

Situation of Human Rights in Cuba



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Approved by the Inter-American Commission on Human Rights on February 3, 2019

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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

1. In this report, the Inter-American Commission on Human Rights (“Inter-American Commission,” “Commission,” or “IACHR”) addresses the situation of human rights in Cuba, focusing in particular on the period from 2017 to 2019. The Commission presents an overview of the characteristics of the Cuban State today, identifying the main issues of concern in the area of human rights and offering recommendations to the State.
2. Although the Government of Cuba does not currently participate in the Organization of American States and has not signed the American Convention on Human Rights, the IACHR has constantly monitored the situation of human rights in Cuba, in keeping with its mandate under the Charter of the Organization of American States (Art. 106) and the American Declaration of the Rights and Duties of Man.
3. Commission reaffirms its competence to examine the human rights situation in Cuba. The understanding of the Commission is that the exclusion from the inter-American system occurred with respect to the Government of Cuba, not the State. The State of Cuba is party to international instruments on human rights in the Hemisphere, such as the American Declaration of the Rights and Duties of Man and the Charter of the Organization of American States; it also signed resolution VIII of the Fifth Meeting of Consultation of Ministers of Foreign Affairs (Santiago, Chile, 1959), which established that the Inter-American Commission on Human Rights is “charged with furthering respect for such rights.” Therefore, the international obligations contracted by the State of Cuba have legitimized the competence of the IACHR. Furthermore, 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 Statute of the IACHR. In this sense, it is incumbent on the IACHR to monitor human rights in Cuba. In addition, the Commission duly notifies the representatives of the Cuban State of each of the actions that should be brought to its attention, thereby respecting its right of defense.
4. The Commission has monitored the human rights situation in Cuba through its various protection mechanisms. Since 1960, the IACHR has published seven country reports: five on the human rights situation in Cuba and two on political prisoners and their families. Cuba has featured in Chapter IV.B of the annual report of the IACHR almost every year since 1985. In addition, the IACHR processes requests for precautionary measures and individual petitions

submitted by Cubans, as well as issuing press releases on the human rights situation on the island.

5. Through this report, the Inter-American Commission on Human Rights deepens its monitoring of the human rights situation in Cuba in this time of change. The Commission has yet to receive consent from the Cuban State for its first visit to the island, which makes it difficult to obtain comprehensive information. Nevertheless, the report draws on open sources and takes into account both the official press and the press that expresses political opposition to the Cuban Government. It also takes into account investigations and reports from different journalistic sources, international organizations, and local civil society.
6. In addition, a particularly relevant component of the report are interviews with Cuban people who live or have lived on the island at some point in the last three years. Through accounts of individual experiences, the interviews provide an overall description of human rights situations. Thus, they provide a human narrative of events that took place during those years, as well as of perceptions and experiences in relation to the State and the guarantee of rights. Faced with the impossibility of visiting Cuba, the IACHR listens to the voices of Cubans and includes them in its examination of the situation in the country. In all, the Commission conducted 55 interviews with activists, human rights defenders, regime opponents, independent journalists, and victims of human rights violations, as well as members of the Cuban diaspora who maintain direct contact and ties with the country's population and the Cuban community. In order to carry out this data collection, semi-structured interviews were conducted using a standard instrument.
7. The report consists of ten chapters: (I) Introduction; (II) The United States' Economic Embargo; (III) The Constitution of 2019; (IV) The Institutional Framework of the State; (V) Representative Democracy and Political Rights; (VI) Situation of Human Rights Defenders; (VII) Freedom of Expression; (VIII) Economic, Social, Cultural and Environmental Rights; (IX) Situation of Human Rights of Other Population Groups; and (X) Conclusions and Recommendations. It is worth noting that in Chapter IX, the IACHR analyzes issues related to people of African descent, women, members of the LGBTI community, children and adolescents, persons with disabilities, people deprived of their liberty, and migrants.
8. In the *introductory chapter*, the Commission sets out some technical aspects of methodology and presents the situation of Cuba in relation to the Organization of American States and, in particular, to the Inter-American Commission on Human Rights. In the latter section, the IACHR reaffirms its competence to monitor the human rights situation on the island, based on its mandate.
9. In the *chapter on the economic blockade by the United States of America*, the IACHR, consistent with its previous pronouncements, reiterates the importance of ending the U.S. economic embargo of Cuba in order to ensure human rights that are impaired as a consequence of it.

10. In the *chapter on the 2019 Constitution*, it describes the process of its adoption and promulgation, and makes a number of observations about its content. The Commission welcomes the Government's intention to use popular participation mechanisms for the adoption of the constitutional text, such as the popular consultation and the referendum. However, it expresses concern about the how those mechanisms functioned, since it received multiple testimonies that those spaces did not take into account the opinions of people opposed to the Government, activists, and artists. The Commission recalls that in democracies the opinion must be guaranteed of all citizens, who are entitled to participate in the decisions that affect them.
11. In its report, the Commission welcomes the inclusion of several human rights and guarantees in the Constitution. It highlights the importance of their effective implementation. The IACHR also notes with concern that the Constitution is ranked above international treaties. The Commission also considers that the constitutional reform process was a unique opportunity to outlaw capital punishment as a criminal penalty. However, the new Constitution does not contain any rules on the matter. While it is not proscribed *per se* in the American Declaration, the Commission has indicated that that does not exempt countries from the standards and protections contained in the Declaration.
12. The Commission notes with regard to procedural guarantees that the new Constitution included the guarantees of habeas corpus, the presumption of innocence, and the right of access to justice. Regarding the latter two, the IACHR had called attention to the fact that they were in the constitutional text, and therefore it welcomes their inclusion. However, it calls for legislation to provide the conditions for the effective functioning of habeas corpus as a mechanism to protect the right to personal liberty. The testimonies collected were emphatic in pointing out that despite its constitutionalization, that guarantee is not effective. The Commission is concerned at the large amount of testimonies and public information denouncing arbitrary arrests of activists and regime opponents as a practice on the island.
13. In the chapter on the institutional framework of the State, the IACHR notes, that other than the creation of the position of Prime Minister, it was largely unchanged in the wake of the 2019 Constitution. The Cuban Communist Party continues to be highly important since it is considered the highest political and leadership force in society and the State. The National Assembly of People's Power still concentrates several public powers, and there are no institutional changes to ensure an independent administration of justice nor a separation of public powers.
14. The Commission is concerned by testimonies that denounced the lack of impartiality in the administration of justice—especially in the case of activists and persons who oppose the regime—and by those that mentioned difficulties in obtaining representation by independent lawyers.
15. In the *chapter on representative democracy and political rights*, the IACHR notes that the essential elements of a representative democracy are still absent in Cuba,

and that the *de jure* identification of the Cuban Communist Party as the sole party undermines the political rights of citizens. In any case, the Commission notes that, *de facto*, in Cuba there are multiple political movements and organizations that reportedly encounter restrictions on their rights to elect, to be elected, and to assemble, aimed at preventing their participation in politics. The IACHR is also concerned that actions to restrict the rights of political activists reputedly also extend to their families, including children.

16. In the *chapter on human rights defenders*, the IACHR presents copious information about the situation of particular risk that they face, including being victims of constant restrictions on international travel, short-term arbitrary detentions, criminalization and judicial persecution. The Commission has reproached the existence on the books of ambiguous criminal classifications in previous annual reports, noting similar vagueness in the concept of “dangerous state” (*estado peligroso*) contained in Article 72 and following provisions of the Criminal Code. Specifically in relation to human rights defenders, it has been informed about the use of indictments for crimes such as contempt, pre-criminal social dangerousness, non-payment of fines, public disorder, and resistance or rebellion, in order to discourage their work in defending and promoting human rights.
17. In the *chapter on freedom of expression*, the IACHR and the Office of the Special Rapporteur for Freedom of Expression noted that Cuba continues to be the only country in the Hemisphere in which there are no guarantees of any kind for the exercise of the right to freedom of expression. A model of state monopoly over the media remains in place, as does the prohibition on founding private media outlets, all of which is incompatible with international standards on freedom of expression. Targeted and deliberate persecution of independent media and journalists continues, and for periods even intensifies. With regard to the Internet, the legal provisions would seem to be extremely restrictive and ambiguous, and there is limited connectivity for the Cuban population. In addition, the blocking and censorship of critical media seriously impedes the exercise of the rights to freedom of expression and privacy on the Internet. In general, with regard to freedom of expression, there is serious discrimination on political grounds in the exercise of human rights against anyone who thinks or wishes to express himself or herself differently from the socialist regime.
18. In the *chapter on economic, social, cultural and environmental rights*, the IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights express concern regarding the housing deficit in Cuba, reports about the large number of homeless people, and complaints concerning deficiencies in water and basic sanitation services on the island. In relation to the right to food, the Commission welcomes the fact that the State has met its targets under the Millennium Development Goals, reducing hunger and malnutrition. However, it is concerned at reports of shortages of essential foodstuffs and difficulty of access to foodstuffs by the population. In relation to cultural rights, the Commission is troubled by the restrictions imposed by Decree No. 349/2018, and that the great power granted to public authorities to encourage prior censorship of cultural expressions. With respect to trade union rights, the IACHR was informed of the barriers that exist in Cuba to the exercise of independent trade union activities,

such as the obstacles imposed on the Independent Trade Union Association of Cuba. As to social security, the Commission is concerned by information that pensions are insufficient to buy the basic staples necessary for a person's survival. Regarding the right to work, the Commission received information about violations in relation to pay as well as alleged gender, political and racial discrimination, which infringe the right to work in Cuba. With regard to the right to health, the Commission welcomes that the State has made positive strides in that area; however, it is concerned about reports of deterioration in the quality of the health service offered to the population, the supply of medicines, and the functioning of the health care system on the island. With respect to the right to education, the Commission is concerned by reports of violation of academic freedom on the island and conditions in education facilities. Finally, in relation to environmental rights, the Commission and its Special Rapporteur express concern at the reports of poor waste management and pollution in less developed parts of the country.

19. In the *chapter on the human rights situation of other population groups*, the IACHR also takes note of the situation faced by people of African descent, women, members of the LGBTI community, children and adolescents, persons with disabilities, people deprived of their liberty, and migrants on the island. For example, it highlighted the absence of clear, disaggregated statistics based on intersectoral databases on the Afro-descendent population, which renders that population invisible, as well as situations of discrimination in labor, educational and social contexts, and the violation of the rights of Afro-Cubans in the areas of health, housing, unemployment, and access to clean water and sanitation services. As regards, women's rights, the IACHR notes that the State has made efforts to adapt legal and State mechanisms in favor of equality between women and men; however, Cuba's legal framework has not mainstreamed into its legislation a general definition of discrimination against women or protection against gender-based violence. In addition, there are concerns about the persistence of gender stereotypes that discriminate against girls and women. With regard to the LGBTI population, the IACHR considers that the scarcity of data on this type of violence in Cuba makes the problem of discrimination unviable; however, based on available information, the Commission found that that population suffers violence, discrimination, restrictions on their rights of assembly and association, and curtailment of their freedom of expression and dissemination of thought. Concerning the rights of persons with disabilities, the IACHR regrets the lack of access for persons with disabilities to the health services necessary for their well-being and incorporation into working life, an inclusive, quality education, as well as health care and employment. Regarding migrants, the Commission expresses its concern at the multiple restrictions and procedures that are said to obstruct the effective exercise of personal liberty both on and off the island. Likewise, regarding the population deprived of liberty, the Commission still does not have updated information on the number of people in Cuba's prisons. However, it does have reports on the persistence of deplorable conditions of detention, overcrowding, insufficient medicine, food and drinking water, inadequate hygiene and sanitation, and deficient medical assistance.

20. Finally, the IACHR offers its conclusions regarding the situation of human rights on the island. It also offers recommendations to the State in order to encourage public policies that effectively guarantee rights in a democracy. The IACHR expresses to the Cuban State its willingness to provide the necessary technical support to promote effective enjoyment of human rights for all in Cuba.

CHAPTER 1

INTRODUCTION

INTRODUCTION

A. Background, Scope, and Purpose of the Report

21. Under the mandate given to it by the Charter of the Organization of American States (Art. 106), the American Declaration of the Rights and Duties of Man, and the American Convention on Human Rights, the Inter-American Commission on Human Rights (IACHR) has constantly monitored the human rights situation in Cuba. Since 1960, the IACHR has published seven country reports, five of which are on the human rights situation in Cuba,¹ and two on political prisoners and their families.²
22. Cuba has featured in Chapter IV.B of almost every annual report of the IACHR since 1985.³ The reason is that the Commission considers that the fundamental elements and institutions inherent to a representative democracy do not exist in the country: there is no judicial independence, there are limits on the separation of powers, there are constant restrictions on the exercise of political rights and freedom of expression, and there are widespread and systematic gross violations of rights set out in the American Declaration on the Rights and Duties of Man.
23. The Commission has taken note of high-profile political events in Cuba's recent history. With regard to senior political leadership positions, worth highlighting were the appointment of Raúl Castro as President of the Council of State and Secretary of the Communist Party of Cuba (PCC) and the election of Miguel Díaz-Canel Bermudez as President of the Councils of State and of Ministers in 2018, as well as his ratification as President of the nation in 2019.
24. The Commission has taken note of the recent process of constitutional change that began in 2018 and culminated in the promulgation of a new text; it is the second issued in the regime since the Revolution and it replaces the one in force since 1976.⁴ The IACHR followed the popular consultation and referendum process, through public information on it. It also heard testimonies on restrictions of rights at the time of adoption of the new constitution, such as curbs on the right of association—particularly of political parties, obstruction of access to information and freedom of expression, arbitrary deprivations of liberty and detentions, impediments to the right of internal and external movement, as well as violations

¹ The reports correspond to 1962, 1967, 1976, 1979, and 1983.

² Submitted in 1963 and 1970.

³ It has been in every annual report except that of 1995.

⁴ IACHR, Press Release No. 058/2019, [IACHR Concerned about Cuba's New Constitution and its Implementation](#), March 4, 2019.

of the physical and psychological integrity of defenders, activists, journalists and regime opponents.

25. Likewise, the Office of the Special Rapporteur for Freedom of Expression of the IACHR, in exercise of its monitoring mandate, presented in its 2019 Special Country Report an overview of the situation of freedom of expression in Cuba. It expressed concern at the lack of spaces for the participation of a plurality of lines of thought and expression. The Rapporteurship concluded that in Cuba "the serious failure to observe the essential elements of freedom of expression, representative democracy, and its institutions persists". Unofficial translation) It also said: "Despite the years that have passed and the repeated recommendations in this regard, intolerance continues to be the rule in the Cuban authorities' treatment of all forms of criticism or opposition and the main stumbling block for fundamental rights and freedoms."⁵ (Unofficial translation)
26. In addition, the IACHR observes that limitations on the rights of human rights defenders, social and political leaders, and independent journalists, as well as Afro-descendants, women, members of the LGBTI community, and other groups historically discriminated against or in situations of vulnerability continue.
27. In view of the foregoing, the IACHR considered it appropriate to prepare a new report on the situation in the country, taking into account the constitutional reform process, the adoption of a new Constitution, and the constant reports of human rights violations in Cuba to which it has access. Thus, this eighth report analyzes the human rights situation in the light of inter-American standards and makes recommendations to the State so that the constitutional and legislative implementation of its reforms are oriented toward better ensuring human rights and democracy.
28. This report takes into consideration events and situations documented from 2017 to 2019.

B. Methodology and Structure of the Report

29. Despite repeated requests for invitations, the Commission has yet to receive consent from the Cuban State for its first visit to the island,⁶ which makes it difficult to obtain comprehensive information. Nevertheless, this report draws on open sources and takes into account both the official press and the press that expresses opposition to the Cuban Government. It also takes into account investigations and reports from different journalistic sources, international organizations, and local civil society. In that regard, the Commission underlines the difficulty of gaining access to reliable official data and figures on the situation

⁵ Office of the Special Rapporteur for Freedom of Expression of the IACHR, [Special Country Report](#), 2019, para. 246.

⁶ In its Press Release of March 4, 2019, the IACHR reiterated its request for an on-site visit to the country. (IACHR, Press Release No. 058/2019, [IACHR Concerned about Cuba's New Constitution and its Implementation](#), March 4, 2019.)

of people in the country and on violations of their human rights. Official information on the Internet is often incomplete and, in some cases, not up to date.

30. In addition, a particularly relevant component of this report are interviews with Cuban people who live or have lived on the island at some point in the last three years. Through accounts of individual experiences, the interviews succeed in painting a picture of overall human rights situations highlighted in the report. Thus, they provide a human narrative of events that took place during those years, as well as of perceptions and experiences in relation to the State and the guarantee of rights. Faced with the impossibility of being in Cuba, the IACHR listens to the voices of Cubans, and includes them in its examination of the situation in the country.
31. To conduct the interviews, the IACHR has relied on the collaboration of civil society organizations to which it is immensely thankful for organizing some of the forums where people could make themselves heard: Instituto de Raza, Igualdad y Derechos Humanos, Pan American Development Foundation, National Democratic Institute, Regional Alliance for Free Expression and Information, and Civil Rights Defenders.
32. In all, the Commission conducted 55 interviews with activists, human rights defenders, regime opponents, independent journalists, and victims of human rights violations, as well as members of the Cuban diaspora who maintain direct contact and ties with the country's population and the Cuban community. In order to carry out this data collection, semi-structured interviews were conducted using a standard instrument.
33. In some cases, the persons interviewed visited the Commission's offices in person, while others were interviewed in the context of activities in third countries. A large number were interviewed by videoconference, electronic media, or telephone. The Commission sought to be as representative as possible by interviewing people from the most diverse priority groups. It should be noted that in some cases, the names and activities of those interviewed will be kept confidential, either because they requested it or owing to the unsafe circumstances or lack of guarantees for their personal security in that country.
34. The Commission also issued a press release announcing the this report and sent a request for information to Cuban civil society organizations.⁷ This document is also based on inputs from the various mechanisms through which the Commission has followed up on the recent situation, including hearings, precautionary measures, individual petitions, and letters to the State. The IACHR is grateful for the information received through these channels.
35. The report consists of ten chapters: (I) Introduction; (II) The United States' Economic Embargo; (III) The Constitution of 2019; (IV) The Institutional Framework of the State; (V) Representative Democracy and Political Rights; (VI)

⁷ IACHR, Press Release No. 205/19, [IACHR Drafts Country Report Concerning the Situation of Human Rights in Cuba](#), August 20, 2019.

Situation of Human Rights Defenders; (VII) Freedom of Expression; (VIII) Economic, Social, Cultural and Environmental Rights; (IX) Situation of Human Rights of Other Population Groups; and (X) Conclusions and Recommendations. It is worth noting that in Chapter IX, the IACHR analyzes issues related to people of African descent, women, members of the LGBTI community, children and adolescents, persons with disabilities, people deprived of their liberty, and migrants.

36. Through this report, the Inter-American Commission on Human Rights deepens its monitoring of the human rights situation in Cuba, identifies some of the main issues of concern, and presents recommendations to the State in the context of this era of change. The IACHR seeks to shed light on the human rights violations suffered by the population on the island and to offer an array of recommendations to the State, in order to promote public policies that effectively guarantee rights in a democracy.

C. Situation of Cuba in relation to the Organization of American States

37. The State of Cuba has been a member of the inter-American system since the founding of the Organization of American States (OAS) in 1948. On January 31, 1962, the Government of Cuba was excluded from participation in the inter-American system by resolution VI adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs, held in Punta del Este Uruguay.⁸ That resolution ceased to have effect on June 3, 2009, when the General Assembly of the Organization of American States determined by resolution AG/RES. 2438 (XXXIX-O/09) 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.”⁹
38. As of the date of adoption of this report, the annulment of the 1962 resolution that excluded the Cuban Government from the inter-American system has not resulted in Cuba's reincorporation in the OAS. The State has not allowed formal visits to the country by the Secretary General or the IACHR. In 2018, at the Eighth Summit of the Americas, Cuba sent a delegation, and despite walking out of the inaugural session prior to the address 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

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

⁹ The text of resolution AG/RES. 2438 (XXXIX-O/09) can be found in “Thirty-ninth Regular Session, San Pedro Sula, Honduras, June 2–4, 2009, Proceedings, Volume I,” Organization of American States, OEA/Ser.P/XXXIX-0.2, p. 12.

interests of United States. Furthermore, in 2017 and 2018, Cuba denied a visa to OAS Secretary General Luis Almagro, who had been invited to the island by civil society organizations to receive the Oswaldo Payá award.

39. In April 2018, the OAS General Secretariat issued a press release stating: "The election by the Cuban National Assembly of Miguel Díaz-Canel as president of the country is a decision taken without the free expression of the Cuban people. When the sovereign will of the people is ignored, the only foundation of the authority of the government is delegitimized."¹⁰
40. On his social media accounts, the Secretary General of the Organization, Luis Almagro, has condemned the imprisonment of journalists and demanded the release of those detained for political reasons and reasons of conscience. He also disagreed with the referendum and described it as a "fraud," pointing out that the single-party regime is not a democracy but a dictatorship.

D. Cuba's Relationship with the Inter-American Commission on Human Rights

41. The Inter-American Commission on Human Rights has consistently held that it is competent to examine the human rights situation in Cuba, and it has monitored that situation as well as processing individual petitions submitted by Cuban citizens.
42. Commission reaffirms its competence to examine the human rights situation in Cuba.¹¹ First, the understanding of the Commission is that the exclusion from the inter-American system occurred with respect to the Government of Cuba, not the State. The State of Cuba is party to international instruments on human rights in the Hemisphere, such as the American Declaration of the Rights and Duties of Man and the Charter of the Organization of American States; it also signed resolution VIII of the Fifth Meeting of Consultation of Ministers of Foreign Affairs (Santiago, Chile, 1959), which established that the Inter-American Commission on Human Rights is "charged with furthering respect for such rights." Therefore, the international obligations contracted by the State of Cuba have legitimized the competence of the IACHR.
43. Furthermore, 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 Statute of the IACHR. In

¹⁰ OAS, Press release C-022/18, [Press Release from the General Secretariat, Cuba: An Illegitimate Transition](#), April 19, 2018.

¹¹ IACHR, [2002 Annual Report, Chapter IV, Human Rights Developments in the Region, Cuba](#), OEA/Ser.L/V/II.117; Doc. 1 rev. 1, March 7, 2003, pars. 3-7; [Seventh Report on the Situation of Human Rights in Cuba](#), OEA/Ser.L/V/II.61; Doc.29 rev. 1, October 4, 1983, pars. 16-46.

this sense, it is incumbent on the IACHR to monitor human rights in Cuba. Likewise, the Cuban State has not denounced the OAS Charter.

44. The Commission has also respected the State of Cuba's right to defense, since it communicates to its representatives, at the appropriate time, each of the actions that should be brought to its attention. In the last country report (1983) on which the IACHR received a response from the Cuban State, its Ministry of Foreign Affairs stated, in reaction to the recommendations of the IACHR and the requests for information made to Cuba, that the Commission lacked the authority to make such recommendations and requests.¹² However, the IACHR continues to send draft reports and letters with requests for information to the State, despite the absence of a response from the State.
45. Equally, the Commission has monitored the human rights situation through its various mechanisms.¹³ Since 1960, the IACHR has published seven country reports: five on the human rights situation in Cuba¹⁴ and two on political prisoners and their families.¹⁵ Cuba has featured in Chapter IV.B of the annual report of the IACHR since 1985.¹⁶ In addition, it processes requests for precautionary measures and individual petitions submitted by Cuban citizens, as well as issuing press releases on the human rights situation on the island.¹⁷
46. With the issuance of this report, the Commission reaffirms its competence to analyze the human rights situation in Cuba. In the absence of official information and the reluctance of the State to allow an on-site visit, the Commission takes note of the information it receives and makes efforts to obtain as much information as possible in order to carry out its mandate and publicize the main progress and challenges in the area of human rights.
47. On December 26, 2019, the IACHR sent the State a draft of this preliminary report and asked it to submit its comments within a month according to its Rules of Procedure. The State did not submit its observations. The IACHR approved this report on February 3, 2020.

¹² IACHR, The Situation of Human Rights in Cuba, Seventh Report, OEA/Ser.L/V/II.61; Doc.29 rev. 1, October 4, 1983, pars. 19-21.

¹³ For example, in 2018, the IACHR issued two letters requesting information from the State and published two press releases: IACHR, Press release 82/2018, [The IACHR publishes merit report in case related to the criminalization of political opinion and deliberation in Cuba](#), April 11, 2018 and IACHR, Press release R152/18, [The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for *desacato* laws in Cuba](#), July 17, 2018.

¹⁴ The reports correspond to 1962, 1967, 1976, 1979, and 1983.

¹⁵ Submitted in 1963 and 1970.

¹⁶ It has been in every annual report except that of 1995.

¹⁷ IACHR, Press release R82/2018, The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for *desacato* laws in Cuba, July 17, 2018. IACHR, Press Release No. 058/2019, [IACHR Concerned about Cuba's New Constitution and its Implementation](#), March 4, 2019. CIDH, Press release No 139/19, [IACHR and its Special Rapporteurship Condemn Move to Break Up Peaceful March in Favor of LGBTI Persons in Cuba](#), June 4, 2019. IACHR, Press release R206/2019, [Office of the Special Rapporteur condemns prison sentence against journalist Roberto Quiñones and expresses concern about the persistence of criminalization and harassment against communicators and human rights defenders in Cuba](#), August 20, 2019.

CHAPTER 2

THE UNITED STATES' ECONOMIC
EMBARGO

THE UNITED STATES' ECONOMIC EMBARGO

48. The economic, commercial, and financial embargo of Cuba by the United States of America includes laws and executive actions, such as the Foreign Assistance Act (1961), the Cuban Democracy Act (1992),¹⁸ and the Cuban Freedom and Democratic Solidarity Act (the Helms-Burton Act) among others.
49. On several occasions, the Inter-American Commission on Human Rights has called for the U.S. Congress to lift the economic embargo, stating that rights are affected as a consequence of it. In its more recent annual reports, the IACHR has reiterated that the embargo must end because of the impact of economic sanctions on the rights of the Cuban population, while emphasizing that the embargo does not release the State of Cuba from its obligation to discharge its international obligations, nor excuse its violations of the American Declaration.¹⁹ Following the restoration of relations between the countries in 2015, which even led both nations to open their embassies in their respective capitals, the IACHR continued its call for the lifting of the embargo in its annual report for that year,²⁰ and in its

¹⁸ TITLE XVII – Cuban Democracy Act of 1992, sec. 1708 a(3).

¹⁹ IACHR, 2013 Annual Report, Ch. IV.B, Cuba, par. 107: "As regards the economic and trade embargo imposed by the United States on Cuba since 1961 and which continues in force, the IACHR reiterates its position in terms of the impact of such economic sanctions on the human rights of the Cuban population; accordingly, it reiterates that the embargo should end. Without prejudice to the foregoing, the economic embargo imposed on Cuba does not release the State of its obligation to carry out its international obligations, nor does it excuse the violations of the American Declaration described in this report." IACHR, 2014 Annual Report, Ch. IV.B, Cuba, par. 157: "The IACHR also indicated that it hopes that the recent decision by the Cuban Government is followed by more measures to open up the country to international presence, including by human rights monitoring bodies, with a view to concrete advances in the protection of its inhabitants. As regards the United States, the IACHR reiterates its position that the economic embargo imposed by this country on Cuba has a negative impact on the human rights of the Cuban population; accordingly, it again calls on the U.S. Congress to lift the embargo, which could happen in the context of the renewed dialogue between both countries. Without prejudice to the foregoing, the economic embargo imposed on Cuba does not release the State of its obligation to carry out its international obligations, nor does it excuse the violations of the American Declaration described in this report."

²⁰ IACHR, 2015 Annual Report, Ch. IV.B, Cuba, par. 18: "The progress made in re-establishing relations between the two countries is apparent. Nonetheless, the IACHR continues to be concerned about the continuation of the embargo, and therefore it appeals once again to the U.S. Congress to lift it."

subsequent reports for 2016 and 2017.²¹ The IACHR has also issued press releases calling for the embargo to be lifted.²²

50. The embargo has also been criticized by the United Nations, which has called for an end to the blockade and highlighted its damaging effects on human rights on the island. In this regard, the report of the Secretary-General presenting the replies of the agencies of the United Nations system to the General Assembly's request for information on compliance with the resolution "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" is noteworthy. In it, the Economic Commission for Latin America and the Caribbean, FAO, the World Food Programme, the Environment Programme, UNESCO, the International Labour Organization, and the World Health Organization and the Pan American Health Organization, among others, indicated the difficulties generated by the embargo for certain rights on the island.²³
51. On November 7, 2019, the United Nations General Assembly passed a new resolution, in addition to the 27 that have been adopted since 1992, to request the lifting of the United States economic embargo on Cuba. The resolution was adopted with 187 votes in favor, 3 against (United States, Israel, and Brazil) and two abstentions (Colombia and Ukraine).²⁴
52. Despite these requests, the embargo continues, although its intensity has fluctuated, first under Barack Obama's presidency and then during the presidency of Donald Trump.
53. The administration of the then-President of the United States, Barack Obama, began to normalize relations between the United States and Cuba by partially revoking some of the political measures that had strong repercussions on the island. In July 2015, diplomatic contact was initiated with Cuba that concluded in the opening of an embassy in Havana and eliminated some restrictions on trade,²⁵ tourism, remittances, telecommunications, and financial services between the

²¹ IACHR, [2016 Annual Report](#), Ch. IV.B, Cuba, par. 17: "In that connection, the IACHR has been consistent in its firm rejection of the economic embargo owing to its disproportionate and indiscriminate impact on the population, which is why it is has repeatedly called for the U.S. Congress to lift it. IACHR, [2017 Annual Report](#), Ch. IV.B, Cuba, par. 22: "As noted in previous years, the IACHR agrees with the United Nations Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, when he notes: 'The argument goes that if measures achieve their objectives rapidly and if these objectives are viewed as desirable by the international community, they may be considered as legitimate. However, this legitimacy is undermined if the measures have caused, by design or by default, egregious violations of basic human rights.' It is for this reason that the IACHR takes this opportunity to reiterate to the U.S. Congress that it should lift the embargo on Cuba and its population."

²² IACHR, Press Release No. 156/14, [IACHR Welcomes Announcement to Re-establish Relations between the United States and Cuba](#), December 18, 2014.

²³ United Nations, [Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba, Report of the Secretary-General](#), A/73/85, 29 August 2018, para. 120.

²⁴ UN News, [UN Members overwhelmingly support end of US embargo, as Brazil backs Washington](#), 7 November 2019.

²⁵ White House Office of the Press Secretary, [Statement by the President on the Re-establishment of Diplomatic Relations with Cuba](#), July 1, 2019,

- countries.²⁶ In March 2016, the then-President of the United States traveled to Cuba, the first time a U.S. president had visited the island since 1928.²⁷
54. Before his presidential term ended, Barack Obama revoked the popularly termed "dry feet, wet feet" policy, which granted residency to Cuban immigrants who had arrived in the United States without detection by the coastguard. In that regard, the Cuban government said that "the governments managed to finalize this commitment which should contribute to the normalization of migratory relations, which have been marked since the Triumph of the Revolution by the application of aggressive policies [...] that encouraged violence, irregular migration, and human trafficking."²⁸
 55. Subsequently, Donald Trump's presidency shifted on a number of the policies adopted by the previous administration in relation to Cuba. In June 2017, it banned trade that benefited Cuban military or security services and prohibited travel from the United States.²⁹ Although strictly tourist travel was also prohibited under Barack Obama's presidency, according to public information from the United States Embassy in Cuba, there are only 12 categories of travel purpose that can justify a legal trip from the U.S. to Cuba: family visits, official U.S. or foreign government business, journalistic activities, religious activities, public functions, workshops or competitions and exhibitions, support for the Cuban people, humanitarian projects, research or academic work, export, import, or transmission of information, and certain authorized export transactions autorizadas.³⁰ Similarly, President Trump, like his predecessor, amended the Cuban Assets Control Regulations by executive action, restoring prohibitions on different forms of business relations between the two countries.³¹
 56. Likewise, the current administration activated Title III of the Helms-Burton Act in 2019.³² Title III of the Act allows U.S. citizens or permanent residents with land confiscated by the Cuban government to sue companies that have used the confiscated land to conduct business. The Act provides that "any person that ... traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages."³³ All previous presidents had suspended the right to file claims under Title III.
 57. Since the activation of Title III of the Helms Burton Act, lawsuits have been filed against Carnival and Norwegian, two cruise companies with ships in the port of

²⁶ Mark P. Sullivan, [Cuba: U.S. Policy Overview](#), Congressional Research Service, August 30, 2019.

²⁷ Washington Post, Karen DeYoung, [How Obama's Trip to Havana Finally Ended the Cold War](#), November 18, 2016.

²⁸ Granma, [Declaracion del Gobierno Revolucionario](#), January 12, 2017. (Unofficial translation).

²⁹ U.S. Government, [Federal Register](#), Vol. 82, No. 202, 20 Oct. 2017, P. 4887.

³⁰ U.S. Embassy in Cuba, [Traveling to Cuba](#).

³¹ Mark P. Sullivan, [Cuba: U.S. Policy Overview](#), Congressional Research Service, August 30, 2019.

³² Lesley Wroughton, Patricia Zengerle, and Matt Spetalnick, [U.S. Allows Lawsuits against Cuban Entities but Shields Foreign Firms for Now](#), Reuters, March 4, 2019,

³³ Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, Sec. 302 a(1).

Havana; Meliá, the Spanish hotel company; and several international companies.³⁴ The IACHR also takes note of public information indicating that under the Helms Burton Act, Exxon Mobil has sued two Cuban companies using an oil refinery expropriated in 1960.³⁵

58. In September 2019, president Trump's administration reportedly expanded the prohibitions on remittances to Cuba, preventing Cubans living in the United States from sending more than \$1,000 in remittances over three consecutive months to relatives on the island. Remittances to relatives of Communist Party officials were also reportedly prohibited. According to available information, there is no limit on remittances that can be sent to private businesses, human rights organizations, or religious groups.³⁶
59. Regarding diplomatic relations between the two countries, it is noted that after the alleged acoustic attacks suffered by several members of the U.S. diplomatic staff in Havana, the U.S. Department of State informed the Cuban embassy in Washington, D.C., of the expulsion of two of its diplomats, a figure that later increased to 15,³⁷ thus further compromising relations between the two countries.³⁸ The considerable reduction in the size of the United States diplomatic delegation in Cuba has affected visa processing. In that regard, the Ministry of Foreign Affairs of Cuba stressed that the country had not and would not allow attacks against diplomatic officials, and reiterated its willingness to cooperate in the clarification of the facts.³⁹
60. The IACHR notes that on September 19, 2019, the U.S. Government expelled two diplomats from the Cuban delegation in the United Nations and prohibited other members of the mission from traveling to New York, where the headquarters of the United Nations is located. The Department of State announced that the diplomats were expelled for attempting to engage in "influence operations."⁴⁰ The Cuban Government rejected the action as "unjustified" and warned that its aim was to "provoke a diplomatic escalation [...] and increase tensions between the two countries."⁴¹

³⁴ Miami Herald, Taylor Dolven, Federal Judge's Ruling Against Carnival on Cuba Cruises Leads to Rash of Similar Lawsuits, August 27, 2019; Daily Business Review, Dylan Jackson, Meliá's Cuban Hotels Hit with Helms-Burton Class Action, September 11, 2019;

³⁵ Bloomberg, Mark Raymond, Carlos Loumiet, y Franco Furmanski, Bracing for Helms-Burton Impact – What to Keep in Mind if Doing Business in Cuba, August 22, 2019.

³⁶ Miami Herald, Nora Gámez Torres, Trump Administration Imposes New Limits on Remittances to Cuba, September 6, 2019.

³⁷ Diario de Cuba, Washington pedirá a La Habana que retire a casi dos tercios de su personal diplomático en EEUU, October 3, 2017; NYTimes, U.S. Expels 15 Cuban Diplomats, in Latest Sign Détente May Be Ending, October 3, 2017.

³⁸ NYTimes, 16 Americans Sickened After Attack on Embassy Staff in Havana, August 24, 2017; CNN, Sonic attacks in Cuba hit more diplomats than earlier reported, officials say, August 20, 2017; NPR, Cuban Diplomats Expelled After U.S. Embassy Staff 'Incidents' In Havana, August 9, 2017.

³⁹ Cubadebate, MINREX informa sobre incidente diplomático con Estados Unidos, August 9, 2017.

⁴⁰ Reuters, Matt Spetalnick, U.S. expels two of Cuba's U.N. Diplomats, Citing "Influence Operations."

⁴¹ Granma, Canciller rechaza injustificada expulsión de dos funcionarios de la Misión Permanente de Cuba a la ONU, September 19, 2019.

61. The Inter-American Commission on Human Rights, consistent with its previous pronouncements, reiterates the importance of ending the U.S. economic embargo on Cuba in order to ensure human rights that are impaired as a consequence of it. The Commission also reiterates that the economic embargo does not release the State from keeping its international obligations under the American Declaration.

CHAPTER 3

THE 2019 CONSTITUTION

THE 2019 CONSTITUTION

62. In the period covered by this report, a particularly significant event was the adoption in 2019 of a new constitution in Cuba, the second full constitutional charter promulgated since change of regime in 1959.
63. As the IACHR has mentioned in previous country reports, the Revolutionary Government of Cuba assumed power on January 1, 1959, and one month later, on February 7, 1959, the Council of Ministers, exercising their legislative powers, approved, sanctioned and enacted the “Fundamental Law of the Republic,” which replaced the 1940 Constitution. The Constitution of the Republic of Cuba adopted in 1976 replaced the Fundamental Law of 1959. It was drafted by the Revolutionary Government of Fidel Castro and was the first Cuban Constitution based on Marxist-Leninist principles.⁴² That Constitution was submitted to a referendum and, according to official sources, elicited the approval of 97.7 percent of the population that voted at the time.⁴³
64. The 1976 Constitution was amended in 1978, 1992 and 2002. According to Article 137 of the Constitution, which was amended in 2002, constitutional amendments of high importance, such as of the powers of the National Assembly, had to undergo a process of popular consultation and a referendum.⁴⁴
65. The section below examines the process of drafting and adoption of the Constitution followed by a number of issues relating to the contents of the new Constitution.

A. The Preliminary Draft Constitution and Popular Consultation

66. The Cuban State began a formal process of constitutional reform in 2018; although preparatory work was done on the new text of the Constitution before then, as indicated by senior leaders in a number of speeches. For example, in April 2016,

⁴² IACHR, Sixth Report on the Situation of Political Prisoners in Cuba, OEA/Ser.L/V/II.48 doc. 7, December 14, 1979, Ch. I.B, par. 1.

⁴³ Cuba News, Cuba: ¿cómo se redactó el proyecto de reforma constitucional?, October 21, 2018.

⁴⁴ Article 137 (on constitutional amendment) of the Cuban Constitution of 1976 provided in its second at paragraph that “[i]f the amendment concerns the composition and powers of the National Assembly of People’s Power or its Council of State, or any rights and duties enshrined in the Constitution, it shall also require the approval of the majority of citizens with the right to vote by means of a referendum called for that purpose by the Assembly.”

in the Central Report to the VII Congress of the Cuban Communist Party, the then-president Raúl Castro Ruz expressed the need to adopt a new constitutional text that would adapt to the transformations associated with updating the economic and social model, and indicated that the constitutional reform process should have the approval of the National Assembly.⁴⁵

67. Two years later, in April 2018, Raúl Castro Ruz, acting as General of the Army and First Secretary of the Central Committee of the Communist Party of Cuba, announced before the National Assembly the creation of a commission to prepare a draft constitution that should be submitted to referendum. He also indicated that the new constitution did not imply a change in the strategic objective of the Party, and that it would be widely supported by the population, as had happened in 1976.⁴⁶
68. On June 2, 2018, the National Assembly of People's Power approved the creation of a commission to prepare a draft Constitution. The Commission was composed of 33 deputies and chaired by Raúl Castro Ruz. At the presentation of the Commission, President Miguel Díaz-Canel stated that the mission of the Commission was to draft a constitution in accordance with principles of humanism and social justice, with the irrevocability of the socialist system as its central pillar.⁴⁷ According to the daily newspaper of the Communist Party, on June 3, 2018, the Commission met to take up the preparatory work and debate the constitutional reforms.⁴⁸ On July 21, 2018, the ten permanent committees of the National Assembly debated the draft Constitution at their regular meetings. On the following day, July 22, the Assembly continued the debate and unanimously approved the draft Constitution with some modifications.⁴⁹
69. The IACHR notes that the preliminary draft was approved quickly. Although there is no set time frame for adopting laws or constitutions, it took the National Assembly less than two months to approve a draft Constitution, without any lengthy discussions on issues of high importance addressed by a normative document of such significance.
70. According to the official press, the period from August 13 to November 15, 2018, saw the start of the sale of the text of the draft constitution and of the process of presentation and debate of its contents in workplaces, study centers, community centers, and abroad, all under the leadership of the Communist Party and with the involvement of the Young Communist League.⁵⁰ According to the same source, in this process duos were created to guide the discussions and systematize all the

⁴⁵ Cubadebate.cu, [Informe Central al VII Congreso del Partido Comunista Cuba](#), April 17, 2016.

⁴⁶ Agencia Cubana de Noticias [Discurso de Raúl Castro Ruz en la Clausura de la Sesión Constitutiva de la IX Legislatura de la Asamblea Nacional del Poder Popular](#), Palacio de Convenciones, April 19, 2018.

⁴⁷ Agencia Cubana de Noticias, [Palabras de Miguel Díaz-Canel en la Sesión Extraordinaria de la IX Legislatura de la Asamblea Nacional del Poder Popular](#), June 2, 2018.

⁴⁸ Granma, [Comenzaron sesiones de trabajo de la Comisión que redactará el anteproyecto de Constitución](#), June 3, 2018.

⁴⁹ Granma, [Proyecto de Constitución es presentado y debatido por diputados cubanos \(I\) y \(II\)](#), July 21 and 22, 2018, respectively.

⁵⁰ Granma, [Preparan proceso de consulta del Proyecto de Constitución](#), August 1, 2018.

citizen proposals on each of the paragraphs of Constitution.⁵¹ In addition, in the consultation process the website of the Ministry of Foreign Affairs was adapted to enable Cubans outside the country to offer their opinions.⁵²

71. The proposals that came out of the popular consultations were reportedly systematized and presented to the National Assembly of People's Power for incorporation as appropriate.⁵³ The Commission to Prepare the Draft Constitution reputedly made 760 changes, ranging from slight to very substantial, with the result that 134 articles supposedly were modified, 3 deleted, and 87 left unchanged.⁵⁴
72. With regard to the consultation process, according to a number of testimonies, the State initially allowed contributions from civil society. Some members of civil society stated that they had participated in the popular consultations for presentation and discussion and had submitted contributions for the reform.⁵⁵ However, when it came to the participation of opponents or opinions that were not in favor of the reform or of the proposed text, their participation had been limited. According to the testimonies gathered, the strategy used by the State was to prevent the physical presence of key individuals at the public assemblies where the draft constitution was discussed. In addition, according to civil society organizations, the procedure used in the popular consultations lacked transparency. They pointed out that the methodology did not allow "knowing beforehand what qualitative and quantitative requirements citizens' proposals had to meet in order to be accepted or rejected by the authorities, undermining its legitimacy."⁵⁶

⁵¹ Granma, [De la raíz de la Patria a su futuro](#), August 13, 2018.

⁵² Granma, [Inicia proceso de Consulta Popular sobre Proyecto de Constitución desde el exterior](#), August 31, 2018.

⁵³ According to information from Cubadebate.com, 133,681 meetings were held that were attended by 8,945,521 people. According to reports, some of the most commented topics were article 68, related to marriage, which provided that it was a union between two persons, in response to which proposals were made that it be defined as consisting of a union between a man and a woman; article 121 on the length of the term of the President of the Republic, their maximum age, and the possibility of their direct election, the latter requested by the majority of those who participated in the consultation. Other provisions that were reportedly hotly debated were Article 31 on work, for which a salary increase was requested; Article 165 on the appointment of the Governor; and provisions on the right to legal assistance and decent housing. The interventions reportedly yielded 9,595 standard proposals, of which 50.1 percent were apparently accepted and 49.9 percent unfounded. The opinions of Cubans abroad were purportedly grouped into 978 standard proposals, of which 391 were accepted. Cubadebate.com, [Presentan a los diputados resultados de la consulta popular del Proyecto de Constitución](#), December 18, 2018.

⁵⁴ Cubadebate.com, [Presentan a los diputados resultados de la consulta popular del Proyecto de Constitución](#), December 18, 2018.

⁵⁵ According to the testimony of Manuel Silvestre Cuesta Muruam, "constitutional proposal panels [were] created in different parts of the country to stimulate citizen participation in putting forward proposals for reforming the constitution." Testimony of journalist Manuel Silvestre Cuesta Murua, May 2019. Available at: IACHR archive.

⁵⁶ Alianza Regional por la Libre Expresión e Información, Report for the thematic hearing of the IACHR on Constitutional Reform and Human Rights in Cuba, February 15, 2019.

B. Referendum and Proclamation of the Constitution

73. On December 21, 2018, the Commission to Prepare the Draft Constitution presented the constitutional text to the National Assembly in the wake of the popular consultations.⁵⁷ On December 22, 2018, the National Assembly of People's Power, in the framework of the Second Regular Session of the IX Legislature, adopted a final version of the constitutional text and called for a referendum to ask citizens at the polls: "Do you ratify the new Constitution of the Republic?" with two possible answers: yes or no.⁵⁸
74. A constitutional referendum on the reform was held on February 24, 2019. The Commission received complaints alleging that certain people were prevented from leaving their homes to vote. In some cases, members of the security police allegedly positioned themselves in front of their homes; others were reportedly summoned to appear at police stations on the same day and at the same time as the vote; some people were apparently detained before, during, and after the referendum. The IACHR received information on several arbitrary detentions in the framework of the process.⁵⁹ It was also reported that members of the organization "Damas de Blanco" (Ladies in White), some of whom are beneficiaries of precautionary measures granted by Commission,⁶⁰ were detained ahead of the referendum for periods of up to 96 hours.⁶¹
75. According to the final results of the National Electoral Commission, 7,848,343 voters, corresponding to 90.15 percent of the updated roll, exercised their right to vote. Of that total, 95.85 percent of the ballots deposited were declared valid. 86.85 percent voted Yes, and 9 percent voted No.⁶²
76. On March 4, 2019, the IACHR issued a press release in which it highlighted some of the advances of the new constitutional text and expressed its concern over reports of restrictions on the exercise of human rights in the popular consultation and referendum process. The Commission said: "Some activists ... reported that they had been intimidated, arrested and, in some cases, beaten up by the security forces, and that their homes had been besieged by the military the week before the referendum." It also noted that there were complaints of election fraud in the referendum day, including things like "voting in pencil, non-secret ballots, the

⁵⁷ National Assembly of People's Power of Cuba. [Diputados debatirán este sábado nuevo Proyecto de Constitución](#), December 21, 2018.

⁵⁸ National Assembly of People's Power of Cuba. [Aprueban diputados cubanos nueva Constitución de la República](#), February 22, 2019.

⁵⁹ Cuban Observatory of Human Rights, Report on Human Rights Violations in Cuba, Period 2018- March 19.

⁶⁰ PM 264/13, [Ladies in White regarding the Republic of Cuba](#), October 28, 2013. The precautionary measure was expanded in May 2014.

⁶¹ Cubanet, [Arrestan a Damas de Blanco por manifestarse contra referendo constitucional](#), February 25, 2019.

⁶² National Electoral Commission. Final results of the Constitutional Referendum process, February 28, 2019.

exclusion of more than two million Cubans who live abroad and inadequate ballot boxes.”⁶³

77. In addition, the interviewees stated that it was possible to vote in more than one place, that pencils were used to record the vote, that votes against were not counted, and that votes that should have been considered void were counted as being in favor.
78. For example, in the interview conducted by the IACHR with Mr. Fernando Palacio Mogar, referring to the constitutional process, he stated: “in the darkness, even a ray of light is something; it seems that small changes occurred, but in general it has been a makeup job to keep the same system in place.”⁶⁴ Likewise, in the interview conducted by the IACHR with Zelandia de la Caridad Pérez Abreu, she stated:

They had already approved the Constitution; they did this so that the people would not feel excluded. Young people are totally ignored; they are not reflected in it and their opinions were not heard when it was drafted. Nor most adults. We went and did a survey and many people did not know what the Constitution was. They were going to vote yes. I'm going to vote yes to get this over with. We went to rural communities [and there was] total ignorance about the Constitution. They voted yes to do as they were told and have done with it. They are not reflected in the Constitution; hardly benefitted. It's like a kind of facade.⁶⁵

79. In this regard, the Commission stresses the importance that citizen participation mechanisms such as popular consultations and referendums, as well as elections, be informed, free, independent and reliable procedures.⁶⁶ In addition, it underlines that the existence of a plurality of opinions is key, as are the guarantees of free political participation for individuals and organized groups and parties.⁶⁷ It also recalls that the presence of electoral observers and the existence of transparent electoral processes are practices aimed at strengthening respect for and guarantee of citizens' political rights.
80. The Constitution of the Republic of Cuba was proclaimed on April 10, 2019.

⁶³ IACHR, Press Release No. 058/2019, IACHR Concerned about Cuba's New Constitution and its Implementation, March 4, 2019.

⁶⁴ IACHR, Interview with Fernando E. Palacio Mogar, April 2019, IACHR archive.

⁶⁵ IACHR, Interview with Zelandia de la Caridad Pérez Abreu, May 2019, IACHR archive.

⁶⁶ Inter-American Democratic Charter, Article 3. Adopted at the Twenty-eighth special session, September 11, 2001, Lima, Peru.

⁶⁷ IACHR, Venezuela, 2018, par. 148. IACHR, Democracy and Human Rights in Venezuela, OEA/SER.L/V/II, Doc. 54, December 30, 2009, par. 21; IACHR, 2014 Annual Report, Chapter IV.B, Venezuela, par. 361; and Second Report on the Situation of Human Rights in Peru, OEA/Ser.L/V/II.106, doc. 59 rev., June 2, 2000, Chapter IV, par. 1.

C. The Contents of the New Constitution

81. The Constitution of 2019 maintains the most characteristic features of the Cuban Government, describes the State of Cuba as socialist and the Communist Party as its highest political and leadership force in society and the State, and establishes that it organizes and guides common efforts in the construction of socialism and progress toward a socialist society.
82. With regard to the constitutional provision that considers the Communist Party the sole party, the Commission expresses its concern about the democratic restrictions implied by the absence of political pluralism and representativeness. Furthermore, the effects of this norm on political rights, freedom of expression, freedom of thought, and even equality and non-discrimination in relation to political ideas deeply troubling.
83. With respect to the rights expressly recognized in the Constitution, the Commission takes note of the recognition of the rights to life,⁶⁸ the prohibition of forced disappearance,⁶⁹ and the prohibition of torture and cruel, inhuman or degrading treatment or punishment.⁷⁰ It also introduces the prohibition of discrimination on the basis of sexual orientation, gender identity, and disability,⁷¹ as well as including the right to privacy.⁷² It also establishes the rights to health,⁷³ education,⁷⁴ work,⁷⁵ housing,⁷⁶ [a healthy and stable] environment,⁷⁷ food,⁷⁸ and clean water.⁷⁹ The vast majority of those economic, social, cultural and environmental rights were enshrined in the previous Constitution as goals or duties of the State, but not as rights of the Cuban population.⁸⁰ The Constitution also states that the State, society, and families have obligations with regard to older persons and persons with disabilities.⁸¹
84. In its last country report on Cuba, published in 1983, the Commission considered that two of the human rights enshrined in the American Declaration were absent from the Cuban Constitution: the right to resort freely to the courts to seek justice and the presumption of innocence until proved guilty. However, it noted that the

⁶⁸ Constitution of the Republic of Cuba, 2019, Art. 46.

⁶⁹ Constitution of the Republic of Cuba, 2019, Art. 51.

⁷⁰ Constitution of the Republic of Cuba, 2019, Art. 51.

⁷¹ Constitution of the Republic of Cuba, 2019, Art. 42.

⁷² Constitution of the Republic of Cuba, 2019, Art. 48.

⁷³ Constitution of the Republic of Cuba, 2019, Arts. 46, 69. In relation to public health, Art. 72. In relation to the consumption of goods that do not endanger health, Art. 78.

⁷⁴ Constitution of the Republic of Cuba, 2019, Art. 73.

⁷⁵ Constitution of the Republic of Cuba, 2019, Art. 64.

⁷⁶ Constitution of the Republic of Cuba, 2019, Art. 71.

⁷⁷ Constitution of the Republic of Cuba, 2019, Art. 75.

⁷⁸ Constitution of the Republic of Cuba, 2019, Art. 77.

⁷⁹ Constitution of the Republic of Cuba, 2019, Art. 76.

⁸⁰ Constitution of the Republic of Cuba, 2019, Art. 9.

⁸¹ Constitution of the Republic of Cuba, 2019, Arts. 88 and 89.

first of those rights was recognized in article 123, subparagraph d of the Constitution then in force.⁸² The IACHR welcomes the fact that the new Constitution refers to the two guarantees indicated by the IACHR in its country report that were not in the previous constitutional text, concerning the right of access to justice and presumption of innocence. Those guarantees are contained in Articles 92 and 95:

Article 92. The State guarantees, in accordance with the law, that people may access judicial bodies to obtain effective protection for their rights and legitimate interests. Compliance with judicial decisions is obligatory and disregard of such decisions will result in liability for those who violate them.⁸³

Article 95. Furthermore, in criminal proceedings, all people have the following guarantees:

c. To be presumed innocent until found a final judgment is issued against them.

85. It is also worth noting that Article 96 of the Constitution elevates the guarantee of habeas corpus to a constitutional level:

Any person illegally deprived of liberty is entitled, of their own account or that of a third party, to institute a proceeding for habeas corpus before a competent court, in accordance with the law.⁸⁴

86. The Commission notes that Article 8 provides that the Constitution of the Republic of Cuba takes precedence over international treaties, as follows: "The provisions of international treaties in force for the Republic of Cuba form part of or are integrated, as appropriate, into the national legal system. The Constitution of the Republic of Cuba takes precedence over those international treaties." The Commission emphatically stresses the importance that States recognize in their legal systems the rights set forth in international treaties and that they provide instruments for the effective fulfillment of their human rights obligations at the international level.

87. In addition, the Commission takes note of a number of issues that require examination in the light of standards under the American Declaration, especially with regard to the death penalty. While it is not proscribed *per se* in the American Declaration, the Commission has indicated that that does not exempt countries from the standards and protections contained in the Declaration. The Commission understands the Declaration as prohibiting it in cases where "doing so would result in an arbitrary deprivation of life or would otherwise be rendered cruel,

⁸² IACHR, [Country report on Cuba](#), 1983, Chapter IV, par. 17.

⁸³ Constitution of the Republic of Cuba, Art. 92.

⁸⁴ Constitution of the Republic of Cuba, Art. 96.

infamous or unusual punishment.”⁸⁵ Therefore, the IACHR has interpreted and applied the American Declaration on the basis that the right to life holds a special primacy, and any deprivation of that right must be subject to the highest possible level of scrutiny.⁸⁶

88. The IACHR has repeatedly expressed concern about the death penalty remaining on the books in Cuba.⁸⁷ The constitutional reform process was a unique opportunity to outlaw capital punishment as a criminal penalty. However, the new Constitution does not contain any rules on the matter. The Commission notes that the death penalty is envisaged for a significant number of criminal offenses⁸⁸ and is prescribed for crimes where it could be imposed through summary proceedings.⁸⁹ The Commission notes that according to the information at its disposal, the death penalty has not been carried out since 2003. Be that as it may, as has already been pointed out above, “the fact that it is in force in domestic legislation and can be potentially applied constitutes a latent threat.”⁹⁰ It is also stressed that abolition of the death penalty continues to be the trend observed in the Hemisphere.⁹¹
89. Likewise, the IACHR notes that the Constitution refers to the right to freedom to enter, remain, travel in, and leave the national territory, as well as the rights to

⁸⁵ IACHR, Report No. 57/96, Case 11.139, William Andrews, United States, December 6, 1996, cited in IACHR, Report No. 62/02, Case 12.285, Merits, Michael Domingues, United States, October 22, 2002, par. 52.

⁸⁶ IACHR, [The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition](#), 31 December 2011, OEA/Ser.L/V/II Doc.68I, par. 13.

⁸⁷ IACHR, 2018 Annual Report, [Chapter IV.B. Cuba](#), par. 40; IACHR, [2017 Annual Report, Chapter IV.B. Cuba](#), par. 58.

⁸⁸ Capital punishment is the penalty for crimes against the security of the State; against peace and international law; against public health; against life and bodily integrity; against the normal conduct of sexual relations; against the normal development of childhood and adolescence; and against property 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 committed against the independence and territorial integrity of the State; those aimed at promoting war or armed action against the State; the provision of armed services against the homeland; providing aid and comfort to the enemy; espionage; insurrection; sedition; usurpation of political or military control; sabotage; terrorism; hostile acts against a foreign State; genocide; piracy; enrolling in the service of a foreign military force; apartheid and other acts against the security of the State. The death penalty is also provided for the following criminal offenses: unlawful production, sale, use, trafficking, distribution and possession of drugs, narcotics, psychotropic substances and others having similar effects; murder; rape; violent pederasty; corruption of minors; robbery committed with violence or intimidation. 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.”

⁸⁹ The Law of Criminal Procedure provides for the summary proceeding at Articles 479 and 480: 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. In a summary proceeding, to extent that the competent court deems necessary, the time limits 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.

⁹⁰ IACHR, 2018 Annual Report, [Chapter IV.B. Cuba](#), par. 40; IACHR, [2017 Annual Report, Chapter IV.B. Cuba](#), par. 58.

⁹¹ IACHR, [The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition](#), OEA.Ser.L/V/II. Doc. 68, December 31, 2011.

assembly, demonstration, and association. All of them in compliance with the provisions of the law. Therefore, the IACHR again emphasizes that one of the challenges for the State in relation to the promulgation of its Constitution is its effective implementation, and that domestic law should not impose obstacles that prevent the full exercise of rights.

90. In relation to freedom of expression, the IACHR remains concerned about several constitutional provisions. Articles 54 and 55 are particularly significant in that regard. The former provides:

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

91. Although the Constitution adopted in February 2019 establishes the general obligation of the State to recognize, respect and guarantee freedom of thought, conscience and expression, whereas the 1976 Constitution contained no such provision, the IACHR is concerned about the effectiveness of that right, given that the Constitution restricts political pluralism and does not provide for judicial or administrative mechanisms that could be considered effective at fully protecting the right to freedom of thought or conscience.⁹²

92. This is linked to the restrictions that remain on freedom of the press, which render the exercise of the right illusory and make its recognition merely rhetorical.⁹³ The Constitution does not recognize non-state ownership of the media and it effectively prevents free exercise of freedom of expression through independent media. This relates to Article 55, which states:

People's freedom of press is recognized. This right is exercised according to the law and for the good of society. The fundamental means of social communication, in any of their forms, are the socialist property of all people or of political, social, and mass organizations, and may not be categorized as any other type of property. The State establishes the principles of organization and operation for all means of social communication.

93. The Commission notes that, according to the above constitutional provision, freedom of expression in Cuba is subject to the "good of socialist society" and may only be exercised through state media outlets, bearing in mind that it is established that the media "are the socialist property of all the people." In that regard, the IACHR considers that maintaining the State monopoly on the media also contradicts the provisions of the new Constitution that define Cuba as a

⁹² IACHR, Special Report on the Situation of Freedom of Expression in Cuba, OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, par. 43.

⁹³ IACHR, Special Report on the Situation of Freedom of Expression in Cuba, OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, par. 44.

democratic State governed by the rule of law. In other words, there can be no talk of a democratic system without full respect for freedom of expression and the possibility for citizens to exchange information, ideas and opinions from a variety of information sources, including the possibility of founding or partnering with others to create communications media.⁹⁴

94. In relation to access to public information, Article 53 of the Constitution recognizes that “[a]ll persons have the right to request and receive from the State truthful, objective and timely information, and to have access to information generated by State bodies and entities, in accordance with established regulations.” Although this provision represents a step forward, given that the Constitution of 1976 did not recognize the right of access to information, its wording does not encompass the full 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, “[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.”
95. Similarly, the IACHR is concerned that Article 32 of the Constitution provides that education and cultural expression in Cuba must adhere to a specific political line: “In its educational, scientific, and cultural policy, the State abides by the following tenets: [...] h. Freedom of artistic creation is promoted in all of its expressions, in accordance with the humanist principles upon which the State's cultural policy and the values of socialist society are based.” Furthermore, Article 79 provides that the State “promotes culture and the distinct artistic formats in accordance with cultural policy and the law.”⁹⁵
96. At the same time, the IACHR finds that to ensure the full exercise of these rights, it is important to have an effective and suitable remedy to satisfy the right of access to information, an adequate mechanism to enable individuals to enforce that remedy in the face of refusals by the State to provide information, and recourse to review by a guarantor. It is also important to ensure the right to judicial review of the administrative decision through a simple, effective, prompt remedy that is not onerous and that allows for the decisions of public officials to be challenged.⁹⁶
97. The Commission notes that the Constitution recognizes several political rights at Article 80. Due to their significance, these issues will be dealt with in more detail in the chapters that follow, as will issues concerning the organization of the State, the duties in defense of the socialist State, and the absence of independence of powers.

⁹⁴ IACHR, Special Report on the Situation of Freedom of Expression in Cuba, OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, par. 45.

⁹⁵ IACHR, Special Report on the Situation of Freedom of Expression in Cuba, OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, par. 129.

⁹⁶ IACHR, Special Report on the Situation of Freedom of Expression in Cuba, OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, pars. 29 and 63-64.

CHAPTER 4
THE INSTITUTIONAL
FRAMEWORK OF THE STATE

THE INSTITUTIONAL FRAMEWORK OF THE STATE

98. The structure of the State after the 2019 Constitution did not undergo any major changes, except for the creation of the post of Prime Minister. The following sections address the aspects related to the Communist Party and mass organizations, as well as the foundations of the State which continue to make references to the defense of the socialist homeland. Furthermore, there are no provisions to ensure the separation of powers, the National Assembly still holds several powers, and the judicial bodies continue without constitutional provisions that give them independence.

A. The Communist Party of Cuba, the Young Communist League, and Mass Organizations

99. In like fashion to the previous Constitution,⁹⁷ the Communist Party of Cuba occupies a position of great importance in the Constitution of the Republic of Cuba, which considers it the highest political and leadership force in society and the State.⁹⁸
100. Regarding the importance of the Party, the Commission takes note of the chief main concerns highlighted in civil society reports on the superiority and primacy of the Communist Party of Cuba (PCC) in the Constitution.⁹⁹ In the same vein, the IACHR found that in a public speech, the President of the Committee on Constitutional and Legal Affairs of the National Assembly, Deputy José Luis Toledo, reportedly said in relation to the new Constitution that the PCC would not submit to the dictates of that fundamental law because the Party was "above the Constitution."¹⁰⁰

⁹⁷ Article 5 of the 1976 Constitution stated that it considered the Party as the "organized Marxist-Leninist vanguard of the working class, it is the leading force of society and the State, which organizes and guides common efforts towards the high goals of the construction of socialism and the advance towards communist society." Constitution of the Republic of Cuba, 2019. Article 5.

⁹⁸ Specifically, Article 5 of the current Constitution states: "The Communist Party of Cuba, the sole, Martían, Fidelist, Marxist and Leninist organized vanguard of the Cuban nation, supported by its democratic character and permanent link to the people, is the highest political and leadership force in society and the State".

⁹⁹ Alianza Regional por la Libre Expresión e Información, Reforma Constitucional e Derechos Humanos en Cuba, February 15, 2019, pp. 5-8; Diario Las Américas, Políticos e intelectuales cuestionan la reforma de la Constitución cubana, November 12, 2018.

¹⁰⁰ CiberCuba, La UPEC aclara que el Partido no estará por encima de la nueva Constitución de Cuba, July 29, 2018.

101. In its previous country report on Cuba, the Commission found that there was a marked subordination to political power of all activities in Cuban society. The Commission also considered that the Communist Party was granted a counterproductive preponderance that impeded the existence of healthy ideological and pluralism. At the time, the IACHR said that it hoped that the conditions would be created to bring about the effective and authentic participation of the citizens of Cuba in the political decisions that affect them, in a framework of freedom and pluralism necessary to the effective observance of all human rights.¹⁰¹
102. With regard to the preponderance of the Communist Party and its stipulation as a the sole party, the Commission is concerned that human rights guarantees in Cuba should require membership and active support of a political party. As previously stated, the IACHR finds that a stipulation of this type is contrary to the political pluralism that fuels a democracy and adversely affects several rights, including the right to freedom of expression and thought; it can even give rise to situations of discrimination on political grounds. Constant testimonies were received regarding the importance of actively supporting the Communist Party in Cuba or the mass organizations in order to have peace of mind in the workplace and educational contexts. Similarly, the Commission received testimonies regarding the possibility of political participation that stated, "If you are in the Party, the everything is possible. If not, nothing is"; "If you criticize anything, you are branded an anti-revolutionary."¹⁰²
103. The Constitution accords high importance to the Young Communist League, which it defines in Article 6 as follows:

The Young Communist League, a vanguard organization of the Cuban youth, is recognized and supported by the State, contributes to the education of the youth in the revolutionary principles as well as the ethics of our society, and promotes their active participation in building socialism.¹⁰³
104. As for the mass organizations, the IACHR notes that the Constitution does not contain a definition for them; however, in the specific rule on access to publicly elected positions, mass organizations play an important role in validating candidacies. Furthermore, Article 14 provides that the State recognizes and encourages them, and that they "represent their specific interests and incorporate them into the tasks of building, consolidating and defending socialist society."¹⁰⁴
105. Likewise, the IACHR is concerned that the State does not offer guarantees for the exercise of rights for those who do not share that political conviction. This will be further developed in the chapter on political rights.

¹⁰¹ IACHR, Country report on Cuba, 1983, Ch. II, par. 46.

¹⁰² IACHR, Interview with Sandor Pérez, September 2019. IACHR archive.

¹⁰³ Constitution of the Republic of Cuba, 2019, Article 6.

¹⁰⁴ Constitution of the Republic of Cuba, 2019, Article 14.

B. Foundations of the State and Branches of Government

106. Regarding the foundations of the State, the IACHR notes that Article 4 of the Constitution provides that the defense of the socialist homeland "is the greatest honor and supreme duty of every Cuban" and "[b]etrayal of the homeland is the gravest of crimes, and whoever commits it is subject to the most severe sanctions." The same article adds that the socialist system is irrevocable and "citizens have the right to fight by all means, including armed struggle, when no other recourse is possible, against anyone who tries to overthrow the political, social and economic order established by this Constitution."¹⁰⁵
107. The Commission is concerned at the potential treatment and guarantees of rights for people who are perceived as being against the regime simply for expressing criticism or a different opinion. In that regard, in the interviews that it conducted the IACHR heard testimony from people who said that their rights were infringed when agents of the State or others perceived them as being contrary to the Government. An activist artist said, "If you say something that's wrong, you're immediately branded anti-revolutionary; just for telling the truth, nothing more."¹⁰⁶ In another testimony, the independent journalist, Lázaro Yuri Valle Roca, said that "[he] was being accused of defamation of the institutions of the State and the heroes and martyrs [because of] a news item about the death of a boy caused by a beating from the police and he was violently arrested and beaten."¹⁰⁷
108. With regard to the branches of government, the Commission notes that under the new Constitution, most of them retained the role they played under the previous Constitution.
109. The National Assembly of People's Power (ANPP) continues to be an institution with broad powers to adopt laws and elect the directors of the main judicial, oversight, and administrative institutions.¹⁰⁸
110. The Council of State is responsible to the ANPP and reports to it on its activities. The decree-laws it adopts are submitted for ratification at the next session.¹⁰⁹ The President of the Republic is responsible for representing the State and directing its foreign policy, endorsing the laws issued by the National Assembly of People's

¹⁰⁵ Constitution of the Republic of Cuba, Arts. 104 and 105.

¹⁰⁶ IACHR, Interview with Sandor Pérez, September 2019.

¹⁰⁷ IACHR, Interview with Lázaro Yuri Valle Roca, June 2019, IACHR archive.

¹⁰⁸ Article 109 of the Constitution sets out all its electoral powers. The National Assembly elects the President and Vice President of the Republic from among its members. It also elects the members of the Council of State and appoints, on the proposal of the President of the Republic, the Prime Minister and members of the Council of Ministers. In addition, it elects the President and Justices of the People's Supreme Court, the Attorney General of the Republic, the Comptroller General of the Republic, and the President and members of the National Electoral Council.

¹⁰⁹ The Council of State is responsible for ensuring compliance with the Constitution and laws; issuing decree-laws and decisions; suspending provisions that contradict the Constitution; issuing general instructions to the courts through the Governing Council of the People's Supreme Court; and ratifying and denouncing international treaties, among other matters. Constitution of the Republic of Cuba, 2019, Article 122.

Power, in addition to examining, evaluating and adopting decisions on the accountability reports submitted to them by the Prime Minister, the Council of Ministers, or its Executive Committee; they also preside over meetings of the Council of Ministers or its Executive Committee.¹¹⁰ For its part, the Council of Ministers is the highest executive and administrative body and constitutes the Government of the Republic. It is composed of the Prime Minister, the Deputy Prime Ministers, the Ministers, the Secretary, and other members determined by law.¹¹¹ The Prime Minister is the Head of Government of the Republic and is appointed by the National Assembly of People's Power on the proposal of the President of Republic.¹¹²

111. As regards the courts of justice, Chapter V of the Constitution provides that the function of dispensing justice emanates from the people and is exercised on their behalf by the People's Supreme Court—which exercises the highest judicial authority—and the other courts established by law.¹¹³ With regard to the Office of the Attorney General of the Republic, the Constitution provides that it is an indivisible organic unit subordinate to the President of the Republic. With regard to the electoral system, the Constitution also provides for the existence of the National Electoral Council, which is responsible for organizing, conducting, and supervising elections, popular consultations, plebiscites, and referendums, and is accountable to the National Assembly of People's Power.¹¹⁴
112. In terms of territorial organization of the State, the country is divided into provinces and municipalities. In the provinces there is a Provincial Government comprising a Governor and a Provincial Council,¹¹⁵ whose mission is the economic and social development of the territory and which acts as a coordinator between the central structures of the State and the municipalities.¹¹⁶ In the municipalities, the Municipal Assembly of People's Power is the highest body of State power and is composed of delegates elected in each district.¹¹⁷ Likewise, the Commission takes note of the existence of the People's Council, which is a local representative body,¹¹⁸ and the Municipal Administration.¹¹⁹
113. In that regard, the IACHR notes that the institutional conditions that prevent a system of separation of powers persist in Cuba. The foundations of the State and the characteristics of the branches of government show that the main powers for the conduct of public affairs remain concentrated in a small number of authorities. The National Assembly of People's Power has a very high concentration of functions, including the appointment of those who will hold other positions in the

¹¹⁰ Constitution of the Republic of Cuba, Article 128.

¹¹¹ Constitution of the Republic of Cuba, Articles 133 and 134.

¹¹² Constitution of the Republic of Cuba, Article 141.

¹¹³ Constitution of the Republic of Cuba, Articles 147 and 148.

¹¹⁴ Constitution of the Republic of Cuba, Article 212.

¹¹⁵ Constitution of the Republic of Cuba, Article 170.

¹¹⁶ Constitution of the Republic of Cuba, Article 171.

¹¹⁷ Constitution of the Republic of Cuba, Articles 185 and 186.

¹¹⁸ Constitution of the Republic of Cuba, Article 198.

¹¹⁹ Constitution of the Republic of Cuba, Article 5.

State. In addition, the possibility of removing officials without substantial protection to prevent reprisals against them for their decisions would seem to undermine independent and impartial decision-making. Moreover, the provisions on the defense of the socialist homeland and the determination that treason is the most serious of crimes in the characterization of the foundations of the State, do not offer institutional guarantees for a rule of law that protects the rights of all persons without political distinction.

C. Administration of Justice

114. The Commission found in its previous reports that Cuba has no legal basis or political practice that allows for real independence in the administration of justice, thus affecting one of the conditions that the IACHR considers essential for the effective observance of human rights. In its 1983 report, it found that the subordination of the administration of justice to political power and the waves of repression against opponents of the Government prevented legal certainty and the independence of the legal system that was trying to be consolidated.
115. At present, according to Article 147 of the Constitution, the function of dispensing justice emanates from the people and is exercised on their behalf by the People's Supreme Court and the other courts established by law. The People's Supreme Court exercises the highest judicial authority and its decisions are final.¹²⁰ In addition to the People's Supreme Court, there are people's provincial courts, people's municipal courts, and the Military Tribunal.
116. The Cuban Constitution provides that magistrates and judges, in their function of imparting justice, are independent and only obedience to the law.¹²¹ Having said that, the Commission notes that the mere constitutional stipulation that judicial organs are independent is not a sufficient condition to ensure proper administration of justice.¹²²
117. Regarding the position of the courts in the State and the appointment of officials to do the work of administration of justice, the Commission notes that the Assemblies of People's Power have a big say in the appointment of judges, who report to them and may be removed by the body that elects them.¹²³ This is the case for judges with legal training and lay judges who are citizens who do not have legal training but participate in judicial decisions.
118. Lay judges—without legal training—are elected by the respective Assemblies of People's Power, whether at the national, provincial or municipal level, from

¹²⁰ Constitution of the Republic of Cuba, 2019, Article 148.

¹²¹ Constitution of the Republic of Cuba, 2019, Article 150.

¹²² IACHR, [Country report on Cuba](#), 1983, Chapter IV.B. Institutional Organization of the System for the Administration of Justice, par. 4.

¹²³ Constitution of the Republic of Cuba, Arts. 149, 154-155.

nominations submitted by candidate selection committees.¹²⁴ The selection committees are made up of representatives of the Central Union of Cuban Workers, the Committees for the Defense of the Revolution, the Federation of Cuban Women, the National Association of Small Farmers, and the Federation of University Students, who are appointed by the respective national, provincial and municipal directorates.¹²⁵ Professional judges are elected by the respective People's Assembly or, in the case of municipal courts, the Provincial Assembly.¹²⁶ According to the Law on the People's Courts, lay judges sit on the People's Supreme Court, people's provincial courts, people's municipal courts, and the Military Tribunal.

119. Regarding suspension from the exercise of judicial functions, the IACHR takes note of the provisions contained in Law 82 on the People's Courts, setting out incompatibilities and the disciplinary regime for judges. In this regard, it should be noted that judges may be suspended from the exercise of their judicial functions by the President of the People's Supreme Court when, *inter alia*, they are placed under investigation by the Governing Council of that Court, are subject to criminal proceedings for the commission of an offense, a precautionary measure has been decreed, or when criminal proceedings have been brought by the public prosecutor.¹²⁷
120. The Commission also notes that under the new Constitution, the National Assembly of People's Power exercises control over the constitutionality of laws, decree-laws, presidential decrees, decrees and other general provisions, in accordance with the provisions of law.¹²⁸ In this regard, it is noted that the National Assembly of People's Power continues to have broad authority in matters that would give independence to judges; for example, the ANPP has the power to interpret the Constitution and laws, if necessary, and its interpretation is general and mandatory.¹²⁹
121. Although States may adopt different ways of creating their democratic systems, the IACHR notes that People's Assemblies still have a big say in the formation of judicial bodies, as well as in tasks that would allow those bodies to exercise their independence more forcefully and expand their exercise of judicial assessment, such as in the area of control of constitutionality. The IACHR also stresses the importance of judges having guarantees as soon as they are elected for carrying out their work independently, impartially, in accordance with the law, and with respect for human rights. Therefore, it reiterates its concern that in Cuba the

¹²⁴ Article 49 of Law 82 on the People's Courts.

¹²⁵ Article 49 of Law 82 on the People's Courts.

¹²⁶ Articles 45 and 46 of Law 82 on the People's Courts refer to the fact that the justices who sit in the divisions of the People's Supreme Court are elected by the National Assembly of People's Power on the proposal of the President of the People's Supreme Court; the judges who make up the People's Provincial Courts are elected by the respective Provincial Assemblies of People's Power on the proposal of the President of the People's Supreme Court; and the judges who make up the People's Municipal Courts are elected by the respective Provincial Assemblies of People's Power.

¹²⁷ Article 64 of Law 82 on the People's Courts.

¹²⁸ Constitution of the Republic of Cuba, Art. 108.

¹²⁹ Constitution of the Republic of Cuba, Art. 108.

interference of the People's Assemblies continues, hindering the performance of judicial duties in the manner described.

122. With regard to military jurisdiction, in accordance with Law 97 of 2002, it is made up of the Military Division of the People's Supreme Court and the military tribunals. Its objectives are the same as the other courts, and in addition: "(a) to prevent and suppress, through its pronouncements in judicial decisions, any criminal act that affects or may affect the security of the State, the capacity and combative readiness of the armed forces, military discipline, or the regulatory order established for the performance of military service, as well as other violations of criminal law; (b) to comply with and enforce socialist law and to contribute to the education of military personnel in the strict observance of military laws, regulations, provisions and orders."¹³⁰
123. In that regard, it is worth highlighting that the United Nations Committee on Enforced Disappearance noted with concern the jurisdiction of military courts over criminal proceedings in which the accused is a member of the armed forces, even when any of the participants or the victim are civilians or the acts were committed on military premises, regardless of the civilian or military status of the persons involved in those acts. In that regard, the Committee remarked:

While noting that the military courts may decline jurisdiction in favour of the ordinary courts, the Committee recalls its position that, in principle, military courts do not offer the guarantees of independence and impartiality required by the Convention for trying cases of enforced disappearance (arts. 11 and 12).¹³¹

124. 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. In this regard, the IACHR also believes that the State should adopt measures to ensure that cases of complaints of forced disappearance are processed with guarantees of independence and impartiality, which, according to the Committee, the Military Court would not afford.
125. At present, the Commission notes that the lack of independence in the system of administration of justice persists for the same reasons. There are no normative guarantees allowing judges to administer justice even when their decisions may be contrary to the political interests of the Government. Furthermore, in practice, according to the testimonies received, the level of trust in the courts is low and they are not perceived as impartial actors in the resolution of conflicts. This last point is addressed in the section on access to justice.

¹³⁰ Article 3 of the Law on the People's Courts.

¹³¹ 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, 19 October 2019.

D. Effective Access to Justice

126. One of the Commission's greatest concerns regarding access to justice in Cuba relates to the effective application of constitutional norms in administrative and judicial processes. The Commission notes that the absence of judicial independence has serious repercussions on judges' decisions. In specific cases of dissidents, testimonies indicate that there is a lack of impartiality, and guarantees such as the right to a public trial are not fulfilled.

127. On the absence of impartiality, among the interviews conducted by the IACHR, one that concerned a judicial decision influenced by the Police stood out in particular. In the case of Silrey Ávila León, she indicated that when she was a delegate of the people's power and lived alone on a farm, she made several complaints about the poverty and lack of education for the people in the region without obtaining a response; when she announced, in response, that she would contact the Inter-American Commission on Human Rights, she became a victim of attacks. She decided to file a complaint for attempted murder but said she received no guarantees in the process. She said:

I received no summons for a trial; they held it when they sewed up my arm badly; I have quite a few limitations. They held the hearing while I was in bed; they didn't notify me. When I complained, they told me that what I needed to think about was that my life had changed. I had no right to a lawyer or to appeal; if the prosecutor considered that there had been a mistrial, he would appeal. He got six and a half years for minor injuries. He cut my knees with six machete blows; my hand when I covered my head; I can't bend my knees. If it was held at the provincial level, the next step is to appeal to the Nation; but no, I have to wait for a response from the provincial prosecutor's office. The prosecution said that I was not entitled to anything else, that the doctor had certified that given where the wounds were located, the intention was not to kill me. That he had struck me on the legs, not to kill me. In that case, why did he cut my shoulder? They wanted to favor him.¹³²

128. Furthermore, regarding certain guarantees, such as the right to a public trial, one testimony received by the IACHR suggested that the right is not fulfilled in cases against dissidents:

Trials are not open to the public and the police carry out round-ups around the perimeters of courts, where there is no press access. Trials of dissidents are not public; they are private because they are afraid that the population will demonstrate because they are being

¹³² IACHR, IACHR interview with Silrey Ávila León, May 2019, IACHR archive.

charged with common crimes when they haven't committed any crime.¹³³

129. Some testimonies indicated that opponents of the Government are prosecuted for ordinary crimes in order to bring them to justice¹³⁴. One of the interviewees said in relation to his perception of the administration of justice that: "the testimony of people who are against the regime is not accepted. They are either not recognized them or ignored. They act as government lawyers; it is not independent."¹³⁵ Another said: "Complaints are never investigated. For example, when we were evicted from the church I tried to get a lawyer but my lawyers were intimidated by state officials."¹³⁶ Several testimonies indicated that "everything goes unpunished"¹³⁷ and that "we have no protection against the arbitrariness of State officials."¹³⁸
130. The Commission was also informed on several occasions of the difficulty of finding independent lawyers with guarantees for their work. Notable, for example, is the testimony of a lawyer to whom the IACHR had access, who, when questioned about his experience as a judge and his opinion of the judicial system in Cuba, said:

The Cuban judicial system is full of legal shortcomings, which offer no protection to citizens, whether they be victims, witnesses or defendants. One such shortcoming undermines due process: defendants do not have access to a lawyer until seven working days have passed; if in those seven working days a precautionary measure is not imposed on the defendant, they do not have access to a lawyer. You have to wait for an injunction before you can hire a lawyer. In the meantime, the defendant is totally defenseless.

In the courts, the judges in my case were not professionals like me; they were party members or members of the UJC, which has an impact on how criminal cases are resolved because they are not impartial and you are linked to politics.

Lay judges are not going to be impartial when it comes to administering and imparting justice; there is no principle of impartiality. Every month a counterintelligence officer would go to court, according to them, because they were supervising, checking, keeping an eye on the courts. I saw it as a threat, a warning, a repressive act: "We're keeping tabs on you. Be careful."¹³⁹

¹³³ IACHR, Widhner Jordani Ballester Cortez, June 2019, IACHR archive.

¹³⁴ IACHR, Interview with Joanna Columbié Grave de Peralta, June 2019, IACHR archive. IACHR, Widhner Jordani Ballester Cortez, June 2019, IACHR archive.

¹³⁵ IACHR, Interview with Michael Valladares Cala, July 2019, IACHR archive.

¹³⁶ IACHR, Interview with Alayn Toledano Valiente, May 2019, IACHR archive.

¹³⁷ IACHR, Interview with Danaísi Muñoz Lopez, June 2019, IACHR archive.

¹³⁸ IACHR, Interview with Julio César Álvarez López, May 2019, IACHR archive.

¹³⁹ IACHR, Widhner Jordani Ballester Cortez, June 2019, IACHR archive.

131. The Commission regards the constitutional recognition of several procedural guarantees as a positive development; however, it notes with concern the repeated complaints about their lack of effectiveness. The Commission has testimonies that reflect how ineffective the remedy of habeas corpus was when it was only stipulated in a law. For example, in the context of the campaign against Decree 349, one person interviewed by the IACHR recounted his experience with the demonstration and the ineffectiveness of judicial remedies:

With the 349 campaign we had to file a habeas corpus application following the arrest of the artists who are still in prison, but it was thanks to international pressure that it was accepted at the provincial level and then at the national level. But then there was no response. The institutions are practically made of stone and unresponsive.

You can only see a lawyer on the seventh day of your arrest. You are basically kidnapped by the government without access to a lawyer. Your lawyer is only notified on the third or fourth day. If you are detained in one place, you may be moved to a completely different location, which means that someone interested in finding out about you does not have access to that information.

We've been arrested just for putting on a performance. These arrests are carried out by the political police without cause. Although procedures exist and we go along with them, we do so to have it on record that we have also gone through the legal motions, even though we know that they do not work; we only log our actions on social media to create a critical mass about it and highlight that lack. But we know that the government do not process the complaints unless it is a show for the media. The citizen is exposed to arbitrary laws without the possibility of defense.¹⁴⁰

132. Finally, it should be noted that the Constitution repeatedly refers to the provisions of law, and in criminal matters, to the Code of Procedure, which dates from 1977. The IACHR considers that laws should be consistent with the Constitution and human rights treaties. Therefore, it calls on the State of Cuba to update its criminal laws by incorporating the guarantees provided for in its Constitution and aligning them with inter-American standards. Likewise, the IACHR calls in particular for assurances that in administrative and judicial practice procedural guarantees are complied with and that they do not depend on political views or on links—proven or otherwise—to certain political groups.

¹⁴⁰ IACHR, Interview with Amaury Pacheco Del Monte, May 2019, IACHR archive.

CHAPTER 5
REPRESENTATIVE DEMOCRACY
AND POLITICAL RIGHTS

REPRESENTATIVE DEMOCRACY AND POLITICAL RIGHTS

133. The IACHR believes that the full exercise of political rights, along with other rights, is an essential element of a representative and pluralistic democratic system. The exercise of political rights includes a wide range of activities that are aimed, whether individually or collectively, at contributing to the conduct of public affairs. It includes the possibility of standing for election, of taking part in the government of the country, and of organizing political parties and associations. In addition, governments must ensure the conditions for the organization of political parties and the effective exercise of such rights.
134. The IACHR notes the Article 80 of the new Cuban Constitution that refers to a number of political rights:

Cuban citizens have the right to participate in the formation, exercise, and control of the power of the State; in accordance with the Constitution and laws, they may: (a) be registered on the electoral roll; (b) propose and nominate candidates; (c) elect and be elected; (d) participate in elections, plebiscites, referendums, popular consultations, and other forms of democratic participation; (e) pronounce on the accountability of those elected; (f) revoke the mandate of those elected; (g) present proposed laws and amendments to the Constitution; (h) perform public functions and hold public office, and (i) be informed of the performance of State bodies and authorities.¹⁴¹
135. While the IACHR welcomes the constitutional enshrinement of these rights, it notes that at present the conditions for political participation in Cuba remain substantially unchanged, since the essential elements of participatory democracy are still lacking and restrictions on the effective exercise of participation by other political forces in public affairs persist. It was confirmed by several persons who disagree with the official party and who informed the IACHR of arrests and restrictions on their rights to assembly and to freedom to elect and to be elected.

¹⁴¹ Constitution of the Republic of Cuba, 2019, Article 80.

A. *Representative Democracy: Absence of Essential Elements*

136. Upon adopting the Inter-American Democratic Charter, the OAS member states recognized that representative democracy is the system through which stability, peace, and development in the region is achieved, and that it is fundamental for attaining the full exercise of fundamental rights. Article 3 of the Inter-American Charter provides:

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.¹⁴²

137. The serious failure to abide by the core requirements for representative democracy and its institutions is one of the main factors behind the inclusion of Cuba in Chapter IV of the annual reports of the IACHR, in accordance with Article 59(6)(a)(i) of the IACHR Rules of Procedure. Historically, the IACHR has categorically denounced 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.
138. In the wake of an electoral process that began in 2017, Raúl Castro Ruz was relieved of the office of President of the Council of State and of Ministers of the Republic of Cuba on April 19, 2018. His replacement, Miguel Díaz-Canel, was confirmed by 99.83 percent 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 retained leadership of the Communist Party and, as the President-elect announced, is in charge of the most important decisions for the present and the future of the nation; consequently, no significant changes are anticipated in how the country is run.
139. Furthermore, with regard to the popular consultation and presidential election processes, the Commission notes that, according to the media, one of the citizens' requests was that the election of the President and Vice President be by popular

¹⁴² Inter-American Democratic Charter, Article 3. Adopted at the Twenty-eighth special session, Lima, Peru, September 11, 2001.

vote.¹⁴³ However, the Constitution adopted did not include that possibility. On contrary, during the period covered by this report, President Miguel Díaz-Canel was elected by the National Assembly of People's Power.

B. Political Pluralism and Participation in Government

140. Constitutionally speaking, Cuba is considered a single-party state, in which the Communist Party is the highest political and leadership force in society and the State.¹⁴⁴

141. The Commission considers that the constitutional provision of a single party not only prevents a higher level of political discussion, which is a fundamental condition for a democracy, but also limits the rights of those who do not share the political convictions of the Communist Party because it does not allow individuals to participate as provided in Article XX of the American Declaration of the Rights and Duties of Man, which states: "Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free."

142. This is illustrated by the comments of one of those interviewed by the IACHR, who underscored the difficulty of political opposition in Cuba: "There is no effective way of being in opposition in Cuba; everything on the island is controlled by State security. It is even above the leadership of the country, above what the party says; they are terrified whenever State security rears its head; it is an organization that has power over everyone. We haven't the slightest freedom of action."¹⁴⁵

143. The monopoly of such political organizations means that anyone who is not a member of the Party has no possibility of attaining public office or participating in the representation of their government. In the testimonies collected by the IACHR, questions were asked about political participation and access to public office. One testimony obtained by the IACHR said:

If I wanted to hold public office, I would have to be a member of the Communist Party and follow the party's orders. The Communist Party in Cuba is above the law. That is where we get into the science fiction part: in Cuba there are no problems with transparency, representation and all the other things that do not exist in Cuba.¹⁴⁶

144. The Commission reiterates its concern about the absence of guarantees for the exercise of political rights by persons who are not registered or aligned with the

¹⁴³ Cubadebate.com, [Presentan a los diputados resultados de la consulta popular del Proyecto de Constitución](#), December 18, 2018.

¹⁴⁴ Constitution of the Republic of Cuba, 2019, Article 5.

¹⁴⁵ IACHR, Interview with Joanna Columbié Grave de Peralta, June 2019, IACHR archive.

¹⁴⁶ IACHR, Interview with David Escalona Carrillo, May 2019, IACHR archive.

Communist Party or its mass organizations. The IACHR finds that the possibility of dissenting and expressing political opinions has an obstacle in the de jure promulgation of a single-party Cuba, in spite of the multiple political organizations that demand participation in the public sphere.

145. In contrast to the provisions of the Constitution, the IACHR notes that, although, by law, only one political party exists, there are *de facto* movements and associations that propose ideas different from those of the Communist Party. Thus, the Commission notes that in Cuba other groups stand out, such as *Unión Patriótica de Cuba* (Patriotic Union of Cuba), *Damas de Blanco* (Ladies in White), *Movimiento Cristiano de Liberación* (Christian Liberation Movement), *Partido por la Democracia Pedro Luis Vomitel* (Pedro Luis Vomitel Party for Democracy), *Partido por la Unidad Cristiana de Cuba* (Party for Christian Unity of Cuba), Frente Nacional de Resistencia “Orlando Zapata Tamayo” (Orlando Zapata Tamayo National Resistance Front), *Movimiento Opositor Juventud Despierta* (Youth Awake Opposition Movement), *Foro Anti totalitario Unido* (United Anti-Totalitarian Forum), *Partido de Unidad Nacional Democrática* (National Democratic Unity Party), *Movimiento Independiente Opción Alternativa* (Alternative Option Independent Movement), *Movimiento San Isidro* (San Isidro Movement), and others.
146. In that regard, the Commission notes several restrictions on the rights of political groups that deviate from the Communist Party, as previously recorded. In 2017, the Commission recorded several attacks on organizations that promoted, among other issues, a multi-party system. The Special Rapporteur for Freedom of Expression of the IACHR was concerned by reports that in April, Karla María Pérez González, journalism student, was expelled from the Universidad Central de Las Villas for belonging to Movimiento Somos+, a Cuban civil society organization that promotes, among other things, a multi-party system, independent journalism, and open elections. According to the information available, her classmates decided that she should be expelled, a decision that was ratified by the University Student Federation (FEU) of the school. In its press release, the FEU said that she was “a member of an illegal, counter-revolutionary organization, contrary to the principles, objectives, and values of the Cuban Revolution.”¹⁴⁷
147. As previously noted, the concern of the Commission in this regard is the absence of guarantees for the exercise of political rights by persons who are not registered or aligned with the Communist Party or its mass organizations. The IACHR finds that the possibility of dissenting and expressing political opinions has an obstacle

¹⁴⁷ Semana, *La estudiante a la que echaron de una universidad en Cuba por pertenecer a un grupo disidente*, April 19, 2017; El País, *Una universidad cubana expulsa a una alumna de 18 años por disidente*, April 19, 2017; BBC Mundo, *“Me expulsaron por no comulgar con las ideas comunistas”*; *Karla María Pérez, la estudiante de periodismo a la que echaron de una universidad en Cuba por ser de un grupo disidente*, April 19, 2017. In May, Pérez González reported that she was the victim of a systematic attack by journalists from official media, bloggers, as well as university authorities (Cuba en Miami, *Gobierno de Cuba inicia campaña mediática contra Karla Pérez*, May 9, 2017; El Nuevo Herald, *La joven expulsada de la universidad en Cuba denuncia una campaña mediática en su contra*, May 8, 2017; CubaNet, *Joven expulsada de la universidad denuncia campaña mediática en su contra*, May 9, 2017).

in the de jure promulgation of a single-party Cuba, in spite of the multiple political organizations that demand participation in the public sphere.

C. Restrictions on the Exercise of the Right to Vote

148. Article XX of the American Declaration of the Rights and Duties of Man establishes the right to vote and to take part in the government of one's country.¹⁴⁸ The IACHR recalls that the right to elect and to be elected is an essential element of democracy and one of the ways in which citizens freely express their will and exercise their right to participate in government. At the same time, political participation by exercising the right to be elected presupposes that citizens can run as candidates on equal terms and that they can hold public office subject to election if they are able to get the number of votes needed.¹⁴⁹

149. Regarding the right to be elected, the IACHR has received testimonies that highlight the difficulty for people not affiliated with the Communist Party to occupy publicly elected office. On this subject, one of those interviewed by the IACHR, Guillermo Fariñas Hernández, said: "The political role of the citizens is blotted out and it is the communist party that chooses the candidates and applicants."¹⁵⁰ In this regard, the testimony of Gerardo Páez to the IACHR is also noteworthy:

I have not tried to run as a candidate for a constituency where we are allowed. I have helped campaign. And a few years ago we managed to get him to run and win, but maneuvers by state security had a strong negative influence, and so on election day he was defeated. We know that it is a step will be very hard for us to pull off because the regime has absolute control over the count."¹⁵¹

150. Also noteworthy is the testimony of Manuel Silvestre Cuesta Murua to the IACHR, who had the following to say about his experience with politics:

I acquired a lot of experience because I coordinated the 818 platform; its aim was to reform the electoral law in order to make it democratic and pluralistic and put forward candidates for the municipal elections, which is the only level where citizens can run without the involvement of state agencies. We managed to present a list of 172 independent candidates throughout the country for the municipal elections in November 2017 and the reaction of the authorities was to use extralegal means to prevent them from running at the local

¹⁴⁸ Article XX provides: "Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free."

¹⁴⁹ IACHR, 2017 Annual Report, Chapter IV.B. Cuba, par. 25; IACHR, 2018 Annual Report, Chapter IV.B. 127, par. 206.

¹⁵⁰ IACHR, Guillermo Fariñas Hernández, June 2019, IACHR archive.

¹⁵¹ IACHR, Interview with Gerardo Páez, May 2019, IACHR archive.

level. Some made it to the assemblies to present their candidacies but they and their supporters were quickly repressed.¹⁵²

151. Regarding the right to elect, in the period covered by this report, a number of highly significant popular elections were held, such as the one for municipal delegates in 2017. It is worth noting that the 2017 elections in Cuba were the first in which the historic leader of the Cuban Revolution, Fidel Castro Ruz, did not take part, following his death on November 25, 2016.
152. In 2017, civil society organizations informed the Commission that the platform *Ciudadanos Observadores de Procesos Electorales* (COPE) had been established for the purpose of observing independently and in line with international standards the general elections to be held for the municipal assemblies.¹⁵³ In the course of its monitoring activities, COPE documented 'several irregularities,' both in the Assemblies for the Nomination of Candidates for Municipal Delegates of the People's Power, and in the municipal elections held afterwards. In addition, some of its members were prevented from carrying out their observation work. Some of the irregularities consisted of a lack of preliminary information before the day of the Nomination Assemblies, hardly any special arrangements for persons with disabilities, and difficulties with the electoral records, since they were not updated or excluded people.¹⁵⁴ In addition, as indicated by the Commission in its 2017 Annual Report and addressed below, a number of restrictions on political participation were found, including arbitrary detentions; searches and seizures of property that reportedly prevented the exercise of the right to vote and the right to elect and be elected.
153. Historically, the IACHR has been critical of Cuba's electoral system, as it considers that the conditions are absent that would allow genuine political participation for 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.¹⁵⁵
154. 31. The IACHR understands that in international law there is no single model for an electoral system and in particular, no single model for the way in which citizens exercise the right to vote and to be elected,¹⁵⁶ for it should be designed "according to their historical, political, social and cultural needs, which may vary from one country to another and even within one country, at different historical moments."¹⁵⁷ And so the discretion states enjoy when it comes to designing their

¹⁵² IACHR, Interview with Manuel Silvestre Cuesta Murua, May 2019, IACHR archive.

¹⁵³ Request for a thematic hearing on violations of civil and political rights in the electoral process in Cuba, submitted by #Otro18 and Somos+, August 2, 2017. See also El Nuevo Herald, [Opositores desafían el sistema electoral cubano con miras a las próximas elecciones](#), May 21, 2017.

¹⁵⁴ COPE, Preliminary report, November 27, 2017, Cuba, par. 30.

¹⁵⁵ IACHR, [2017 Annual Report, Chapter IV.B. Cuba](#), par. 25; IACHR, 2018 Annual Report, [Chapter IV.B. Cuba](#), par. 20.

¹⁵⁶ I/A Court H.R., Case of Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 6, 2008, Series C. No. 184, par. 166.

¹⁵⁷ I/A Court H.R., Case of Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 6, 2008, Series C. No. 184, par. 162.

election system is limited by the principles of legality, necessity, and proportionality, for otherwise one would run the risk of rendering illusory the essence of the right.¹⁵⁸

155. In this regard, some of the testimonies received by the IACHR were also critical of the Electoral Law.¹⁵⁹ They indicated that the Law was a system of filters designed to prevent persons who did not identify with the State from holding public office.¹⁶⁰ Furthermore, they stressed that although formally the Communist Party is not an electoral entity and supposedly has no say in nomination processes, “[t]he party governs, controls and directs all electoral processes on the island, validating or not validating candidacies.”¹⁶¹ Another testimony indicated that there are other mechanisms for preventing non-party members from being nominated.¹⁶²
156. The Commission notes that apart from the Communist Party, political organizations that the Party supports are promoted by the Constitution and have functions under the election law. In that regard, the Commission notes the role of the Young Communist League and the mass organizations in the elections of members of parliament. For example, to become a deputy of the National Assembly of People's Power one must be proposed as a pre-candidate by a mass organization, then the National Candidacies Committee must submit the candidacy to the Assembly of People's Power of the corresponding municipality for approval. Subsequently, it is put to a vote in the municipality or electoral district.¹⁶³

D. Restrictions on the Rights of Assembly and Freedom of Association, and Arbitrary Arrests to Prevent Political Participation

157. Cases of alleged restrictions on the rights of assembly and freedom of association, as well as allegations of arbitrary detention to prevent political participation have been described by the IACHR in successive annual reports. The Commission has received information about repressive tactics by the State—or persons acting with its authority, support, or acquiescence—to the detriment of any individual whose work is identified as a threat to the current system of government.
158. In this regard, it highlights information it received on measures to prevent political participation in the 2017 electoral process. In particular, they include reports of harassment, threats and reprisals; arbitrary arrests; raids on homes and

¹⁵⁸ I/A Court H.R., Case of Yatama v. Nicaragua, Judgment of June 23, 2005.

¹⁵⁹ IACHR, Interview with Marthadela Tamayo Gonzalez, June 2019, IACHR archive.

¹⁶⁰ IACHR, Confidential interview.

¹⁶¹ IACHR, Interview with Gustavo Pérez Silveiro, May 2019, IACHR archive.

¹⁶² IACHR, Confidential interview.

¹⁶³ Web page of the National Assembly of People's Power: www.parlamentocubano.gob.cu

confiscation of property, generally linked to "fabricated" criminal cases; obstacles to gatherings for political purposes; undue restrictions on leaving the country and deportations from Havana to other provinces in the interior; and stigmatization and smearing.¹⁶⁴ According to the information received, such measures are aimed at hindering the nomination of independent candidates at the Candidate Nomination Assemblies, legalization of civil organizations, the holding of training workshops on electoral issues, the presentation of citizens' proposals for reforms to the electoral laws, and campaigns for a binding plebiscite, among other related activities.

159. In the 2017 Report, the IACHR recorded allegations of arbitrary detentions in that year's electoral process. In August 2017, Manuel Cuesta Morúa, spokesperson for the platform #Otro 18, denounced at a press conference harassment and threats targeting its more than 170 independent candidates.¹⁶⁵ Other movements, such as the Mesa de Unidad de Acción Democrática (MUAD) and Ciudadanos Observadores de Procesos Electorales (COPE), reported threats, attacks, harassment and arrests of their activists.¹⁶⁶ Cuba Decide publicly denounced the arrest of its coordinators Sayli Navarro, Ivan Hernández, and Feliz Navarro by State security agents on May 8, 2017, as they were on their way to the José Martí International Airport to meet Rosa María Paya.¹⁶⁷
160. As regards raids on people's homes, the IACHR took note of reports of such actions and confiscation of property against Eliecer Ávila, president of the Somos + Movement on April 8, 2017, as a result of an investigation initiated for the alleged commission of the crimes of handling of stolen goods and illicit economic activity. During the procedure, the State security bodies reportedly confiscated advertising material of the movement and other related organizations, as well as books, copies of the Electoral Law, computers, USB memory sticks, cell phones, and all other electronic accessories. Those apparently coincided with the announcement of his candidacy as district delegate for the municipality of Cerro, Havana.¹⁶⁸ According to available public information, the home of independent candidate Ernesto López

¹⁶⁴ A leaked video shows First Vice President Miguel Díaz-Canel explaining how at least six projects seek to nominate "counter-revolutionary" candidates as delegates of the People's Power structures, and then he states: "and now we are taking all the steps to discredit that, so that people have a perception of risk, so that the people know what it is about" (El Nuevo Herald, [Nuevo video filtrado de Díaz-Canel revela qué hará el gobierno con la oposición en próximas elecciones](#), August 29, 2017; 14ymedio, [Miguel Díaz-Canel incurre en un delito electoral](#), August 18, 2017). In the past, Cuban civil society organizations have informed the IACHR how the Cuban authorities have opted to stigmatize and smear candidates, for example by changing their biographies, to reduce the possibility of success of anti-government nominations.

¹⁶⁵ El Nuevo Herald, [Opositores cubanos denuncian hostigamiento a candidatos independientes](#), August 24, 2017.

¹⁶⁶ 14yMedio, [Detenidos dos activistas de la plataforma #Otro18](#), April 26, 2017; 14yMedio/EFE, [Varios opositores denuncian la represión contra candidatos independientes de #Otro18](#), April 18, 2017; EFE, [Opositores cubanos denuncian la represión a candidatos independientes de #Otro18](#), April 18, 2017; Cubanos en Spain, [Gobierno cubano comienza proceso para futuras 'elecciones'](#), May 18, 2017; Martí Noticias, [Cuba comienza proceso para futuras elecciones, pero no revela detalles o fechas](#), May 18, 2017.

¹⁶⁷ Cuba Decide, Alerta por arresto de coordinadores de Cuba Decide antes de arribo de Rosa María Paya a La Habana, information received electronically by the Executive Secretariat of the IACHR on May 8, 2017.

¹⁶⁸ Request for a thematic hearing on violations of civil and political rights in the electoral process in Cuba, submitted by #Otro18 and Somos+, August 2, 2017. See also YouTube, [Elicer Avila después del robo de sus pertenencias](#), Somos+, April 10, 2017.

Matamoros of Movimiento Cristiano Liberación (MCL) was also searched and several of his belongings were taken by officers of State Security and the National Revolutionary Police (PNR) on July 13, 2017; after being held for 48 hours, he was released without charge.¹⁶⁹

161. The request for a thematic hearing on violations of civil and political rights in the electoral process in Cuba, submitted by #Otro18 and Somos+ on August 2, 2017, indicated that because Electoral Law No. 37 excludes from the exercise of the right to elect and be elected “persons who are mentally disabled” (“los incapacitados mentales”), “persons who have been judicially disqualified because of crime” (“los inhabilitados judicialmente por causa de delito”), and “those on whom a sanction of deprivation of public rights has been imposed, as of the serving of their sanction of deprivation of liberty,” independent candidates have been prosecuted or convicted on criminal charges, resulting in the immediate impossibility of their participating in the current electoral process.¹⁷⁰
162. In 2018, it is worth noting that the IACHR adopted a report on merits concerning arbitrary detentions of persons with dissident political ideas. In its Report on Merits No. 27/18 regarding Vladimiro Roca Antunez and others versus Cuba, the IACHR addressed events that occurred in 1997 concerning arbitrary detention and lengthy prison sentences for creating the “Internal Dissidence Working Group,” devoted to the study of socioeconomic problems in Cuba and the dissemination of documents and newsletters critical of the State. The report on merits concluded that “the detention of the four victims (before, during, and after their trial and conviction) was designed to punish them for their political opinions and civic activism—in other words, it was based on a restriction of the exercise of their rights to freedom of thought and expression and freedom of association, and was part of a systematic pattern of arrests and imprisonment for the exercise of human rights that has been clearly identified by the IACHR in its annual reports on Cuba.”¹⁷¹
163. At the beginning of October 2019, the IACHR expressed concern at reports of the unknown whereabouts of Armando Sosa Fortuni and called for the adoption of all necessary measures to ensure his rights, including his right to health. At the end of the same month, the Commission was informed of the death of Armando Sosa Fortuny in Amalia Simoni Hospital in Camaguey, Cuba at the age of 76, having spent more than 43 years of that time in prison in Cuba. According to press information, Sosa Fortuny “was given his first sentence in the early years of the regime, which he served from 1960 to 1974.” He then went into exile in the United States and “returned to the island in 1994 as part of an armed exile group, although he did not make use of weapons” and “was captured and sentenced to 30

¹⁶⁹ Diario de Cuba: [Fuerzas del régimen detienen en Santiago de Cuba a un candidato independiente](#), July 13, 2017; [Liberado el candidato independiente Ernesto López Matamoros](#), July 17, 2017.

¹⁷⁰ Request for a thematic hearing on violations of civil and political rights in the electoral process in Cuba, submitted by #Otro18 and Somos+, August 2, 2017.

¹⁷¹ IACHR, [Report No. 27/18, Caso No. 12.127, Merits \(Publication\)](#), Vladimiro Roca Antunez and others, Cuba, February 24, 2018. par. 133.

years in prison for illegal entry into Cuba and other acts against the security of the Estado.”¹⁷²

164. Likewise, the Commission takes note of the detention of the leaders of UNPACU, which was widely denounced by the organization Cuban Prisoners Defenders and has prompted pronouncements at the international level. The arrests reportedly included the well-known leader José Daniel Ferrer and activists Fernando González Vaillant, José Pupo Chaveco, and Roilán Zárraga Ferrer. As a result of the arrests, which occurred on October 1, 2019, a complaint was filed with the Working Group on Enforced or Involuntary Disappearances (WGEID). According to information provided to the IACHR, the family filed a petition for a writ of habeas corpus, which was answered by the People's Provincial Court of Santiago de Cuba without giving any information on their whereabouts, thus failing to comply with the principles of habeas corpus, as was denounced by Cuban Prisoners Defenders.¹⁷³ Organizations such as Amnesty International stated that there is alarming information suggesting that Ferrer may have been subjected to torture, although it has not been possible to obtain independent verification of that.¹⁷⁴
165. In relation to this case, the IACHR notes that the European Parliament approved a resolution demanding that the Government of Havana release José Daniel Ferrer and his three UNPACU colleagues.¹⁷⁵ In this regard, the International Relations Committee of the National Assembly of People's Power of the Republic of Cuba expressed its rejection of the resolution of the European Parliament, considering it to be interfering and harmful to Cuban sovereignty.¹⁷⁶
166. In this regard, the IACHR expresses its concern about the allegations of arbitrary detention and torture of UNPACU leaders and calls for the cessation of any act against the rights of opponents and for the investigation of the matter in accordance with inter-American standards.
167. From the testimonies received, the IACHR notes the case of Guillermo Fariñas Hernández, who said that since 1991 he has suffered 923 detentions, torture, and beatings and has never received a response from a military prosecutor or a civilian prosecutor.¹⁷⁷ The IACHR also received the testimony of Eduardo Cardet, leader of the Christian Liberation Movement, who said "I was detained on multiple occasions. I suffered acts of repudiation in multiple accusations, I was kidnapped on several occasions in the streets, on the roads, and I was arbitrarily detained in unknown places; physical attacks in November 2016; I am still being unjustly imprisoned. Inside the prison I was the victim of attacks by the authorities. By

¹⁷² ABC Internacional, [Muere Armando Sosa Fortuny, el preso político más antiguo de Cuba](#), October 30, 2019.

¹⁷³ See also Cuban Prisoners Defenders, [En peligro José Daniel Ferrer](#), October 4, 2019.

¹⁷⁴ Amnesty International, Cuba: Opposition leader at risk of torture: José Daniel Ferrer, November 12, 2019.

¹⁷⁵ El Mundo.es, [El Parlamento Europeo presiona a Cuba para lograr la libertad del preso político José Daniel Ferrer](#), November 28, 2019.

¹⁷⁶ Granma, [Declaración de la Comisión de Relaciones internacionales de la Asamblea Nacional del Poder Popular de la República de Cuba](#), November 29, 2019.

¹⁷⁷ IACHR, Guillermo Fariñas Hernández, June 2019, IACHR archive.

order of the prison's political authorities, I am now being watched by the political police and other institutions."¹⁷⁸

168. Also noteworthy is a testimony taken by the IACHR in which it was stated that in the area of Caimanera the Government has placed mines on the border between Cuban territory and the U.S. military base, which have caused deaths and injuries to people: "These mines are placed so that Cubans do not go to the naval base to seek political asylum. [...] It is for security reasons, they say. But the truth is that they don't want them going to the military base."¹⁷⁹ Similarly, the testimonies indicate that detention practices were not changed by the Constitution, and emphasize that nothing in the Constitution in that regard was altered either: "The police arrest you and you have 24 hours; the investigator has another 72 hours; the prosecutor's office has 72 hours more. After that, if you are going to be prosecuted, then you have the right to hire a state attorney. We thought that would change with the new Constitution but it didn't."¹⁸⁰
169. In relation to due process, particularly in criminal matters, the Commission takes note of the report "Premeditated Convictions: Analysis of the Situation of the Administration of Justice in Cuba" by the International Institute on Race, Equality and Human Rights in June 2019. In relation to guarantees in criminal proceedings, the above-mentioned report refers to violations of the rights of accused persons during trials, in particular the right to consult a lawyer, the right to present a defense, the right to be tried promptly and without delay, the right to be presumed innocent, and the rights to a fair trial and a public hearing. The report points out that Cuban law considers a person to be part of a criminal proceeding when a precautionary measure is issued and only then can they consult a lawyer; therefore, in the previous stages of the investigation citizens would be unable to consult a lawyer, as allegedly happened in the case of José Daniel Ferrer García, leader of the Patriotic Union of Cuba (UNPACU).¹⁸¹ It also says that defense lawyers find it difficult to defend their opposition clients properly because they are given little time to prepare the defense before the trial, as reputedly occurred in the case of Misael Carnét Velásquez in November 2016.¹⁸² The report indicated that because of this, the aforementioned rights in Cuba "do not exist or are drastically limited for regime opponents."¹⁸³
170. Finally, the IACHR expresses its concern that several defenders and activists interviewed stated that their children were bullied at school or denied an education, just because their parents were activists.¹⁸⁴ Some testimonies also

¹⁷⁸ IACHR, Eduardo Cardet Concepción, June 2019, IACHR archive.

¹⁷⁹ IACHR, Interview with Yeris Curubelo Aillera, July 2019, IACHR archive.

¹⁸⁰ IACHR, José Ernesto Morales Estrada, junio de 2019. IACHR archive. 26.

¹⁸¹ International Institute on Race, Equality and Human Rights, "*Premeditated Convictions: Analysis of the Situation of the Administration of Justice in Cuba*," June 2019, pars. 127 and 128.

¹⁸² International Institute on Race, Equality and Human Rights, "*Premeditated Convictions: Analysis of the Situation of the Administration of Justice in Cuba*," June 2019, par. 136.

¹⁸³ International Institute on Race, Equality and Human Rights, "*Premeditated Convictions: Analysis of the Situation of the Administration of Justice in Cuba*," June 2019, par. 123.

¹⁸⁴ IACHR, Confidential interview, April 2019, IACHR archive. 26. IACHR, Interview with Danaisi Muñoz Lopez, June 2019, IACHR archive.

mentioned that the authorities threaten activists' families by telling them that they will throw them in jail if they continue their work,¹⁸⁵ and that their homes are kept under surveillance.¹⁸⁶ Other testimonies also point out that the State Police conduct searches of the homes of activists and journalists and take away work items and personal belongings and never return them.¹⁸⁷

171. The Commission finds that unlawful restrictions persist on the right to political participation and all other fundamental rights relevant for its full exercise. Likewise, there are no guarantees for those who deviate from the Communist Party, which is worrisome, considering that the very Constitution states that the defense of the homeland is the greatest honor and supreme duty of every Cuban. The IACHR calls for the opening of channels that would allow real and vigorous participation by all political sectors of the population and contribute to the construction of democracy in Cuba.

¹⁸⁵ IACHR, Joel Alberto Romero Rivero, June 2019, IACHR archive.

¹⁸⁶ IACHR, Interview with Moises Leonardo Rodriguez Valdez, July 2019, IACHR archive.

¹⁸⁷ IACHR, Interview with Pedro Antonio Rodríguez Cuba, September 2019, IACHR archive.

CHAPTER 6

THE SITUATION OF HUMAN
RIGHTS DEFENDERS

THE SITUATION OF HUMAN RIGHTS DEFENDERS

172. The Commission has reiterated on several occasions the importance of the right to defend human rights and the irreplaceable role of human rights defenders in guaranteeing the rule of law and building a solid and lasting democratic society.¹⁸⁸In the case of Cuba, in recent years, the IACHR has received copious information that provides an account of the situation of particular risk faced by human rights defenders. Thus, for example, the Commission has granted precautionary measures in favor of human rights defenders in Cuba whose lives and wellbeing are at risk.¹⁸⁹
173. According to the information received and the monitoring carried out by the Commission, human rights defenders in the country are victims of constant international travel restrictions and short-term arbitrary detentions. Furthermore, those who defend human rights in the country are subjected to serious processes of criminalization and judicial persecution with the aim of obstructing or paralyzing their work to defend and advance human rights. The Commission will now analyze the situation of this group in more detail.

A. *Travel Restrictions*

174. With respect to the freedom of movement of human rights defenders, the State of Cuba has repeatedly refused to allow members of civil society organizations to leave the country in order to take part in activities and forums organized by the inter-American and universal human rights systems.¹⁹⁰ The Commission finds that these restrictions on the right to freedom of movement are aimed at

¹⁸⁸ IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II., Doc. 49/15, December 31, 2015, par. 22; IACHR, Press Release 288/19, IACHR and UN Human Rights Presences Once Again Call for the Creation of a Safe, Favorable Environment for Human Rights Defenders in the Americas, November 7, 2019.

¹⁸⁹ IACHR, Precautionary Measure 954-16, Jose Ernesto Morales, Cuba, March 18, 2018; IACHR, Resolution 37/2016, Precautionary Measure 236-16, Juana Mora Cedeño et al., Cuba, July 3, 2016; IACHR, Resolution 31/2015, Precautionary Measure 428/15, Shirley Avila León, Cuba, September 2, 2015; IACHR, Precautionary Measure 96-15, Members of Centro de Información Legal (CUBALEX), Cuba, April 22, 2015; IACHR, Resolution 5/2013; Precautionary Measure 245-13, Ivan Hernandez Carrillo, Cuba, October 28, 2013; IACHR, Precautionary Measure 264-13, Ladies in White, Cuba, October 28, 2013; IACHR, Precautionary Measure 420-12, Antonio Rodiles, Cuba, December 18, 2012; IACHR, Precautionary Measure 444-12, Lourdes Esquivel Veiyto, Jose Diaz Silva, and their children, Cuba, December 20, 2012; IACHR, Precautionary Measure 163-12, Damaris Moya Portieles and daughter Lázara Contreras Moya, Cuba, June 12, 2012; IACHR, Precautionary Measure 484-11, José Daniel Ferrer Garcia et al., Cuba, November 5, 2011; IACHR, Precautionary Measure 218-11, Yris Tamara Perez Aguilera, Cuba, July 6, 2011.

¹⁹⁰ IACHR, 2018 Annual Report, Ch. IV.B, Cuba, par. 114.

preventing human rights defenders from exposing the current human rights situation in the country internationally.

175. Among other cases, the Commission learned that on June 25, 2019, Juan Antonio Madrazo Luna, Jimmy Roque, and Madelyn Rodríguez, all members of the Citizens' Committee for Racial Integration (CCIR) were refused permission to travel to Colombia to take part in the General Assembly of the Organization of American States (OAS).¹⁹¹ Likewise, on August 15 of the same year, Leandro Rodríguez García, President of the Cuban Foundation for LGBTI Rights, denounced on his social media accounts that he was prevented from traveling and participating in a four-month program for social leaders in the United States with the justification that he was on the Cuban Government's list of "regulated" people.¹⁹²
176. The IACHR was also informed that on September 26, 2019, authorities at José Martí International Airport in Havana prohibited Michel Matos, an artist and activist for cultural rights, from traveling. Mr. Matos was preparing to participate in the Dublin Platform, an international meeting of human rights defenders organized by Front Line Defenders in Ireland. He was reportedly told that he could not board the plane because he was on a list of people who were denied permission to leave the country. The IACHR learned that Matos, along with other activists, musicians, and performers in Cuba, had been previously detained and threatened for opposing Decree 349, which gives the State the ability to control, cancel, and punish artistic expression in the country.¹⁹³
177. For its part, the Office of the United Nations High Commissioner for Human Rights issued a press release saying that it had received several complaints about travel restrictions on human rights defenders from Cuba preventing them from attending meetings outside the country, with the pretext that more identity checks were needed. It added that such cases suggest that additional reviews are being used deliberately as a form of intimidation, pressure, and harassment against certain individuals and civil society organizations.¹⁹⁴ One of the persons interviewed by the IACHR, said:

I could not attend an OAS Assembly in 2018, a MOAD Assembly in 2017; I could not go to the Summit of the Americas in Peru. Also, in 2017, I couldn't go on a scholarship course for female leaders that I was awarded in Mexico. A car and two motorcycles went to my home and I was taken back inside the house with my suitcase. I was also prevented from traveling to workshops in Argentina and Colombia. The most recent was in 2018 for the UPR in Geneva. Juan Antonio Madrazo and I were unable to got represent people of African

¹⁹¹ World Organisation against Torture (OMCT), [Cuba: Ola de represión contra personas defensoras y periodistas](#), June 27, 2019; Race and Equality, [Estado cubano prohíbe la salida de cinco activistas que participarían de la Asamblea General de la OEA en Colombia](#), June 24, 2019.

¹⁹² Diario Las Américas, [Cuba impide viajar a EEUU a activista LGBTI](#), August 20, 2019.

¹⁹³ Front Line Defenders, [Michel Matos Banned from Travelling to the Dublin Platform](#), October 2, 2019.

¹⁹⁴ United Nations, [Preocupa el bloqueo y acoso a los defensores de los derechos humanos en Cuba](#), May 11, 2018.

descent. I was hit on the hand at the airport. I was kicked off the flight.¹⁹⁵

B. Arbitrary Arrests

178. According to the information received, human rights defenders are victims of repeated arbitrary arrests as a method of harassment by the police and State security agents. The IACHR has learned that such detentions are intended to discourage the expression of views critical of the government, hinder the free expression of opinions and ideas, impede the work of defense and promotion of fundamental rights, and block the emergence of new leadership. According to the Cuban Observatory of Human Rights, in the month of May 2019 alone, 204 arbitrary detentions were recorded of human rights defenders, most for periods of between 1 and 24 hours. In addition, during their detention some of them were threatened because of their work in defense of human rights.¹⁹⁶

179. One of the testimonies received by the IACHR stated, for example:

I was handing out fliers of the Universal Declaration of Human Rights, I was arrested and they took them off me because I couldn't hand that out.¹⁹⁷

180. Among other cases, for example, the IACHR followed up on the situation of the women defenders who belong to the Ladies in White movement, who meet on Sundays at church to protest on behalf of their relatives who have been deprived of their liberty and whom they consider political prisoners. According to testimonies received by the Commission, they are fined¹⁹⁸ and their demonstrations repressed.¹⁹⁹ In addition, people who have participated in Ladies in White protests reported being harassed, arrested, injured, persecuted and constant surveilled by the police.²⁰⁰ The police allegedly mistreat the detained women²⁰¹ by saying obscene and nasty things to them²⁰² and leaving them in prisons with people who disagree with them so that they will be mistreated.²⁰³ One of the testimonies mentioned that they are even arrested before

¹⁹⁵ IACHR, Interview with Marthadela Tamayo Gonzalez, June 2019.

¹⁹⁶ World Organisation against Torture (OMCT), Cuba: Ola de represión contra personas defensoras y periodistas, June 27, 2019.

¹⁹⁷ IACHR, Interview with Shirley Avila, April 2019.

¹⁹⁸ IACHR, Confidential interview.

¹⁹⁹ IACHR, Interview with Marthadela Tamayo Gonzalez, June 2019, IACHR archive.

²⁰⁰ IACHR, Interview with Danaísi Muñoz Lopez, June 2019, IACHR archive.

²⁰¹ IACHR, Interview with Eralidis Frometa Polanco, June 2019, IACHR archive.

²⁰² IACHR, Roxilene Sotolongo Cruz, June 2019, IACHR archive.

²⁰³ IACHR, Interview with Danaísi Muñoz Lopez, June 2019, IACHR archive.

demonstrations: “If they find out that there's going to be a meeting, they arrest us right away.”²⁰⁴

181. In that regard, the Commission has learned that in 2017 there were 2,849 arrests were reported of members of the organization, usually as they exercised their right to freedom of expression.²⁰⁵ In addition, according to information received, on July 15, 2018, 23 Ladies in White were arrested when they tried to participate in the weekly march they hold at the Church, most of them for a period of less than five hours, until the march ended.²⁰⁶ The IACHR notes with grave concern that these arrests apparently continue to be carried out on a weekly basis by police and state security agents, often with excessive use of force.²⁰⁷

182. One of the persons interviewed by the IACHR, who protests with the Ladies in White said:

I've had many experiences of beatings as one of the Ladies, constant arbitrary arrests (...). On December 10, 2015, I was put in jail for more than 72 hours and we were threatened with imprisonment (...) The most memorable was when President Barack Obama went to Cuba in 2016. I was arrested twice: once at St. Rita's Church in Casia and we were taken to jail; handcuffed for more than 24 hours.²⁰⁸

183. In the testimonies obtained by the IACHR, some people said that the arrests of women activists are violent. For example, one of the women interviewed said:

The arrests in the case of the wives of defense activists are very cruel; they don't give you any explanations, whether in the street, at home, or in a public place. [...] I have been arrested with women and men alike. The detentions much more cruel. It is because women make a real scene and scream a lot. When women say they're activists, they are more harshly treated. They cover your mouth, they hit you in the face.²⁰⁹

184. In addition, the IACHR was informed that on May 11, 2019, LGBTI rights defenders and journalists were arbitrarily detained during a peaceful march for the LGBTI rights. Those arrested included LGBTI activist Oscar Casanella, who was reportedly severely beaten by police and State security agents.²¹⁰ The Commission received information that the Cuban authorities broke up the demonstration because it was not “authorized.” In that regard, it urged the State to take the

²⁰⁴ IACHR, Interview with Eralidis Frometa Polanco, June 2019, IACHR archive.

²⁰⁵ Ladies in White Movement, Resumen del año 2017, 2017.

²⁰⁶ Race and Equality, Premeditated Convictions: Analysis of the Situation of the Administration of Justice in Cuba, June 2019, p. 114.

²⁰⁷ Human Rights Watch, World Report 2019: Cuba, 2019.

²⁰⁸ IACHR, Interview with Eralidis Frómeta Polanco.

²⁰⁹ IACHR, Interview with Zuleidys Lisbet Pérez Velazquez, April 2019, IACHR archive.

²¹⁰ Ciber Cuba, Activista Oscar Casanella denuncia haber sido golpeado y estrangulado por participar en la marcha independiente LGBTI+ en Cuba, May 12, de 2019.

necessary steps to ensure the exercise of the right to peaceful assembly and freedom of expression of LGBTI persons.²¹¹

185. The Commission reiterates that the exercise of the right to assembly through social protest should be subject neither to authorization by the authorities nor to excessive requirements that impede it from taking place. Legal or administrative requirements that condition, prohibit or limit the holding of a meeting or demonstration, for example by requiring prior permission, are not compatible with the right of assembly. The IACHR has indicated that the requirement of prior notification must not be confused with the requirement of prior authorization granted in a discretionary manner,²¹² the latter of which must not be established in the law or practice of the administrative authorities, even when it comes to public spaces.²¹³
186. The Commission also considers that the arbitrary detention of human rights defenders places them in a situation of vulnerability and creates a real and imminent risk that other rights will be violated to their detriment.²¹⁴ In this regard, the Commission was informed that on February 25, 2017, five members of Red de Cultura Inclusiva Cuba were arbitrarily detained and three were prevented from leaving their homes, making it impossible to hold a meeting to organize the organization's activities. Then, on August 15 of that year, Rolando Ferrer Espinosa was detained and threatened as he was preparing to attend the organization's meeting in the center of the country.²¹⁵ The Commission recalls that the systematic and consistent practice of attacks on the freedom of the members of a human rights organization, within a climate of hostility to their work, may entail a violation of freedom of association.²¹⁶
187. Regarding LGBTI people's right to peaceful assembly and freedom of expression, on June 4, 2019, the Commission and the Office of its Special Rapporteur on Freedom of Expression condemned the break-up of a peaceful march for the rights of LGBTI people in Cuba. The march was independently organized following the cancellation of an event popularly known as the "Conga against Homophobia," held under the official auspices of the government during the Cuban Days against Homophobia and Transphobia.²¹⁷ The IACHR notes with concern that the Cuban police interrupted an exercise in freedom of expression and requested that the more than 200 participants stop their march, as they lacked authorization. During the break-up of the march, three independent journalists were arrested. Furthermore, an international correspondent from the Washington Blade

²¹¹ IACHR, Press Release No. 139/19, IACHR and its Special Rapporteurship Condemn Move to Break Up Peaceful March in Favor of LGBTI Persons in Cuba, June 4, 2019.

²¹² IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, par. 137.

²¹³ *Ibid.*, pars. 140 and 142.

²¹⁴ I/A Court H.R., Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008, Series C. No. 192, par. 69.

²¹⁵ IACHR, Hearing on Situation of persons with disabilities in Cuba, 164th session, September 5, 2017.

²¹⁶ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/SER.L/V/II/Doc.66, December 31, 2011, par. 118.

²¹⁷ Reuters, Comunidad LGBT cubana critica al gobierno por cancelar desfile, May 7, 2019.

newspaper, who had traveled to Havana to report, among other things, on the cancellation of the "Conga against Homophobia," was prevented from entering the country.

C. Criminalization

188. The Commission has been told of instances of criminalization and misuse of criminal and administrative law against human rights defenders, social leaders, and activists, who have been charged with crimes such as assault, contempt, pre-criminal social dangerousness, non-payment of fines, public disorder, and resistance or rebellion, in order to discourage their work of defending and promoting human rights.²¹⁸ It draws attention to the criminal classification of pre-criminal dangerousness, which, as noted, is of concern to the IACHR because of its summary procedure, its formulation, and the fact that it could result in arbitrary deprivation of liberty.
189. In relation to the existence on the books of ambiguous criminal classifications, in its annual reports the Commission has noticed similar vagueness in the concept of "dangerous state" (*estado peligroso*) contained in Article 72 and following provisions of the Criminal Code.²¹⁹ According to those provisions, a "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.²²⁰
190. According to Articles 415 ff. of Decree-Law No. 128 of June 18, 1991,²²¹ a declaration of pre-criminal dangerousness of antisocial conduct is also issued

²¹⁸ Race and Equality, *Consejería Jurídica de Derechos Humanos*, *Diario de Cuba*, Request for thematic hearing on criminalization of independent activists in Cuba, July 17, 2018.

²¹⁹ Law No. 62, *Criminal Code*, December 29, 1987. Articles 72 to 74: "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.

²²⁰ *Law No. 62, Criminal Code*, December 29, 1987.

²²¹ Special Official Gazette No. 7, *Decree-Law No. 128*, June 18, 1991.

through a summary proceeding, and may result in 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 that regard, the organs of the inter-American human rights system have concurred that “[a]mbiguity 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.”²²²

191. Among other cases of criminalization, the IACHR learned that on April 26, 2019, activist Hugo Damián Prieto, a leader of the Orlando Zapata Civic Action Front (FACOZT) was released from prison after being sentenced in December 2018 to one year’s imprisonment for the crime of “pre-criminal social dangerousness” for participating in a protest in front of the National Assembly of People’s Power of Cuba.²²³ The IACHR notes that Prieto was previously arrested in 2015 while on his way to a peaceful demonstration in Havana; he was prosecuted and sentenced to six months in prison for the crime of public disorderly conduct.²²⁴
192. The Commission also received information that human rights defenders have been deprived of their liberty for the crime of “non-payment of fines.” In that regard, the IACHR learned that in October 2019, Nieves de la Caridad Matamoros González, a defender of the Ladies in White, was released after spending a year and six months in prison. Matamoros has reportedly refused to pay the fines imposed by the Cuban authorities for constantly protesting on the streets.²²⁵
193. The IACHR finds that the principal aim of imposing fines or other penalties on the work of human rights defenders and depriving them of their liberty is to criminalize their activities in promoting and defending human rights, as well as deterring them from continuing to advance their causes. Likewise, the Commission reiterates that the organs of the inter-American system have indicated that reprisals against human rights defenders have a multiplier effect that goes beyond the person of the defender. When an assault is committed in reprisal for a defender’s actions, it produces a chilling effect on those defending similar causes.²²⁶
194. In turn, as the Commission indicated in its report on the criminalization of human rights defenders, the State must take all measures necessary to prevent State investigations from being used to unjustly persecute persons who are legitimately

²²² I/A Court H.R., *Castillo Petrucci et al. Case v. Peru*, Judgment of May 30, 1999, Series C. No. 52, par. 121.

²²³ *Diario de Cuba*, [La presión diplomática logra la liberación del prisionero político Hugo Damián Prieto](#), April 27, 2019.

²²⁴ Front Line Defenders, [Historia del Caso: Hugo Damian Prieto Blanco](#), November 18, 2015.

²²⁵ Youtube, [Liberan a Presa Política Nieves de la Caridad Matamoros González SD](#), October 15, 2019; Race and Equality, [Premeditated Convictions: Analysis of the Situation of the Administration of Justice in Cuba](#), June 2019, p. 183.

²²⁶ IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/SER.L/V/II/Doc.66, December 31, 2011, par. 25.

demanding observance and protection of their human rights.²²⁷ The IACHR calls on the Cuban State to adopt measures to guarantee and respect the human rights of human rights defenders, activists, journalists, and other social leaders. The IACHR recalls that it is the obligation of States to prevent attacks, threats, and harassment against human rights defenders, as well as to safeguard and promote the conditions necessary for them to carry out their work properly.

²²⁷ IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II., Doc. 49/15, December 31, 2015, par. 182.

CHAPTER 7

FREEDOM OF EXPRESSION

FREEDOM OF EXPRESSION

195. One of the most worrying issues for the IACHR has been the restriction on the rights to freedom of expression, association, assembly, movement, due process, and access to public information in Cuba. In recent years, the Inter-American Commission on Human Rights and the office of its Special Rapporteur for Freedom of Expression have continued to receive disturbing information about unlawful restrictions on freedom of expression, freedom of association, and the right to peaceful assembly. As part of its mandate, in 2018, the Commission issued a Special Report on the Situation of Freedom of Expression in Cuba, the main conclusions of which are set out below.
196. In this chapter, the Commission will focus on (a) State monopoly of the media, censorship, and compulsory membership of an organization for the practice of journalism; (b) Persecution of the independent press; (c) Criminalization of critical or politically motivated expressions of dissent; (d) Censorship and persecution of artists; and (e) Limitations on the right to freedom of expression on the Internet.

A. State Monopoly of the Media, Censorship, and Compulsory Membership of an Organization for the Practice of Journalism

197. As the IACHR and the Special Rapporteurship have noted in the Special Report on the Situation of Freedom of Expression in Cuba, Cuba has maintained a monopoly on the media. There are constant restrictions on all open debate on ideas and key aspects of life in the country.²²⁸ International organizations specializing in freedom of expression rank Cuba among the ten most censored countries in the world.²²⁹ For example, the organization Reporters Without Borders (RSF) ranks it 172nd out of 180 countries in its 2018 World Press Freedom Index.²³⁰
198. According to the information available, the forms of repression against journalists consist of the requirement to be a member of an organization licensed to practice

²²⁸ IACHR, Special Report on the Situation of Freedom of Expression in Cuba, OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, par. 1.

²²⁹ Committee to Protect Journalists (CPJ), 10 Most Censored Countries, 2019 Report.

²³⁰ The Index measures the media freedom situation based on an evaluation of pluralism, independence of the media, quality of legislative framework and safety of journalists in each country. [Reporteros Sin Fronteras, Clasificación Mundial de RSF 2018: Balance de América Latina: a medias tintas].

journalism; threats, summonses and interrogations for the purpose of intimidation; illegal and/or arbitrary arrests; raids and seizures of journalistic equipment or other property; dismissal and loss of authorization to practice a profession or engage in economic activities; pressure and threats against families and social circles, defamatory practices, and prevention from foreign travel and other arbitrary restrictions on freedom of movement. The report of the IACHR shows that the misuse of criminal law or criminalization has become normalized, seriously impacting journalism and those who seek to express their opinions in Cuba. Thus, for example, it was reported that in May 2019, the President of the People's Supreme Court of Cuba threatened to apply the "Gag Law" to those who collaborate with foreign media and with the objectives of the Helms-Burton Act.²³¹

199. The existing legal framework in Cuba restricts freedom of the press by making it a requirement for the practice of journalism to belong either to the Union of Journalists of Cuba (UPEC), the official and only journalists' union, or to an official media outlet.²³² According to information received, journalists who, despite those restrictions, practice their trade, are threatened with being formally charged with the crimes of "usurpation of public functions" or "usurpation of legal capacity," something that openly contradicts the notion of freedom of expression and press, whose full exercise, on the contrary, should be guaranteed.²³³
200. In view of the foregoing, the IACHR finds that the repression of the right to exercise freedom of expression in Cuba is a systematic and long-term practice which,²³⁴ under the existing regulatory framework, uses State-owned media to sustain the official discourse and delegitimize independent journalism, while the establishment and operation of private media is not permitted. The rules and practices aimed at the elimination of criticism in Cuba have meant that, for decades, the media have not been able to fulfill the role they should play in a pluralistic, open and democratic system by allowing the circulation and dissemination of ideas to facilitate the free formation of public opinion.

²³¹ Radio Televisión Martí, May 9, 2019, [Cuba amenaza con la Ley Mordaza en respuesta a la activación de la Helms-Burton](#); Cubanet, May 10, 2019, [FDHC al Tribunal Supremo de Cuba: "No le corresponde amenazar a los ciudadanos"](#); Inter-American Press Association (IAPA), [Report on Cuba, 75th General Assembly, October 4-7, 2019](#), October 7, 2019; CNN, April 17, 2019, [Trump administration targets so-called 'troika of tyranny' with wave of new sanctions](#).

²³² See Article 2 of the UPEC Statutes, which provides "Upec is a trade union organization recognized in Article 7 of the [1976] Constitution of the Republic, which states: The Cuban socialist State recognizes and encourages the mass and social organizations that have emerged in the historic process of our people's struggles, which gather in their core different sectors of the population, representing their specific interests and incorporating them into the tasks of construction, consolidation, and defense of the socialist society."

²³³ IACHR, Office of the Special Rapporteur, Working meeting with journalists, 168th session, June 2018.

²³⁴ Other institutions and organizations such as the Inter-American Press Association (Inter-American Press Association), AI, RSF, and Freedom House (FH) have referred to the persecution of journalists in Cuba. IAPA, [Report of the 2018 Midyear Meeting](#); IAPA, [Report of the 72nd General Assembly](#); IAPA, [Report of the 2016 Midyear Meeting](#); AI, [Cuba: Human Rights at a glance](#), 2015; RSF, [2016 Annual Report, Americas, Cuba](#); RSF, [2015 Annual Report, Americas, Cuba](#); FH, [Freedom of the Press 2017: Cuba](#); FH, [Freedom of the Press 2016: Cuba](#); FH, [Freedom of the Press 2015: Cuba](#).

B. Persecution of the Independent Press

201. According to the information received by the IACHR, in order to prevent independent journalists carrying out their activities freely, the Cuban State makes arbitrary detentions—generally of short duration, internal deportations, summonses to police stations, house searches, pressure on relatives, travel restrictions, and confiscation of work equipment. The information received indicates that those affected are intercepted on the street;²³⁵ State agents often conduct “confiscations” during raid and search operations of their homes, their family is intimidated, and the journalist is arrested. During the arrests, journalists are kept incommunicado and crowded into cells together with people detained for common crimes.²³⁶ As for summonses to the Ministry of the Interior, State Security reportedly uses non-police agencies for that purpose.²³⁷ Family members of independent journalists are also often pressured to collaborate with State Security.²³⁸
202. The IACHR and its Special Rapporteurship note that such raids, summonses, and arrests of independent journalists intensify on dates close to important political events, so that communicators are unable to provide coverage and report information.²³⁹ Information has also been received about expulsions from State work or study centers of journalists who collaborate with “illegal” or foreign media. That was the case of Iris Mariño, who reportedly lost her job as a professor at an art school in Camagüey, and of Aimara Peña, who was allegedly expelled from the university. There are also reports of pressure on landlords to evict journalists

²³⁵ Interviews with the IACHR, 2019, Julio Cesar Álvarez and Vladimir Turro Páez.

²³⁶ The testimony tells of their imprisonment along with “[f]ive men hardened by a life of crime and imprisonment [...] One was suspected of stabbing a man to death and pouring acid down a woman’s throat.” According to one account received, “[i]t was a room made entirely of concrete, six meters long by three meters wide (18m2), for six inmates. There were three double bunks, one right up against the other, also made of concrete. And, in one corner, a crusted hole for physical needs without any privacy.” Díaz, Pablo, *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica*, Diario de Cuba.

²³⁷ IACHR, 2018 country report on freedom of expression in Cuba. Detentions and summonses are used to intimidate and threaten relatives of independent journalists and activists. Illustrative examples include that of Aimara Peña, whose minor son was reportedly directly threatened. According to her testimony, they delayed her son’s surgical procedure to put pressure on her: “They said to me, ‘Your child is going into a room; why don’t you think about it. You don’t know what might happen.’ They were trying to scare me as a mother so that I would stop doing my work.” Also against Danaisi Muñoz, an activist with the organization Delibera.

²³⁸ IACHR, 2018 country report on freedom of expression in Cuba. That was the case, for example, with Margarita Aranda Tejeda, wife of reporter Manuel Alejandro León Velázquez, and Idalia Torres Carballosa, wife of journalist Osmel Ramírez Álvarez, during their arrest in November 2017.

²³⁹ In October 2016, several communicators were reportedly detained for hours and their material seized while trying to cover the devastation caused by Hurricane Matthew. That same year, on the day of President Barack Obama’s arrival in Cuba, independent blogger and activist Lazaro Yuri Valle Roca was reportedly arrested and detained for five days after he tried to cover a protest by Ladies in White. On August 16, 2019, the director of El Toque magazine, José Jasán Nieves Cárdenas, reported that he received a summons by telephone due to his coverage of the protest demonstrations by SNet users in Cuba. See, also, CPJ, Conectar a Cuba: Más espacio para crítica, pero restricciones frenan avance de libertad de prensa, 2016, p. 11.

from their rented homes, as in the cases of Adriana Zamora, Odalina Carmona, Sol García, and Ernesto Carralero, for example.²⁴⁰

203. Another of the restrictions brought to the attention of the IACHR are impediments to journalists and media directors traveling abroad and within the country, a practice known as “regulation,”²⁴¹ apparently carried out without due process.²⁴² According to the information received, the journalists of *La Hora de Cuba* Inalkis Rodríguez, Iris Mariño, Sol García, and Isal Arango were “regulated” in May 2019.²⁴³ Similarly, apparently there were restrictions on the entry into the country of reporters seeking to cover various issues in Cuba,²⁴⁴ such as, for example, the case of Washington Blade editor and reporter Michael Lavers, who was allegedly held at José Martí International Airport in Havana before being deported and declared *persona non grata* due to his intention to cover the Conga, a well-known parade of the Cuban LGBTI+ movement.²⁴⁵
204. In 2019, the IACHR and the Office of Special Rapporteur received information about more than fifty reports of violent persecution against independent journalists, activists and defenders in 10 of the island’s 14 provinces.²⁴⁶ In that regard, the Cuban Observatory of Human Rights (OCDH) documented at least 1,468 arbitrary detentions in the first 10 months of the year alone,²⁴⁷ the intensity of which apparently increased due to the various movements that promoted the “no” vote on the new Constitution in the referendum called for its approval in February 2019.
205. They also received information about the normalization of humiliating treatment to which independent journalists in Cuba are subjected, such as the case of

²⁴⁰ Diario de Cuba, *La policía política deja sin vivienda a dos periodistas de DIARIO DE CUBA a punto de ser padres*, August 18, 2019.

²⁴¹ IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba, *Request for a thematic hearing on freedom of expression in Cuba*, March 9, 2018. According to publicly known information, these impediments, commonly termed “regulations,” include a list with the names of Carlos Alejandro Rodríguez, Maily Pérez, Regina Coyula, Joan Manuel Núñez Díaz, Sol García, Maykel González, Yoandy Izquierdo, Anderlay Guerra, Raúl Velázquez, Iván Hernández, Abel Estrada, Henry Constantín, Augusto Cesar San Martín, Yusimí Rodríguez, Ileana Álvarez, and Yudel Estenoz. Other journalists who have recently reported bans are Julio Aleaga, Amarilis Cortina, Víctor Manuel Domínguez, Niober García, Jose Fornaris, Anay Remon, Osmel Ramírez, Manuel León, Javier Valdez, Luz Escobar, Boris González Arenas, and Manuel Alejandro León Velázquez, among others.

²⁴² IACHR interviews in 2019 with Lázaro Yuri Valle Roca.

²⁴³ ADN Cuba, May 22, 2019, *Prohiben salir del país a 4 jóvenes de la revista La Hora de Cuba*; Puente a la vista, May 25, 2019, *Reguladas: El caso de ‘La hora de Cuba’*.

²⁴⁴ Notable for the large numbers involved were those imposed during President Barack Obama’s visit in 2017, when five Cuban journalists from Costa Rica were allegedly stopped on their arrival at the Airport in Havana. That same year, two journalism students from the University of São Paulo (USP), reportedly had to return to Brazil before the end of their trip to Cuba because of an interview with Ailer González, wife of the dissident Antonio Rodiles and member of the project Estado de Sats. In 2018, the deportation of Telemundo journalist Arlena Amaro was significant. Despite the fact that the government did not explain the reasons for her deportation, the reporter presumed that it was for a number of critical reports on Venezuela, Martí Noticias, January 18, 2016, *Expulsan de Cuba a dos estudiantes brasileños por entrevistar a esposa de opositor* January 18, 2019, *Reportera de Telemundo es deportada de Cuba*, May 2, 2019.

²⁴⁵ The Washington Blade, *Cuba blocks Blade reporter from entering country*, May 9, 2019.

²⁴⁶ First semester report, APLP Cuba, Race and Equality Report 2019, IACHR hearings, 2019.

²⁴⁷ Observa Cuba, *Gobierno de Díaz-Canel casi duplica las detenciones arbitrarias en septiembre*, October 3, 2019.

Oswaldo Landín Baños,²⁴⁸ an independent journalist from Perico, Matanzas, who was allegedly run over by a PNR vehicle in 2019, or that of Carlos Alejandro Rodríguez and six other journalists from the magazine Tremenda Nota, who were allegedly handcuffed, stripped naked, and searched by police officers in 2017.²⁴⁹ Also of particular concern are the cases reported by women journalists in detention, who are forced to strip naked and assume humiliating positions.²⁵⁰ Iris Mariño, a journalist with the independent magazine La Hora de Cuba, for example, reported 22 cases of harassment, arrests, and interrogations in which no female officers were 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.²⁵¹ The Commission also received serious information in the same year, 2018, that State Security agents threatened Adriana Zamora, a journalist with Diario de Cuba, with causing her to have a miscarriage. According to her, State agents said: "Anything can happen in the delivery room; they could give you the wrong medication and there you'll stay."²⁵²

206. In keeping with its mandate, in April 2019, the IACHR granted precautionary measures to the *Diario de Cuba* journalists Manuel Alejandro León Velázquez, Osmel Ramírez Álvarez, Adriana Zamora García and their families, on the grounds that their rights to life and humane personal integrity were "at serious and urgent risk." On that occasion, the IACHR also requested that the State adopt measures to protect the right to freedom of expression of the media outlet "Diario de Cuba."²⁵³
207. Finally, according to available information, other journalists who have been repeatedly and deliberately harassed in Cuba over the last five years are: Yoani Sánchez (who is the beneficiary of precautionary measures from the IACHR), José Jasán Nieve,²⁵⁴ Luz Escobar,²⁵⁵ Ileana Álvarez,²⁵⁶ Roberto Quiñones, Eider Frometa,²⁵⁷ Yoarielis Centelle,²⁵⁸ Arodis Pelicie,²⁵⁹ Osmel Ramírez,²⁶⁰ Martha

²⁴⁸ ADN Cuba, Denuncian atropello y causa legal fabricada contra periodista independiente, July 25, 2019,

²⁴⁹ IACHR, Hearings of the 173rd session, September 2019.

²⁵⁰ IACHR, Hearings of the 173rd session, September 2019.

²⁵¹ 544 Diario de Cuba, May 1, 2018, Una periodista independiente es detenida en Camagüey al intentar hacer una foto del Primero de Mayo; Díaz, Pablo, Acercas de la libertad de expresión en Cuba: una represión sin huella jurídica, Diario de Cuba. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

²⁵² Diario de Cuba, February 2, 2018, 'Tu embarazo depende de ti', amenaza la Seguridad del Estado a la periodista de DDC Adriana Zamora;; Civicus, February 16, 2018, Journalists, human rights defenders and artists persecuted and harassed in Cuba; Cuba en Miami, February 2, 2018,

²⁵³ Precautionary Measure No. 1025-18, April 4, 2019.

²⁵⁴ Puroperiodismo/ Youtube, August 22, 2019. José Jasán Nieves de elTOQUE sobre el periodismo móvil en Cuba.

²⁵⁵ CiberCuba, May 22, 2019, Prohíben salir de Cuba a la periodista Luz Escobar.

²⁵⁶ 14 y Medio, August 16, 2019, "Resistir por resistir no tiene ningún sentido".

²⁵⁷ Diario de Cuba, February 12, 2019, José Daniel Ferrer: 'O nos respetan o nos matan'.

²⁵⁸ Radio Televisión Martí, February 22, 2019, Entrevistas con periodistas del Instituto Cubano por la Libertad de Expresión y Prensa.

²⁵⁹ CiberCuba, June 21, 2019, Redada a la prensa independiente.

²⁶⁰ Diario de Cuba, October 10, 2019, El periodista de DIARIO DE CUBA Osmel Ramírez Álvarez cumple 700 días 'regulado'.

Liset Sánchez,²⁶¹ Carlos Alejandro Rodríguez, Maily Esteves,²⁶² Alberto Corzo, Alberto Castaño,²⁶³ Rudy Cabrera,²⁶⁴ José Fornaris, Boris González,²⁶⁵ Mario Echevarría, Regina Coyula, Joan Manuel Núñez, Roberto Rodríguez, Luis Cino, Sol García,²⁶⁶ Emiliano González, Raúl Velasquez, Manuel Alejandro León,²⁶⁷ Alexander Rodríguez, Alejandro Hernández, Osniel Carmona, Yuri Valle, Anderlay Guerra, Augusto César San Martín, Carlos Alberto Torres, Niorbis García, Yordis GarcíaDaniel González, Deris Solís, Adrián Quesada, Vladimir Turró, Eradilys Frómata, Inalkis Rodríguez,²⁶⁸ Rosalia Viñas, Idilsa Bailly,²⁶⁹ Oscar Padilla, Dagoberto Valdés, Yoandy Izquierdo, Rafael Gordo, Mario Echavarría, Yaudel Estenoz, Yuri Valle,²⁷⁰ Odalina Carmona,²⁷¹ Ernesto Carralero, Julio Aleaga, and Henry Constantin,²⁷² among others.²⁷³

C. Criminalization of Critical or Politically Motivated Expressions of Dissent

208. The IACHR and its special rapporteur have consistently expressed concern at the information received about the misuse of the criminal law—using charges such as contempt, attempted commission, and public disorder—as a mechanism for subsequent imposition of liability on those who express opinions, information, or any kind of criticism on matters of public interest or in relation to authorities or government officials. It is one of the most severe tactics used against certain groups. In that regard, some of the civil society organizations that remain active, despite repeatedly having proceedings instituted against them, are Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP), Asociación Pro Libertad de Prensa (APLP), and Unión Patriótica de Cuba (UNPACU), in addition to the Ladies in White. Another example is Centro de Información Legal (Cubalex), which

²⁶¹ Radio Televisión Martí, June 25, 2019, [Cacería de brujas contra periodistas independientes en Cuba](#).

²⁶² Confidencial, September 19, 2019, [Declaración de la prensa independiente de Cuba](#).

²⁶³ Knight Center for Journalism in the Americas, June 26, 2019, [Periodistas cubanos informan sobre el aumento de detenciones y otros abusos de poder por parte de las autoridades](#).

²⁶⁴ CubaNet, September 27, 2019, [Escapando en silencio o la autocensura en Cuba](#).

²⁶⁵ CiberCuba, October 10, 2019, [La esposa del activista cubano Boris González Arenas denuncia que sigue en paradero desconocido](#).

²⁶⁶ ADN Cuba, October 6, 2019, [Asamblea de la SIP en Miami denuncia represión al periodismo independiente cubano](#).

²⁶⁷ CiberCuba, October 24, 2019, [Gobierno de Cuba impide viajar a 15 activistas para asistir a evento en Miami](#).

²⁶⁸ CiberCuba, May 22, 2019, [Impiden a periodistas independientes de Camagüey participar en evento en el extranjero](#).

²⁶⁹ Diario Las Américas, October 19, 2019, [Cuba niega salida de periodista para asistir a congreso de prensa interamericana](#).

²⁷⁰ Diario de Cuba, June 19, 2019, ['Expatriaciones forzosas': nueva denuncia contra el régimen cubano ante la ONU](#).

²⁷¹ Infobae, September 17, 2019, [Informe denuncia "terrorismo de Estado" contra periodistas en Cuba](#).

²⁷² IAPA, August 31, 2019, [Detienen temporalmente a Henry Constantín, representante de la SIP en Cuba](#).

²⁷³ Asociación Pro Libertad de Prensa de Cuba, September 2019, [Informe mensual monitoreo](#). IACHR, Public hearings, 173rd session, Freedom of expression and human rights in Cuba.

reportedly suffers warrantless searches by police and security officials and is also the beneficiary of precautionary measures from the IACHR.²⁷⁴

209. An emblematic case that highlights the situation is that of Cubanet journalist Roberto Jesús Quiñones who was sentenced to one year's imprisonment for the crime of resistance and disobedience. On 22 April, Quiñones was reportedly arrested and beaten by agents of the National Revolutionary Police (PNR), while covering a trial that the Cuban State conducted against the Rigal-Exposito couple, a husband and wife who were prosecuted for their decision to home-school their children, among other older cases.²⁷⁵
210. Another typical case concerned the conviction and prison sentence handed to Ariel Ruiz Urquiola, a doctor of biological sciences, for the crime of contempt.²⁷⁶ According to public information, on May 3, 2018, officials from the Ministry of the Interior's forest ranger corps entered the lands that Ruiz Urquiola was using in Viñales National Park in order to ask him to show them proof of ownership of his work instruments and legal permits for the activities he was carrying out. The officials reportedly refused to show their official identification, so the biologist referred to them as "rural guards," a term with negative connotations in the country. That same day, Ruiz Urquiola was reportedly arrested and charged with the crime of contempt against forest rangers. In May 2018, he was reportedly sentenced to one year's imprisonment in a summary trial before Viñales Municipal Court, for the crime of contempt; the decision was upheld on appeal. On 3 July, he was reportedly released on "extra-penal leave" for health reasons after going on a hunger and thirst strike in protest.²⁷⁷

D. Censorship and Persecution of Artists

211. The IACHR has affirmed for more than three decades, that in Cuba there is a practice of close control by government authorities that demonstrates "intense intolerance of works of art that might raise questions as to the virtues of the political system or the correctness of the ruling group." In that regard, the IACHR and its Special Rapporteurship have continued to receive information indicating that ideological disagreement has been a reason for preventing artistic

²⁷⁴ Precautionary Measure No. 95-15, November 14, 2016.

²⁷⁵ A similar case is that of a doctor of biological sciences, Ariel Ruiz Urquiola, for the crime of contempt. According to public information, that conviction had to do with the fact that on May 3, 2018, he was arrested and charged with the crime of contempt against forest rangers. In May 2018, he was reportedly sentenced to one year's imprisonment in a summary trial before Viñales Municipal Court, for the crime of contempt; the decision was upheld on appeal. On 3 July, he was reportedly released on "extra-penal leave" for health reasons after going on a hunger and thirst strike in protest.

²⁷⁶ The Office of the Special Rapporteur expressed serious concern about this criminal conviction in a press release in July 2018. IACHR, Office of the Special Rapporteur, The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for *Desacato* Laws in Cuba, Press release R152/18, July 17, 2018.

²⁷⁷ El Nuevo Herald, Científico cubano es condenado a un año de cárcel por "desacato" a las autoridades, May 9, 2018; BBC, Quién es Ariel Ruiz Urquiola, el científico cubano sentenciado a un año de cárcel por criticar a las autoridades, July 6, 2018; Al, June 11, 2018, Urgent Action - Environmental activist imprisoned; The Washington Post, Ariel Ruiz Urquiola, un hombre libre en una sociedad presa, July 9, 2018.

expression.²⁷⁸ The information received shows that many artists, such as theater directors,²⁷⁹ musical groups,²⁸⁰ and writers, among others,²⁸¹ reputedly continue to be severely harassed, in order to prevent them from expressing their social and political concerns through art.²⁸²

212. Thus, for example, in February 2018, the painter Luis Trápaga and the activist Lía Villares, both of them artists from the gallery El Círculo, were detained for 24 hours and interrogated. In addition, the house where the gallery operated was searched and the police seized USB memory sticks, computers, cell phones, video and stills cameras, and hard disks containing Villares' interviews with various censored artists.²⁸³ Other artists who have recently been subject to censorship include curator Yanelis Núñez, writer and journalist Jorge Enrique Rodríguez, the director of the television project *Lente cubano*, Iliana Hernández, and Luis Manuel Otero Alcántara. According to the information available, Otero Alcántara was arrested several times in 2019. Thus, for example, in August 2019, he was reportedly detained for two days in Havana when he wore a Cuban flag on his shoulders as part of a thirty-day performance, entitled *Drapeau*, in protest at a law passed in July 2019 governing how national symbols can be displayed.²⁸⁴ Similarly, in September 2019 he was arrested together with Iris Ruiz and Amaury Pacheco in Havana, during the celebration of the first anniversary of the declaration of the San Isidro Movement.²⁸⁵

²⁷⁸ IACHR, *Special Report on the Situation of Freedom of Expression in Cuba*, OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, par. 127.

²⁷⁹ In December 2017, it was learned that the Ministry of the Interior had summoned the theater director Adonis Milás after he had decided to join the alternative biennial. They also reportedly put pressure on the members of the Milan-based group Perséfone Teatro. The director reportedly belonged to the Asociación Hermanos Saiz that had recently organized presentations of the play *Hamlet Machine* in Santiago de Cuba. The play was reportedly reviewed by a jury of the Provincial Council of the Performing Arts of Santiago de Cuba, which approved the performances. However, State Security allegedly suspended the second performance, claiming that the play cast doubt on Fidel Castro's image. Due to alleged pressure from the regime's agents, the actors are now reportedly afraid to work. IACHR, *2017 Annual Report*, Chapter IV.B, Cuba, par. 69.

²⁸⁰ According to members of the punk rock band *Porno para Ricardo*, they are subject to harassment and censorship by the government, and are unable to perform publicly in Cuba, due, among other things, to a repertoire that is against the official regime. Puente Democrático, *El punk rock cubano en Buenos Aires*, May 3, 2017.

²⁸¹ Diario de Cuba, *#00Bienal: el régimen responde al arte independiente con represión*, May 13, 2018; Martí Noticias, *Creadores buscan espacios fuera de la UNEAC y las instituciones oficiales de Cuba*, February 27, 2018.

²⁸² Diario de Cuba, *La Seguridad del Estado impide la celebración de un evento literario con escritores censurados*, February 4, 2018; Martí Noticias, *Política política reprime evento literario contra la censura en Cuba*, February 4, 2018. In 2018 it was reported that the Political Police had blocked the literary event "Palabras excluidas," which had been scheduled to be held on February 3 at the Museo de la Disidencia. State Security reportedly prevented several writers from reaching the site, including Ángel Santiesteban.

²⁸³ 14yMedio, *La policía detiene durante 24 horas a los artistas de la galería El Círculo*, February 4, 2018.

²⁸⁴ Artforum, August 13, 2019, *Cuban artist Luis Manuel Otero Alcántara arrested over performance with Cuban flag*; 14yMedio, August 11, 2019, *El artista Luis Manuel Otero lleva 24 horas en paradero desconocido*; IVPress Online, August 13, 2019, *Lanzan artistas cubanos reto por bandera*; Cuba comenta, July 10, 2019, *Gobierno cubano promulga nueva Ley de Símbolos Nacionales*; Diario Las Américas, July 10, 2019, *Régimen cubano censura uso de símbolos nacionales en prendas de vestir*; Invasor, July 13, 2019, *En Cuba, nuevas leyes de Pesca, de Símbolos Nacionales y Electoral*.

²⁸⁵ CiberCuba, September 15, 2019, *Fernando Rojas arremete contra Luis Manuel Otero Alcántara: "No tiene aval artístico"*; ADN Cuba, September 17, 2019, *"La libertad es un vicio para mí": Exclusiva con Luis Manuel Otero*

213. Additionally, the Rapporteurship was informed that the artist Tania Bruguera was also arrested on several occasions in 2018. On December 5, 2018, she arrested while on her way to a protest in front of the Ministry of Culture against Decree No. 349. It was the third time that Bruguera was arrested in the space of one week. She had already been detained on December 3 and 4.²⁸⁶
214. In relation to cultural policy, Decree No. 349 (passed on April 20, 2018) was recently promulgated, establishing sanctions for noncompliance with the cultural policy.²⁸⁷ According to reports, it has aggravated censorship and persecution of artists in Cuba.
215. In that regard, the Commission notes that this policy requires that Cuban artists must be deemed qualified by the State in order to practice their profession. Article 4.1 of the Decree states that it is a violation when a natural or legal person "establishes spaces for the commercialization of visual arts without having the proper authorization or being listed in the Creator's Register for Visual and Applied Arts." Thus, only artists registered in the Creator's Register for Visual and Applied Arts can apparently 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. State officials are empowered to decide whether a work complies with ethical and cultural values or with other broad criteria. Furthermore, 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.²⁸⁸
216. The IACHR and its Special Rapporteur find that these regulations, through an excessively broad wording, maintain State limitations and restrictions on the freedom of expression of artists by allowing the punishment of artists who do not share the official ideological discourse or disagree with the ideology imposed by the Cuban Government. Furthermore, these regulations limit access to culture, insofar as only those persons registered in the Creator's Register of Visual and Applied Arts may make presentations, provide services in public, or have marketing spaces. UN rapporteurs, including the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, made similar statements on June 12 in a communication to Cuba.²⁸⁹

Alcántara; 14yMedio, September 15, 2019, *Liberado el artista Otero Alcántara tras pasar más de 72 horas detenido*.

²⁸⁶ AFP, December 5, 2018, *Artista Tania Bruquera detenida en Cuba por protestar contra decreto oficial*; El Nuevo Herald/AFP, December 5, 2018, *Tania Bruquera detenida por tercera vez en Cuba por protestar contra un decreto oficial*; The Guardian, December 6, 2018, *Cuban artists fear crackdown after Tania Bruquera arrest*.

²⁸⁷ IACHR, *Special Report on the Situation of Freedom of Expression in Cuba*, OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, par. 130.

²⁸⁸ IACHR, *Special Report on the Situation of Freedom of Expression in Cuba*, OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, par. 131.

²⁸⁹ United Nations, Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on

217. En response to the Decree, independent artists, known as “activists,” are reported to have launched the #NoAlDecreto campaign³⁴⁹ and to have had their rights restricted. Thus, incidents recorded included the arrest of the rappers Lázaro Leonardo Rodríguez Betancourt, known as “Pupito en Sy” and Maikel Castillo Pérez, known as Maikel el Obsorbo, who are allegedly being persecuted for voicing their opposition to Decree No. 349 and the Cuban regime.²⁹⁰ According to the information available, the former was released, while the latter is to serve a year and a half in prison for the crime of “assault.”²⁹¹ Likewise, the artists Yanelis Núñez and Nonardo have reportedly gone into exile in Spain due to the constant harassment against them.²⁹² Other reported developments include the suspension of the concert of hip-hop artist Osvaldo Navarro Veloz, known as “Navypro”;²⁹³ the arrest of six artists in Havana at a peaceful protest in front of the Cuban Ministry of Culture, and the persecution and arrest of the writer couple, Nancy Alfara and Jorge Olivera Castillo.²⁹⁴
218. In addition, different independent artists and activists denounced an increased use of excessive force in the repression of public protest through artistic actions. One example was the intervention in an activity by the Club of Independent Writers and Artists and the Di.Verso Project.²⁹⁵ Another example was the arrest of theater director Adonis Milan,²⁹⁶ who, allegedly, was held in solitary confinement, suffered psychological torture, and was forced to sign a record of anti-revolutionary activities.

the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders. [Reference OL CUB 2/2019](#), 12 June 2019. According to the rapporteurs, “[t]he lack of precision and the excessively broad nature of the wording of Decree 349 allows for the possibility of its arbitrary application and, therefore, risks infringing not only the right to freedom of artistic expression and creativity of all persons in Cuba, but also the right of everyone to seek and receive information and ideas of all kinds.” They also expressed their “particular concern that the Decree establishes a system of prior censorship of the arts, as the rules contained in the Decree appear to exceed any legitimate objective of regulating the artistic sphere and, therefore, are in direct conflict with Cuba’s obligations under international human rights law with respect to freedom of expression, artistic freedom and the right to participate in cultural life.” At the same time, they mentioned their concern that the Decree “[a]ccords inspectors complete authority to impose sanctions based on their personal opinions. Furthermore, since the sanctioning body and the body that deals with appeals against such sanctions are the same, [they] are also concerned that there is no meaningful and impartial appeal process, and therefore it is not an effective (judicial) remedy on the part of the competent judicial, administrative or legislative authorities.”

²⁹⁰ CubaNet, [Régimen cubano acusa de “atentado” a rapero Maikel el Obsorbo](#), November 9, 2018. Diario de Cuba, [‘Nunca me he callado’, dice el rapero cubano Pupito en Sy tras su excarcelación](#), August 25, 2019.

²⁹¹ [Cubanos por el mundo, Maikel Castillo Pérez ‘El Osorbo’ sentenciado a año y medio de prisión por criticar el 349](#), May 2019.

²⁹² Diario de Cuba, [Dos activistas contra el Decreto 349 se exilian en Madrid](#), March 28, 2019.

²⁹³ [CiberCuba, Autoridades cubanas suspenden concierto en Matanzas del rapero independiente Navypro](#), March 24, 2019.

²⁹⁴ [Comunicado PEN](#), 2019.

²⁹⁵ Diario de Cuba, [Un violento despliegue policial frustra un taller de escritores independientes y el proyecto Di.Verso](#), October 1, 2019.

²⁹⁶ El Diario de Cuba, [‘Tengo miedo de que el miedo me haga traicionar mis principios y a la gente que yo quiero’](#), September 9, 2019.

E. Limitations on the Right to Freedom of Expression on the Internet

219. As the Office of the Special Rapporteur mentioned in its 2018 special report on the state of freedom of expression in Cuba, if anything has changed recently in the area of freedom of expression, it has been fundamentally due to the slow and gradual spread of communication technologies which, even with severe restrictions, have become important in a country. In recent years, the use of the Internet and the development of digital media have opened up spaces for the circulation of information and ideas outside government control. Thanks to those technologies, in recent years an increasing number of journalists have set up digital media outside the official discourse and state control to disseminate their work, as well as to promote the exchange of information and opinions.²⁹⁷
220. The IACHR and Office of the Special Rapporteur mentioned in the above report that, according to the information available, access to the web is severely obstructed in Cuba by (i) highly restrictive and ambiguous legal provisions, (ii) the limited connectivity of the Cuban population, (iii) blocking and censorship of critical media, and (iv) on-line surveillance. The risks of persecution and repression against those involved in this type of activity seriously hinder progress in terms of press freedom on the Internet in Cuba.²⁹⁸
221. Cuba first connected to the World Wide Web in 1996 but private use of personal computers was not authorized by the State until 2008. In addition, despite official statements to the effect that it aspires to encourage widespread use of the Internet on the island, such as the fact that Cubans have been able to have Wi-Fi in their homes since July 29, 2019,²⁹⁹ Cuba continues to rank last in Latin America in terms of roll-out of information and communication technologies due to factors such as high prices, for example.³⁰⁰ According to the International Telecommunication Union (ITU), in 2017, Cuba was in 137th place out of 176, two spots lower than the previous year.³⁰¹ According to figures that cite independent estimates and government statistics as sources, Internet access is between 5 percent and 27 percent of the population, but none of the estimates clearly indicates the methodology used to calculate access. In the case of government statistics, the

²⁹⁷ IACHR, Special Report on the Situation of Freedom of Expression in Cuba, OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, par. 197.

²⁹⁸ IACHR, Special Report on the Situation of Freedom of Expression in Cuba, OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, par. 199.

²⁹⁹ New York Times, July 31, 2019, *Cuba Expands Internet Access to Private Homes and Businesses*; Radio Televisión Martí, September 17, 2019, *CPI: Nuevas medidas sobre acceso a Internet en Cuba, "una trampa" para medios independientes*; El Comercio, July 29, 2019, *Cuba amplía su acceso a internet, una herramienta para defender la revolución*.

³⁰⁰ IACHR, Special Report on the Situation of Freedom of Expression in Cuba, OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, par. 217.

³⁰¹ ITU, *Measuring the Information Society Report 2017*, p. 31.

figure does not distinguish between connecting to the Internet and Cuba's intranet, a closed network of sites mostly hosted on Cuban domains.³⁰²

222. The IACHR takes note of a set of decrees, ministerial resolutions, and various regulations on the use of new technologies that would appear to have an impact on freedom of expression, such as Decree No. 209 of 1996, Resolution No. 56 of 1999, Resolution No. 92 of 2003, Resolution No. 179 of 2008, and Resolutions Nos. 72 and 73 of 2009.
223. **Decree No. 209 of 1996** of the Office of the President of the Council of Ministers governs access from Cuba to global computer networks. Article 12 states that the policy must always be implemented "in accordance with the national interest", and goes on to mention the need to ensure that "the information disseminated is reliable and that the information obtained is in keeping with our ethical principles and does not adversely affect the interests and security of the country." Articles 13 and 14, for their part, establish those controls by providing that "access to global computer network services shall be selective," as well as the need to obtain administrative authorization to access the global network, which is granted by the Interministerial Commission for Global Computer Network Services (*Comisión Interministerial para la Atención de lo Relacionado con Redes Informáticas de Alcance Global*). On that point, the selective nature and the requirement of prior authorization for access to the network are contrary to the principle of universal access. On the other hand, the requirement to align with national interests is at odds with pluralism and diversity, essential conditions for the process of public discussion and the exercise of freedom of expression that must be preserved in the digital environment. Likewise, the requirement that the information be reliable, and in accordance with the ethical principles, interests and security of the country, can only be satisfied if the contents of the network are subjected to strict control or prior censorship, blocking access to an enormous amount of material available online.³⁰³
224. With respect to **Resolution No. 56 of 1999** on the authorization of serial publications on the Internet, the Office of the Rapporteur notes that it requires all Cuban serial publications "that are intended to be circulated, printed or disseminated on the Internet" to have the specific approval of the National Registry of Serial Publications, regardless of the node, institution or country that they use as a gateway to the web. In addition, it imposes as requirements for dissemination on the Internet that it "maintain objectivity and high professional standards" and "espouse the most genuine national values," among others. It is also troubling to note that, among other elements, the application for registration must present the rationale of "why, on the basis of its objectives and thematic profile, it would be in the national interest to post the publication on the Internet." In this regard, the Special Rapporteur considers that this resolution is a form of prior censorship and seriously contravenes the principles of universal access,

³⁰² CPJ, *Conectar a Cuba: Más espacio para crítica, pero restricciones frenan avance de libertad de prensa*, 2016, p. 27.

³⁰³ IACHR, *Special Report on the Situation of Freedom of Expression in Cuba*, OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, pars. 203-205.

pluralism, non-discrimination, network neutrality, and multisectoral governance.³⁰⁴

225. **Resolution No. 92 of 2003**, on access to e-mail and chat and responsibility of intermediaries, introduces a number of restrictions that are particularly relevant to two of the main forms of Internet use: e-mail and chat. With regard to e-mail services, it is established that Cuban websites offering these services "may not implement the creation of e-mail accounts (webmail) automatically for natural and legal persons who are not duly authorized." With regard to the chat services, it establishes that "they must ensure that natural or legal persons who only have approved access to national browsing are not able to use the international chat services." In that regard, the Special Rapporteur considers that these restrictions impair free browsing and use of networks and amount to a disproportionate interference with individual liberty, without any explanation or justification.³⁰⁵
226. **Resolution No. 179 of 2008** approves the Regulations on the activity and responsibilities of a group of intermediaries: Internet service providers (ISPs). Among the obligations imposed on these operators in Article 19, notable are the requirements "to ensure that software with cryptographic systems or encrypted file transfer is not used," "to take the necessary measures to prevent access to sites whose contents are contrary to social interest, morals, and good customs; as well as the use of applications that affect the integrity or security of the State," and "to establish procedures that ensure the identification of the origin of accesses, as well as their recording and conservation for a period of not less than one (1) year." ISPs that fail to carry out these and various other functions correctly are subject to temporary or permanent suspension of their contract with ETECSA, a state-owned company that has a monopoly on telecommunications services. Thus, intermediaries, in this case ISPs, have imposed on them direct obligations to monitor and "regulate" online content, based on extremely vague criteria such as "content contrary to social interest, morals and good customs." That vagueness, added to the strict regime of direct responsibilities, would likely lead to strict censorship of any material that could be considered to match those criteria. At the same time, the prohibition of the use of cryptographic systems to guarantee the privacy of users' communications is contrary to the obligation imposed on ISPs precisely to preserve that privacy, which also suggests an interest on the part of the authorities in having easy access to Internet exchanges.³⁰⁶
227. Finally, **Resolution No. 72 and 73 of 2009** provide that "the websites of legal entities that are national or based in the country [...] and; the websites of international organizations that are hosted on Cuban servers" must be registered. The regulations governing that registration were approved by Resolution No. 73 on that same date. It provides that those responsible for each website must submit an application for registration. In view of the restrictions on the creation of

³⁰⁴ IACHR, [Special Report on the Situation of Freedom of Expression in Cuba](#), OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, pars. 206-207.

³⁰⁵ IACHR, [Special Report on the Situation of Freedom of Expression in Cuba](#), OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, par. 208.

³⁰⁶ IACHR, [Special Report on the Situation of Freedom of Expression in Cuba](#), OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, pars. 213-214.

associations in Cuba, it is of particular concern to note that in the "case of associations, foundations, civil societies, [they] must present the endorsement of their relations body, giving their consent to the website," which in practice is not possible. In addition, it should be noted the requirements for registration include reporting all the website information, including URLs, service provider, thematic profile, objective and intended audience, content sections, services, multimedia and interactivity resources, and others. It also establishes that the registration, which needs to be revalidated every year, can be suspended, cancelled or denied to websites that (i) do not comply with the requirements established by the legal provisions in force regarding the use of the Internet and others; (ii) disseminate, cover or protect under their domain other unregistered sites or periodical publications not approved by the Directorate of Periodical Publications; (iii) disseminate and/or publish content contrary to the social interest, morals, good customs and integrity of persons; or (iv) fail to live up to the profile or objectives approved for the publication of the website. It also contains a general provision that provides for cancellation without prior notice "in cases of serious violations of ethics and morals, or others acts incompatible with the principles of our socialist society." In this regard, the requirement to register websites as described above would constitute a form of prior censorship that is incompatible with the exercise of the right to freedom of expression on the Internet.³⁰⁷

228. Furthermore, in July 2019, **Decree-Law 370** "on the computerization of society in Cuba" was published in Cuba. While that decree could represent an advance for ICTs, provisions such as Article 68 and Chapter II are of particular concern. For example, Article 68, which sets out "violations associated with information and communication technologies," could establish a censorship regime in the country and serve as a legal instrument to punish the independent press. That article includes as a violation the fact of (f) "hosting on servers located in a foreign country a site that is not a mirror or replica of the main site on servers located in national territory."³⁰⁸ It is important to note that the Ministry of Communications has made it clear through a tweet that this provision does not apply to blogs, personal sites, or information sites³⁰⁹. Notwithstanding the above, several organizations have reportedly expressed concern about the wording of the provision, which clearly refers to "sites" without further specification.³¹⁰ In this regard, these regulations could be used against non-State media in Cuba, since all of them are hosted outside the country because they have apparently been denied the possibility of acquiring ".cu" domains and legal recognition.

³⁰⁷ IACHR, Special Report on the Situation of Freedom of Expression in Cuba, OEA/SER.L/V/II CIDH/RELE/INF.21/18, December 31, 2018, pars. 215-216.

³⁰⁸ Decree-Law 370 "on the computerization of society in Cuba," published on July 4, 2019, Article 68(f).

³⁰⁹ "DL-370 computerization, contraventions subparagraph (f), in the case of natural persons, it refers to national platforms and applications for services offered on the Internet and used by citizens; it does not refer to blogs, personal sites or information sites". Twitter account of the Ministry of Communications of Cuba, @MINCOMCuba. July 5, 2019.

³¹⁰ Tremenda Nota, July 10, 2019, Decreto-Ley 370: internet bajo control en Cuba; Knight Center for Journalism in the Americas, July 10, 2019, Independent Cuban media criticize government decree establishing sanctions on sites hosted outside of the country.

229. Likewise, subparagraph (i) establishes as a violation "the dissemination, through public data transmission networks, of information contrary to the social interest, morals, good customs and integrity of persons."³¹¹ The IACHR and its Rapporteurship find that this provision fails the triple test of legality, necessity, and proportionality for implementing permissible limits on freedom of expression online. In this sense, its excessively vague and open wording could favor a broad interpretation and would leave the interpretation of the article to the discretion of judges. This could give rise to undue restrictions on the exercise of the rights to freedom of expression and assembly through the Internet, affecting the free flow of information.
230. At the same time, it also considers the penalties envisaged in Chapter II of the Decree-Law to be disproportionate, as they provide, for example, for "confiscation of the equipment and means used to commit the violations," "temporary or permanent suspension of the license," "closure of the facilities," and fines of up to several hundred U.S. dollars, which are substantial amounts in Cuban pesos.
231. In addition, a series of blockades have been recorded of media sites covering information about Cuba at irregular intervals, apparently carried out without notice to those affected. According to information provided to the IACHR, some of the blocked sites are *Tremenda Nota*, *14yMedio*, *ADN*, and *Diario de Cuba*.³¹² A parallel reality to that of the state monopoly of the Internet access service is the so-called Street Network (SNet). Different administrators and users reported the imminent disappearance of what is considered the largest informal Internet network in the world, connecting at least 20,000 people.³¹³ In that regard, on May 21, 2019, the Cuban Government reportedly passed two resolutions for the use of wireless telecommunications networks that establish new requirements for the use of the country's radioelectric space, thus making the network illegal.
232. Finally, information has been received about alleged surveillance of those who surf the Internet, in violation of the right to privacy and protection of personal data. This is either as a result of the use of e-mail and messaging services, or through software that allows general monitoring of the network, especially with regard to those who connect from the Internet cafés.³¹⁴ In this connection, it is particularly worrying that, in recent years, surveillance of network activity by the State is apparently used as a means of identifying independent journalists and

³¹¹ Decree-Law 370 "[on the computerization of society in Cuba](#)," published on July 4, 2019, Article 68(i).

³¹² Tremenda Nota, [Tremenda Nota, otra revista que no puede leerse en Cuba](#), September 14, 2019;

³¹³ Diario de Cuba, [Someterse o desaparecer, las opciones que deja el régimen cubano a la red independiente SNet](#), August 23, 2019.

³¹⁴ Recently, it was also 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. 2018 country report on Cuba, par. 238.

political dissidents, leading to patterns of harassment³¹⁵—traditionally used with the written press—against those who engage in this kind of activity online.³¹⁶

³¹⁵ According to the information available, for example, Sol García Basulto and Henry Constantín, journalists from La Hora de Cuba, are permanently spied on and victims of trolling on social networks. 2018 country report on Cuba, par. 242.

³¹⁶ FH, [Libertad en el internet 2017: Cuba](#); FH, [Libertad en el internet 2016: Cuba](#); FH, [Libertad en el internet 2015: Cuba](#); FH, [Libertad en el internet 2014: Cuba](#), pp. 13-16.

CHAPTER 8
ECONOMIC, SOCIAL, AND
CULTURAL RIGHTS

ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

233. This chapter will address the rights to adequate housing, food, cultural rights, trade union rights, the rights to social security, labor, health, and education, and environmental rights. In this regard, it considers public information presented by the State of Cuba to other international organizations that contains details about its policies in relation to such rights, as well as information received by the IACHR through the office of its Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (SRESCER).

A. *Right to Adequate Housing*

234. On general information related to housing and its construction, the IACHR takes note of the public information presented by the State of Cuba to the United Nations. The State said that under Decision No. 7387 of the Executive Committee of the Council of Ministers (“Regulations for granting subsidies to individuals to undertake construction on their homes”³¹⁷) it had guaranteed the sale of more than 57,000 houses, the donation of more than 157,000 houses, and provided millions of pesos to beneficiaries for building. In addition, it added that it has delivered 10,000 subsidized homes annually to the population.³¹⁸ Likewise, it stated that the new housing regulations reportedly allow the transfer of 16,887 State homes currently under construction to be completed by self-help, the legalization of 20,021 homes, recognition of the right to ownership in perpetuity of areas affected by weather events, and to transfer ownership of dwellings allocated by the State or basic units built with subsidies.³¹⁹
235. In December 2018, the National Housing Plan was reportedly published, which sets out the government’s annual construction targets over a period of ten years for eliminating Cuba’s housing deficit. However, specialists from the Cuban Observatory of Human Rights point out that the government has historically failed to meet housing construction goals and that it will take at least fifty years to eliminate the current deficit.³²⁰ The government’s delays in fulfilling housing

³¹⁷ Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Cuba, March 5, 2018, par. 122.

³¹⁸ Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Cuba, March 5, 2018, par. 122.

³¹⁹ Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Cuba, March 5, 2018, par. 124.

³²⁰ Cuban Observatory of Human Rights, 2019 Informe Primer Semestre: Violaciones de Derechos Humanos Económicos, Laborales, Sociales y Culturales en Cuba, July 8, 2019.

completion plans have been acknowledged by its officials on other occasions.³²¹ In the same vein, press releases from official media outlets point out that, despite efforts to increase the production of materials, "there is still insufficient supply to meet demand from the population."³²² Other media indicated that as of May 2019, Cuba had only have completed 8 percent of the Plan³²³.

236. The IACHR notes that the State has taken steps to promote the right to adequate housing; however, the housing deficit in Cuba has grown to an estimated 1.4 million homes.³²⁴ Considering that, according to information from the State, there is a national average of 2.98 people per housing unit,³²⁵ the deficit would appear to affect about 4.2 million inhabitants, or 37 percent of the population.³²⁶ Apart from the housing deficit, 38 percent of homes were apparently reported to be in poor or regular condition.³²⁷ According to information from the press, the provinces most affected by the housing deficit are Havana, Holguin, and Santiago de Cuba.³²⁸
237. The Commission also takes note of academic analyses of measures taken by the State of Cuba to protect the right to housing. One of them highlights that, despite the new policies in this regard, the housing problem in Cuba has to do with "not only economic-social issues, but also regulatory ones, associated with the issue of ownership of the home, financing, demographic problems, and subsidies," and adds that it is important to harmonize the forms of ownership with the forms of production of materials for housing construction and repair in order to create an effective public policy.³²⁹ Another study stresses the importance of modifying the current housing subsidy procedure to enable people of limited means to carry out building projects on their homes.³³⁰
238. The IACHR also received information through the SRESCER about the weakness of water and sanitation services in Cuba. The Cuban Observatory of Human Rights said that just 13 percent of Cubans have round-the-clock access to water, while the rest have to rely on intermittent tanker deliveries. The same information points out that this water is not potable but needs to be boiled for human

³²¹ Radio Televisión Martí, *Más de 2,6 millones de cubanos afectados por la falta de viviendas*, July 13, 2017.

³²² Cubadebate, *¿Cómo marcha el Porgaram de la vivienda en Cuba?*, August 16, 2019.

³²³ CiberCuba, *Gobierno de Cuba solo ha logrado cumplir con el 8% del plan nacional de construcción para 2019*, May 4, 2019.

³²⁴ Cuban Observatory of Human Rights, *2019 Informe Primer Semestre: Violaciones de Derechos Humanos Económicos, Laborales, Sociales y Culturales en Cuba*, July 8, 2019.

³²⁵ Radio Televisión Martí, *Más de 2,6 millones de cubanos afectados por la falta de viviendas*, July 13, 2017.

³²⁶ Teniendo en cuenta que la población estimada en Cuba es de 11,208,000 habitantes (Granma, *¿Con cuántos habitantes cerramos el 2018?*, February 15, 2019).

³²⁷ Cuban Observatory of Human Rights, *2019 Informe Primer Semestre: Violaciones de Derechos Humanos Económicos, Laborales, Sociales y Culturales en Cuba*, July 8, 2019.

³²⁸ Radio Televisión Martí, *Más de 2,6 millones de cubanos afectados por la falta de viviendas*, July 13, 2017.

³²⁹ Roberto Muñoz González and Jorge Manuel García Vázquez (2018): "El problema de la vivienda en Cuba en el periodo 2011-2018: situación y principales desafíos," *Revista Observatorio de la Economía Latinoamericana*, August 2018.

³³⁰ Noris Tamayo Pineda and Marvelis Velázquez Reyes (2018): *El subsidio en Cuba. Una política pública para la construcción y reparación de viviendas*. *Revista Estudios del Desarrollo Social: Cuba y América Latina*.

consumption, while the waste collection system, sewage treatment, and the sewerage system are less than adequate.³³¹

239. Testimonies of Cubans gathered by the Commission mentioned that access to subsidies to buy building materials to renovate houses is limited. People without access to such subsidies find it even more difficult to make improvements and/or repairs to their homes. Also, they mentioned that State assistance to repair houses damaged by weather-related events is insufficient and houses in general are in poor condition and dilapidated, while house prices are too high for anyone to afford to buy a house. In addition, according to testimonies, water, electricity, and sewerage sanitation systems are in a parlous state.
240. The people interviewed by the IACHR also pointed out that currently there is not enough housing, that there is overcrowding inside the houses, and that up to three generations can live in one house because there is no possibility of buying or of expanding. One of the persons interviewed said:

The right to housing is limited by the purchasing power of the citizenry; no young people have access to housing because they have no money; you will never be able to afford a house on your salary. Interest rates on home loans are very high and put people into debt for a large portion of their lives.³³²

B. Right to Food

241. Regarding the right to food, the IACHR notes the State's report to the United Nations Human Rights Council, in which it said that it had implemented actions to ensure the food security of the population, with particular attention to the availability, access, and correct use of food. It also said that it offered basic foodstuffs at subsidized prices for the entire population, regardless of their level of income.³³³ In the same report, the State mentioned as examples of plans on the right to food: the Comprehensive Plan for the Prevention and Control of Iron-deficiency Anaemia; a subsidized nutrition service for older persons, persons with disabilities, and other at-risk individuals for children and pregnant women; and projects with the support of UNICEF and WFP focused on children. It also mentioned actions to improve the performance of the agriculture sector, achieve higher levels of local production, replace food imports, increase resilience in environmental situations.³³⁴

³³¹ Cuban Observatory of Human Rights, 2019 Informe Primer Semestre: Violaciones de Derechos Humanos Económicos, Laborales, Sociales y Culturales en Cuba, July 8, 2019.

³³² IACHR, Confidential interview, IACHR archive.

³³³ Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Cuba, March 5, 2018, pars. 116 and 117.

³³⁴ Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Cuba, March 5, 2018, pars. 118 and 119.

242. In addition, the Permanent Mission of Cuba to the United Nations pointed out that: "the impact of the US embargo on the Cuban food industry and agriculture between April 2017 and March 2018 amounted to US\$413,793,100, which represents an increase of US\$66,195,100 compared to previous periods."³³⁵
243. At the same time, the United Nations Independent Expert on human rights and international solidarity said after a visit to Cuba in July 2017 that the food subsidy program had been a significant factor in its achieving the target of the millennium development goals relating to the reduction of hunger and undernourishment to below 5 percent since 2005.³³⁶ The Food and Agriculture Organization of the United Nations (FAO) indicated that Cuba had managed to maintain the lowest prevalence of undernourishment in Latin America and the Caribbean with an estimated percentage of less than 2.5 percent.³³⁷ However, its said that the fight against obesity remained a challenge, as the prevalence of overweight and obese people in the adult population was 26.7 percent.³³⁸
244. However, according to public information, healthy eating in Cuba is expensive, bearing in mind the average person's income. In a press report made about a mother of a person with Down syndrome, the importance was emphasized of a balanced diet; however, she pointed out that "prices are the main obstacle for an ordinary Cuban hoping to maintain a healthy diet," and added that at least two glasses of juice a day for her two children was almost impossible on her salary as a secretary.³³⁹ In that regard, several recent press releases refer to the shortage of food products,³⁴⁰ as well as their high cost.³⁴¹ There are accounts of families who spend about 80 percent of the family budget just on food.³⁴²
245. The IACHR also received information from Cubans regarding shortages of essential food products such as oil, wheat flour, rice, pork, chicken, and eggs, the supply of which has reportedly become intermittent. Testimonies from Cubans collected by the IACHR describe the difficulties that people have acquiring food products other than those contained in the ration book. One of the persons interviewed said:

The basic basket is totally diminished; the government has freed up many products that are not in the book and prices have gone up. Now it's just sugar, beans, grains and some meat, like chicken. The basic nutrition of Cubans is poor, although there are alternative sources,

³³⁵ Overseas diplomatic missions of Cuba, Bloqueo repercute en el derecho a la alimentación del pueblo cubano, September 28, 2018.

³³⁶ United Nations Human Rights, Office of the High Commissioner, Preliminary observations of the United Nations Independent Expert on human rights and international solidarity, Ms. Virginia Dandan, at the end of her visit to Cuba conducted from 10 to 14 July 2017, July 14, 2017.

³³⁷ FAO, El hambre afecta a 42,5 millones de personas en América Latina y el Caribe, July 15, 2019.

³³⁸ FAO, El hambre afecta a 42,5 millones de personas en América Latina y el Caribe, July 15, 2019.

³³⁹ Radio Televisión Martí, Cuba, El Costo de una alimentación saludable en Cuba, 2018.

³⁴⁰ BBC News, Las colas y la escasez en Cuba hacen temer por un nuevo Período Especial: "La gente casi se mata por comprar una lengua de puerco", May 29, 2019.

³⁴¹ Ciber Cuba, Regular la venta de alimentos en Cuba "La cosa está mala y se pondrá peor," May 12, 2019.

³⁴² La Nación, Los precios de los alimentos en Cuba dejan muy atrás a los salarios, June 12, 2019.

but they do not supply the whole population. Prices are very high; there is almost no money. Cubans survive on the money the Cuban diaspora supplies for cooking oil, for example, which is in short supply; eggs are also scarce and you can only get them once a month.³⁴³

C. *Cultural Rights*

246. According to ECLAC, the resources allocated to financing recreational, cultural, and religious activities in Cuba correspond to 0.62 percent of GDP, more than four times higher than the regional average (0.15 percent of GDP), but lower than the minimum agreed at the 10th Ibero-American Conference on Culture in 2007 (1 percent of the general budget of each State). Values for recreational, cultural, and religious activities correspond to 4.26 percent of total social spending in Cuba.³⁴⁴
247. In its report to the United Nations Human Rights Council, the State said that it promotes cultural rights and all branches of the arts and sciences, and that freedom of artistic and literary creation are encouraged. It also emphasized that it guarantees full access for the people to art and literature and takes many steps to preserve and defend the nation's culture.³⁴⁵ It added that Cuba's policy on culture is to encourage the people to be involved in different aspects of cultural life, safeguard cultural rights, promote the implementation of projects aimed at defending identity, and enhance artistic, literary, and creative production.³⁴⁶ It also mentioned that the State trains thousands of art instructors who work in schools in the general education system and in communities. More than 2,500 professionals promote culture and carry out cultural outreach activities in the People's Councils and towns. In addition, there are currently 360 socio-cultural projects on the island.³⁴⁷
248. In that regard, the Commission reiterates its concern about the promulgation of Decree No. 349 which would impose a number of restrictions on those rights, as elaborated in the section on freedom of expression and artists.³⁴⁸ The new cultural regulations prohibit artistic activities in public or private spaces without prior authorization from the Ministry of Culture and allow State authorities to immediately suspend a performance or recommend the cancellation of an authorization granted. Furthermore, it prohibits artistic expression based on vague and excessively broad concepts. The IACHR takes note of the possible

³⁴³ IACHR, Confidential interview, IACHR archive.

³⁴⁴ ECLAC, *Social Panorama of Latin America 2018*, 2019, pp. 125 and 144.

³⁴⁵ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Cuba*, March 5, 2018, par. 104.

³⁴⁶ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Cuba*, March 5, 2018, par. 105.

³⁴⁷ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Cuba*, March 5, 2018, par. 106 and 107.

³⁴⁸ Cuban Observatory of Human Rights, *2019 Informe Primer Semestre: Violaciones de Derechos Humanos Económicos, Laborales, Sociales y Culturales en Cuba*, July 8, 2019.

consequences of violations of Decree No. 349/2018, including a warning, a fine, and confiscation of instruments, equipment, accessories, and other property.

249. As a result of the demonstrations against the Decree, protesters were allegedly subjected to arbitrary arrests, threats, police intimidation, and even prison sentences.³⁴⁹ The IACHR was informed that activists from the San Isidro Movement, which organized the protests, went into exile because of intimidation and arbitrary abuses from the Cuban authorities.³⁵⁰
250. The testimonies collected by the IACHR on the enjoyment of cultural rights consistently indicate that the authorities censor young people on the basis of the Decree in question. Artists are reportedly face obstacles when it comes to expressing themselves or being creative. Furthermore, according to accounts there are few cultural activities, little access to cultural assets, and movements that have values that differ from those of the Revolution receive no support from the State.

D. Trade Union Rights

251. In the Universal Periodic Review, various entities noted that in Cuba a high number of workers were unionized and protected by collective agreements and that trade unions could participate in the administration of justice in the field of employment and had the right to conduct inspections. However, other groups said that no trade unions other than the Cuban Trade Union Federation (CTC) were legally recognized and that independent trade union activists were systematically repressed by the government.³⁵¹
252. According to information provided to the Commission, despite the fact that labor legislation in Cuba permits the establishment of independent trade unions, in practice it allows only one confederation of workers' unions, which is under the control of the State.³⁵² In addition, some reports indicate that independent trade union activists have been harassed in their homes and forbidden without justification from leaving the country in order to take part in international events.³⁵³
253. According to the report of individuals and civil society groups not officially recognized in Cuba for the Universal Periodic Review in Geneva, in April and May 2018, the right to strike is not recognized in practice; workers are forced to join

³⁴⁹ Cuban Observatory of Human Rights, 2019 Informe Primer Semestre: Violaciones de Derechos Humanos Económicos, Laborales, Sociales y Culturales en Cuba, July 8, 2019.

³⁵⁰ Cuban Observatory of Human Rights, 2019 Informe Primer Semestre: Violaciones de Derechos Humanos Económicos, Laborales, Sociales y Culturales en Cuba, July 8, 2019.

³⁵¹ Human Rights Council, Summary of Stakeholders' submissions on Cuba, 9 March 2018, pars. 57 and 58.

³⁵² Human Rights Watch, Cuba, Events of 2018, 2019; Corrente Martiniana, Informe de individuos y grupos de la sociedad civil no reconocida oficialmente en Cuba al Examen Periódico Universal, 2018.

³⁵³ Cubasindical, Intervención de la ASIC en la reunión anual de la ADS durante la 108ª CIT, June 13, 2018. Cubasindical, La ASIC denuncia represión del régimen contra sus miembros, November 23, 2017.

the official trade union and collective agreements in general are geared towards the achievement of State goals and do not take into account the interests of workers.³⁵⁴ In turn, the IACHR notes that the ILO Committee of Experts noted that there is no guarantee for the exercise of the right to strike in labor legislation, that it is prohibited in practice, and that the State should ensure that workers can exercise it without risk of punishment.³⁵⁵

254. In 2018, the ILO Committee on Freedom of Association presented its conclusions and recommendations on Case No. 3271 presented by the Independent Trade Union Association of Cuba (ASIC) against the State of Cuba. The Committee requested the government to ensure that ASIC was given recognition and that it could freely operate and carry out its trade union activities and that an investigation was made into all the allegations of aggression and other forms of anti-union discrimination and, should these be proven, to ensure that penalties that act as a deterrent were imposed and appropriate compensatory measures for the victims were taken. Specifically, it requested the State to provide detailed information on the outcome of any administrative or judicial proceedings instituted against the trade unionists mentioned as victims of anti-union discrimination, such as Mr. Reyes Consuegras.³⁵⁶ In the same month, the Governing Body adopted the Committee's recommendations.³⁵⁷ The case is considered symbolic on the island because it was the first time that a complaint filed by an unofficial workers' organization was taken forward.³⁵⁸

255. With respect to the testimonies gathered by the IACHR on trade union rights in Cuba, the Cuban people interviewed pointed out the impossibility of exercising freedom of association, the non-existence of the right to organize and to register entities independent of the State, the lack of representation of trade unions recognized by the government, the need for membership in order not to lose their jobs, the weakness of the defense of labor rights by official unions, the non-existence of the right to strike, and cases of persecution and harassment of independent trade unionists. One of the persons interviewed said:

Where trade union rights are concerned, the administrations are really the enemies of the worker. There is a war between the administration and the workers, the union bows down to the administration and does not defend the rights of workers; it is not independent. There is no union session without a party core. It's totally illogical.³⁵⁹

³⁵⁴ Corrente Martiniana, *Informe de individuos y grupos de la sociedad civil no reconocida oficialmente en Cuba al Examen Periódico Universal*, 2018.

³⁵⁵ ILO Committee of Experts on the Application of Conventions, *Report III (Part 1A)*, 2017, p. 104.

³⁵⁶ Governing Body, *386th Report of the Committee on Freedom of Association*, June 9, 2018, pars. 232-242.

³⁵⁷ Governing Body, *Decisions adopted by the Governing Body at its 333rd Session (June 2018) and outcomes of the discussions*, June 9, 2018.

³⁵⁸ Radio Televisión Martí, *¿Por qué no protestan los trabajadores cubanos?*, May 5, 2019.

³⁵⁹ IACHR, Confidential interview, IACHR archive.

E. Right to Social Security

256. According to the summary of stakeholders' submissions on Cuba, the United Nations High Commissioner for Human Rights, the entities (state, non-state, international) that contributed to the Universal Periodic Review of Cuba, the social security system is universal, including sickness and accident benefits, maternity allowances and old-age pensions, among others, and that there is a high level of investment in the system. They also mentioned that the social welfare system provided protection for persons who were not fit for work or who required State support on account of their living conditions or state of health.³⁶⁰ However, other entities that contributed information for the Universal Periodic Review of Cuba stated that the social welfare system was not universal as the Government had reduced the number of beneficiaries, leaving large vulnerable sectors of the population without any protection.³⁶¹
257. In this regard, public information from the National Statistics and Information Office indicates that in 2018 there were 1,669,510 retirees and pensioners who receive an average pension of 303.98 Cuban pesos (or US\$12.16). Although there was no increase in the number of retirees and pensioners from 2017 to 2018, there was a reported increase of about 15 Cuban pesos in the average pension (from 285.71 to 303.98).³⁶² The value of the minimum pension, according to data from July 2019, is 280 Cuban pesos (or US\$11.20 dollars).³⁶³
258. The IACHR, through the SRESCER, received information that highlights that the coverage of the social security system in Cuba has not been universal since 2011 because people who have a family member with a job do not receive pensions or subsidies.³⁶⁴ This situation refers specifically to the social welfare system, according to Article 4 of Law No. 105 of January 22, 2009. The Commission also obtained information that the pension amounts do not allow people to buy enough provisions to survive, since the minimum individual basic basket costs more than \$50 a month at domestic market prices. In addition, allowances for some of those most in need, such as single mothers with disabled children, single elderly people, single mothers with many children, widowed persons, and those who have been injured at work, are US\$8.68 per month.³⁶⁵
259. The differences in criteria for the retirement of civilians and the military were pointed out by the Cuban Observatory of Human Rights as an element that generates serious distinctions in the population.³⁶⁶ civilians are only entitled to receive an old-age pension at the age of 60 or over (women) or 65 years or over

³⁶⁰ Human Rights Council, [Summary of Stakeholders' Submissions on Cuba](#), 9 March 2018, par. 61.

³⁶¹ Human Rights Council, [Summary of Stakeholders' Submissions on Cuba](#), 9 March 2018, par. 62.

³⁶² National Statistics and Information Office, [Seguridad Social: Indicadores seleccionados 2018](#), June 2018.

³⁶³ Granma, [Medidas en el centro de la atención de más de 2 500 000 cubanos beneficiados](#), July 4, 2019.

³⁶⁴ Cuban Observatory of Human Rights, [2019 Informe Primer Semestre: Violaciones de Derechos Humanos Económicos, Laborales, Sociales y Culturales en Cuba](#), July 8, 2019.

³⁶⁵ Ibid.

³⁶⁶ Ibid.

(men) if they have given not less than 30 years of service,³⁶⁷ while the military have their own retirement system, in which they receive a seniority pension if they have 25 years or more of active military service, regardless of their age.³⁶⁸

260. Testimonies from Cuban people gathered by the IACHR confirm the dissatisfaction with the minimum age for retirement and the weakness of social welfare coverage. When asked about social security, one of the people interviewed said:

There are parameters that have to be met. A lot of people had their checkbooks taken away. In 2008, a law was drafted explaining that social security is for helping people who have no parents, children, or people living with them. Your two children could get married tomorrow. Since you have children, they have an obligation to take care of her. Their mother has a duty to help her. Since you have a family, social security doesn't help you first.³⁶⁹

F. Right to Work

261. According to official data for 2018, there are 4,482,700 people employed in Cuba and the unemployment rate is 1.7 percent. That year, the majority of employed persons were reportedly concentrated in the state sector (68.4 percent), although employment in the non-state sector (31.6 percent) is said to have increased by about 13 percent in four years (2015-2018). According to the National Statistics and Information Office, the average monthly salary in state and mixed entities was 777 pesos (US\$31.00), marking a 1.3 percent increase from 2017 to 2018.³⁷⁰ The minimum wage for employees of the budgeted sector is reported to be 400 pesos (US\$16.00) since July 2019,³⁷¹ while for employees of the non-state sector it is 225 pesos (US\$9.00), according to the Cuban Observatory of Human Rights.³⁷²
262. The Commission received complaints alleging non-payment of wages and a number of cases in which the minimum wage has not been respected in Cuba. State workers at the trading company in the western province of Artemisa reported that they had received less than 225 pesos due to non-compliance with the Economic Plan. The facts were reported in March and May 2019.³⁷³ The Commission has also received information alleging that workers at foreign and state-owned joint ventures and completely foreign-owned companies are hired through state-

³⁶⁷ Article 22 of Law No. 105 of January 22, 2009.

³⁶⁸ Article 21 of Decree Law No. 344 of January 17, 2017.

³⁶⁹ IACHR, Confidential interview. IACHR archive.

³⁷⁰ National Statistics and Information Office, *Anuario estadístico de Cuba 2018: Empleo y salarios*, 2019.

³⁷¹ Trabajadores, *Anuncian escalas y tarifas del incremento de pensiones y salarios*, July 20, 2019.

³⁷² Cuban Observatory of Human Rights, *2019 Informe Primer Semestre: Violaciones de Derechos Humanos Económicos, Laborales, Sociales y Culturales en Cuba*, July 8, 2019.

³⁷³ Observatorio de Derechos Económicos, *Afectación económica a trabajadores estatales en Artemisa*, March 23, 2019; Observatorio de Derechos Económicos, *Afectación económica a trabajadores estatales en Artemisa (II)*, May 5, 2019.

owned employment companies that withhold between 80 percent and 96 percent of monthly salaries.³⁷⁴

263. Information was also received that, although the unemployment rate reported by the State suggests a situation of full employment, the real unemployment rate is 30 percent, bearing in mind that official statistics do not recognize underemployment and hidden unemployment.³⁷⁵
264. Job discrimination is also a serious problem for workers in Cuba. In legislative terms, the International Labour Organization (ILO) Committee of Experts identified the need for the Labor Code to define and expressly prohibit direct and indirect discrimination on the basis of race, political opinion, and national extraction. The Committee also requested the Government to take the necessary measures to ensure that in practice no information concerning political or religious opinion is sought from workers or students and to ensure that workers are not subjected to discrimination on grounds of their political opinion in terms of access to employment and working conditions.³⁷⁶
265. In that regard, the IACHR takes note of the report of the dismissal of university professor Omara Isabel Ruiz Urquiola for alleged political discrimination in employment. According to the information available, the Superior Institute of Design dismissed the teacher because of a "low teaching workload."³⁷⁷ For her part, Omara Isabel Ruiz publicly stated that she had always had a high teaching workload and that she engaged in activities such as thesis advice, publications, and participation in events. She also stressed that her dismissal was politically motivated by her work as an academic and human rights activist.³⁷⁸
266. The IACHR received information regarding the existence of official and independent analyses about racial disparities in the guarantee and quality of the right to work. In that regard, Comité Ciudadanos por la Integración Racial has reported that there are historical racial disparities in income level, that Afro-Cubans are sidelined from the tourism sector and foreign investment, and that they are over-represented in low-status jobs but under-represented as business owners in the self-employed sector.³⁷⁹
267. The Commission also obtained information that the Labour Code does not expressly prohibit discrimination on the basis of gender identity. In general, employers do not take gender identity into account when there is a vacancy to be filled. Trans persons in Cuba do not have access to decent occupations and their

³⁷⁴ Cuban Observatory of Human Rights, 2019 Informe Primer Semestre: Violaciones de Derechos Humanos Económicos, Laborales, Sociales y Culturales en Cuba, July 8, 2019.

³⁷⁵ Ibid.

³⁷⁶ International Labour Organization, Observation (CEACR) - adopted 2016, published 106th ILC session (2017), 2017.

³⁷⁷ Diario de Cuba, 'Han usado una razón administrativa que es falsa': Omara Ruiz Urquiola sobre su expulsión del ISDj, July 30, 2019.

³⁷⁸ Radio Televisión Martí, Expulsan de instituo de diseño a profesora Omara Ruiz Urquila, July 29, 2019.

³⁷⁹ Comité Ciudadanos por la Integración Racial, Negación, exclusión y represión: Informe sobre la situación de derechos humanos de la población afrocubana, June 2017.

options are restricted to low-paid positions. Consequently, they are one of the most vulnerable population sectors in the labor market. The IACHR had access to reports concerning limitations on trans people's access to managerial positions or job promotions as well as of homophobic attitudes toward LGBT people in the workplace.³⁸⁰

268. The IACHR also received the report "A view from the Cuban youth: education, employment and participation" [Informe Una mirada desde la juventud cubana: educación, empleo y participación] by Plataforma Social Centro Esperanza (CE), Cuba Independiente y Democrática (CID), Plataforma Social Juventud Activa Cuba Unida (JACU), and Unión Patriótica de Cuba (UNPACU), which, among its main conclusions, noted that once young people finish their studies they are placed in work by the State, "and must pay for their studies with obligatory social service or lose their academic title."³⁸¹ They also indicated that the Cuban State is the main employer on the island but does not offer jobs that are necessarily in line with the interests and needs of young people. In addition, it does not always offer jobs that match the interests, needs, and studies of young people³⁸².
269. The IACHR also collected testimonies from Cuban people on the right to work in Cuba. Those interviewed mentioned cases of racial discrimination in access to work, insufficient pay to support families, a shortage of jobs, and work in precarious conditions. One of the persons interviewed said:

There is something that happens in Cuba that is a serious violation of the workers' rights: free hiring in foreign companies is impossible. No one can be hired freely. That whoever hires or subcontracts is a state institution and takes the worker's wages. The government gets paid for that person's work. A man never even gets 10 percent of what he works for.³⁸³

G. *Right to Health*

270. The official statistics available on the situation of health in Cuba disclose a positive panorama. The State stressed that the health system offers universal coverage and

³⁸⁰ Alianza Cubana Manos, Informe para el Examen Periódico Universal – Revisión de la República de Cuba Tercer ciclo Trigésimo Período de Sesiones, May 2018.

³⁸¹ Plataforma Social Centro Esperanza (CE), Cuba Independiente y Democrática (CID), Plataforma Social Juventud Activa Cuba Unida (JACU), and Unión Patriótica de Cuba (UNPACU), Informe Una mirada desde la juventud cubana: educación, empleo y participación, 2019.

³⁸² Plataforma Social Centro Esperanza (CE), Cuba Independiente y Democrática (CID), Plataforma Social Juventud Activa Cuba Unida (JACU), and Unión Patriótica de Cuba (UNPACU), Informe Una mirada desde la juventud cubana: educación, empleo y participación, 2019.

³⁸³ IACHR, Confidential interview. IACHR archive.

free, good-quality care.³⁸⁴ Life expectancy at birth was 79.9 years in 2017.³⁸⁵ The Government gives priority to the maternal and child program: in 2018, the mortality rate for children under 1 was 4.0 per 1,000 live births, while the mortality rate for children under 5 was 5.3 per 1,000 live births.³⁸⁶

271. According to the National Statistics and Information Office, in 2018, Cuba had 261,947 medical personnel under the Ministry of Public Health (graduates of the various levels of instruction in public health issues). Of the 95,487 doctors, 13,070 are family doctors in the community. From 2013 to 2018, the number of doctors rose by 11,789 while the family doctors declined by 312. In 2018, the ratio of inhabitants to doctors was 118, there were 8.9 medical consultations per inhabitant, and there were 12,527 Ministry of Public Health service units on the island.³⁸⁷
272. According to ECLAC, Cuba invests 3.16 percent of GDP in health, higher than the average amount of government resources allocated to health in Latin America and the Caribbean (2.4 percent), but lower than the goal of the Sustainable Health Agenda for the Americas 2018-2030 to achieve progress towards universal health (6 percent). In the distribution of social spending (14.6 percent of GDP) by area, health accounts for 21.7 percent³⁸⁸.
273. The United Nations Independent Expert on human rights and international solidarity said that Cuba has a Comprehensive Health Program, a cooperation project sending emergency brigades composed of doctors, nurses and other health workers even to isolated places affected by extreme weather events and epidemics.³⁸⁹ Currently, there are 66 brigades abroad with 38,262 workers, of which 18,384 are doctors.³⁹⁰ The IACHR has recognized the solidarity and international cooperation programs for promotion of the right to health and the sending of medical missions to countries that have suffered natural disasters and epidemics.³⁹¹
274. According to social organizations, there are hospitals where the sanitary conditions are deplorable, without the necessary logistics for the care of the sick, while the food offered to doctors and patients is of poor quality. The absence of

³⁸⁴ Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Cuba, March 5, 2018, par. 90.

³⁸⁵ United Nations Development Programme – Human Development Reports, Cuba: Human Development Indicators, 2018.

³⁸⁶ National Statistics and Information Office, Anuario estadístico de Cuba 2018: Salud pública y asistencial social, 2019.

³⁸⁷ Ibid.

³⁸⁸ ECLAC, Social Panorama of Latin America 2018, 2019, pp. 124 and 144.

³⁸⁹ United Nations Human Rights, Office of the High Commissioner, Preliminary observations of the United Nations Independent Expert on human rights and international solidarity, Ms. Virginia Dandan, at the end of her visit to Cuba conducted from 10 to 14 July 2017, July 14, 2017.

³⁹⁰ PAHO Cuba, XVIII Meeting of Heads of Medical Missions, July 31, 2018.

³⁹¹ IACHR, 2018 Annual Report, Chapter IV.B, Cuba, OEA/Ser.L/V/II.Doc. 30, March 17, 2019.

doctors who are sent abroad is reportedly felt in some provinces that lack specialists to care for the local population.³⁹²

275. According to the Cuban Observatory of Human Rights, the State includes 757 medicines in its "basic table," 619 of which are a priority; in April 2019, 85 medicines were not available from the island's pharmacies; and in May and June it was difficult to find aspirin, thermometers, and alcohol to treat wounds.³⁹³ According to information in the press, in July, the director of operations and technology of BioCubaFarma, the state-owned company that produces most of the medicines in Cuba, said that the trend points to a continuing shortage of between 40 and 44 medicines.³⁹⁴
276. In interviews with humans on the right to health in Cuba, the Commission was informed that medical services were deteriorating; clinics and hospitals were in poor condition; there was a lack of medicines and specialist doctors in the provinces; zika, dengue and cholera had increased; and doctors were poorly paid. One of the persons interviewed by the Commission said:

I think that the export of [health] services by the Cuban government has affected Cubans' enjoyment of health care; the Cuban missions are more of a tool that the Cuban government has used a lot in the international arena. In other words, a health professional would rather work carrying luggage or as a hotel clerk because usually the salary does not correspond to their profession.³⁹⁵

H. Right to Education

277. According to ECLAC, Cuba spends 4.29 percent of GDP on education, higher than the average for Latin America and the Caribbean (3.9 percent) and in line with the Education 2030 Framework for Action (between 4 percent and 6 percent of GDP).³⁹⁶ In the Universal Periodic Review, entities such as the Cuba Solidarity Campaign noted that teaching was a high-status occupation on the island, that teachers were highly qualified, that the majority of head teachers and school leaders were women, and that there was a high teacher-student ratio.³⁹⁷
278. According to official data from the National Statistics Office of Cuba, in 2017, the net enrollment rate in primary education (6-11 years) was 103.9 percent and the gross rate was 99.7 percent. In secondary education (12-17 years), the net rate is

³⁹² Cuban Observatory of Human Rights, 2019 Informe Primer Semestre: Violaciones de Derechos Humanos Económicos, Laborales, Sociales y Culturales en Cuba, July 8, 2019.

³⁹³ Ibid.

³⁹⁴ Cubadebate, Medicamentos en Cuba: Continúa la tendencia a la disminución de las faltas, July 23, 2019.

³⁹⁵ IACHR, Confidential interview, IACHR archive.

³⁹⁶ ECLAC, Social Panorama of Latin America 2018, 2019, p. 144.

³⁹⁷ Human Rights Council, Summary of Stakeholders' submissions on Cuba, 9 March 2018, par. 79.

reported to be 100.8 percent, and the gross rate, 83.9 percent.³⁹⁸ In 2018/19 there were 10,598 schools (an increase of 3.2 percent compared to 2013/14) and 284,885 teachers (a decrease of 7 percent compared to 2013/14).³⁹⁹ According to the United Nations Development Programme, the expectation of years of education for women is 14.3, and for men, 13.7. The literacy rate is 99.8 percent.⁴⁰⁰

279. With respect to education coverage, the IACHR notes the high levels recorded in Cuba by UNESCO in preschool, primary, secondary education, without significant gender differences. In the Universal Periodic Review, UNESCO reported that the State had adopted various measures that had produced results, such as reducing the student-teacher ratio, installation of computers in schools, and using technological teaching aids in every classroom, as well as improvements in teacher training.⁴⁰¹
280. Having said that, the Commission takes note of reports that parents had lost the right to teach their children about the civic matters and political beliefs that they considered important and that the Cuban government denied access to education to students who held political and religious views that differed from those of the State.⁴⁰² The IACHR received information on punishments imposed on families for deciding to educate their children without sending them to state schools. The information collected in interviews indicates that homeschooling is prohibited in Cuba. In that regard, the IACHR notes the cases of Ramón Rigal and Ayuda Expósito, who were sentenced to two years and one and a half years in prison, respectively, for engaging in "acts contrary to the normal development of the minor."⁴⁰³
281. Likewise, the IACHR and the office of its Rapporteur were informed about State barriers to freedom of education. There is reported to be no space for society to participate in the design, execution and control of public education policies. Furthermore, there is a requirement that the system's programs and objectives be in line with the government's philosophical, ideological and political values; and the universality, inseparability and interdependence of human rights are not considered in classes on that subject in schools.⁴⁰⁴
282. The IACHR also received information about some weaknesses in the education system in Cuba. There are accounts of the infrastructure of schools being dilapidated, of parents giving "gifts" to teachers to compensate for low salaries, and of a shortage of teachers due to the exodus of professionals to the non-state

³⁹⁸ National Statistics and Information Office, [Anuario estadístico de Cuba 2017: Educación](#).

³⁹⁹ National Statistics and Information Office, [Anuario estadístico de Cuba 2018: Educación](#), 2019.

⁴⁰⁰ United Nations Development Programme – Human Development Reports, [Cuba: Human Development Indicators](#), 2018.

⁴⁰¹ UNESCO, [Universal Periodic Review \(30th session, Apr-May 2018\) Contribution of UNESCO – Cuba](#), 2018.

⁴⁰² Human Rights Council, [Summary of Stakeholders' submissions on Cuba](#), 9 March 2018, par. 80.

⁴⁰³ Radio Televisión Martí, [Pastores Cubanos condenados a prisión por educar a sus hijos en casa](#), April 22, 2019.

⁴⁰⁴ Corrente Martiniana, [Informe de individuos y grupos de la sociedad civil no reconocida oficialmente en Cuba al Examen Periódico Universal](#), 2018.

sector.⁴⁰⁵ According to information in the press, the State has decreed a selective salary increase for teachers with a large number of students in the classroom, contrary to the policy of maintaining an enrollment of 20 students per class. Also, teachers are reportedly unable to live on the salary and have to engage in other activities, such as the sale of food products at schools.⁴⁰⁶ The IACHR also notes that the State announced the reinstatement of more than 5,000 teachers following the salary increase in July 2019.⁴⁰⁷

283. In the interviews are carried out, the IACHR was informed about a decline in the quality of education, low teachers' salaries, weaknesses in school infrastructure, strict ideological control by the State over content taught in schools, a shortage of teachers, and students prevented from pursuing their courses of choice, among other situations. One of those interviewed said:

The regime claims that education is free. It's paid for by fathers, mothers, and peasant farmers. They cut their salary—not directly. They cut their salaries indirectly. We need "x" pesos to fix the chairs or to paint the school. Principals ask parents for money. It's pretty bad. There are fewer teachers because of the low salaries. Children's books are the same, old books. The uniform is also the same. The government is unable to provide uniforms to everyone. The schools are also in a bad state. One child died in 2017 from fulminant meningitis. This school has never been painted. The water tanks were dirty; they had crabs in them. The food at school is bad: a little bit of soup and soy mince. According to the government, they are going to raise teachers' salaries, but those who have left won't be coming back.⁴⁰⁸

I. Environmental Rights

284. According to public information provided by the National Statistics and Information Office, investment spending on environmental protection in 2018 totaled 628,127.4 thousand pesos. The same agency reported a reduction of 2.5 percent compared to spending in 2017 (642,549.8 thousand pesos). It added that investments mainly targeted water (60 percent), forest resources (12.3 percent) and the air (7.4 percent).⁴⁰⁹ It also said that spending on watersheds and bays amounted to 22.4 percent and 4 percent, respectively.⁴¹⁰

⁴⁰⁵ Cuban Observatory of Human Rights, 2019 Informe Primer Semestre: Violaciones de Derechos Humanos Económicos, Laborales, Sociales y Culturales en Cuba, July 8, 2019.

⁴⁰⁶ El Nuevo Herald, Maestros de escuela cubanos, la pobre remuneración hace inevitable el éxodo, April 17, 2017.

⁴⁰⁷ Cubadebate, Se reincorporan a las aulas más de cinco mil maestros tras el aumento salarial, July 17, 2019.

⁴⁰⁸ IACHR, Confidential interview, IACHR archive.

⁴⁰⁹ National Statistics and Information Office, Anuario estadístico de Cuba 2018: Medio Ambiente, 2018.

⁴¹⁰ National Statistics and Information Office, Panorama ambiental: Cuba 2018, August 2019.

285. According to the National Statistics and Information Office, the volume of solid waste collected increased by 3 percent in 2018 to reached 29,490.1 thousand cubic meters. The same source indicates that a total of 885 landfill sites in 2018; 102 fewer than in 2013. It added that 77 percent of the population has a waste collection service, which represents hardly any change since 2014, when the proportion was 76.8 percent. However, the proportion in urban areas is 100 percent.⁴¹¹
286. Official data also indicate that in 2018 there were 262 forest fires in Cuba, a 27 percent drop compared to 2017 (359). The area damaged by forest fires in 2018 was 4,693.4 hectares, 79.4 percent of which was caused by human activities. Economic losses due to forest fires in 2017 totaled 27,131 thousand pesos.⁴¹²
287. According to information in the press, in 2017 the State launched the Plan Tarea Vida to combat climate change.⁴¹³ The Plan envisions short-term (2020), medium-term (2030), long-term (2050) and longer-term (2100) measures to recover beaches and coastlines and to mitigate the effects of frequent droughts, among other aspects. There are 5 strategic actions to counter adverse effects on vulnerable areas, as well as 11 priority tasks. In that regard, the Ministry of Agriculture reported that the Plan achieved positive results in 2019, such as an increase in forest area and progress with reforestation.⁴¹⁴
288. In the Universal Periodic Review, a number of entities mentioned that the island had adopted measures to protect the environment, promote the use of renewable and non-polluting energy, respond to natural disasters, and fight against climate change.⁴¹⁵ The resident coordinator of the United Nations in Cuba said that the country's priority is to address environmental challenges and climate change and that it adequately manages these dimensions in conjunction with economic and social issues.⁴¹⁶
289. Regarding environmental rights, people interviewed by the IACHR said that environmental laws were broken, that waste management was precarious, that garbage collection was not adequate, that there was no culture of environmental protection, that beaches and rivers were contaminated, and that there was not enough investment in preservation of natural resources. With respect to official information on Plan Tarea Vida, one of the persons interviewed said:

Right now the Cuban State is speculating a lot with the Tarea Vida environmental program, especially with the protection of fauna and marine platforms, but we have a situation where the interior of the country, where a large part of the Afro-Cuban population is concentrated, is the most polluted; that is, there are no internal

⁴¹¹ National Statistics and Information Office, [Panorama ambiental: Cuba 2018](#), August 2019.

⁴¹² National Statistics and Information Office, [Anuario estadístico de Cuba 2018: Medio Ambiente](#), 2018.

⁴¹³ Granma, [Tarea Vida: para ahora y para el futuro](#), July 14, 2017.

⁴¹⁴ Ministry of Agriculture, [Tarea Vida señala el camino frente al cambio climático](#), June 5, 2019.

⁴¹⁵ Human Rights Council, [Summary of Stakeholders' Submissions on Cuba](#), 9 March 2018, par. 15.

⁴¹⁶ UN Cuba, [Naciones Unidas reconoce labor de Cuba a favor del medio ambiente](#), June 6, 2017.

development programs that could improve the quality of life of a large portion of the Cuban population, especially in very depressed areas.⁴¹⁷

290. In conclusion, the Commission and the office of its Special Rapporteur on ESCE rights welcome the efforts of the State of Cuba in taking steps to advance the protection of economic, social, cultural and environmental rights. In particular, they recognize that, according to information from United Nations programs, the levels of protection for the rights to education and health stand out in comparison with Latin American countries. However, they express concern about reports of deterioration in health and education infrastructure, as well as about the quality of education and health care. Also concerning was the information provided by Cubans and some of their organizations that spoke of obstacles to access to adequate housing, the persisting housing deficit, the absence of basic sanitation on the island, the shortage of essential foodstuffs, and difficulties in access to food. The Commission reiterates its concern about the promulgation of Decree 349 and its potential impact on the effective exercise of cultural rights. In addition, the IACHR calls upon the State to eliminate existing barriers in Cuba to the exercise of independent trade union activities, to take measures regarding the alleged insufficiency of pensions for buying inputs necessary for people's survival, and to prohibit any discrimination in access to and preservation of employment. The IACHR and the SRESCER welcome Cuba's efforts to adopt plans to protect environmental rights and it will continue to monitor their implementation and results, as it will the plans on waste and pollution management.

⁴¹⁷ IACHR, Confidential interview, IACHR archive.

CHAPTER 9

HUMAN RIGHTS SITUATION OF
OTHER POPULATION GROUPS

HUMAN RIGHTS SITUATION OF OTHER POPULATION GROUPS

291. The Commission has also received information on the human rights situation of other population groups through its monitoring mechanisms, especially public hearings, as well as the testimonies gathered. In the following section it addresses the main concerns in relation to certain populations in Cuba, such as the people of African descent, women, LGBTI people, persons with disabilities, people deprived of their liberty, and migrants.

A. Situation of People of African Descent

292. The Commission notes that the new Constitution of Cuba (2019) broadens the legal formulation of the principle of equality, prohibiting discrimination on the basis of sex, gender, sexual orientation, gender identity, ethnic origin, skin color, religious belief, disability, or national origin.⁴¹⁸ It also considers that the creation of the José Antonio Aponte Commission for the fight against racism and discrimination is a step forward.⁴¹⁹ In addition, with regard to the participation of people of African descent, the IACHR notes that in the Council of State the representation of persons of African descent and of mixed race is 40.49 percent.⁴²⁰
293. However, the IACHR remains concerned that a situation of institutional racism persists in the country, which is reflected in the State's historical denial of racism and has been used to criminalize mobilization. For example, there is a lack of clear disaggregated statistical data from inter-sectoral databases on the Afro-descendent population and a persistent absence of campaigns aimed at raising society's awareness of self-identification.⁴²¹
294. In this regard, one of the testimonies received by the IACHR stated:

The racial issue is a very delicate situation; normalization – the State does not want to recognize that it exists. Hiding does not solve but

⁴¹⁸ Asamblea Nacional del poder Popular de la República de Cuba, Introducción al análisis del Proyecto de Constitución de la República durante la consulta popular, 2018.

⁴¹⁹ Cuba, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, 2018.

⁴²⁰ ECLAC, Cuba: Report of the Third Session of the Regional Conference on Population and Development in Latin America and the Caribbean, Lima, Peru, August 2018.

⁴²¹ Comité Ciudadanos por la Integración Racial (CIR), Submission to the Universal Periodic Review concerning Cuba, Third Cycle, Thirtieth session, May 2018.

deepens. The State does not recognize the words "Afro-Cuban" or "Afro-descendant." We work to empower so that they are accepted, recognized.⁴²²

295. At a public hearing on the "Human Rights Situation of Afro-Descendants in Cuba", held in March 2017 at the 161st session of the IACHR, the requesting entities said that the situation of people of African descent is overlooked in Cuba. They referred to the Cuban State's refusal to recognize the racism that exists and the absence of legal mechanisms for reporting incidents, as well as the marginalization, poverty, and labor inequalities suffered by Afro-Cubans in their country. They also said that the effects of violence, harassment, threats, stigmatization, persecution, and criminalization of human rights defenders, activists, social and political leaders, and journalists are aggravated in the case of persons of African descent.⁴²³
296. In this regard, the Commission finds that one of the main challenges for the State begins with making the population of African descent in Cuba visible, which requires the collection of statistical data to draw greater attention to their human rights concerns and claims.
297. The Commission notes that the Afro-Cuban LGBTI population is disproportionately impacted by intersecting discrimination on the basis of ethno-racial origin, diverse sexual orientation, and gender identity. According to the report for the third cycle of the Universal Periodic Review concerning Cuba submitted at the thirtieth session in May 2018, lesbian women of African descent who are victims of police violence triple discrimination. Specifically, women who express their gender as male are treated worse, both because of their ethno-racial origin and because they are women. In turn, gay men of African descent, whose gender expressions do not fit into the traditional notion of masculinity, are more likely to suffer police repression and violence, because of the persistence of the idea that gay people are mostly white.⁴²⁴
298. Likewise, Afro-Cuban human rights activists reportedly suffer constant restrictions on their rights, according to a June 2017 report titled *Denial, Exclusion and Repression* (Negación, Exclusión y Represión). According to that report, activists who work on issues of ethno-racial discrimination have developed initiatives to train communities in different provinces. However, when attempting to travel among municipalities and provinces they have been detained and deported, regardless of where they are, in violation of their freedom of movement and residence.⁴²⁵

⁴²² IACHR, Confidential interview. IACHR archive.

⁴²³ IACHR, Hearing on the *Human Rights Situation of Afro-Descendants in Cuba*, 161st special session, March 21, 2017. See also OGDH: *Casi 500 detenciones en agosto en Cuba*, September 1, 2017; *Más de 3.000 detenciones y la "Ley Cangrejo"*, August 4, 2017; Diario de Cuba, 'Nos llaman negras payasas', *Damas de Blanco denuncian el racismo de las fuerzas represivas*, March 28, 2017; Agencia EFE, *Afrodescendientes cubanos denuncian el racismo del Gobierno ante la CIDH*, March 21, 2017.

⁴²⁴ Alianza Cubana Manos, Submission for the Universal Periodic Review concerning the Republic of Cuba, Third Cycle, thirtieth session, May 2018.

⁴²⁵ Comité Ciudadanos por la Integración Racial (CIR), *Negación, exclusión y represión: Informe sobre la situación de derechos humanos de la población afrocubana*, July 2017.

299. Furthermore, with regard to the excessive use of force by law enforcement personnel against persons of African descent, it should be noted that in its concluding observations on the combined nineteenth to twenty-first periodic reports of Cuba, the Committee on the Elimination of Racial Discrimination (CERD) expressed concern about this issue and recommended that the State take measures to prevent the excessive use of force, ill-treatment and abuse of authority, ensure that complaints are effectively investigated, and ensure that persons of African descent who have been victims have access to effective remedies and compensation.⁴²⁶

300. Likewise, with respect to racial profiling practices, the IACHR received testimony regarding the systematic use of searches and arbitrary arrests by the police based on the ethno-racial origin and appearance of individuals. With regard to these practices, the testimony of Fernando Palacio Mogar to the IACHR is especially notable:

As a black man, I have suffered discrimination. In Cuba there is a very common practice of detaining black men walking in the street with backpacks, in order to ask them for identification and search them. There is a presumption that they are carrying stolen goods.⁴²⁷

301. Likewise, the interviewee Gustavo Pérez Silveiro told the Commission:

I get stopped in the street just for being black. In Havana they detain black people just for having dreadlocks. They are prevented from entering bars; they are told the place is full and the right of admission is reserved. It happened to me: I couldn't get into a bar. They told me it was full.⁴²⁸

302. In that regard, the Commission stresses the importance of collecting disaggregated data on a variety of situations of racial discrimination, including those related to the use of racial profiling in communities and occurrences of arbitrary detention. The IACHR underscores that the State has a duty to promote the observance of clearly defined codes of conduct and ethical standards, in accordance with international standards, by all public officials, particularly law enforcement officials and justice operators, including security personnel, prosecutors, and judges. The State should also ensure that racial profiling and other explicit or implicit discriminatory practices on the basis of ethno-racial origin and other reasons are explicitly prohibited and punished.

303. The IACHR also expresses its concern that the testimonies collected indicated that there was racial discrimination in schools. According to one of those interviewed "there is also a lot of racial discrimination by teachers, especially against black girls; there is verbal abuse against Afro hair. There are many children who are

⁴²⁶ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined nineteenth to twenty-first periodic reports of Cuba, 20 September 2018.

⁴²⁷ IACHR, Interview with Fernando Palacio Mogar, April 2019, IACHR archive.

⁴²⁸ IACHR, Interview with Gustavo Pérez Silveiro, May 2019, IACHR archive.

being punished for their afro hair; the first punishment is for refusing to cut their hair. There is no way to appeal against such punishments.”⁴²⁹

304. In general, the IACHR draws attention to the particular violation of the rights of Afro-Cubans in the areas of health, housing, unemployment, and access to clean water and sanitation services. According to the ECLAC report *Situación de las personas afrodescendientes en América Latina y desafíos de políticas para la garantía de sus derechos* (Situation of people of African descent in Latin America and policy challenges for ensuring their rights), regarding the inequalities identified in relation to access to housing, in countries like Cuba the number of people of African descent living in severely overcrowded housing—that is, with an average of more than five people to a room—is more than twice that of people of non-African descent living in such conditions.”⁴³⁰ The report also found that a high percentage of people of African descent in countries like Cuba are severely deprived of sewerage services.⁴³¹

305. As regards access to employment in the tourism sector, one of the persons interviewed by the IACHR stated:

They got rid of the Afro staff and left the whites. A few years ago as part of the mixed investment in what was Havana Libre. Hotel investment; the government disguised it very well. So that they weren't too dark-skinned. In the resort keys, the hiring of Afro people, especially women, is not allowed.⁴³²

306. In that connection, the IACHR calls on the State to adopt special policies and affirmative actions to guarantee the enjoyment or exercise of the rights of persons of African descent in Cuba with the objective of promoting equitable conditions of equal opportunity, inclusion, and progress for these persons, particularly in relation to access to the rights to education and housing, as well as entry into the labor market within the framework of the country's economic opening-up.

307. The Commission also urges the State to take positive steps to ensure the political participation of people of African descent in the various public bodies, whether by adopting a system of electoral quotas or by creating channels for civil society participation in legislative processes and public policy development. The IACHR believes that their participation would contribute substantially to the modification of racist patterns and enable their specific needs to be highlighted.

308. The IACHR takes note of the open letter sent by civil society organizations to the State on the racial problems in Cuba, in which they request recognition and attention, taking into account the observations made by the United Nations

⁴²⁹ IACHR, Interview with Iris Ruiz Hernandez, May 2019, IACHR archive.

⁴³⁰ ECLAC, [Situación de las personas afrodescendientes en América Latina y desafíos de políticas para la garantía de sus derechos](#), 2017, p. 78.

⁴³¹ ECLAC, [Situación de las personas afrodescendientes en América Latina y desafíos de políticas para la garantía de sus derechos](#), 2017, p. 84.

⁴³² IACHR, Interview with Zelandia de la Caridad Pérez Abreu, May 2019, IACHR archive.

Committee on the Elimination of Racial Discrimination (CERD) to the Cuban State in the framework of its ninety-sixth regular session in 2018.⁴³³

309. Finally, the Commission urges the Cuban State to implement measures to mitigate structural racial discrimination and to take steps to consult and meet with civil society organizations working in defense of persons of African descent and against racism. In particular, the IACHR urges the Cuban State to adopt effective measures to prevent and combat the stigmatization and criminalization of demonstrators, especially when such stigmatization or criminalization may be discriminatory in nature based on their ethno-racial origin, as well as to fully guarantee the right to freedom of expression.

B. The Situation of Women

310. With regard to women's rights, the Commission recognizes that Cuban law formally grants women and men equal rights. The Commission has also taken note of the information provided by the State in the framework of its Universal Periodic Review. According to that information, the State has made efforts to adjust legal and state mechanisms in favor 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.⁴³⁴
311. 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 be 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.⁴³⁵
312. The IACHR emphasizes the importance of the countries of the region adopting measures regarding violence against women, taking into account that the inter-American human rights system has recognized the close relationship that exists between the right of women to live free of violence and the right to equality and

⁴³³ CUBANET, [Envían carta abierta a Díaz-Canel sobre problemática racial en Cuba](#), August 30, 2019.

⁴³⁴ United Nations General Assembly, Working Group on the Universal Periodic Review, [National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Cuba](#), A/HRC/WG.6/30/CUB/1, 5 March 2018.

⁴³⁵ OAS, [Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women](#), “Convention of Belém do Pará”, Information on the Treaty, as at December 10, 2018.

non-discrimination.⁴³⁶ It has also stressed that gender-based violence "is a manifestation of the historically unequal power relations between women and men"⁴³⁷ that is perpetuated by the persistence of discriminatory attitudes and practices towards women.⁴³⁸ In particular, the IACHR has stated that gender-based violence is one of the most extreme and widespread forms of discrimination against women, girls and adolescents which, among other consequences, leads to an obstruction of their ability to "exercise and enjoy their rights and freedoms on an equal footing with men."⁴³⁹

313. In the area of gender equality and prevalence of gender-based discriminatory stereotypes, the Commission was informed of the results of the National Survey on Gender Equality conducted by the Center for Women's Studies of the Federation of Cuban Women (FMC) and the Centre for Population and Development Studies (CEPDE) of the National Statistics and Information Office (ONEI) in 2016.⁴⁴⁰ In this regard, the Commission is concerned that, according to the results of the survey, discriminatory stereotypes against women persist, such as that "women should not participate in activities that involve physical effort, the implication of which is that a range of occupations are considered unsuitable for them. Thus the idea persists that trades such as electrician, bricklayer, mechanic, carpenter and plumber are not suitable for women; others include firefighter, fisherman/seaman, bus drivers and airplane pilots, which are deemed unsuitable by about 53 percent of the population."⁴⁴¹ In turn, the survey's findings suggest that "a number of myths and views that persist in part of the population help to sustain and perpetuate violence against women. The most ingrained are: alcohol use is the cause of violence; a woman who endures abuse must like it, or else she would have already broken the relationship; most women withdraw complaints; and violence is a private matter. Such views become justifications for not intervening or reporting acts of violence."⁴⁴²

⁴³⁶ IACHR, Report No. 28/07, Cases 12.496-12.498, Merits, Case of González et al., Mexico, March 9, 2007; IACHR, Report No. 54/01, Case 12.051, Merits, María Da Penha Maia Fernandes, Brazil, April 4, 2001; IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser.L/V/II Doc. 68, January 20, 2007; and I/A Court H.R., Case of I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 30, 2016, Series C. No. 389, par. 253.

⁴³⁷ IACHR, The Right of Women in Haiti to be Free from Violence and Discrimination, OEA/Ser.L/V/II. Doc. 64, March 10, 2009, par. 168; I/A Court H.R., Case of Fernández Ortega et al. v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Judgment of August 30, 2010, Series C No. 215, par. 118, citing the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, Preamble.

⁴³⁸ IACHR, The Right of Women in Haiti to be Free from Violence and Discrimination, OEA/Ser.L/V/II. Doc. 64, March 10, 2009, par. 78.

⁴³⁹ IACHR, Report No. 80/11, Case 12.626, Merits, Jessica Lenahan (Gonzales) et al. United States, July 21, 2011; IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc. 68, January 20, 2007, Section I, par. 65; I/A Court H.R., Case of I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 30, 2016, Series C. No. 389, par. 253; CEDAW, General recommendation No. 19: Violence against women, A/47/38. 1992, para. 1.

⁴⁴⁰ National Office of Statistics and Information of Cuba. National Survey on Gender Equality 2016.

⁴⁴¹ National Office of Statistics and Information of Cuba. National Survey on Gender Equality 2016.

⁴⁴² National Office of Statistics and Information of Cuba. National Survey on Gender Equality 2016. – Overall Results, pars. 8 and 9.

314. The IACHR emphasizes that the use of and references to gender-based stereotypes constitute a form of discrimination against women, girls and adolescents since they are based on preconceptions that place them in a position of inferiority that promotes, legitimizes, and exacerbates gender-based violence against them.⁴⁴³ Furthermore, the Commission recalls that the organs of the inter-American system has affirmed that gender-based stereotypes refer to “a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women. [...] [T]he subordination of women can be associated with practices based on persistent socially-dominant gender stereotypes, a situation that is exacerbated when the stereotypes are reflected, implicitly or explicitly, in policies and practices and, particularly, in the reasoning and language of the judicial police authorities.”⁴⁴⁴
315. Several testimonies collected by the IACHR referred to acts of gender-based discrimination against women. Worth mentioning in that regard is the interview with Eroises González Suárez, who said:
- Because you are a woman you have to work to get ahead, to try to be someone in life; you are not allowed to succeed as you would like. If you aspire to become a doctor or an engineer, sometimes it's impossible to study that kind of career because in the minds of the authorities women are not capable of reaching such positions.” “Black women have a hard time getting into college, getting places. It's a lie that we all have a right to education.”⁴⁴⁵
316. In relation to gender-based violence against women and, in particular, gender-based killings, the IACHR stated in its 2018 Annual Report that while there are no figures or up-to-date statistical information on complaints or cases prosecuted as crimes involving to violence against women,⁴⁴⁶ it has taken note of some cases of gender-based violence that have been reported in the media,⁴⁴⁷ such as the brutal killing of Misleydis González García, who was killed with an axe after she filed various complaints with the authorities in Ciego de Avila in the center of the island;⁴⁴⁸ the double murder of Tomasa Causse Fabat and her daughter, Daylín Najarro Causse, who was three months pregnant when her former partner cut her

⁴⁴³ Convention of Belém do Pará, Article 8(b). See IACHR, Report on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164. Doc. 147, December 7, 2017, par. 187, citing IACHR, Missing and Murdered Indigenous Women in British Columbia, Canada, OEA/Ser.L/V/II. December 21, 2014, par. 175. See also, IACHR, Report No. 4/01, Case 11.625, Merits, María Eugenia Morales de Sierra, Guatemala, January 19, 2001, par. 52.

⁴⁴⁴ I/A Court H.R., González et al. case (“Cotton Field”) v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 16, 2009.

⁴⁴⁵ IACHR, Interview with Eroises González Suárez, April 3, 2019. IACHR archive.

⁴⁴⁶ Statistics on violence against women in Cuba are not officially available or published; however, at the end of 2017 the official press recognized in a small headline that violence against women was the 35th cause of death in the country. Source: <https://cubaposible.com/propuesta-una-ley-violencia-la-mujer-cuba/>

⁴⁴⁷ Cubanet, Hallan el cuerpo desmembrado de una mujer en el oriente cubano, July 26, 2018.

⁴⁴⁸ Alas Tensas, El feminicidio hay que contarle: Misleydis, asesinada a pesar de repetidas denuncias, January 4, 2018. Diario de Cuba, Una avileña muere apuñalada presuntamente por su expareja, a quien había denunciado varias veces, January 7, 2018.

throat in Cienfuegos;⁴⁴⁹ or the case of the woman known as “La China,” who was stabbed seven times in the street when she was on her way to the police station in Centro Habana to report the threats made against her by her attacker.⁴⁵⁰

317. 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.⁴⁵¹

318. In the testimonies taken by the Commission, people mentioned murders of women and a lack of response by the State in some cases when asked if it had been aware of acts of discrimination against women:

A lot in my municipality, which has seen acts of violence, the murders of women, femicides; the Cuban State does not recognize list femicide as a crime in its laws but records it as a crime of passion.⁴⁵²

Yes, a few months ago a woman was murdered near my house; the authorities refused to act straight away and the family put pressure on the police. The young woman died 17 days later.⁴⁵³

In the independent press we are drawing attention to protection issues in Cuba; there is no express law that protects women against femicide; the Cuban criminal code does not recognize the offense; the body that defends women has nowhere to protect women who are victims of violence. They are seen as problems between husband and wife and this has allowed violence to escalate to femicide. The lack of statistics. One does not know directly. The press has published this about femicides and come up with statistics that nobody believes. They never published them and now they have. It's published.⁴⁵⁴

319. With regard to protection and access to justice for women victims of gender violence, The Commission notes that according to the National Survey on Gender Equality carried out in 2016 and published in 2019, 22.6 percent of women between the ages of 15 and 74 stated that they had been victims "at some other time in their lives," as well as of some form of violence in the relationship with their partner. According to that information, the predominant type of violence

⁴⁴⁹ Miami Herald, [‘Massacre’ in central Cuba raises questions about violence against women on the island](#), May 22, 2018.

⁴⁵⁰ Diario de Cuba, [Amenazadas, golpeadas, acuchilladas a la vista del Estado](#), June 8, 2018.

⁴⁵¹ CIDH, [Access to Information, Violence against Women, and Administration of Justice in the Americas](#), OEA/Ser.L/V/II. 154 Doc.19, 2015.

⁴⁵² IACHR, Interview with Gerardo Pérez, May 21, 2019, IACHR archive.

⁴⁵³ IACHR, Interview with Gerardo Pérez, May 21, 2019, IACHR archive.

⁴⁵⁴ Interview conducted on June 3, 2019. Interviewee's name withheld, IACHR archive.

against women in couple relationships is psychological, followed by forms of economic violence. Likewise, among women victims of violence in couple relationship, only 3.7 percent have turned to an institution service for help, and according to the conclusions of the survey, “[w]hen they do seek help, they usually go to the police and the public prosecutor’s office, followed by the Federation of Cuban Women (FMC). The fact that they do not seek help could be due, among other reasons, to the fact that some of the women victims have managed to get out of the situation, apparently by their own means, as they said that they had suffered some kind of violence at some other time in their lives, but not in the last 12 months. This fact could be explained by the empowerment and autonomy achieved by women in our country, and by the fact that they are guaranteed a set of rights as a result of the policies implemented for their advancement and the work led by the FMC to promote equality and non-violence throughout all these years.”⁴⁵⁵

320. With regard to the assistance services available for women victims of violence, the Commission notes with concern that, in addition to the aforementioned regulatory shortcomings, there are no specialized institutions in this area. The IACHR notes that in practice such services are provided by FMC offices, specifically by each municipality’s Women’s and Family Orientation Houses; Municipal Sex Education Committees; Sexual Orientation and Therapy Services; Family Physicians or Health Areas; Community Mental Health Centers; Citizens’ Rights Attention Offices attached to Municipal Prosecutor’s Offices; and units of the National Revolutionary Police.⁴⁵⁶ In that regard, the Commission considers that States should have an appropriate legal framework of protection that is effectively enforced, as well as prevention policies and practices that allow effective measures to be taken in response to complaints of acts of gender-based violence against women.⁴⁵⁷

321. In relation to protection measures for women victims of violence, the Commission received testimonies referring to the absence of such measures:

In his opinion , there are no protection measures in Cuba. When a woman is abused by her partner, she has to go through a diabolical process. She has to testify several times and submit to a large number of examinations and humiliations. He does not believe there is an institution that defends or guarantees women’s rights.⁴⁵⁸

There are none and there is no protection for women. Women or gays have gone to the police to file a complaint and it is not taken seriously.⁴⁵⁹

⁴⁵⁵ National Office of Statistics and Information of Cuba. [National Survey on Gender Equality 2016](#).

⁴⁵⁶ Cuba Posible. [Proposal for a Law on Violence against women for Cuba](#). March 31, 2018.

⁴⁵⁷ I/A Court H.R., [González et al. case \(“Cotton Field”\) v. Mexico](#), Preliminary Objection, Merits, Reparations and Costs, Judgment of November 16, 2009. Series C. No. 205, par. 258.

⁴⁵⁸ IACHR, Interview with Antonio Enrique Garcia, April 3, 2019, IACHR Archive.

⁴⁵⁹ IACHR, Interview with Sandra Haces Ramos, May 21, 2019, IACHR Archive.

No protective measures, no shelters; the police are not prepared to provide such a service. They see it as a husband and wife problem, or else they victimize the woman: "Behave yourselves," they tell the couple in order to fix things. But that's it. A girl slept at the police station for a week for fear that her husband would kill her, and there was no response from the police. Three months later, the police locked up the husband. They didn't take her anywhere, no.⁴⁶⁰

No protective measures, no shelters; the police are not prepared to provide such a service. They see it as a husband and wife problem, or else they victimize the woman: "Behave yourselves," they tell the couple in order to fix things. But that's it.⁴⁶¹

322. With regard to the situation of sexual exploitation, as the Commission mentioned in its 2018 Annual Report, there is particular concern about this situation and its effect on women, pre-teen and teenage girls.⁴⁶² 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, pre-teen, and teenage girls.⁴⁶³ 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.⁴⁶⁴ 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.⁴⁶⁵ 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 2017.⁴⁶⁶ The Commission renews its call for 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.
323. On this subject, the Commission takes note of one testimony in response to the questions: "Are you aware of acts of sexual exploitation? Or "Do you know of any health services or coping programs that are available to victims":

The authorities punish the victims. She is sent to a prison for harassment of tourists; she risks losing her child. The cause is not

⁴⁶⁰ Interview conducted on June 3, 2019. Interviewee's name withheld withheld, IACHR Archive.

⁴⁶¹ Interview conducted on June 3, 2019. Interviewee's name withheld withheld, IACHR Archive.

⁴⁶² *Cubamet*, *Prensa oficial cubana declara "gran preocupación" por abuso sexual a menores*, August 1, 2018.

⁴⁶³ United Nations Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children on her mission to Cuba*, A/HRC/38/45/Add.1, 30 April 2018.

⁴⁶⁴ *El País*, *Aquel que quiere encontrarlos, sabe dónde están los burdeles de Cuba*, October 7, 2018.

⁴⁶⁵ United Nations Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children on her mission to Cuba*, A/HRC/38/45/Add.1, 30 April 2018.

⁴⁶⁶ Ministry of Foreign Affairs of Cuba, *Prevención y Enfrentamiento a la Trata De Personas y La Protección A Las Víctimas*, 2017.

addressed. The justice system only acts when pimps are found to be involved, but the root causes of the evil are not attacked.⁴⁶⁷

324. In conclusion, the Commission is concerned by the situation of violence, stereotypes and lack of comprehensive care to which women, girls and adolescents are exposed in Cuba. The Commission also emphasizes that the persistence of gender stereotypes leads to restrictions on other women's rights simply for being women. Therefore, it calls on the State to adopt measures—including special affirmative measures if needed—in order to eradicate such stereotypes and to guarantee for women the full exercise of their rights in all respects.

C. The Situation of LGBTI Persons

325. The Inter-American Commission has recognized the efforts of the Cuban State in adopting legal measures for the comprehensive protection of lesbian, gay, bisexual, trans and intersex (LGBTI) persons. In that regard, it specifically highlights the constitutional reforms against discrimination based on sexual orientation and gender identity; the effective and practical health guarantees for the comprehensive recognition of people's gender identity; and the implementation of educational campaigns on diversity to promote sociocultural changes. For the IACHR, such developments are consistent with States' obligations to adopt legislative or other measures necessary to give effect to the rights to equality and non-discrimination of LGBTI persons.⁴⁶⁸
326. However, the IACHR notes with concern that LGBTI people and human rights defenders working on issues of sexual orientation, gender identity and/or expression, and sexual characteristics still suffer violence, discrimination, restrictions on their rights of assembly and association, and curtailment of their freedom of expression and dissemination of thought. It also notes the efforts of groups that often have a negative impact on the design of laws and policies aimed at guaranteeing the rights of such persons. In this regard, the Commission recalls that under the principles of equality and non-discrimination inherent to democratic societies, States have an obligation to advance protections and guarantees for the rights of LGBTI persons and other minorities, even if it goes against the sentiments and opinions of the majority of society.
327. With regard to the recognition of the rights of LGBTI persons, the Commission welcomes the promulgation on April 10, 2019, of Article 42 of the Constitution of the Republic, which recognizes the equality of all persons before the law, without discrimination on the basis of sexual orientation, gender identity, or any other personal condition or circumstance that entails a distinction prejudicial to human

⁴⁶⁷ IACHR, Interview with Gerardo Páez, May 21, 2019, IACHR Archive.

⁴⁶⁸ IACHR, *Recognition of the Rights of LGBTI Persons*, December 7, 2018, par. 82.

dignity.⁴⁶⁹ In this regard the IACHR considers that the express mention of non-discrimination on the basis of sexual orientation, gender identity, or other conditions represents a step forward in terms of adoption of laws or modification of existing legislation prohibiting all forms of discrimination against LGBTI persons, and it recommends that the State continue its efforts to implement domestic legislation to eradicate it.

328. The Commission also highlights the information received on the State's willingness to move forward, through a constitutional reform, with recognition of the equality guaranteed by the right to marriage between persons of the same sex. However, it notes with concern that this guarantee will depend on a future process of popular consultation and referendum on the draft Family Code, which has been deferred by the National Assembly of People's Power. According to information received, that decision came in response to pressure from groups in Cuba that are opposed to an inclusive interpretation of the institution of marriage.⁴⁷⁰ In that regard, while acknowledging the democratic value of referendums and plebiscites, the Commission expresses concern at the possibility of a human right being subject to a mechanism of popular consultation.⁴⁷¹
329. With regard to the State's obligation to eradicate social prejudice, the IACHR notes that the National Center for Sex Education (CENESEX) has worked to raise awareness that the human rights of LGBTI people are protected, through initiatives such as the campaigns "For Schools without Homophobia and Transphobia," for example.⁴⁷² Such campaigns advance social change towards awareness and sensitization to eliminate stigma, stereotypes and discrimination against LGBTI people, or those perceived as such. The Commission notes that the cultural change initiatives carried out by the State are consistent with inter-American obligations in the area of equality and nondiscrimination, and therefore urges the State to continue its efforts to eradicate violence and prejudice in society.
330. The IACHR reaffirms that cultural changes and other public policies that seek to advance the rights of LGBTI people should allow the participation of such stakeholders in the design and monitoring of such projects, so that they reflect their interests. In this regard, the Commission reminds the State that in its efforts it must work with civil society to advance access to and recognition for the human rights of LGBTI people.
331. However, the IACHR takes note of testimonies which it received denouncing discrimination against the LGBTI population. One of the persons interviewed said:

⁴⁶⁹ Official Gazette of the Republic of Cuba, No. 5 (Extraordinary), Constitution of the Republic of Cuba, April 10, 2019.

⁴⁷⁰ El Mundo, Cuba abre la consulta popular de su proyecto de nueva Constitución, August 13, 2018; 14 y Medio, Varias Iglesias evangélicas apelan al Gobierno y a la Revolución para impedir el matrimonio igualitario, July 6, 2018.

⁴⁷¹ IACHR, Press Release No. 135/19, IACHR Completes Visit to Uruguay, May 31, 2019.

⁴⁷² IACHR, 2017 Annual Report, Chapter IV.B, Special Report: Cuba, par. 83, citing UNESCO, *La lucha contra la homofobia y la transfobia en las escuelas cubanas*, June 22, 2017.

I myself was forced out of the tourism industry for being a lesbian, as was my sister. And my received a letter calling him scum. He's been banned from the university for being gay. People in neighborhoods insult you, but you ignore it. They don't want to give trans girls jobs because they don't want to wear men's clothes.⁴⁷³

332. Similarly, a person who asked to have their identity withheld told the Commission:

Killing gay men in Cuba is not classified as a hate crime because they are gay. It's lumped into the crimes of passion category. In the interior of the country there are hate crimes; they are beaten for being gay, physically injured. And when they go to the police, they say: that's what they get for being "faggots," that's why they are beaten up. They get badly hurt.⁴⁷⁴

333. Regarding acts of discrimination against trans people, in an interview with the IACHR Lidia Romero Moreno said:

Raids are carried out at meeting places. Police raids in which they are taken away by force. Trans women are roughly handled. All arrests of trans women are violent.⁴⁷⁵

334. With regard to guarantees for the rights of trans persons, the Commission notes that, since 2007, at least 39 sex reassignment surgeries have been performed in Cuba by the Ministry of Health. They are contingent on preconditions being met, such as minimum age, submission of medical and psychological evaluations, as well as a detailed review of medical protocols for sexual affirmation surgeries.⁴⁷⁶ The IACHR welcomes the Cuban State's initiative to offer health care to trans people based on their gender identity.

335. With regard to violence and personal security, the Commission notes the lack of official data on the human rights situation of LGBTI people in Cuba, particularly in relation to the violence of which they are victims. The IACHR considers that the scarcity of data on this type of violence in Cuba renders the problem invisible and makes it difficult to carry out an in-depth analysis of the actual human rights situation of LGBTI people in the country.⁴⁷⁷ However, the Inter-American Commission has received information about acts of violence against LGBTI people in Cuba, such as the cases of Joan Cristian Campos Guevara, a young gay man who was stabbed in Villa Clara province,⁴⁷⁸ and the cases of activists and citizens Isabel Díaz Torres, Jimmy Roque Martínez and Oscar Antonio Casanella Saint-Blancard,

⁴⁷³ IACHR, Interview with Isabel Pacheco Sosa, April 2019.

⁴⁷⁴ IACHR, Confidential interview. 9. IACHR archive.

⁴⁷⁵ IACHR, Interview with Lidia Romero Moreno, April 2019, IACHR archive.

⁴⁷⁶ IACHR, 2018 Annual Report, Chapter IV.B, [Special Report: Cuba](#), par. 92.

⁴⁷⁷ IACHR, 2017 Annual Report, Chapter IV.B, [Special Report: Cuba](#), par. 85.

⁴⁷⁸ IACHR, 2018 Annual Report, Chapter IV.B, [Special Report: Cuba](#), par. 92.

who have been persecuted, detained, insulted, and physically and verbally abused for taking part in peaceful marches calling for equality.⁴⁷⁹

336. Thus, in view of the acts of violence, the Commission reminds the State of Cuba of its obligation to adopt all necessary measures to apply the standard of due diligence in the prevention, investigation, punishment and reparation of such crimes. It also points out that due diligence should continue regardless of whether the violence has occurred in the context of the family, the community, or the public sphere, including in work, education, and health care environments. That standard includes the obligation to conduct a thorough investigation of the reasons behind the violence,⁴⁸⁰ with an approach that recognizes the intersection of other factors that can make LGBTI people particularly vulnerable to violence or worsen the consequences of the violence they suffer.⁴⁸¹
337. The Commission reaffirms that the right to freedom of expression enshrined in Article 13 of the American Convention encompasses the right to express one's own sexual orientation and gender identity and that this kind of expression enjoys a special level of protection under inter-American instruments because it conveys an integral element of personal identity and dignity.⁴⁸²
338. In conclusion, the Commission considers that, although there have been advances in the human rights of LGBTI people in recent years, Cuba must ensure that that progress translates into actual situations of equality and that it continues to move forward with the defense and promotion of those rights. The State must protect the integrity of persons whose sexual orientation, gender identity and/or expression, and sexual characteristics diverge from the accepted pattern of society, based on the right to equality and non-discrimination; to that end it is important to have reliable and disaggregated statistical data that can be used to plan, adopt and implement measures to guarantee full equality for LGBTI persons.

D. Children and Adolescents

339. With regard to the rights of children and adolescents, the Commission values the fact that the new Cuban Constitution expressly recognizes that children and adolescents are full subjects of rights and must be protected from any form of violence. The new Constitution also provides for the special protection of children

⁴⁷⁹ Information received on July 15, 2019, by the IACHR from *Institute on Race, Equality and Human Rights*.

⁴⁸⁰ IACHR, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015, par. 45 and recommendation 31.

⁴⁸¹ In its report on violence, the IACHR said, for example, that an Afro-descendent trans woman who is internally displaced in a rural area and who lives in poverty would experience violence or its consequences differently from a wealthy Caucasian gay man who lives in a major city. Cf. IACHR, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015, par. 262. On discrimination against LGBTI people in rural areas, see Luke Boso, 'Urban Bias, Rural Sexual Minorities and Courts' Role in Addressing Discrimination,' *UCLA L. Rev.* 60 (2012): 562.

⁴⁸² IACHR, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015, par. 217.

and adolescents and the guarantee of their comprehensive development by the State, society and families.⁴⁸³ However, constitutional recognition of the rights of children and adolescents must be accompanied by an infra-constitutional system capable of guaranteeing effective enjoyment of those rights. In this regard, the Commission notes that Cuba does not yet have a national system that provides for the regulatory and institutional framework to develop special measures for the protection of children, in accordance with the relevant Inter-American standards.⁴⁸⁴

340. In particular, the Commission stresses the urgency for the country to adapt its legislation to prohibit all forms of corporal punishment of children in all care settings, including schools and alternative care settings. Currently, the 1975 Family Code allows "moderate" punishment of children by parents (Art. 86) and guardians (Art. 152).⁴⁸⁵ In addition, the IACHR joins the Committee on the Rights of the Child in recommending that Cuba set 18 as the minimum age for entry into the armed forces and that it prohibit all military-type training for persons under 18.⁴⁸⁶
341. According to UNICEF data, Cuba's population includes more than 2.2 million below the age of 18, corresponding to 19.6 percent of the total population.⁴⁸⁷ The Commission notes with satisfaction the State's efforts to ensure universal birth registration, which reached 100 percent in 2018,⁴⁸⁸ as well as to reduce bureaucracy in registration procedures.⁴⁸⁹ On the other hand, it is also concerned about the high rate of early marriage, particularly among girls and teenagers, with 26 percent of teenagers married by the age of 18.⁴⁹⁰ Despite the fact that the minimum legal age for marriage under Cuban law is the same as that determined by the Convention on the Rights of the Child, the country's law also allows marriage between adolescents with parental consent.⁴⁹¹
342. With regard to the right to health, the Commission notes that the country has maintained a steady reduction in the child mortality rate, from 9 deaths per 1,000 live births in 2000 to 5 in 2018.⁴⁹² The Commission also recognizes that Cuba achieved 99 percent immunization of children and adolescents from vaccine-preventable diseases. On the other hand, in spite of the low incidence of HIV infections in children and despite being the first country to eliminate vertical

⁴⁸³ Official Gazette, Constitution of the Republic of Cuba, GOC-2019-406-EX5, 2019, Art. 86.

⁴⁸⁴ IACHR, Annual Report, Ch. IV.B: Special report: Cuba, 2018, par. 84.

⁴⁸⁵ Global initiative to end all corporal punishment of children, Corporal Punishment of Children in Cuba, November 2019.

⁴⁸⁶ UN, Human Rights Council, Compilation on Cuba, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/30/CUB/2, 16 March 2018, pars. 52 and 61.

⁴⁸⁷ UNICEF, The State of the World's Children 2019, October 2019, p. 193.

⁴⁸⁸ UNICEF, The State of the World's Children 2019, October 2019, p. 232.

⁴⁸⁹ Granma, Nuevas facilidades para inscripciones de nacimiento y en registro de consumidores, July 5, 2019.

⁴⁹⁰ UNICEF, The State of the World's Children 2019, October 2019, p. 232.

⁴⁹¹ UOL, América Latina avança em proteção a crianças proibindo casamento infantil, August 23, 2017. IACHR, Annual Report, Ch. IV.B: Special report: Cuba, 2018, par. 87.

⁴⁹² UNICEF, Country profiles: Cuba, December 2018.

transmission of the virus,⁴⁹³ there is concern that only 33.8 percent of children aged 0-14 years who are living with HIV receive antiretroviral therapy.⁴⁹⁴

343. In relation to the right to education, Cuba achieved 100% completion of primary education and 98% completion of lower secondary education.⁴⁹⁵ On the other hand, at a public hearing held in 2018, the Commission was informed about the existence of a shortage of teachers and that the State was seeking to address this problem by training adolescents as educators.⁴⁹⁶ Based on the potential effects on the development of the adolescents taking part in the training program, in its 2018 Annual Report the IACHR recommended that this public policy proposal be reviewed taking into account the principle of the best interests of the child.⁴⁹⁷
344. Likewise, information received from the Cuban Association for the Development of Children's Education (ACDEI) indicates that since 2011 there has been growing dissatisfaction among educators, parents, and students with state education at all levels. Interviews conducted by ACDEI show that only 11.2 percent of Cuban teenagers believe that school teaches them what they need. In addition, the IACHR is concerned by the information that parents may be prosecuted and deprived of their liberty for non-compliance with rules that impose the political and ideological positions of the State⁴⁹⁸ and that limit the right of parents to guide the child in the enjoyment of the right to freedom of thought and conscience, as provided in Article 14(2) of the Convention on the Rights of the Child Niño.⁴⁹⁹

E. People with disabilities

345. The Inter-American Commission has monitored the situation of persons with disabilities in Cuba. In 2017, it held a public hearing at its 164th special session in Mexico City. At the hearing, civil society organizations described obstacles faced by persons with disabilities in the exercise of their rights, namely the right to identity for newborn children with disabilities and low life expectancy; the right to assembly and free movement for disability advocates; the right to politically motivated association; the right to health; and the right to equality and non-discrimination.⁵⁰⁰ In the same meeting, Cuba's human rights ombudsman, Rolando Ferrer Espinosa, mentioned that the mechanisms for making complaints

⁴⁹³ WHO, [WHO validates elimination of mother-to-child transmission of HIV and syphilis in Cuba](#), June 30, 2015.

⁴⁹⁴ UNICEF, [The State of the World's Children 2019](#), October 2019, pp. 204, 208 and 212.

⁴⁹⁵ UNICEF, [The State of the World's Children 2019](#), October 2019, p. 228.

⁴⁹⁶ IACHR, Hearing on the *Situation of the rights of children and adolescents in Cuba*, 167th session, February 28, 2018.

⁴⁹⁷ IACHR, Annual Report, [Ch. IV.B: Special report: Cuba](#), 2018, par. 86.

⁴⁹⁸ UNHCHR, [Summary of Stakeholders' Submissions on Cuba](#), A/HRC/WG.6/30/CUB/3, 9 March 2018, par. 80.

⁴⁹⁹ ACDEI, [Contribución al 3er Examen Periódico Universal](#), October 2, 2017, pp. 3-4.

⁵⁰⁰ IACHR, Transcript of speech at public hearing: [Situation of Persons with Disabilities in Cuba](#), September 5, 2017.

in Cuba are ineffective, since they respond to the interests of the State and not to that of the citizen.⁵⁰¹

346. The Commission notes that on March 27, 2019, the UN Committee on the Rights of Persons with Disabilities reviewed the report of Cuba on the measures taken to implement the provisions of the Convention on the Rights of Persons with Disabilities. The Convention has been implemented, however Cuba does not have specific legislation to fulfill the rights of persons with disabilities.⁵⁰² The Committee of Experts noted that persons with disabilities in Cuba have not been able to exercise the principle of participation. In addition, the experts highlighted that laws in Cuba have discriminatory language with respect to disability, laws that speak of disability in medical terms without including a human rights-based approach.⁵⁰³ Therefore, one of the main conclusions of this report is that the Cuban State should shift to a human rights-based approach in relation to persons with disabilities.
347. It should be noted that as part of the constitutional referendum voting process, 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 it one month to respond. The State did not respond.⁵⁰⁴
348. In its 2018 Annual Report, the IACHR acknowledged as a forward step that the proposed reform of the Political Constitution included a prohibition of discrimination on the basis of disability⁵⁰⁵. Indeed, Article 42 of the approved text of the Constitution prohibits discrimination on the basis of disability. The Commission considers that this represents a significant advance in the recognition of the rights of that population, which continues to face many forms of discrimination in Cuba.
349. In its interviews, the Commission was informed that children with disabilities in Cuba still face many problems and difficulties, partly because there has been a decline in the number of people specialized in their care.⁵⁰⁶ In addition, other testimonies pointed out that many of the entities that offer public services do not have rules on removal of architectural barriers and ensuring access.⁵⁰⁷
350. According to information received by the IACHR,⁵⁰⁸ there is no specific law in Cuba that protects the rights of persons with disabilities. Protections for some of their

⁵⁰¹ IACHR, Transcript of speech at public hearing: [Situation of Persons with Disabilities in Cuba](#), September 5, 2017.

⁵⁰² OHCHR, [The Committee on the Rights of Persons with Disabilities reviews the report of Cuba](#), March 27, 2019.

⁵⁰³ OHCHR, [The Committee on the Rights of Persons with Disabilities reviews the report of Cuba](#), March 27, 2019.

⁵⁰⁴ IACHR, 2018 Annual Report, [Chapter IV.B. Cuba](#), par. 100.

⁵⁰⁵ BBC, [Cuba to recognize private property under new constitution](#), July 15, 2018.

⁵⁰⁶ IACHR, Interview with Amaury Pacheco Del Monte.

⁵⁰⁷ IACHR, Widhner Jordani Ballester Cortez, June 2019, IACHR archive.

⁵⁰⁸ Red de Cultura Inclusiva Cuba, Primer informe sobre la situación de las personas con discapacidad en Cuba, 2019.

rights are contained, in a disjointed and ancillary manner, in different codes and standards. Civil society organizations insist that not having special laws on protection of persons with disabilities contributes to the invisibility of this population group and their particular needs.

351. The IACHR is concerned about the politicization of access to care services for persons with disabilities. In that regard, civil society organizations have reported that some entities that provide care to people with disabilities include in their statutes ideological constraints that expressly discriminate against anyone who does not support the government. For example, Article 9 of the Statutes of the National Association of the Blind (*Asociación Nacional del Ciego*), on the duties and rights of members, reportedly makes it a requirement “[t]o support resolutely any demonstration, attitude, pronouncement, or resolution adopted by the Association in defense of the homeland and for the preservation of the rights won by our Socialist Revolution.”⁵⁰⁹
352. Also troubling is the prevalence of the medical model in the State's approach to disability, both in legal instruments and in the development and implementation of plans of action. This model provides for differential and exclusionary treatment, which contrasts with the perspective of inclusion adopted by the human rights-based approach to disability. In this regard, the IACHR reminds the Cuban State of the need to harmonize its domestic laws and specific plans of action with its treaty obligations in the area of disability, adopting a model of care based on human rights that seeks to eliminate discrimination against persons with disabilities and promote their full integration into society.
353. The IACHR notes that Cuban civil law provides for the annulment of the legal capacity of persons with disabilities such as deafness and mental illness. The Commission has already stated that States must take measures to ensure full recognition of the legal capacity of persons with disabilities.⁵¹⁰
354. In the area of education, the IACHR was informed that instead of implementing a policy of inclusion, girls with disabilities are forced to attend special schools, which heightens their social exclusion, marginalization, and stigmatization.⁵¹¹ The IACHR regrets the lack of access for persons with disabilities to the health services necessary for their well-being and incorporation into working life. In this regard, the IACHR recommends that the State ensure quality and inclusive education, as well as access to health care and work on an equal basis with others.
355. As it recommended in its 2017 and 2018 annual reports, the IACHR calls on the Cuban State to adopt the necessary measures to guarantee access for persons with

⁵⁰⁹ Red de Cultura Inclusiva Cuba, Primer informe sobre la situación de las personas con discapacidad en Cuba, 2019, pp. 14-15.

⁵¹⁰ IACHR, Press release 216/18, [IACHR Welcomes Measures Recognizing the Legal Capacity of People with Disabilities in Peru](#), October 2, 2018; IACHR, Press release 195/17, [IACHR Urges States to Adopt Measures to Better Protect and Promote the Rights of Persons with Disabilities](#), Washington, D.C., December 1, 2017.

⁵¹¹ Cubalex and RCI, Informe conjunto para la determinación del listado de cuestiones que el Comité sobre los Derechos de las Personas con Discapacidad presentara al Estado Cubano, par. 77.

disabilities to social programs and public health and education services, without any discrimination.⁵¹²

F. Situation of Migrants

356. With regard to the migrant population, in its annual reports the Commission has constantly monitored the restrictions that prevent the full exercise of the right freedom of movement and residence both within the country and abroad.
357. 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. The IACHR reiterates the importance of guaranteeing for all people in Cuba, free from undue interference, the right to residence and movement contemplated 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."
358. The IACHR notes that although Article 52 of the new Constitution refers to freedom of movement in Cuban territory, there are constant complaints about allegedly unjustified restrictions on that right. Therefore, the Commission once again makes an urgent appeal to the Cuban State to allow its inhabitants freely to exercise their freedom of movement in Cuban territory and the freedom to leave and enter the country, and to refrain from continuing to implement the above-described restrictions.
359. As regards legal measures, the IACHR has taken note of Decree No. 217 of 1997 on Internal Migration Regulations for the City of Havana and infractions thereof, which was originally intended to control the movement of persons to Havana and thereby diminish the effects of overpopulation in terms of access to housing, stable employment, urban transport, and supply of water, electricity, and fuel. The Decree restricted the possibility of becoming domiciled, residing, or living with others on a permanent basis in a dwelling located in the City of Havana. The Decree was amended by Decree No. 293 of 2011, which provides for certain exceptions.
360. Regarding specific instances of restrictions, in its 2017 Annual Report the IACHR referred to cases such as that of Anairis Miranda Leyva, of the *Movimiento Cubano de Reflexión*, who was violently removed from a bus by personnel of the Ministry of Interior of Cuba and placed in a police patrol car while she was on her way to work from the city of Holguín to Havana, with the intention of delivering a letter to the Central Committee, denouncing the increased repression and announcing the hunger strike that she and her siblings, Adairis Miranda Leyva and Fidel Manuel Batista Leyva, proposed to hold. The Commission noted the case of the

⁵¹² IACHR, 2017 Annual Report, Chapter IV.B. Cuba, par. 119(17).

independent trade unionist and General Secretary of the Independent Trade Union Association of Cuba (ASIC), Iván Hernández Carrillo, a beneficiary of precautionary measures granted by the Commission, who was allegedly detained at the bus terminal in the city of Matanzas when he intended to travel to Havana. Reportedly, two members of the national police took him in a patrol car to the police station in that town, where he was placed in a 3x2 meter cell, in squalid, overcrowded conditions, with a half-covered door, no electricity or drinking water, and a concrete and rebar bed. He was reportedly held there for more than 10 hours without charge; his identity documents have apparently been withheld by the police.

361. The Commission has also condemned the fact that the State of Cuba prohibited from leaving the country the organizations that planned to participate in the hearing on the human rights situation of children and adolescents in Cuba held during the Commission's 167th session in Colombia.⁵¹³
362. In 2019, the IACHR received information that the Cuban authorities prevented 12 Cuban citizens who were going to participate in the event "Path Toward Change" from boarding a flight to the United States. The group included independent journalists and members of opposition and civil society organizations such as the Ladies in White, UNPACU, and the Cuba Decide campaign. The citizens said that they were eligible to travel outside the country and that the reasons for the restriction were not explained to them.
363. Human Rights Watch has documented similar cases in its reports. The 2018 Report said that according to the Cuban Commission for Human Rights and National Reconciliation, the government imposed restrictions primarily on persons traveling to Latin American countries to attend conferences. In June, the Commission recorded the highest number of restrictions on freedom of movement in several years: at least 29 people were prevented from traveling abroad to attend international conferences and other events.⁵¹⁴ The 2019 Report notes that in April, dissidents and human rights defenders Dulce Amanda Duran, Roseling Peñalvar, and Wendis Castillo were banned from traveling to Lima for a civil society meeting. Castillo, a human rights defender and member of the Dignidad Movement, had also been stopped from traveling in November 2017 when she tried to fly to Lima to participate in a conference on corruption and human rights in Latin America. In addition, in July 2018, René Gómez Manzano, a well-known dissident who has been imprisoned several times, was intercepted at the airport before he could board a plane to attend a human rights meeting in Montevideo. The agents informed him that he was not authorized to travel.
364. In the testimonies collected by the IACHR, people constantly stated that they had been prevented from leaving the country because of their political beliefs. For example, human rights defender Sara Cuba said:

⁵¹³ IACHR, Press release 041/2018, IACHR Wraps Up 167th Session in Colombia, March 2, 2018.

⁵¹⁴ Human Rights Watch, [World Report 2018](#).

A few weeks ago I was not allowed to travel; for the summit in Peru either. Three times I've been arrested and not allowed to leave. In my family my son studied his primary education, for the service he was forced to sign a document saying he had not finished his studies because his family was opposed to the regime and was not allowed to leave the country.⁵¹⁵

365. The testimonies also described restrictions on leaving the provinces, as Henry Constaín Ferreiro told the IACHR:

I've been banned from leaving the country. There was a year to go. Prohibition to leave the province and the city of Camagüey and my house when Fidel died, when President Obama went to Cuba; I have been followed in the street, my phone is tapped.⁵¹⁶

366. One interviewee even made reference to forcible removals from the country:

I was a really terrible thing. I am one of those who does not want to leave Cuba. They are forcibly banishing activists from Cuba. One from UNPACU was removed in that way. It violates your rights of citizenship and to a homeland.⁵¹⁷

367. The International Institute on Race, Equality and Human Rights has documented several cases of restrictions on free movement. In 2019 it recorded the case of five Cuban activists who were prohibited from attending the OAS General Assembly in Colombia.⁵¹⁸ In addition, in its report *Premeditated Convictions* it presented several other cases of restrictions on leaving the country.

368. Several people who gave testimonies to the IACHR made reference to the fact that their freedom to travel outside the country was restricted and that they were known as “regulated” people (*regulados*).⁵¹⁹ And they also reported that some people were not given permission to return to the country.⁵²⁰ In this regard, one of the interviewees explained: “In the last two years the Cuban government has applied a policy of regulation[.] [In] 2013 there were migratory reforms; many Cubans began to go abroad for training. The state curbs freedom of movement. Several OAS invitation events were thwarted by the policy of regulation. You arrive at the airport, terminal 3, and at customs a red circle lights up; we were taken to an office for official business and I was told that I could not leave the country. When you ask for information, they don't answer. You are referred to the public assistance office at the Ministry of the Interior. They make a request to the

⁵¹⁵ IACHR, Interview with Sara Cuba Delgado, May 2019, IACHR archive.

⁵¹⁶ IACHR, Interview with Henry Constantin Ferreiro, May 2019, IACHR archive.

⁵¹⁷ IACHR, IACHR interview with Michael Matos Alonso, May 2019, IACHR archive.

⁵¹⁸ International Institute on Race, Equality and Human Rights, [Gobierno cubano prohíbe a cinco activistas viajar a Colombia para participar en la Asamblea General de la OEA](#), 2019.

⁵¹⁹ IACHR, Interview with Lázaro Yuri Valle Roca, June 2019, IACHR archive. IACHR, Interview with Marthadela Tamayo Gonzalez, June 2019, IACHR archive.

⁵²⁰ IACHR, Confidential interview, 2019, 38, IACHR archive.

citizens' attention office, and it turns out that the regulation has been imposed by the Department of State Security."⁵²¹

369. Finally, the IACHR notes that according to the UNHCR report *Global Trends: Forced Displacement* in 2018, at the end of 2018, there were a total of 5,488 Cuban refugees and 26,603 Cuban asylum seekers (pending cases).⁵²²
370. The Commission considers that the impossibility of returning to one's country of origin keeps Cubans from enjoying an effective nationality, which entails other human rights violations, such as the right to family. In addition, it places Cubans who leave their country in an especially vulnerable situation, since sometimes their status is irregular in the country where they find themselves, yet they cannot return to their country. The Commission expresses its concern at the multiple restrictions and the imprecise procedures that hinder the effective exercise of personal liberty both on and off the island. The IACHR considers that such measures are often taken to impede the work of activists, opponents, and human rights defenders.

G. Situation of Persons Deprived of Their Liberty

371. The IACHR still does not have current information on the number of people in Cuba's prisons. The last official figure dates from 2012 and records a prison population of 57,337.⁵²³ Based on these figures, in a report by the World Prison Brief Report, Cuba has the sixth-largest prison population in the world in terms of number of prisoners per 100,000 of national population.⁵²⁴ According to the report, there are 510 prisoners on the island for every 100,000 inhabitants. By contrast, the organization Cuban Prisoners Defenders considers that, according to its own research, there are 950 people deprived of their liberty in Cuba for every 100,000 inhabitants.⁵²⁵
372. The Commission takes note of official public information, according to which in July 2019, the Council of State pardoned 2,604 persons deprived of their liberty. Under the decision convicts were released for good behavior while serving their sentence.⁵²⁶ However, with regard to that information and the number of persons who have reportedly been deprived of their liberty after this mass release, the IACHR still has no possibility of access to current official figures on the number of people in prison in Cuba.

⁵²¹ IACHR, Interview with Juan Antonio Madrazo Luna, July 2019. IACHR archive.

⁵²² UNHCR, *Global Trends: Forced Displacement in 2018*, June 12, 2019.

⁵²³ Sergio Alejandro Gomez, "Respeto a la dignidad y al mejoramiento humano", Granma, Year 16, No. 140, May 22, 2012.

⁵²⁴ World Prison Brief, World Prison Population List, Twelfth edition.

⁵²⁵ Prisoners Defenders, Cuba tiene miles de presos políticos, March 14, 2019.

⁵²⁶ Granma, Concede el Consejo de Estado indulto a 2.604 sancionados, July 19, 2019.

373. Regarding prison conditions, as it pointed out in its 2017 and 2018 annual reports, the Commission has received worrisome information about the persistence of deplorable conditions of detention for persons deprived of their liberty in Cuba, such as overcrowding; insufficient medicine, food, and clean water; inadequate hygiene and sanitation; deficient medical care; and the wide margin of discretion that its agents have in keeping order inside prisons.
374. In its 2017 Report, the Commission learned of the contents of a complaint signed by 18 prisoners held in the municipal prison in Melena del Sur, Mayabeque province, in May 2017, and addressed to the United Nations Human Rights Council:
- In the space of four months so far this year, four inmates have died and several days ago Rafael Arredondo Jardines died from a beating he received while handcuffed from officers of this prison, all of them common prisoners. We want justice and respect for human rights in this place.⁵²⁷
375. In addition, in July 2017, the IACHR learned of the public denunciation by Yosvany Martínez and Ismael Boris Reñí, members of the UNPACU, in which they described the “subhuman” conditions they experienced in the Combinado del Este maximum security prison: “the water from the toilets would run along the walls and the ceiling ... the beatings of ‘handcuffed prisoners’ were frequent.” They also denounced the death of prisoner Hermenegildo Duvergél, due to the lack of medical care for multiple rib fractures as a result of a major beating inflicted on him for celebrating the death of former President Fidel Castro.⁵²⁸ In the months prior to February 2017, UNPACU had publicly denounced the death of Hamell Santiago Más Hernández, due to bad prison conditions and a lack of medical attention, and in April of the same year, that of Alberto Delgado Valle, after he was beaten by guards; both deaths occurred in the aforementioned prison.⁵²⁹
376. In its 2018 Report, the Commission recorded the case of Alejandro Pupo Echemendía, who had died while in custody, and whose body—according to his relatives—showed signs of torture.⁵³⁰ In the same report, the IACHR highlighted cases of negligent medical care, lack of provision of medicines⁵³¹ and the delay or

⁵²⁷ Directorio Democrático Cubano, *Comunique: Audio of letter/complaint from prisoners to the UN and human rights organizations*: <https://youtu.be/Ty5nhPzOayA>, June 1, 2017. See also Martí Noticias, *Esciben a ONU 17 reos para denunciar muerte de 5 presos por “golpizas” en cárcel de Cuba*, June 2, 2017.

⁵²⁸ Martí Noticias, *Opositores liberados revelan “condiciones infrahumanas” en Combinado del Este*, July 13, 2017. See also YouTube, *Las prisiones en Cuba*, UNPACU, March 18, 2017.

⁵²⁹ Hablemos Press, *Asesinado un activista cubano en una cárcel castrista*, April 29, 2017; ABC Internacional, *Muere un preso político cubano por «falta de atención médica y malas condiciones de presidio»*, February 25, 2017; Martí Noticias, *Miembro de UNPACU muere en la prisión Combinado del Este*, February 25, 2017. See also YouTube, *Las prisiones en Cuba*, UNPACU, March 18, 2017.

⁵³⁰ CiberCuba, *“Ola de denuncias por muertes bajo custodia policial en Cuba,”* September 5, 2018.

⁵³¹ Martí Noticias, *Celular por pabellón, chantaie de un oficial de prisiones a esposa de recluso*, February 12, 2018; Cubalex, *Informe sobre los Derechos Humanos de las Personas Privadas de Libertad en Cuba*, 2018.

total lack of medical care.⁵³² In addition, the IACHR has observed that people held in prisons frequently resort to hunger strikes, self-flagellation, and even suicide, in order to demand improvements in prison conditions and observance of basic fair-trial guarantees in the proceedings pending against them, among other things.⁵³³

377. In relation to procedural and criminal procedures and guarantees, the IACHR highlights the constitutional recognition of habeas corpus and various criminal-law guarantees, as noted in previous sections of this report. However, the IACHR has not been informed of any effective changes for persons who are deprived of their liberty as a result of those guarantees.
378. In 2017, the Committee on Enforced Disappearances, in reference to inspection of places of deprivation of liberty, took note of the information provided by the State concerning State and non-State agencies that may visit places where persons deprived of liberty are held. At the same time, it made reference to the fact that the Attorney General's Office conducted regular, mostly unannounced, inspections, though it observed that no specific independent mechanism has been established to carry out regular visits to all the places where persons deprived of liberty may be held.⁵³⁴ Consequently, the Committee recommended that Cuba establish a specific independent mechanism with the power to undertake, without hindrance, regular unannounced visits to any place that may hold persons deprived of liberty. The Committee also invited the State to reconsider ratification of the Optional Protocol to the Convention against Torture.
379. The IACHR also takes note of the case of Eduardo Cardet Concepción, leader of the Christian Liberation Movement. According to report *Premeditated Sentences* by the Institute on Race, Equality and Human Rights, Cardet was reportedly a victim of violence and has suffered appalling prison conditions. In addition, according to the same source, his family visits had been suspended.⁵³⁵ The IACHR had the opportunity to interview him and, when asked about prison conditions, he said:

[Conditions] are very difficult for all the prisoners; they are inhumane; food is deficient, scarce, and of very bad quality; food preparation is very bad; there is overcrowding, an incredible amount of men in a confined space; water is very scarce, it undrinkable, bad. Very often there is no water for personal hygiene. There is no privacy in the place; you have to live badly.

The treatment by the prison authorities is harsh, bad; conditions for communication with families are very poor. Only five minutes a week.

⁵³² CiberCuba, "Maltrato carcelario en Cuba: sacan a un hombre de prisión en estado de coma," September 10, 2018; CiberCuba, "Prisionero diabético pierde un pie en una cárcel de Cuba por falta de atención médica," October 10, 2018.

⁵³³ IACHR, *Annual Report, Ch. IV, Cuba*, par. 98.

⁵³⁴ United Nations, Committee on Enforced Disappearances, Concluding observations on the report submitted by Cuba under article 29 (1) of the Convention, CED/C/CUB/CO/1, 14 April 2017.

⁵³⁵ Institute on Race, Equality and Human Rights, Premeditated Convictions: Analysis of the Situation of the Administration of Justice in Cuba, June 2019.

Going out into open spaces, taking the sun; you can go up to 15 days without getting any sun or going out into the open to exercise; you often have to spend prolonged periods in confined spaces; that is a rule in the penitentiary system. It's a policy they have. Medical care is bad; sometimes it is difficult; there is a huge shortage of medicines.⁵³⁶

380. The testimonies collected by the IACHR also mentioned precarious conditions of detention and violence.⁵³⁷ For example, one activist said:

One time I was detained when I was traveling [from] El Santuario del Cobre to Machamo for a political prisoner event and was stripped of my clothes and made to sit on an anthill, handcuffed, and beaten several times.⁵³⁸

381. Another testimony noted: "If there is no food on the street, imagine what it's like in a prison. There your family has to bring you food; they have to support you throughout your whole sentence."⁵³⁹

382. The Commission reminds the State of Cuba that every person deprived of liberty has the right to be treated humanely, with absolute respect for his or her inherent dignity, rights, and fundamental guarantees. This implies that the State, as the guarantor of the rights of the persons under its custody, not only has the special duty to respect and ensure their right to life and integrity, but must also ensure minimum conditions that are compatible with their dignity. Treating every person deprived of liberty with humanity and respect for their dignity is a universal norm that must be applied without any type of distinction, and that cannot depend on the material resources of the State.⁵⁴⁰

⁵³⁶ IACHR, Interview with Eduardo Cardet, June 2019, IACHR archive.

⁵³⁷ IACHR, Interview with Rosa Rodríguez, May 2019. IACHR archive.

⁵³⁸ IACHR, Interview with Gabriel Ernesto Torres Velázquez, June 2019, IACHR archive.

⁵³⁹ IACHR, Interview with Sandor Pérez, September 2019.

⁵⁴⁰ IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 61; Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116. Doc. 5 rev. 1, corr., October 22, 2002.

CHAPTER 10

**CONCLUSIONS AND
RECOMMENDATIONS**

CONCLUSIONS AND RECOMMENDATIONS

383. The State of Cuba is going through a period of political, social and cultural transformation, in which significant human rights challenges remain.
384. After decades in power, the top positions of political leadership, such as that of President of the Republic, are held by persons who are not family members of Fidel and Raul Castro Ruz. The Presidency of the State has been assumed by Miguel Díaz-Canel, the well-known leader of the Communist Party, who shares the policies of the Castro Ruz brothers. In addition, the post of Prime Minister has been reinstated in Cuba to represent the Government of the Republic; the position was still waiting to be filled at the time of writing. The Commission notes that, although by law the State recognizes the Cuban Communist Party as the sole party, in practice there are many political organizations and movements that express different political convictions and have an interest in occupying positions of political representation, despite the difficulties they encounter in the institutional framework of the State.
385. One of the signs of change was the promulgation of a new Constitution in 2019. The process of issuing the new constitutional text was mainly overseen by the National Assembly of People's Power, from the approval of the first draft to the definition of the final text, in two sessions. In between, two citizen participation mechanisms were implemented for the purposes of public awareness, discussion, and approval of the Constitution, which were managed by the State: a popular consultation and a referendum. The Commission welcomed the inclusion of several rights in the constitutional text, as well as procedural guarantees, and it hopes that they will be effectively implemented by State authorities in order to ensure the rights set forth in the American Declaration of the Rights and Duties of Man. It also welcomed the State's intention to include the citizenry in that constituent process. However, it also noted reports of exclusions from the popular consultation and referendum processes, preventing those considered to be in opposition to the Government from taking part in the debate.
386. In general, the Commission notes that the new Constitution contains several rights that were not in the 1976 Constitution and also that it takes into account IACHR recommendations such as the inclusion of the right of access to justice and the presumption of innocence. Despite the opportunity offered by the adoption of a new Constitution, the Commission finds that the State of Cuba has within its text elements that are not conducive to the guarantee of rights. For example, a plurality of political parties, measures to ensure the separation of powers, and judicial independence and impartiality remain lacking. The same text also states that the Constitution ranks higher than international treaties.

387. With regard to political rights, the Commission notes that the new Constitution establishes several such rights, and therefore it welcomes this provision and hopes that it will be effective. Having said that, according to information received by the Commission, restrictions on political rights persist in Cuba and the electoral system continues not to provide guarantees for the free exercise of those rights. In addition, activists, regime opponents, and human rights defenders are arbitrarily subjected to multiple restrictions on their rights. Of particular concern is the reported increase in violence against women activists by state authorities, as well as the many obstacles now faced by activist artists in the exercise of their work. All of this is based on the persistence of legal norms that establish ambiguously defined criminal offenses and broad discretionary powers for the police and prosecutorial authorities. Similarly, the Commission found that in Cuba, the human rights of vulnerable populations such as people of African descent, women, the LGBTI population, persons with disabilities, migrants, and people deprived of their liberty would continue to be infringed.
388. The IACHR also reiterates conclusions that it presented in its 2018 special country report on the serious situation affecting freedom of expression in Cuba. In the area of economic, social and cultural rights, the Commission takes note of the information from international organizations that highlight outstanding indicators for protection of the rights to health and education in Cuba compared to other Latin American countries, and it will continue to follow up on information on challenges to the full protection of those rights.
389. Based on the above, the Inter-American Commission on Human Rights considers it appropriate to make the following recommendations to the State of Cuba.

In relation to State institutions:

1. Adopt the necessary administrative measures to ensure the participation of all persons in representative positions in the State, without discrimination on political grounds.
2. Adopt the measures necessary to ensure the full independence of the judicial branch from the other branches of government. Take measures to ensure that judges having guarantees as soon as they are elected for carrying out their work independently, impartially, in accordance with the law, and with respect for human rights. In that regard, appointment and dismissal processes must be conducted without undermining judicial independence.
3. Adopt measures to ensure that lawyers can practice their profession without restrictions for political reasons and without threats or harassment.
4. Investigate alleged human rights violations, punish those responsible, and take measures to prevent impunity due to a lack of judicial independence.

In relation to representative democracy and political rights:

5. Adopt measures to guarantee for Cubans the full exercise of political rights provided in the new Constitution.
6. Adopt the legislative and other measures necessary to ensure an electoral system that is inclusive and ensures the free circulation of ideas and thought, making possible free political participation for all Cuban citizens on an equal footing.
7. Adopt measures allowing the rights to freedom of assembly and of association for political organizations and movements.
8. Adopt adequate prevention mechanisms to avoid acts of harassment, threats, assaults, stigmatization, persecution and criminalization committed by State officials, or with their acquiescence, to the detriment of dissidents, activists, human rights defenders, journalists, and other media workers. As necessary measures, it is recommended to include public condemnation of any act of aggression; training and education of public officials, especially of the police or security forces; take the necessary steps to prevent violence in the context of public demonstrations; establish reasonable limits, governed by the principles of legality, necessity and proportionality, to ensure that such demonstrations proceed peacefully; and conduct serious, impartial and effective investigations into attacks, threats and acts of intimidation committed to the detriment of the aforementioned.
9. Ensure that in the exercise of the right to freedom of movement, human rights defenders, activists, journalists, and social leaders are not subjected to unwarranted obstacles and refrain from confiscating or destroying their materials and tools of work.
10. Abolish the death penalty from 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 is not imposed in proceedings in which there is no observation of the guarantees of due process or of a fair trial before a competent, independent and impartial tribunal previously established by law, and which are instituted on the basis of allegations of criminal conduct prescribed in ambiguous and vague legal provisions.
11. Eliminate the concepts of “dangerousness” and “special proclivity of a person to commit crimes” from the Criminal Code.
12. Bring procedural laws into 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 know the charges against

them; to know the evidence and to have the possibility to refute it, among other guarantees.

13. Release persons detained for political reasons or reasons of conscience, as well as journalists prosecuted for their work.

In relation to human rights defenders:

14. 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.
15. Ensure that criminal offenses included in their legislation are formulated in a manner consistent with the principle of legality.
16. 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.
17. Refrain from arbitrarily depriving of their liberty human rights defenders, who perform their legitimate work of defense of human rights in the country.

With regard to freedom of expression, the IACHR refers the State to the recommendations contained in its Special Report on the Situation of Freedom of Expression in Cuba of 2018.

In relation to economic, social, cultural and environmental rights:

18. As to the right to *decent housing*, the IACHR recommends that measures be adopted to guarantee this right, taking into account the need to provide permanent access to clean water, energy, sanitation, and washing facilities, as well as waste disposal. Adopt measures to make adequate housing affordable, ensuring that people have full and sustainable access to adequate resources to obtain housing to which they are entitled.
19. Regarding the right to *food*, adopt measures to ensure the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals and the accessibility of such food. Take steps to ensure that the personal or household financial costs associated with the acquisition of food for an adequate diet are at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised.
20. With regard to *cultural rights*, revoke Decree No. 349/2018 and abolish the censorship of cultural activities that it has imposed on the arts and other forms of expression.
21. With regard to *trade union rights*, it is recommended that this right be guaranteed to trade union entities representing workers without

discrimination based on political opinion, as well as ensuring that they can freely function and exercise trade union activities, in accordance with the principles of freedom of association. Take steps to ensure that reports of attacks and other forms of anti-union discrimination are investigated and that, if they are found to have taken place, the corresponding deterrent sanctions and compensatory measures are imposed.

22. With regard to the right to *social security without discrimination*, adopt measures be taken to ensure that social benefits are sufficient in amount and duration to allow a decent standard of living.
23. As regards the right to *work*, take steps to prohibit any discrimination in access to and retention of employment. Take measures to ensure that remuneration provides a decent standard of living, taking into account external factors such as the cost of living and other prevailing economic and social conditions, and that its is sufficient to enable the worker and their family to enjoy other rights.
24. As for the right to health, ensure a sufficient number of public health facilities, goods, and services, including the underlying determinants of health, such as safe and clean water and adequate sanitation, hospitals, clinics and other health-related facilities, and essential drugs. Also, provide public health services that are respectful of medical ethics, culturally appropriate, and sensitive to gender requirements.
25. Regarding the right to education, adopt measures to ensure the academic freedom of teachers and students. Take measures to provide good conditions for the operation of educational institutions and programs, such as adequate buildings, sanitation facilities for both sexes, safe drinking water, and qualified teachers, and ensure that all teachers enjoy conditions and status commensurate with their role.
26. Regarding environmental rights, adopt measures for the adequate management of waste in order to reduce environmental pollution.

In relation to people of African descent:

27. Adopt programs aimed at collecting disaggregated statistics, broken down by gender, sexual orientation, age, with respect to the Afro-descendent population, not only through census surveys, but also at all government offices, including those of the police, justice, health and education systems.
28. Adopt the mechanisms necessary to promote self-identification of the Afro-descendent population, especially, through the inclusion of the choice “Afro-descendence” on all public records and specifically on the population census and household surveys. Also, to that end, carry out sensitization campaigns for civil society and training for census workers, in order to create the necessary conditions to enable all Afro-descendants to be able to identify themselves as such.

29. 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.
30. Adopt urgent measures, with a gender-based approach, aimed at overcoming the situation of structural discrimination that affects the Afro-descendent population, as well as positive measures to eliminate racial discrimination and ensure that Afro-descendants can exercise their rights on an equal basis with the rest of the population.

In relation to women:

31. Sign and ratify the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará).
32. 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.
33. 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. In the same vein, adopt measures against the perpetuation of gender stereotypes that discriminate against women.
34. 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.
35. Strengthen 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.

In relation to LGBTI persons:

36. 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.
37. Adopt legislative, administrative and policy measures aimed at addressing the underlying causes of violence against LGBTI persons.
38. Conduct thorough and impartial investigations into cases of violence against LGBTI persons, taking effective measures to prosecute, punish, and redress

violence against them, with an approach that recognizes the intersection of other factors that can make LGBTI people particularly vulnerable to violence or worsen the consequences of the violence they suffer.

39. 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 children and adolescents:

40. 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.
41. 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.

In relation to persons with disabilities:

42. Adopt all measures necessary to ensure full accessibility to the health care system, without any discrimination.
43. Adopt a policy of quality and inclusive education, as well as access to work on an equal basis with others.

In relation to migrants:

44. Remove travel restrictions imposed on individuals because of their activities as activists or for political reasons.
45. Create an expeditious and public procedure to determine the grounds for imposing restrictions on freedom of movement between provinces or leaving the country, and ensure in all circumstances that the country does not engage in any type of discrimination, including for political reasons. This policy should clearly explain the valid constitutional and legal grounds for terming a person "regulated." In any case, there must be a procedure that avoids arbitrariness and is expeditious and impartial, so that citizens can denounce restrictions on leaving the country or on taking up residence in another part of Cuba and obtain a response in a reasonable time, before preparing their travel.

In relation to people deprived of their liberty:

46. Establish an up-to-date, public, readily accessible register of persons deprived of their liberty, updating it on an ongoing basis. In particular, at a minimum, said register should include the following information: (a) the 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, ethnicity, age, sexual orientation, gender identity and expression, interculturality, intersectionality, and disability status, should be included.

47. Ensure that persons in the custody of the State are treated with dignity. In particular, ensure that persons held in detention receive the medical assistance that their particular health status requires, are provided sufficient food of high nutritional value, 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.
48. Open ex officio and without delay, effective criminal and administrative investigations to identify, prosecute, and punish those responsible for ill-treatment. Such investigations should be carried out using all available legal means, 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.