

## CHAPTER IV

### B. Countries

#### CUBA

##### I. INTRODUCTION

1. The Inter-American Commission on Human Rights (“the IACHR” or “the Commission”), exercising its competence with respect to the promotion and protection of human rights in the Americas, has closely monitored the events that took place in late 2014 and 2015 in Cuba that could be relevant for the full enjoyment of human rights. Accordingly, the Commission has noted major advances in this regard, but also pointed out certain scenarios of concern that continue to constitute an obstacle to the enjoyment of all human rights for all persons under the jurisdiction of the Cuban State.

2. The persistent restrictions on political rights, the right to association, the right to freedom of expression and thought, the lack of independence of the judiciary, and the restrictions on freedom of movement continue to limit systematically the human rights of Cubans. In addition to the foregoing is the increase in severe repression and restrictions on human rights defenders, dissidents, and independent journalists. The IACHR also learned of situations of discrimination and violence with respect to LGBTI persons, in addition to contexts of exclusion that are detrimental to Afro descendants.

3. This is why, when evaluating the human rights situation in Cuba, the IACHR decided to include the country in this Chapter, for considering that it falls under Article 59(6)(a)(1) of the IACHR’s Rules of Procedure, which came into force on August 1, 2013, and which refers to:

a. a serious breach of the core requirements and institutions of representative democracy mentioned in the Inter-American Democratic Charter, which are essential means of achieving human rights, including:

i. there is discriminatory access to or abusive exercise of power that undermines or denies the rule of law, such as systematic infringement of the independence of the judiciary or lack of subordination of State institutions to the legally constituted civilian authority;

4. It also understood that said situation fits under Article 59(6)(c) of the same Rules of Procedure, which establishes:

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

5. In drawing up this report, the Commission has received information from international organizations, civil society, and the Government through the page of the Ministry of Foreign Affairs of Cuba and other official media outlets. It has also drawn on the information obtained through the other mechanisms of protection of the IACHR, such as the system of petitions and cases and precautionary measures, among others. The Commission notes the limited information available on human rights in Cuba.

6. Once it has received the information, the IACHR analyzes it in light of inter-American human rights standards, identifies good governmental practices, and issues recommendations. It also takes this opportunity to describe its activities in 2015 related to Cuba.

7. The Commission is aware of the various changes continuously unfolding in the hemisphere, and the growing challenges States face when it comes to achieving the ideal level of enjoyment of human rights. The IACHR is at the disposal of all actors, especially the authorities of the Government of Cuba, for providing the technical support necessary, and aspires to a greater opening that strengthens the dialogue and makes possible the exchange of best practices in the hemisphere.

8. On November 9, 2015 the Commission sent to the State of Cuba a copy of the preliminary draft of this report in accordance with Articles 59(7) and 59(10) of the Rules with a deadline of November 20, 2015 for comments. The State did not respond.

## II. PRELIMINARY MATTERS

### A. The situation of Cuba before the OAS

9. 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).<sup>1</sup> On June 3, 2009, during its Thirty-Ninth Regular Session, held in *San Pedro Sula* (Honduras), the General Assembly of the Organization of American States (OAS), by Resolution 2438, resolved that Resolution VI adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs ceased to have effect and established 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.”<sup>2</sup>

10. The Seventh Summit of the Americas, held in Panama City, Panama, April 10 and 11, 2015, included the presence of President Raúl Castro Ruz, such that all 35 heads of state and government of the member countries of the Organization of American States were brought together in one place for the first time.<sup>3</sup> On that occasion “Mandates for Action” were agreed upon that address relevant human rights issues<sup>4</sup>, suggesting a scenario that promises to favor the gradual strengthening of the relations of cooperation among the nations of the Americas.

### B. Situation of Cuba before the IACHR

11. The past situation of exclusion of Cuba by the OAS has not kept this Commission from fulfilling its mandate to protect and monitor human rights in that Nation. In this regard, the Commission recognizes “the Cuban State is answerable to the Inter-American Commission in matters that concern human rights” since it “is party to the first international instruments established in the American hemisphere to

<sup>1</sup> The text of Resolution VI can be found in “Eighth Meeting of Consultation of Ministers of Foreign Affairs serving as Organ of Consultation in application of the Inter-American Treaty of Reciprocal Assistance, Punta del Este, Uruguay, January 22 to 31, 1962, Meeting Documents,” Organization of American States, OEA/Ser.F/II.8, doc. 68, pages 17-19.

<sup>2</sup> The text of Resolution AG/RES. 2438 (XXXIX-0/09) can be found at “Thirty-ninth Regular Session, San Pedro Sula, Honduras, June 2 to 4, 2009, Acts and Documents, Volume I,” Organization of American States, OEA/Ser.P/XXXIX-0.2, page 12.

<sup>3</sup> Seventh Summit of the Americas, Panama, 2015. Available: [http://www.summit-americas.org/vii/docs\\_en.htm](http://www.summit-americas.org/vii/docs_en.htm)

<sup>4</sup> Seventh Summit of the Americas, Panama, 2015, “Prosperity with Equity: The Challenge of Cooperation in the Americas,” Mandates for Action. OEA/Ser.E. CA-VII/INF.4/15. April 17, 2015. Available at: [http://www.summit-americas.org/vii/docs/mandates\\_en.pdf](http://www.summit-americas.org/vii/docs/mandates_en.pdf)

protect human rights” and because Resolution VI of the Eighth Meeting of Consultation “excluded the present Government of Cuba, not the State, from participation in the inter-American system.”<sup>5</sup>

12. In the exercise of its competence the Commission has continued monitoring the human rights situation in Cuba through special reports<sup>6</sup>; in Chapter IV of the Annual Report<sup>7</sup>; through the cases system<sup>8</sup>; and by adopting precautionary measures for the purpose of protecting the life and integrity of Cuban citizens. It should be noted that the Cuban State does not answer the communications or decisions of the IACHR. Nonetheless, it is known that the pronouncements made by the Commission have had a positive impact on the persons on whose behalf they have been issued, such as, for example, the issuance of precautionary measures aimed at protecting the rights to life and integrity, the beneficiaries of which have reported having experienced the cessation, sometimes temporary, of the mistreatment, harassment, and attacks that have targeted them.<sup>9</sup>

13. The Commission takes this opportunity to ask for consent to conduct a first on site visit to Cuba, in order to facilitate the exchange of relevant information showing the progress made and challenges faced with respect to human rights.

### C. Process of normalizing relations between Cuba and the United States

14. On December 17, 2014, the governments of Cuba and the United States announced the adoption of several bilateral measures, including the re-establishment of diplomatic relations which had been suspended since January 1961. The United States identified the importance of continuing to support efforts to improve the human rights situation and to bring democratic reform in Cuba.<sup>10</sup> For its part, Cuba said it would be fundamental to consolidate bilateral relations “based on absolute respect for our independence and sovereignty; the inalienable right of every State to choose its political, economic, social, and cultural system without meddling of any kind; and sovereign equality and reciprocity”; and at the same time, it conditioned full re-establishment of relations between the two countries on the lifting of the economic, commercial, and financial embargo, the return of Guantánamo, ending radio and television broadcasts to Cuba, ending programs aimed at destabilizing the Government, and the payment of compensation for the impact that U.S. policies have caused on the Cuban people.<sup>11</sup>

15. In the wake of this historic event, the IACHR welcomed that announcement in a press release of December 18, 2014, considering it “a sign of strengthening of relations between two Member States of the

<sup>5</sup> IACHR, *2002 Annual Report*, Chapter IV, Cuba, paragraphs 3-7. See also IACHR, *2001 Annual Report*, Chapter IV, Cuba, paragraphs 3-7. IACHR, *Seventh Report on the Situation of Human Rights in Cuba*, 1983, paragraphs 16-46.

<sup>6</sup> IACHR, Special Reports from the following years: 1962; 1963; 1967; 1970; 1976; 1979; 1983. At [www.cidh.org](http://www.cidh.org)

<sup>7</sup> IACHR, Chapter IV of the Annual Report for the following years: 1990-1991; 1991; 1992-1993; 1993; 1994; 1996; 1997; 1998; 1999; 2000; 2001; 2002; 2003; 2004; 2005; 2006; 2007, 2008, 2009, 2010, 2011, 2012, 2013 and 2014. At [www.cidh.org](http://www.cidh.org)

<sup>8</sup> IACHR, Report on the Merits No. 47/96, Case 11,436, The Tugboat “13 de marzo,” October 16, 1996; IACHR, Report on the Merits No. 86/99, Case 11,589, Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales, September 29, 1999; IACHR, Report on Admissibility No. 56/04, [Petition 12,127](#), Vladimiro Roca Antúnez et al., October 14, 2004; IACHR, Report on Admissibility No. 57/04, [Petitions 771/03 and 841/03](#), Oscar Elías Biscet et al., October 14, 2004, and its subsequent pronouncement on the merits at IACHR, Report on the Merits No. 67/06, [Case 12,476](#), Oscar Elías Biscet et al., October 21, 2006; IACHR, Report on Admissibility No. 58/04, [Petition 844/03](#), Lorenzo Enrique Copello Castillo et al., October 14, 2004; and its subsequent pronouncement on the merits at IACHR, Report on the Merits No. 68/06, [Case 12,477](#), Lorenzo Enrique Copello Castillo et al., October 21, 2006. At [www.cidh.org](http://www.cidh.org)

<sup>9</sup> IACHR hearing on Situation of human rights defenders in Cuba: 149<sup>th</sup> regular period of sessions, October 29, 2013. Available at: <https://www.youtube.com/watch?v=rSBVTvoEKuM>

<sup>10</sup> The White House, Press Release, Fact Sheet: Charting A New Course On Cuba, December 17, 2014. Available at: <https://www.whitehouse.gov/the-press-office/2014/12/17/fact-sheet-charting-new-course-cuba>

<sup>11</sup> Ministry of Foreign Affairs of Cuba. Special Section Cuba-United States. Statement by the Revolutionary Government, July 1, 2015, available at: <http://cubaeeuu.cubaminrex.cu/articulo/declaracion-del-gobierno-revolucionario>

OAS, and hopes that such measures will benefit the population of both countries.”<sup>12</sup> At the same time, the IACHR stated that it hoped “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,” and as regards the United States, it reiterated its position with respect to the negative impact of the embargo on the Cuban population, and asked to the U.S. Congress to lift that embargo in the context of the renewed dialogue between the two countries.<sup>13</sup> Similarly, in the context of the hearing on the “General human rights situation in Cuba,” held on March 19, 2015, during its 154<sup>th</sup> regular period of sessions, the IACHR once again expressed its appreciation of the progress made in this process and reiterated its concern about the continuation of the embargo.<sup>14</sup>

16. From January 2015 to date, there have been several rounds of negotiations between the U.S. and Cuban delegations. An important step in normalizing relations between Cuba and the United States was the removal of Cuba from the List of State Sponsors of Terrorism drawn up by the U.S. Department of State; it had been on that list since 1982. On April 14, 2015, President Barack Obama informed the United States Congress of his intention to remove Cuba from that list; after the 45-day notice period to Congress expired, the Secretary of State proceeded to remove Cuba from the List of State Sponsors of Terrorism.<sup>15</sup>

17. According to publicly available information, on July 20, 2015, both nations opened their embassies in the respective capital cities; the “interest sections” became embassies.<sup>16</sup> After the meeting between the U.S. Secretary of State and the Cuban Foreign Minister on August 14, 2015, in Havana, it was agreed to establish a bilateral commission aimed at defining the focal issues on the agenda for re-establishing relations between the two countries, agreeing to include new areas such as “environmental protection, health, science, and law enforcement.”<sup>17</sup> Once the Cuba-U.S. Bilateral Commission is formed, its first session will be held in the Cuban capital on September 11, 2015.<sup>18</sup>

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. Has shown equal concern when the United Nations Organization (UN) for the twenty- fourth time, this time with the support of 191 members of the General Assembly , condemned the economic, commercial and financial embargo against Cuba<sup>19</sup>. The inadequacy of

<sup>12</sup> IACHR, IACHR Welcomes Announcement to Re-establish Relations between the United States and Cuba, December 18, 2014. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2014/156.asp>

<sup>13</sup> IACHR, IACHR Welcomes Announcement to Re-establish Relations between the United States and Cuba, December 18, 2014. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2014/156.asp>

<sup>14</sup> Hearing of the IACHR on the General human rights situation in Cuba: 154<sup>th</sup> period of sessions, March 19, 2015. Available at: <https://www.youtube.com/watch?v=MWN0xCRnAIA>

<sup>15</sup> U.S. Department of State, Press Statement: Rescission of Cuba as a State Sponsor of Terrorism, Jeff Rathke, Director, Office of Press Relations, May 29, 2015. Available at: <http://www.state.gov/r/pa/prs/ps/2015/05/242986.htm>

<sup>16</sup> Embassy of the United States of America in Havana, Cuba. Restablecimiento de relaciones diplomáticas entre los Estados Unidos Cuba, July 20, 2015. Available at: [http://photos.state.gov/libraries/havana/231771/PDFs\\_001/Embajada-EEUU-en-La-Habana-Nota-de-Prensa-20-de-julio.pdf](http://photos.state.gov/libraries/havana/231771/PDFs_001/Embajada-EEUU-en-La-Habana-Nota-de-Prensa-20-de-julio.pdf); Ministry of Foreign Affairs of Cuba, Special Section Cuba-United States, Principal moments in the process of reestablishing diplomatic relations between Cuba and the U.S. and the reopening of Embassies. Available at: [http://cubaeeuu.cubaminrex.cu/sites/default/files/info\\_cuba\\_eeuu2\\_0.jpg](http://cubaeeuu.cubaminrex.cu/sites/default/files/info_cuba_eeuu2_0.jpg)

<sup>17</sup> Ministry of Foreign Affairs of Cuba, Special Section Cuba-United States, Cuban Chancellor receives U.S Secretary of States, Havana, August 14, 2015. Available at: <http://cubaeeuu.cubaminrex.cu/article/recibe-canciller-cubano-al-secretario-de-estado-de-los-estados-unidos>

<sup>18</sup> Ministry of Foreign Affairs of Cuba, Special Section Cuba-United States, the first meeting of the Bilateral Commission Cuba-EE.UU. will session, Havana, September 8, 2015. Available at: <http://cubaeeuu.cubaminrex.cu/article/sesionara-la-primera-reunion-de-la-comision-bilateral-cuba-eeuu>

<sup>19</sup> Press release of October 27, 2015 in nytimes.com: <http://www.nytimes.com/aponline/2015/10/27/world/americas/ap-un-untied-nations-cuba-embargo.html? r=0>

the measure and its disproportionate impact on the general population, has justified its examination from different perspectives and forums and meeting, for example, the Report of the General Secretariat of the UN 2006 where, counting with the support of the different organs and agencies of the Organization, the need to end the referral But by indiscriminately causing immeasurable damage to its population studied<sup>20</sup>. Amnesty International, meanwhile, was found as yet, directly and indirectly impacted the enjoyment of the right to health of the Cuban people when, based on specialized studies by the American Association for World Health (AAWH), the World Organization Health (WHO), the Fund of the United Nations Children's Fund (UNICEF: United Nations Children's Fund) Programme, United Nations Development (UNDP) identified problems of malnutrition, particularly in children / as and women, deficiencies in water quality, limited access to medicines, medical supplies and exchange of scientific and medical information. To illustrate the challenges faced in the area of health due to questioned, however, he referred to the limited access to new drugs for the treatment of psychiatric disorders; the inability of the National Institute of Oncology and Radiology of acquiring positron emission tomography / computed tomography (PET: Positron Emission Tomography / CT: Computerized tomography), manufactured by three (3) companies that are not authorized to negotiate with Cuba; delay, and in some cases cancellation of orders processed by UNICEF, in conjunction with other programs, to purchase syringes for vaccination programs in Cuba, or antiretroviral drugs, being prevented providers negotiate with Cuba , having to resort to more distant markets, and therefore more costly; and the non-renewal in August 2007 license to the NGO Population Services International (PSI) to export condoms to Cuba with the purpose of distribution to groups at high risk for HIV; among other situations.<sup>21</sup>

19. Due to the growing concern shown by the different organs of the human rights system of the UN and the international community at large , regarding the negative impact of sanctions , including unilateral coercive measures of nature, in the enjoyment of human rights by persons within the jurisdiction of the State to which extent the United Nations Human Rights Council established a new mandate at the end of 2014<sup>22</sup>, Assuming the May 1, 2015 Mr. Idriss Jazairy as First Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights (hereafter "Special Rapporteur on coercive measures"), who in his recent report of 10 August 2015 concluded that<sup>23</sup>:

[t]he objectives of the measures imposed on countries should be limited to changing the behavior of the target country only if it violates a treaty, pact or agreement, or to show disapproval of the international community regarding the behavior of the target country. The measures should be limited in time and, [...] Must be combined with a number of other complementary initiatives, such as incentives and negotiations, to increase the chances of success. [...] However, if the impact of unilateral coercive measures on human rights of the most vulnerable groups are case if there are no evident progress in achieving the stated objective, the legitimacy of these measures will be questioned, however much they may provide a strong argument in support of the action<sup>24</sup>.

20. Referring, the Special Rapporteur on coercive measures, the adverse impact of unilateral coercive measures on the enjoyment of the right to attain an adequate standard of life and health,

<sup>20</sup> UN General Assembly. Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba. Report of the Secretary-General. August 8, 2006. Available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/61/132&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/61/132&Lang=E)

<sup>21</sup> Amnesty International. The US Embargo Against Cuba. Its impact on economic and social rights. 2009. Disponible (inglés) en: <http://www.amnestyusa.org/pdfs/amr250072009eng.pdf>

<sup>22</sup> UN Human Rights Council. Resolution approved by the Human Rights Council 27/12. Human rights and unilateral coercive measures, October 3, 2014.

<sup>23</sup> For more information on the Special Rapporteur on the negative impact of the unilateral coercive measure in the enjoyment of human rights, visit <http://www.ohchr.org/EN/Issues/UCM/Pages/SRCoerciveMeasures.aspx>

<sup>24</sup> UN Human Rights Council. Report of the Special Rapporteur on the negative impact of the unilateral coercive measures in the enjoyment of human rights, Idriss Jazairy. August 10, 2015.

referred to Cuba as an example of how the embargo imposed by the USA It has resulted in restrictions on access to medicines, new research and technology available in the area of health, food, chemicals for water treatment and electricity.<sup>25</sup> Other sectors have also mentioned the increase of the state budget to purchase items needed to guarantee the right to free education constitutionally protected<sup>26</sup>, and limitations on cultural exchange<sup>27</sup>.

21. Notwithstanding the above, the Commission finds that the economic embargo imposed on Cuba does not exempt the State from complying with its international obligations nor does it excuse the non-observance of the American Declaration of the Rights and Duties of Man (hereinafter “American Declaration”) described in this report.

### III. HUMAN RIGHTS SITUATION IN CUBA

22. Having examined the information received, the Commission will now present the most relevant human rights-related events reported from late 2014 to date, in particular with a view to pointing out the obstacles that stand in the way of the full enjoyment of the rights provided for in the American Declaration, which the Cuban State is committed to respect in relation to all persons under its jurisdiction, and also recognizing the advances that have been made in this regard.

#### A. General human rights situation

23. As regards the human rights situation in Cuba, the Commission has consistently pointed out that the restrictions on political rights, the right to association, the right to freedom of expression and dissemination of thought, the lack of independence of the judicial branch, and the restrictions on the freedom of movement and residence have, for decades, constituted a permanent and systemic situation of violation of the human rights of its inhabitants.

24. In the course of 2015, available information suggests that the stage has already warned not changed substantially. In fact, the Commission was informed at the hearing about the “General situation of human rights in Cuba”, which since December 2014, with announcements of normalization of relations between the US and Cuba, would have increased the repression of the Cuban population<sup>28</sup> Because of that that process would be giving legitimacy and force the Cuban regime. The scenario described is increasing its support of summary arrests documented in the ground for civil, such as the Cuban Human Rights Observatory society identified 740 arrests occurred only in September<sup>29</sup> 894 as well as arbitrary detentions reported by the Press Information Center Talk (CIHPRESS) during the same period<sup>30</sup> or 293 Damas de Blanco likewise

<sup>25</sup> UN General Assembly. Human rights and unilateral coercive measures. Note by the Secretary-General. August 28, 2015. Available at: <http://www.ohchr.org/Documents/Issues/UCM/A-70-345.pdf>

<sup>26</sup> Press release of October 24, 2015 in juventudrebelde.cu: *Bloqueo provoca pérdidas millonarias a la educación cubana*. Available in Spanish only: <http://www.juventudrebelde.cu/cuba/2015-10-24/bloqueo-provoca-perdidas-millonarias-a-la-educacion-cubana/>

<sup>27</sup> Press release of October 25, 2015 in juventudrebelde.cu: *El absurdo pentagrama de un cerco*. Available in Spanish only: <http://www.juventudrebelde.cu/cuba/2015-10-25/el-absurdo-pentagrama-de-un-cerco/>

<sup>28</sup> IACHR, Hearing about the “General human rights situation in Cuba,” March 19, 2015, 154<sup>th</sup> regular period of sessions. Video of the hearing available at: <http://www.oas.org/es/cidh/multimedia/sesiones/154/default.asp>

<sup>29</sup> Viewed on October 5, 2015 in observacuba.org: *Observatorio Cubano de Derechos Humanos denuncia 740 detenciones arbitrarias en septiembre*. Available at: <http://observacuba.org/observatorio-cubano-de-derechos-humanos-denuncia-740-detenciones-arbitrarias-en-septiembre/>

<sup>30</sup> Centro de Información Hablemos Press, *Cuba: Informe sobre detenciones arbitrarias (894) y otros abusos cometidos en Cuba en Septiembre de 2015*. Available in Spanish at: <http://www.cihpress.com/2015/10/informe-sobre-detenciones-arbitrarias.html>



arrested in September<sup>31</sup>, and the 142 members of the Patriotic Union of Cuba (UNPACU) detained in various parts of the country only during the three days of the visit of Pope Francisco made in the same month.<sup>32</sup>

25. The visit by Pope Francis to Cuba in September from 19 to 22 was favorable for the pardon decreed by the Council of State in favor of 3,522 persons deprived of liberty; in principle, those persons convicted of crimes against state security, among others, were not included in the pardon.<sup>33</sup> At the same time, the Commission observed how the state security agencies were said to be arbitrarily restricting many fundamental rights in the case of groups of activists and dissidents who were kept from participating in the activities organized on occasion of the visit.

## **B. Particular human rights situations**

### **1. Right to vote and to participate in government**

26. One of the main criteria for including Cuba in Chapter IV of the Annual Report has been the lack of elections in line with internationally accepted standards, which violates the right to political participation enshrined in Article XX of the American Declaration, which provides that:

Article XX – Right to vote and to participate in government. 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.

27. Political rights are of fundamental importance and are closely related to other rights which, on being exercised fully, make possible the adequate operation of a democratic and plural system. The exercise of political rights includes a wide array of activities which, individually or collectively, aspire to contribute to the conduct of public affairs. “The right to vote is an essential element for the existence of a democracy and a way in which citizens freely express their wishes and exercise the right to participate in government. This right implies that citizens can decide directly and elect freely, in conditions of equality, those who will represent them in decision-making in public affairs.”<sup>34</sup> At the same time, political participation through the exercise of the right to be elected presupposes that citizens can run for office in equal conditions, and that they can hold public office subject to election if they obtain the number of votes required to be elected.

28. By adopting the Inter-American Democratic Charter the OAS member States recognize that representative democracy is the system of government with which the stability, peace, and development of

<sup>31</sup> *Damas de Blanco*. October 10, 2015. *Informe de Represión del Movimiento Damas de Blanco Laura Pollan* (September 2015). Available in Spanish at: <http://www.damasdeblanco.org/index.php/derechos-humanos/2125-informe-de-represion-del-movimiento-damas-de-blanco-laura-pollan-septiembre-de-2015>

<sup>32</sup> Viewed in unpacu.org: <http://www.unpacu.org/listado-de-142-detenido-de-unpacu-en-la-visita-del-papa-francisco/>

<sup>33</sup> Press article of September 12, 2015 at internacional.elpais.com: *Cuba amnistiará a 3.500 presos por la visita del papa Francisco*. Available at: [http://internacional.elpais.com/internacional/2015/09/11/actualidad/1441971003\\_108303.html](http://internacional.elpais.com/internacional/2015/09/11/actualidad/1441971003_108303.html); see also, article at [papafranciscoencuba.cubaminrex.cu](http://papafranciscoencuba.cubaminrex.cu): *Acordó Consejo de Estado indultar a sancionados en ocasión de la visita de su Santidad*. Available at: <http://papafranciscoencuba.cubaminrex.cu/articulos/acuerdo-consejo-de-estado-indultar-sancionados-en-ocasion-de-la-visita-de-su-santidad>

<sup>34</sup> IACHR, *1990-1991 Annual Report*, p. 557; IACHR, *Second Report on the Situation of Human Rights in Peru*, 2000, Chapter IV, Political Rights, A.1. See also 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.

the region can be attained<sup>35</sup>, this being fundamental in order to achieve the full exercise of fundamental rights.<sup>36</sup> Article 3 of the Inter-American Charter established:

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.

29. Both the Declaration and the Democratic Charter reflect a broad conception of representative democracy which, as such, rests on the sovereignty of the people and in which the functions by which power is exercised are performed by people chosen in free elections and representative of the popular will in a context of free expression and circulation of ideas, even those critical of the government. According to the Commission, elections in Cuba lack of plurality and independence and the absence of free access to various sources of information.

30. The Constitution of the Republic of Cuba, at Article 1, defines the State “as a unitary and democratic Republic”<sup>37</sup>; its sovereignty “is vested in the people, from which all the power of the State emanates. That power is exercised directly or through the Assemblies of People’s Power and other organs of the State derived from them, in the manner and according to the rules set by the Constitution and the laws.”<sup>38</sup> Article 43 of the Constitution enshrines the right of all citizens to have access to positions and employment in the State and the public administration, without discrimination, based on their merits and capabilities, and it adds at Article 68(a) of the same instrument that all the representative organs of power of the State are elective and renewable.

31. Law No. 72 of 1992, the Electoral Law, regulates the procedures for electing the delegates to the municipal and provincial assemblies, and the legislators to the National Assembly of People’s Power<sup>39</sup>. At Title I, Chapters II and III, of the same Law, “the right of the citizens to vote and to be elected” is regulated.<sup>40</sup> Law No. 89 of 1999, Law on revoking the popular mandate, regulates the possible renewal of the mandate conferred, provided for in Article 68 of the Constitution.

32. The State has said that “Cuba’s democratic system is based on the principle of ‘government of the people, by the people and for the people,’ adding that the “The Cuban people participate in the exercise and active control of Government through its political and civil institutions and in the framework of its

<sup>35</sup> Inter-American Democratic Charter. Twenty-eighth Special Session. Approved at the first plenary session on September 11, 2001. Lima, Peru. Available at: [http://www.oas.org/charter/docs/es/resolucion1\\_es.htm](http://www.oas.org/charter/docs/es/resolucion1_es.htm)

<sup>36</sup> Inter-American Democratic Charter, Article 7. Twenty-eighth Special Session. Approved at the first plenary session on September 11, 2001. Lima, Peru. Available at: [http://www.oas.org/charter/docs/es/resolucion1\\_es.htm](http://www.oas.org/charter/docs/es/resolucion1_es.htm)

<sup>37</sup> Constitution of the Republic of Cuba, Article 1, proclaimed February 24, 1976, and its amendments approved by the National Assembly of People’s Power at the Eleventh Regular Session of the Third Legislature, held July 10, 11 and 12, 1992. Available at: <http://www.cuba.cu/gobierno/cuba.htm>

<sup>38</sup> Constitution of the Republic of Cuba, Article 3, proclaimed February 24, 1976, and its amendments approved by the National Assembly of People’s Power at the Eleventh Regular Session of the Third Legislature, held July 10, 11 and 12, 1992. Available at: <http://www.cuba.cu/gobierno/cuba.htm>

<sup>39</sup> Law No. 72, Electoral Law, adopted October 29, 1992. Available at: <http://elecciones.discovercubaus.com/wp-content/uploads/2015/04/LEY-NO.-72-LEY-ELECTORAL-TÍTULO-PRELIMINAR.pdf>

<sup>40</sup> Law No. 72, Electoral Law, adopted October 29, 1992. Available at: <http://elecciones.discovercubaus.com/wp-content/uploads/2015/04/LEY-NO.-72-LEY-ELECTORAL-TÍTULO-PRELIMINAR.pdf>



laws.”<sup>41</sup> In addition, it has said that the restrictions imposed by law on the enjoyment of some political rights in Cuba have been the minimum essential for enjoying the protection of the right to self-determination, peace, and life of the whole people, as a response to the growing anti-Cuban aggressiveness of the Empire.<sup>42</sup>

33. Taking into account the State position, and even though the electoral legislation does not expressly require a political affiliation to the Cuban Communist Party, in practice there is not a genuine participation of different sectors. The dissident voice, and its attempt to contribute in running the country, is drowned with the overwhelming presence of a single party, that in accordance to the Constitution “organizes and guides the common effort toward the goals of the construction of socialism and the progress toward a communist society”<sup>43</sup>, the prohibition of association for political purposes and the ongoing harassment faced for those who thinks differently.

34. In the year under review, the Commission observes that in April partial elections were held in which the delegates were elected to the Municipal Assemblies of People’s Power. On that occasion the National Electoral Commission (hereinafter CEN: *Comisión Electoral Nacional*) reported the participation of 7,553,000 voters, equivalent to 88.30%, in the first round, held on April 19, 2015.<sup>44</sup> In the second round, held on April 26, 2015, of the 1,200,000 citizens called to vote, 941,041 had voted when the polls closed.<sup>45</sup> The low abstention rate has been a constant reported by the CEN in Cuban elections, even though exercising the right to vote is not compulsory.<sup>46</sup>

35. According to information provided by the Permanent Mission of Cuba to the organs of the United Nations in response to a questionnaire sent to the member states, Cuba reports having made major strides aimed and ensuring participation in public and political life in equal conditions. In this respect, it shows an increase in women’s participation in management positions. For example, it indicates:

In 1996, women leaders accounted for 30.1% of all leadership positions in the country; by the year 2000 this figure increased to 33.4%; and as of yearend 2012 it reached 46.0%.

In the 2012-2013 elections for presidents, vice-presidents, and secretaries at the provincial level, women account for 60% whereas at the municipal level they are 53.17%.

In the eighth legislature of the National Assembly of People’s Power (2012-2017) women’s legislative representation reached 48.86 %, above the world average of 20%. For this term, 13 women were elected members of the Council of State (41.9%), and of the five vice-presidents of this organ, two are women. In the leadership of the National Assembly, of three leadership positions, two are held by women.<sup>47</sup>

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<sup>41</sup> National report submitted by the State of Cuba; United Nations, Human Rights Council, Working Group on the Universal Periodic Review, Fourth session, Geneva, February 2, to 13, 2009, A/HRC/WG.6/4/CUB/1; November 4, 2008, para. 8.

<sup>42</sup> In Chapter 9, “Libro Blanco del 2007,” published at the official web page of the Ministry of Foreign Affairs of Cuba.

<sup>43</sup> Constitution of the Republic of Cuba (1992). Article 5.

<sup>44</sup> Note of April 20, 2015 in Granma.cu: *Más de siete millones de cubanos ejercieron su derecho al voto*, available at: <http://www.granma.cu/elecciones-en-cuba-2015/2015-04-20/mas-de-siete-millones-de-cubanos-ejercieron-su-derecho-al-voto>

<sup>45</sup> Note of April 27, 2015 in granma.cu: *Más de 1 100 circunscripciones fueron a segunda vuelta*, available at: <http://www.granma.cu/elecciones-en-cuba-2015/2015-04-27/mas-de-1-100-circunscripciones-fueron-a-segunda-vuelta>

<sup>46</sup> Note at ecured.cu: *Sistema electoral Cubano*. Available at: [http://www.ecured.cu/index.php/Sistema\\_electoral\\_cubano](http://www.ecured.cu/index.php/Sistema_electoral_cubano)

<sup>47</sup> Note No. 196/2015 directed by the Republic of Cuba, Permanent Mission to the United Nations in Geneva and the international organizations based in Switzerland, March 10, 2015, p. 5.

36. As reported in the 2012 Annual Report, Adela Hernández was the first trans person elected as a delegate to the Municipal Assembly of People's Power of Caibarién.<sup>48</sup> The Commission celebrates the gains that have been reported, and supports the adoption of additional measures that foster the plural and diverse participation of all Cuban citizens.

37. The Commission is aware that under international law there is no single model for an electoral system, and in particular, for how citizens exercise the right to vote and to be elected<sup>49</sup>, for these must 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."<sup>50</sup> The discretion that States have to design their electoral systems finds its limits in the principles of legality, necessity, and proportionality, otherwise one would run the risk of rendering the essential core of the right illusory.<sup>51</sup>

38. That is why this Commission, on observing the persistent lack of plurality and independence and absence of a framework for free access to various sources of information, considers that undue restrictions continue to be in place that limit the right to political participation of the Cuban people.

## 2. Activism and dissidence

39. In the period covered by this report, the obstacles that dissidents, human rights defenders, and independent journalists face when they express their thinking, or defend and promote respect for human rights have persisted. Harassment and threats, followed by attacks and brief arbitrary detentions, seek to discourage the work of defending fundamental rights and to maintain a homogenized line of thought and expression.

### a. Right to liberty and integrity

40. According to the information received in the period monitored, the Government continued to use a tactic of political repression based on systematic arrests for several hours or a few days, threats, and other forms of harassment directed against political opponents, human rights defenders, and independent journalists.<sup>52</sup> Those practices have also been described by Amnesty International in its 2014/2015 report; they are identified as a tactic "to silence dissent."<sup>53</sup>

41. To monitor the situation, the Commission relies on records kept by non-governmental organizations, as there is no official data available. In this context, the Commission takes note of what was reported by the *Observatorio Cubano de Derechos Humanos*, whose members documented 913 cases of arbitrary detentions during the month of August, 462 of which were in the province of Havana<sup>54</sup> to which are

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<sup>48</sup> IACHR, *2012 Annual Report*, Chapter IV, Cuba, para. 133. See also: Press article of May 27, 2015 in the *washingtonblade.com*: *Amid change, LGBT Cubans face lingering challenges*. Available at: <https://www.washingtonblade.com/2015/05/27/amid-change-lgbt-cubans-face-lingering-challenges/>

<sup>49</sup> 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, para. 162.

<sup>50</sup> 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, para. 166.

<sup>51</sup> I/A Court H.R., *Case of Yatama v. Nicaragua*. Judgment of June 23, 2005. Series C No. 127, para. 206.

<sup>52</sup> For more information, see section on Freedom of expression and human rights defenders.

<sup>53</sup> Amnesty International, Report 2014/15, Republic of Cuba. Available at: <https://www.amnesty.org/es/countries/americas/cuba/report-cuba/>

<sup>54</sup> Note viewed September 2, 2015 at *observacuba.org*: *Informe de Violaciones de Derechos Humanos Agosto 2015*, available at: <http://observacuba.org/informe-de-violaciones-de-derechos-humanos-agosto-2015/>

added 740 that took place during September<sup>55</sup>. The *Comisión Cubana de Derechos Humanos y Reconciliación Nacional* (CCDHRN) has also been documenting such arrests since 2010; during 2015, for example, monthly records have been kept on politically-motivated arbitrary arrests, showing 1,788 in January; 492 in February; 610 in March; 338 in April<sup>56</sup>; and 641 in May. They conclude that in May there were “almost twice the number recorded in April and the highest figure for such arrests in the last ten months.”<sup>57</sup> According to a report by the CIHPRESS, 894 arbitrary detentions reported in September<sup>58</sup>, surpassing the 782 that occurred in August.<sup>59</sup>

42. In the course of this year, information was also received on alleged harassment, attacks, and detentions of members of the group *Damas de Blanco* (Ladies in White). The Ladies in White movement is made up of wives, mothers, sons and daughters of men and women who are imprisoned in Cuba for motives they consider unjust. It was created in 2003 after a “massive wave of arrests against the peaceful dissidence”; they call for the release of the political prisoners.<sup>60</sup> According to what was reported, the authorities restrained the Ladies in White using metal handcuffs for up to several hours, which on some occasions can cause lacerations and displaced shoulders. In addition, while detained they are generally not allowed to drink water or eat food provided by family members. And there were massive detentions in different months and provinces, as follow: January, 40<sup>61</sup>; February, 58<sup>62</sup>; March, 88<sup>63</sup>; April, 147<sup>64</sup>; May, 239<sup>65</sup>; June, 115<sup>66</sup>; July,

<sup>55</sup> Viewed on October 5, 2015 in observacuba.org: *Observatorio Cubano de Derechos Humanos denuncia 740 detenciones arbitrarias en septiembre*. Available in Spanish at: <http://observacuba.org/observatorio-cubano-de-derechos-humanos-denuncia-740-detenciones-arbitrarias-en-septiembre/>

<sup>56</sup> Report of the Comisión Cubana de Derechos Humanos y Reconciliación Nacional, Cuba: *Algunos Actos de Represión Política en el mes de mayo de 2015*, June 3, 2015. Available at: <http://ccdhrn.org/wp-content/uploads/OVERVIEW-MAYO-2015.pdf>

<sup>57</sup> Report of the Comisión Cubana de Derechos Humanos y Reconciliación Nacional, Cuba: *Algunos Actos de Represión Política en el mes de mayo de 2015*, June 3, 2015. Available at: <http://ccdhrn.org/wp-content/uploads/OVERVIEW-MAYO-2015.pdf>

<sup>58</sup> Informe del Centro de Información Hablemos Press, Cuba: *Informe sobre detenciones arbitrarias (894) y otros abusos cometidos en Cuba en Septiembre de 2015*. Disponible en: <http://www.cihpress.com/2015/10/informe-sobre-detenciones-arbitrarias.html>

<sup>59</sup> Report of the Centro de Información Hablemos Press, Cuba: *Informe de detenciones arbitrarias de agosto de 2015*. Available at: <http://www.miscelaneasdecuba.net/web/Article/Index/55ef3ada3a682e0ba848c099#VfAzV3IOVpg>

<sup>60</sup> *Damas de Blanco*. April 1, 2003. *¿Quiénes son las Damas de Blanco?*

<sup>61</sup> *Damas de Blanco*. January 20, 2015. *Informe Semanal del Movimiento Damas de Blanco, January 18, 2015*; *Damas de Blanco*. January 13, 2015. *Informe Semanal del Movimiento Damas de Blanco, January 12, 2015*; *Damas de Blanco*. January 6, 2015. *Informe Semanal del Movimiento Damas de Blanco, January 5, 2015*; *Damas de Blanco*. January 28, 2015. *Informe Semanal del Movimiento Damas de Blanco (Sunday, January 25, 2015)*; *Damas de Blanco*. June 10, 2015. *Informe de represión correspondiente al mes de mayo 2015*.

<sup>62</sup> *Damas de Blanco*. February 4, 2015. *Informe Semanal del Movimiento Damas de Blanco, February 1, 2015*; *Damas de Blanco*. February 25, 2015. *Informe Semanal del Movimiento Damas de Blanco (February 24, 2015)*; *Damas de Blanco*. June 10, 2015. *Informe de represión correspondiente al mes de mayo 2015*.

<sup>63</sup> *Damas de Blanco*. April 2, 2015. *Informe Semanal del Movimiento Damas de Blanco (March 22, 2015)*; *Damas de Blanco*. April 2, 2015. *Informe Semanal del Movimiento Damas de Blanco (March 29, 2015)*; *Damas de Blanco*. June 10, 2015. *Informe de represión correspondiente al mes de mayo 2015*.

<sup>64</sup> *Damas de Blanco*. April 21, 2015. *Informe semanal del Movimiento Damas de Blanco Laura Pollán, April 20, 2015*; *Damas de Blanco*. May 12, 2015. *Informe Damas de Blanco (April, 2015)*; *Damas de Blanco*. June 10, 2015. *Informe de represión correspondiente al mes de mayo 2015*.

<sup>65</sup> *Damas de Blanco*. May 12, 2015. *Informe Semanal del Movimiento Damas de Blanco Laura Pollán (May 3, 2015)*; *Damas de Blanco*. May 12, 2015. *Informe Semanal del Movimiento Damas de Blanco Laura Pollán (May 10, 2015)*; *Damas de Blanco*. May 27, 2015. *Informe Semanal del Movimiento Damas de Blanco Laura Pollán, May 25, 2015*; *Damas de Blanco*. June 3, 2015. *Informe del Movimiento Damas de Blanco "Laura Pollán" (May 2015)*; *Damas de Blanco*. June 10, 2015. *Informe de represión correspondiente al mes de mayo 2015*.

<sup>66</sup> *Damas de Blanco*. June 3, 2015. *Informe Semanal del Movimiento Damas de Blanco Laura Pollán (June 1, 2015)*; *Damas de Blanco*. June 15, 2015. *Informe Represivo (Sun., June 7, 2015)*; *Damas de Blanco*. June 18, 2015. *Informe del décimo domingo represivo del DSE contra el Movimiento Damas de Blanco Laura Pollán*; *Damas de Blanco*. July 5, 2015. *Informe del 11no. domingo represivo del DSE contra el Movimiento Damas de Blanco Laura Pollán*.

270; August, 300<sup>67</sup>, and September, 293<sup>68</sup>. On several occasions, by order of alleged agents from the State Security, unknown persons smeared asphalt and excrement at the front of their homes. Others, such as Digna Rodríguez, on February 22, were said to have been attacked by an unknown person who “poured a pail of asphalt in her face.”<sup>69</sup>

43. The Commission, on learning of the situation described above, granted precautionary measure 264/13 to benefit the Ladies in White; it was broadened on May 12, 2014. Despite the precautionary measure being in force, the Commission observes an increase in the incidents of violence directed at members of the organization. This includes situations such as that of Sonia Garro Alfonso, who on August 8 was said to have been harassed, beaten to the point of sustaining a wound in the head that required medical attention, and then detained 24 hours; or that of Anai Penalba Subit, who was said to have been kicked on the floor by alleged paramilitary groups and agents of the State Security offices on Sunday, August 9, in Havana; and Yurami Rodríguez, Laudelina Caballero Chacón, Yorosilaidis Spek, Mareysi Columbie López, Laidis Favier, Celina Osoria Claro, and Margiolis Planes Calderín, who on August 20 were said to have been harassed, beaten, and detained<sup>70</sup>. Those accounts reflect the imminent risk faced by those who make up the organization. This risk was heightened during the visit of Pope Francis to Cuba, when members of the Ladies in White movement reported dozens of detentions and house arrests that kept them from participating in the various activities that had been organized on occasion of that visit.<sup>71</sup>

44. The Commission notes that not only are the members of the movement the target of attacks, harassment, and arrests, but so are those who sympathize with the movement’s positions. This is the case of approximately 20 members of the Cuban opposition who were arrested on August 7 at the Havana airport when they were going to receive the leader of Ladies in White, Berta Soler, and the opposition figures Rodiles and Jorge Luis Pérez “Antúnez” on their return from Miami.<sup>72</sup>

45. At the hearing held at its 154<sup>th</sup> regular period of sessions on the “General Human Rights Situation in Cuba”, the Commission continued to receive information on the arbitrary detentions, threats, and violent acts directed against members of the UNPACU.<sup>73</sup> These reports are corroborated by information that is available to the public that shows, for example, the arrest of 20 members of the UNPACU on February 26, 2015, along with three locals who had protested against the arbitrary action of the Ministry of Interior Special Forces.<sup>74</sup> The Commission also takes note of the conviction of and prison sentence imposed on two members of the UNPACU for pre-criminal dangerousness (*peligrosidad predelictiva*).<sup>75</sup> Similarly, on September 12 the

<sup>67</sup> Communication received on September 2, 2015. Damas de Blanco. Informe de represión correspondiente al mes de agosto del 2015.

<sup>68</sup> *Damas de Blanco*. 10 de octubre de 2015. Informe de Represión del Movimiento Damas de Blanco Laura Pollan (Septiembre de 2015). Disponible en: <http://www.damasdeblanco.org/index.php/derechos-humanos/2125-informe-de-represion-del-movimiento-damas-de-blanco-laura-pollan-septiembre-de-2015>

<sup>69</sup> Damas de Blanco. February 25, 2015. [Informe Semanal del Movimiento Damas de Blanco \(February 24, 2015\)](#).

<sup>70</sup> Communication received September 2, 2015. Damas de Blanco. Informe de represión correspondiente al mes de agosto del 2015.

<sup>71</sup> Press article of September 20, 2015 at [elnuevoherald.com](http://elnuevoherald.com): *Disidentes denuncian decenas de detenciones desde el inicio de visita del Papa a Cuba*, available at: <http://www.elnuevoherald.com/noticias/mundo/america-latina/cuba-es/article35895921.html>

<sup>72</sup> Cubanet. August 8, 2015. [Detenidos opositores en aeropuerto de La Habana](#).

<sup>73</sup> IACHR hearing on the General human rights situation in Cuba: 154<sup>th</sup> period of sessions, March 19, 2015. Available at: <https://www.youtube.com/watch?v=MWN0xCRnAIA>

<sup>74</sup> Article of February 27, 2015 at [unpacu.org](http://unpacu.org): *Cuba: 23 nuevos detenidos ayer día 26. El régimen castrista persiste en violar derechos y libertades fundamentales*, available at: <http://www.unpacu.org/cuba-23-nuevos-detenidos-ayer-dia-26-el-regimen-castrista-persiste-en-violar-derechos-y-libertades-fundamentales/>.

<sup>75</sup> Note August 21, 2015 in [cubademocraciayvida.org](http://cubademocraciayvida.org): *El régimen condena a dos activistas de la UNPACU por ‘peligrosidad predelictiva’. Ya son 21 los miembros de UNPACU encarcelados por razones políticas*, available at: <http://cubademocraciayvida.org/web/article.asp?artID=29242>

general coordinator of the UNPACU was arrested in Havana along with at least 40 Ladies in White and a dozen opposition figures, including former political prisoners of the Group of 75, José Daniel Ferrer and Ángel Moya, the husband of Ladies in White leader Berta Soler and director of the critical forum “Estado de SATS”, Antonio González Rodiles.<sup>76</sup> Members UNPACU also documented the arrest of some of its members to approach the Pope Francisco pretend and pretend to denounce political repression<sup>77</sup> recorded a total 142 detainees in various sectors of the country.<sup>78</sup>

46. Rolando Yusef Pérez Morera, member of the *Partido Unión por Cuba Libre*, was arrested on May 2 by the Department of State Security (DSE: *Departamento de Seguridad del Estado*), accused of attacking the authorities, and released on bond on June 18, after a 46-day hunger strike. In 2014 he had been arrested and assaulted, purportedly to keep him from participating in a party meeting.<sup>79</sup> Eight more activist members of that party were arrested and handcuffed for five hours on July 7. They were then abandoned in a rural area south of Havana to prevent them from holding the regular party meeting.<sup>80</sup>

47. A similar fate has been faced by human rights defenders of the rights of LGBTI persons; as they do not share the official position they are subject to arbitrary arrest, workplace harassment, and social isolation.<sup>81</sup> It is argued that the organizations not recognized by the State, or by the Cuban National Center for Sexual Education (CENESEX: *Centro Nacional de Educación Sexual*), face major obstacles doing their work to defend the rights of the LGBT population in Cuba.<sup>82</sup> The IACHR has already said that the situation of human rights defenders in Cuba is marked by adverse conditions for defending rights, as they are subjected to conditions of risk due to their activity.<sup>83</sup> The IACHR urges the State to ensure the participation of defenders who are not considered to share the political line of the government or of the CENESEX in public policy matters related to the rights of LGBT persons in the country, and to ensure them access to forums for dialogue and social debate. During the hearing on LGBT rights in Cuba held on October 19, 2015 at the headquarters of the IACHR, commissioners stressed that there should not be any retaliation for his defense activity and participation in the hearing.<sup>84</sup>

48. The Commission was also informed of the arbitrary detention of human rights activist Hugo Damián Prieto Blanco on October 25, 2015, who would find facing charges of public disorder related to public and peaceful demonstration in which 22 have participated October 2015, in which the release of human rights defenders detained during the Pope's visit to Cuba was required.<sup>85</sup> Geovany Laudelino Izaguirre

<sup>76</sup> Cubanet. September 13, 2015. [Arrestan a unas 40 damas de blanco y a una docena de disidentes en La Habana.](#)

<sup>77</sup> Article of September 20, 2015 at [elnuevoherald.com](#): *Tres opositores detenidos en misa del Papa en Cuba*, available at: <http://www.elnuevoherald.com/noticias/mundo/america-latina/cuba-es/article35892627.html>

<sup>78</sup> Viewed in unpacu.org: <http://www.unpacu.org/listado-de-142-detenedos-de-unpacu-en-la-visita-del-papa-francisco/>

<sup>79</sup> Cubanet. July 1, 2015. [Activista estuvo 46 días en huelga de hambre](#); Diario de Cuba. June 21, 2015. [El régimen libera a un activista tras 46 días en huelga de hambre](#); Misceláneas de Cuba. January 29, 2014. [Arrestados numerosos opositores.](#)

<sup>80</sup> Comisión Cubana de Derechos Humanos y Reconciliación Nacional. July 2015. [Cuba: Algunos actos de represión política en el mes de julio de 2015.](#)

<sup>81</sup> The Washington Blade, “[LGBT advocate challenges Cuban human rights record](#),” May 26, 2015. The Washington Blade, “[Amid change LGBT Cubans face lingering challenges](#),” May 27, 2015.

<sup>82</sup> “Informe de derechos humanos sobre orientación sexual; identidad de género y situación de las personas con VIH-sida en Cuba 2015,” submitted to the IACHR in September 2015.

<sup>83</sup> IACHR, 2014 Annual Report, Chapter IV: Cuba, para. 270.

<sup>84</sup> Public Hearing about the “Human Rights situation of LGBTI persons in Cuba” held on October 19, 2015. Audio and video available at [www.cidh.org](http://www.cidh.org).

<sup>85</sup> Front Line Defenders. Cuba: *Continúa la detención arbitraria del defensor de derechos humanos Hugo Damián Prieto Blanco en medio a detenciones arbitrarias y acoso judicial de manifestantes pacíficos*, November 18, 2015.



Rodriguez Hernandez and Mendoza also were reportedly arrested on November 5, 2015 and, after being subjected to a summary trial, had been sentenced to six months in prison, on the next day.<sup>86</sup>

49. The IACHR observes how generalized intolerance to the dissident person and/or activist is progressively scaling into grave acts of violence, as it is the case of Shirley Ávila León, whom the Commission granted precautionary measures in order to protect her life and personal integrity considering that “given her work as human rights defender, she is being targeted with retaliations materialized in acts of violence. These circumstances allegedly reached their top on May 24, 2015 when [the precautionary measures beneficiary] was allegedly attacked with a machete, resulting in her left hand loss and severe injuries in her knees and clavicle”<sup>87</sup>.

50. The Commission has also received information about the reprisals against human rights rights defenders who present the human rights situation of Cuba before international organizations. One clear example stems from the IACHR resolution on the precautionary measure issued in favor of Cubalex, Cubalex, which highlights the concern expressed by several United Nations experts with respect to the acts of the acts of intimidation and reprisal said to have been suffered by members of the organization after having participated in the 150<sup>th</sup> session of the CEDAW Committee, in addition to having documents and other and other materials confiscated upon their return.<sup>88</sup>

51. Hunger strikes continue to be a method for bringing pressure on the Cuban Government. According to various media reports, Emilio García Moreira and Alexander Veliz García began a hunger strike to protest the failure to allow a group of the Ladies in White to attend a mass to be held in the *Jesús de Nazaret* Catholic Church in June 2015.<sup>89</sup> In addition, information on Emmanuel Abreu Sánchez indicates he was convicted on October 14, 2014, to 12 years of deprivation of liberty, for the crime of human trafficking. He then began a hunger strike on May 13 to oppose what he considered an unfair sentence<sup>90</sup>; after 90 days he was continuing the hunger strike.<sup>91</sup> Miguel Ángel López Herrera faces a similar situation; after having declared a hunger strike on July 27, 2015, to protest the mistreatment, threats, and arbitrary arrests he had suffered at the hands of the Revolutionary National Police (PNR: *Policía Nacional Revolucionaria*) and of the DSE, he was admitted to a health center because of his delicate health.<sup>92</sup> On August 24, 2015, the graffiti artist Danilo Maldonado, known as El Sexto – who since December 2014 has been held at the Valle Grande prison for criminal contempt – has also declared a hunger strike.<sup>93</sup> According to public information, El Sexto was released from Valle Grande prison on October 20, 2015.<sup>94</sup> Three members of the UNPACU, Zacchaeus Baez

<sup>86</sup> Front Line Defenders. Cuba: *Continúa la detención arbitraria del defensor de derechos humanos Hugo Damián Prieto Blanco en medio a detenciones arbitrarias y acoso judicial de manifestantes pacíficos*, November 18, 2015.

<sup>87</sup> IACHR, Precautionary Measure 428-15. Resolution 31/2015. Shirley Ávila León, Cuba, September 2, 2015.

<sup>88</sup> IACHR, Precautionary Measure 96-15. Resolution 12/2015. Cubalex members, Cuba, April 22, 2015.

<sup>89</sup> Article of June 28, 2015 at [elnuevoherald.com](http://www.elnuevoherald.com/noticias/mundo/america-latina/cuba-es/article25730179.html): *Opositores cubanos dejan huelga de hambre y son detenidos*, available at: <http://www.elnuevoherald.com/noticias/mundo/america-latina/cuba-es/article25730179.html>

<sup>90</sup> Article of June 15, 2015 at [observacuba.org](http://observacuba.org): *Que levante la mano la justicia*, available at: <http://observacuba.org/que-levante-la-mano-la-justicia/>

<sup>91</sup> Article of August 17, 2015 at [martinoticias.com](http://www.martinoticias.com): *Opositor cubano rehúsa abandonar huelga de hambre tras 90 días*, available at: <http://www.martinoticias.com/media/video/cuba-opositor-huelga-de-hambre-cargos-trafico-humano/102371.html>

<sup>92</sup> Article of August 21, 2015 at [cihpress.com](http://www.cihpress.com): *Ingresan a disidente guantanamero en huelga de hambre*, available at: <http://www.cihpress.com/2015/08/ingresan-disidente-guantanamero-en.html#Ved4MXIOVpg>

<sup>93</sup> Article of August 25, 2015 at [martinoticias.com](http://www.martinoticias.com): *El Sexto se declara en huelga de hambre en Cuba*, available at: <http://www.martinoticias.com/media/video/cuba-el-sexto-huelga-de-hambre-presos-sin-juicio-/102888.html>. Article of August 28, 2015 at [diariolasamericas.com](http://www.diariolasamericas.com): *Grafitero cubano El Sexto confirma desde la cárcel su huelga de hambre*, available at: [http://www.diariolasamericas.com/4847\\_cuba/3304921\\_grafitero-cubano-el-sexto-carcel-huelga-hambre.html](http://www.diariolasamericas.com/4847_cuba/3304921_grafitero-cubano-el-sexto-carcel-huelga-hambre.html)

<sup>94</sup> Article of October 20, 2015 at [amnestyusa.org](http://www.amnestyusa.org): *Release of graffiti artist in Cuba must herald new approach to dissent*, available at: <http://www.amnestyusa.org/news/press-releases/release-of-graffiti-artist-in-cuba-must-herald-new-approach-to-dissent>



Guerrero, Maria Josefa Acón Sardiña and Ismael Bonet, after being arrested while trying to approach the Pope Francisco during his visit to the island, have chosen to start hunger and thirst strike in prison and 100 Aldabó in Havana.<sup>95</sup>

52. In contrast, the Commission welcomes the January 7 release of three members of the UNPACU. Brothers Diango and Bianco Vargas Martín, and Enrique Figuerola Miranda, were released after the December 17, 2014 agreement with the United States to re-establish diplomatic relations. The brothers had been detained in December 2013 and were convicted in June 2014 on charges of contempt, resistance, public disorder, and threat. In addition, Figuerola Álvarez has been detained since July 2012 accused of the crimes of attack on and contempt of the authority, for allegedly having filmed the detention of several persons in the street in the middle of the Carnival celebrations in Santiago.<sup>96</sup>

53. Journalist José Antonio Torres, detained in February 2011 and convicted and sentenced to 14 years in prison for espionage, was also placed under a “minimum severity regime,” as of March 9, that enables him to work and visit his home. Torres, who had worked at the official daily newspaper *Granma* and who had held positions of trust in the government, said that having a flexible punishment was not his objective but rather he was seeking his freedom because he never was a spy.<sup>97</sup> He was arrested after publishing information on the alleged mismanagement of the construction of the water supply system in Santiago and of the installation of an optic fiber cable between Venezuela and Cuba.<sup>98</sup>

54. It is also a matter of public knowledge that the Council of State of the Republic of Cuba pardoned 3,522 people who have been convicted and were serving jail sentences.<sup>99</sup> Those benefited by the decree included persons over “60 years of age, under 20 years of age without a criminal record, chronically ill persons, women, several of whom were reaching the term established for release on parole in 2016, and some of whom were completing the sentence and are working in open conditions, as well as foreigners, so long as the country of origin guarantees their repatriation.”<sup>100</sup> The Commission welcomes the measure but notes that it excluded, in principle, persons convicted of crimes against state security<sup>101</sup>, established in criminal statutes that this Commission has disputed for their broad or vague language that allows for disproportionate sanctions and enormous discretion, and limiting any possibility of effective defense of the person. This reflects the harsh position that the Government of Cuba continues to maintain with respect to those who dissent from the official line, and who therefore are considered a threat to the stability of the prevailing system.

<sup>95</sup> Press release of September 23, 2015 in univision.com: *Inician huelga de hambre los disidentes cubanos detenidos por acercarse al Papa*. Available in Spanish at: <http://www.univision.com/noticias/el-vaticano/inician-huelga-de-hambre-los-disidentes-cubanos-detenido-por-acercarse-al-papa>.

<sup>96</sup> El País. January 8, 2015. [Cuba comienza a liberar a presos políticos tras el acuerdo con EE UU](#); Cubanet. January 8, 2015. [Cuba: 5 liberados de presunta lista de presos políticos](#).

<sup>97</sup> Inter-American Press Association (IAPA). March 23, 2015. [SIP: beneplácito por flexibilización de régimen carcelario para periodista cubano](#); 14 y medio. January 27, 2015. [El espía que nunca quiso serlo](#).

<sup>98</sup> Reporters without Borders (RSF). November 16, 2012. [CUBA / 14 años de cárcel para el periodista Jose Antonio Torres](#).

<sup>99</sup> Article at [papafranciscoencuba.cubaminrex.cu](http://papafranciscoencuba.cubaminrex.cu): *Acordó Consejo de Estado insultar a sancionados en ocasión de la visita de su Santidad*. Available at: <http://papafranciscoencuba.cubaminrex.cu/articulos/acordo-consejo-de-estado-indultar-sancionados-en-ocasion-de-la-visita-de-su-santidad>

<sup>100</sup> Article at [papafranciscoencuba.cubaminrex.cu](http://papafranciscoencuba.cubaminrex.cu): *Acordó Consejo de Estado insultar a sancionados en ocasión de la visita de su Santidad*. Available at: <http://papafranciscoencuba.cubaminrex.cu/articulos/acordo-consejo-de-estado-indultar-sancionados-en-ocasion-de-la-visita-de-su-santidad>

<sup>101</sup> Article of September 14, 2015 at 14ymedio.com: *El indulto no incluye a presos considerados políticos por la disidencia*. Available at: <http://www.14ymedio.com/nacional/indulto-incluye-considerados-politicos-disidencia-0-1852614730.html>

**b. Minimum due process guarantees**

55. In its reports the IACHR has repeatedly addressed the absence of minimum judicial guarantees of due process in the prosecution of persons in Cuba. The negative impact of this situation is disproportionately affecting activists and dissidents.

56. In this respect, the American Declaration, at Article XXVI, enshrines the right of all persons to due process of law and provides that:

Every accused person is presumed to be innocent until proved guilty.

Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

57. As regards the judicial guarantee regarding the independence of the courts from the other public authorities, the Commission has already referred to Article 121 of the Constitution of Cuba, which provides: “The tribunals constitute a system of State organs, structured with functional independence from any other, and subordinate hierarchically to the National Assembly of the People’s Power and the Council of State.” In the view of the Commission, the subordination of the courts to the Council of State, presided over by the Head of State, represents direct dependence of the judicial branch on the dictates of the executive branch. The IACHR has considered that this dependence on the executive does not provide for an independent judiciary capable of providing guarantees for the enjoyment of human rights.<sup>102</sup>

58. The IACHR has also repeated its reproach of the death penalty as a punishment in a significant number of broad or vague statutory crimes, such as the “state of dangerousness,” which could be invoked in very summary proceedings<sup>103</sup> that do not offer the minimum guarantees required for the accused to exercise the right to an adequate legal defense.<sup>104</sup> The Commission has also noted a similar vagueness in the description of the statutory crime called “pre-criminal social dangerousness,” set forth in Article 72 of the Criminal Code, and related conduct. In addition to the foregoing is what is provided for in Decree No. 128, which once again prescribes a summary procedure for prosecuting persons whose conduct fits within the vague statutory definition. In this respect, the organs of the inter-American human rights system have agreed 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 affect the right to life and liberty.”<sup>105</sup>

59. Even though the death penalty has not been carried out since 2003, the Commission considers that keeping it in the Criminal Code in the conditions described in previous years’ reports poses a latent threat to those persons who, *inter alia*, do not share the official understanding of the system of

<sup>102</sup> IACHR, Guarantees for the Independence of Justice Operators, OEA/Ser.L/V/II Doc. 44, December 5, 2013, para. 32. Available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/Operadores-de-Justicia-2013.pdf>

<sup>103</sup> The Law on Criminal Procedure establishes the very summary procedure at Articles 479 and 480:

Article 479: In a case of exceptional circumstances, the Attorney General may propose to the President of the People’s Supreme Court and the latter shall decide whether to use the especially expedited summary proceeding to prosecute those crimes that any court has jurisdiction to hear, except for those crimes that are the jurisdiction of the People’s Municipal Courts.

Article 480: In especially expedited summary proceedings, the procedures that this law establishes for preliminary proceedings, oral trial and appeals may be reduced to the extent that the court with jurisdiction deems necessary. Title X, Especially Expedited Summary Proceeding. Articles 479 and 480.

<sup>104</sup> IACHR, 2008 Annual Report, Chapter IV, Cuba, para. 177.

<sup>105</sup> I/A Court H.R., Case of Castillo Petruzzi et al. Vs. Peru, Judgment of May 30, 1999, Series C. No. 52, para. 121.

government and, therefore, the Commission issues an appeal to the State to abolish it, in line with the trend observed in the hemisphere.<sup>106</sup>

### 3. Restrictions on the right of residence and movement

60. As regards the right to residence, the Commission has addressed the restrictions that stand in the way of the full exercise of the right of every person to reside freely in the territory of Cuba, and in particular in the city of Havana.<sup>107</sup> As of Decree 217 of 1997<sup>108</sup>, on internal migration regulations for the city of Havana, restrictions were established on freely residing in Havana for those persons who, coming from other parts of the country, are seeking to become domiciled in, reside in, or share housing arrangements permanently in a dwelling situated in the city of Havana, or those who, being from other municipalities, seek to domicile themselves, reside, or share housing arrangements in a dwelling situated in the municipalities of La Habana Vieja, Centro Habana, Cerro, and Diez de Octubre. An authorization from the administrative authorities is required to reside in the capital. The decree in question imposed fines and the obligation to return to the place of origin for those persons who violated its provisions.

61. The implementation of Decree 217 has led the Police to arrest and deport persons who do not comply with the terms of the Decree to their places of origin. If the deportation occurs with respect to a person who has already been deported, it may lead to the application of pre-criminal security measures.<sup>109</sup> According to *Human Rights Watch* and other human rights organizations, Decree 217 is often used to keep political dissidents from going to Havana to participate in rallies and demonstrations, and as a mechanism to harass dissidents from other parts of Cuba who reside in Havana.<sup>110</sup>

62. The much-questioned restrictions in Article 5 of Decree No. 217 of 1997 were relaxed by Decree No. 293 of 2011, which provides for an exception to the application process for certain persons from other provinces of the country who request permanent transfer to the city of Havana<sup>111</sup>, including: (a) the spouse, children, parents, grandparents, grandchildren, and siblings of the primary family member authorized to live in Havana; (b) the minor children of the non-authorized spouse; (c) persons declared legally incompetent; and (d) the core family group of the person who is assigned a real property due to state or social interest. Despite the reforms, the restrictions still in place limit excessively the exercise of the right, as evidenced in the case of persons in the LGBT community who, in search of employment opportunities or fleeing from areas of the interior more inclined to prejudice and discrimination, are kept from making their regular place of residence in the capital, as the authorities, relying on the above-mentioned Decree, arrest and deport them to their provinces of origin.<sup>112</sup> A similar outlook is reported by the president of an organization independent and critical of Mariel Castro who was not allowed to participate in the gay pride march in Havana, and who was reportedly arrested for one week in June 2014 because he was in Havana without government permission.<sup>113</sup>

<sup>106</sup> 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, available at: <http://www.oas.org/es/cidh/docs/pdfs/penademuerte.pdf>

<sup>107</sup> IACHR, Annual Report, Chapter IV, Cuba.

<sup>108</sup> Council of Ministers, Decree No. 217 de 1997, April 22, 1997. Available at: <http://www.gacetaoficial.cu/html/regulacionesmigratoriasparaC.H.html> [Consulted December 7, 2012].

<sup>109</sup> Cubalex, *Informe sobre la situación discriminación contra las mujeres en Cuba*. 2013 [Document in the Commission's files].

<sup>110</sup> Human Rights Watch, *World Report 2015: Cuba*. Available at: <http://www.hrw.org/es/world-report/2015/country-chapters/268142>

<sup>111</sup> Council of Ministers, Decree No. 293 de 2011, published in the Official Gazette of November 16, 2011.

<sup>112</sup> "Informe de derechos humanos sobre orientación sexual; identidad de género y situación de las personas con VIH-sida en Cuba 2015," submitted to the IACHR in September 2015.

<sup>113</sup> The Washington Blade, "[Cuban Police Prevent Activist from Attending Pride March](#)," June 28, 2015.

63. Accordingly, the Commission makes an appeal to the Cuban State to repeal Decree 217 of 1997, as well as its supplemental provisions, and to adopt all measures necessary to ensure the rights to freely determine their place of residence and the freedom of movement in Cuban territory for all persons.

64. As regards the right to move about freely, since 1983 the Commission has raised the issue of the lack of constitutional protection for the right to movement in Cuba, which represents an obstacle to its effective enjoyment. Previously, under the Law on Migration, Law No. 1312 of 1976, to leave or enter the national territory Cubans needed to have a current passport and an entry or exit permit granted by the Ministry of Interior.<sup>114</sup> After that law was amended on October 16, 2012, by Decree-Law No. 302, which entered into force on January 14, 2013, the requirement for authorization to leave the territory was partially eliminated; the time that must elapse before a Cuban national who has travelled abroad can come to be considered an émigré was extended from 11 to 24 months; the requirement of a letter of invitation from the destination country was eliminated; and children were afforded the possibility of temporary travel once they are authorized for it by their parents or legal representatives.

65. Even though Decree-Law No. 302 of 2012 reflects gains with respect to the Law on Migration, the Commission observes that the 2012 law establishes a series of conditions by which certain Cuban nationals who reside in Cuba cannot obtain a current passport or may not leave the country when reasons of “defense and national reasons so advise”<sup>115</sup>; for “[I]acking the established authorization, pursuant to provisions aimed at preserving the skilled work force for the economic, social, and technical-scientific development of the country, as well as for the security and protection of official information”<sup>116</sup>; “[w]hen for other reasons of public interest it is so determined by the designated authorities”<sup>117</sup>; among other grounds. In its annual reports for 2012, 2013, and 2014 the Commission has insisted that the general nature of certain terms confers a broad discretion on the Cuban authorities to allow or not the exit of Cuban nationals, in particular those who express opinions contrary to the Government.

66. At the same time, the Commission finds that the restriction by which staying abroad for 24 months may subject a Cuban to émigré status continues to be an unreasonable restriction on the exercise of the right to residence and movement. While one does not cease to be a Cuban national, the impossibility of returning to Cuba or of exercising one’s rights as a Cuban national means that one cannot enjoy an effective nationality. These provisions also have a direct impact on the right to the protection of family life of these persons, who are deprived of the ability to re-unite with their family members who remain in Cuba. In addition to the foregoing, this situation presents obstacles to Cuban migrants who are in an irregular migratory situation since they cannot return to their country of origin nor do they have a migratory situation that enables them to reside regularly in the country they are in.

67. The Commission has also received information on restrictions on the exercise of the right to freedom of movement and reprisals against human rights defenders and activists who discuss the human rights situation in Cuba in international forums. To illustrate, we note the organization *Cubalex*, whose situation was referred at paragraph 46 above.<sup>118</sup> The Commission also learned of the situation of artist Danilo Maldonado, known as El Sexto, who was unable to attend the ceremony where the 2015 Václav Havel International Prize for Creative Dissent, an event organized in the context of the Oslo Freedom Forum, as he

<sup>114</sup> Council of Ministers, Law No. 1312, Law on Migration, September 20, 1976, Article 1.

<sup>115</sup> Decree-Law No. 302 of October 16, 2012. Article 23(d). Available at: <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8950.pdf?view=1>

<sup>116</sup> Decree-Law No. 302 of October 16, 2012. Article 23(f). Available at: <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8950.pdf?view=1>

<sup>117</sup> Decree-Law No. 302 of October 16, 2012. Article 23(h). Available at: <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8950.pdf?view=1>

<sup>118</sup> IACHR, Precautionary Measure No. 96-15. Resolution No. 12/2015. Matter of *Cubalex* members with respect to Cuba, April 22, 2015.

was deprived of liberty due to contempt.<sup>119</sup> Similarly, a report was received on the situation of three human rights defenders who, on returning from a workshop on the situation of LGBT persons in Cartagena, Colombia, were held at the Jose Martí International Airport in Havana; they were questioned and had materials confiscated.<sup>120</sup>

68. One phenomenon that continues to be of concern to the Inter-American Commission in 2015 has to do with the increase in the exit of migrants and refugees from Cuba. According to the UNHCR, as of 2014 there are 6,502 Cuban refugees, 1,000 persons in “refugee-like situations,” and 1,838 asylum seekers whose applications were still pending decision.<sup>121</sup>

69. The increase in human mobility in Cuba is attributed primarily to speculation that, with the normalization of relations between the United States and Cuba, the United States would end its so-called “wet foot, dry foot” policy, which has extended protection to Cubans who reach U.S. territory. According to public information accessed as of the writing of this report, from October 2014 to June 2015, a 118% increase has been reported in the number of Cubans attempting to enter the United States through Miami or through the four states that border Mexico.<sup>122</sup> Data revealed by the United States Coast Guard in 2015 indicate that 2014 saw the largest number, since 2008, of Cubans risking their lives to travel to the United States for the first time. In all, U.S. officials intercepted 2,059 Cubans at sea.<sup>123</sup> With respect to fiscal year 2015, the U.S. Coast Guard intercepted 1,604 Cubans at sea from October 1, 2014 to May 31, 2015.<sup>124</sup> Since mid-November 2015, the Commission has monitored the massive influx of Cuban migrants to Costa Rica through Paso Canoas border between Costa Rica and Panama, who would find themselves stranded in the country after the militarization of the border with Nicaragua on November 15, 2015.<sup>125</sup> According to official information provided by the Costa Rican authorities on 27 November for the presence of some 4,000 Cuban migrants in Costa Rican territory was reported. The Commission reiterated the obligations of the Member States of the OAS to respect and guarantee human rights of all persons under its jurisdiction, with a particular Nicaraguan State called to investigate the alleged ill-treatment inflicted by the authorities to the detriment of the Cuban migrants, and urged States to understand the migratory route of that group to ensure regular migration and safe.<sup>126</sup>

70. In addition, there was an increase in the number of shipwrecks of migrants and refugees of Cuban origin attempting to reach other countries in the Caribbean and/or the United States, and who died on route. Their deaths can be attributed to many factors, among them climatic conditions, rough waters, and/or dangerous maritime passages to avoid Coast Guard controls in vessels that are not in good navigational condition or are carrying an excessive load, or at the hands of human traffickers who force the persons they

<sup>119</sup> Article of August 27, 2015 at 14ymedio.com: *El Sexto confirma desde la cárcel su huelga de hambre*, available at: [http://www.14ymedio.com/nacional/Sexto-confirma-huelga-hambre\\_0\\_1841815814.html](http://www.14ymedio.com/nacional/Sexto-confirma-huelga-hambre_0_1841815814.html)

<sup>120</sup> The Washington Blade, “Cuban LGBT advocates harassed at Havana airport,” July 15, 2015.

<sup>121</sup> UNHCR, *Asylum Trends 2014*. Geneva, 2015, Table 2, Available at: <http://www.acnur.org/t3/recursos/estadisticas/>

<sup>122</sup> Article of August 14, 2015, by Ben Piven, at america.aljazeera.com: *Cuban migration to US rises amid historic thaw in relations*. Available at: <http://america.aljazeera.com/articles/2015/8/14/cuban-migration-increases-fears-grow.html>

<sup>123</sup> The years indicated are fiscal years, which run from October 1 to September 30 (e.g., fiscal year 2014 went from October 1, 2013 to September 30, 2014). U.S. Coast Guard, “Alien Migrant Interdiction: Total Interdictions – Fiscal Year 1982 to Present (Current as of May 1<sup>st</sup>, 2015),” <http://www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/FY.asp> (last visited June 18, 2015). See also, Cristina Silva, “Why Cubans are Still Risking Their Lives on Flimsy Rafts to Leave the Island,” *International Business Times* (May 7, 2015), <http://www.ibtimes.com/why-cubans-are-still-risking-their-lives-flimsy-rafts-leave-island-1909877>.

<sup>124</sup> U.S. Coast Guard, “Alien Migrant Interdiction: Total Interdictions – Fiscal Year 1982 to Present (Current as of May 1<sup>st</sup>, 2015),” <http://www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/FY.asp> (last visited June 18, 2015).

<sup>125</sup> IACHR. Press Release No.146/15 - IACHR Expresses Deep Concern regarding Situation of Cuban Migrants on the Costa Rica-Nicaragua Border, December 8, 2015.

<sup>126</sup> IACHR. Press Release No.146/15 - IACHR Expresses Deep Concern regarding Situation of Cuban Migrants on the Costa Rica-Nicaragua Border, December 8, 2015.



are trafficking to jump from the vessel far from the coast and/or without the equipment needed, such as lifejackets. According to the information provided by UNHCR, in 2014 there were 1,359 persons in shipwrecks, and from January 1 to April 15, 2015, 233 Cubans were on record as having been shipwrecked.<sup>127</sup> In both years the numbers of Cubans in shipwrecks were the second highest, after figures for persons from Haiti in such maritime incidents.

#### 4. LGBTI persons

71. During 2015, the Commission received information on the gains made and challenges faced as regards protecting the rights of lesbian, gay, bisexual, and trans (LGBT) persons<sup>128</sup> in Cuba. For several years, the IACHR has taken stock of the initiatives pursued by the CENESEX, assigned to the Ministry of Public Health and directed by Mariela Castro, in favor of promoting and protecting the rights of LGBT persons. The IACHR takes note that in recent years there have been legislative gains, such as prohibiting labor discrimination based on sexual orientation, in 2013, and policy gains in relation to the measures adopted by CENESEX. These measures have also lifted up the visibility of LGBT persons in Cuban society. Nonetheless, worrisome challenges persist in relation to protecting and guaranteeing the rights of LGBT persons in Cuba, and with respect to LGBT defenders who are critics of the government. During this period the IACHR continued receiving information on killings of LGBT persons, instances of police abuse, discrimination against LGBT persons who come from other provinces in Havana, discrimination against trans persons in terms of health, education, and employment, and discrimination against the defenders of the rights of LGBT persons.

72. The IACHR recognizes the efforts made by the State to give visibility to the issues faced by LGBT persons in Cuba. For example, on May 16, 2015, Mariela Castro led a march against homophobia in the city of Las Tunas.<sup>129</sup> Independent civil society organizations also recognize the efforts of the CENESEX on training government officials on the rights of LGBT people, despite indicating continuing police abuses towards LGBT people.<sup>130</sup> Nonetheless, the activities of the CENESEX have been criticized by LGBT organizations and activists who are not aligned with the government's position<sup>131</sup>. Accordingly, while the IACHR has been informed that since 2008 trans persons have received surgery free of charge, under the national health system, activists critical of the government allege that fewer than 30 persons have benefited from such procedures.<sup>132</sup> The Commission has received information indicating that trans people wishing to access this benefit must first sign a document indicating their affiliation and commitment to the ideology of the government.<sup>133</sup> In addition, some LGBT activists criticize the government, for even though Mariela Castro has publicly supported marriage equality, they do not consider there to be a genuine intent to protect it.<sup>134</sup>

73. Regarding police abuse, according to the information received, members of the police in Havana fine and process gay men and lesbian women to keep them out of certain zones and "*sitios de encuentro*" ("meeting places") (places of "homo-socialization").<sup>135</sup> It was also reported that trans women are

<sup>127</sup> UNHCR, *Incidentes Marítimos en el Caribe 2014-2015*.

<sup>128</sup> During this period, the IACHR did not receive information on the situation of intersex persons in Cuba.

<sup>129</sup> The Washington Blade, "[Mariela Castro leads LGBT march](#)," May 16, 2015 (available only in English).

<sup>130</sup> Public Hearing "Human Rights situation of LGBTI persons in Cuba" held on October 19, 2015. Audio and video available at [www.cidh.org](http://www.cidh.org).

<sup>131</sup> Public Hearing "Human Rights situation of LGBTI persons in Cuba" held on October 19, 2015. Audio and video available at [www.cidh.org](http://www.cidh.org).

<sup>132</sup> The Washington Blade, "[Cuban Trans Advocate: Government seeks to 'destroy us.'](#)" May 20, 2015 (available only in English).

<sup>133</sup> IACHR private meeting held with Cubans activist, 2013. Annual Report 2013, Chapter IV: Cuba, par. 217.

<sup>134</sup> The Washington Blade, "[Cuban LGBT advocate challenges Mariela Castro](#)," May 23, 2015 (available only in English).

<sup>135</sup> "Informe de derechos humanos sobre orientación sexual; identidad de género y situación de las personas con VIH-sida en Cuba 2015," submitted to the IACHR in September 2015.



constantly suffering police abuse.<sup>136</sup> The IACHR has also received information on the high levels of extortion to which gay men and trans women engaged in sex work are subjected; they must give money or sexual favors to avoid arrest.<sup>137</sup> The IACHR urges the State of Cuba to adopt all measures necessary, through the CENESEX, or some other state entity, to ensure that LGBT persons are not subjected to torture or cruel, inhuman or degrading punishment at the hands of police agents. These actions may include the adoption of protocols for the police agencies, training in human rights and sexual and gender diversity, as well as strengthening the mechanisms for filing complaints and investigating these cases.

74. As regards killings, the IACHR was informed of the killing of Marcel Rodríguez man, who was killed outside his residence in Vedado in early 2015, and on August 23, 2015, it was that there had been no progress in the investigation.<sup>138</sup> The IACHR was informed of the killing of Muñoz Robaina, a 24-year-old trans woman known as “La Eterna,” in a park in the city of Pinar del April 26, 2015. According to the information reported, she died as the result of “the barrage of stones by a group of adolescents, while she, the victim, was at the Roberto Amarán park.”<sup>139</sup> According to information received in July 2015, two persons were arrested who were alleged to be guilty of this Civil society organizations denounce a pattern of impunity in relation to LGBTI murders, and also only one case has been brought to justice in 2015.<sup>141</sup> The IACHR urges the State of Cuba to continue step up efforts to ensure that these killings of LGBT persons in Cuba are investigated with due including opening lines of investigation that take into account whether these killings were committed prejudice related to the victims’ sexual orientation and gender identity. Investigating and punishing these crimes prevents impunity and the repetition of these acts.

75. On October 19, 2015, the IACHR held a hearing about Human Rights situation of LGBTI persons in Cuba, during which the Commission regretted the absence of States representatives. At that hearing, the petitioners presented a research based on 150 interviews administrated to LGBTI people (26 lesbians, 91 gays, 19 bisexuals, 22 trans women, 1 trans man y 1 intersex person) during 2014 and 2015 in different provinces of Cuba<sup>142</sup>. According to the report, 87 people reported having suffered physical or verbal violence by the police, 67 said having experienced violence and discrimination within the family, and that 13, out of 22 trans women surveyed, reported having been discriminated against in the health system.<sup>143</sup> During the hearing, the petitioners requested the State, *inter alia*, (1) participate actively in the political space available at the OAS and the Inter-American Human Rights System; (2) take steps to disseminate the international instruments for the protection of human rights throughout the country, including the Inter-American Human Rights; (3) to cease the harassment and persecution of independent organizations of civil society, and those working in independent LGBT organizations; (4) collect data on the situation of

<sup>136</sup> The Washington Blade, “[Amid change LGBT Cubans face lingering challenges](#),” May 27, 2015.

<sup>137</sup> “Informe de derechos humanos sobre orientación sexual; identidad de género y situación de las personas con VIH-sida en Cuba 2015,” p. 4, submitted to the IACHR in September 2015.

<sup>138</sup> <http://ernestoverarod.blogspot.com/>, “[Comunidad LGBT en Cuba atraviesa por sus peores momentos](#),” August 23, 2015.

<sup>139</sup> Article of May 11, 2015 at 14ymedio.com: “[Muere un transexual apedreado en la ciudad de Pinar del Río](#)”, May 11, 2015.

<sup>140</sup> “Informe de derechos humanos sobre orientación sexual; identidad de género y situación de las personas con VIH-sida en Cuba 2015,” p. 10, submitted to the IACHR in September 2015.

<sup>141</sup> Public Hearing “Human Rights situation of LGBTI persons in Cuba” held on October 19, 2015. Audio and video available at [www.cidh.org](http://www.cidh.org).

<sup>142</sup> Informatio received in the public hearing about the “Situation of Human Rights of LGBTPersons in Cuba”, October 19, 2015. Audio and video available at [www.cidh.org](http://www.cidh.org).

<sup>143</sup> Macro-Project “Hands Alliance” (*Manos Alianza*). Report on the human rights situation of LGBTI Cuban community 2014-2015. It was presented during the Public Hearing “Human Rights situation of LGBTI persons in Cuba” held on October 19, 2015. Audio and video available at [www.cidh.org](http://www.cidh.org).

human rights of LGBT people, particularly economic, social and cultural rights; (5) ensure the right to education of LGBT people, including transgender people, without discrimination; and (6) ensure transgender transgender people access to social programs and benefits without discrimination, including body transformations benefits.<sup>144</sup>

76. According to information received, many Cuban trans women are forced to engage in sexual in sexual work because they cannot find any other employment, and do not receive support from the government so as to access education, formal employment, and other services.<sup>145</sup> According to the information received, discrimination against trans persons is even greater in the provinces than in Havana.<sup>146</sup> Havana.<sup>146</sup> The IACHR observes that the fact that Cuba's internal migratory regulations do not allow Cubans Cubans who live in the provinces outside Havana to establish residence in Havana means that many LGBT LGBT persons who migrate from the interior in search of job opportunities or to engage in sexual work to work to survive, or fleeing from the prejudice and discrimination that tend to be more rooted in the areas areas away from the capital, are detained and deported to their places of origin in the interior.<sup>147</sup> The IACHR IACHR has already shown concern over these restrictions on the right to residence in Cuba and has asked the asked the State to repeal Decree 217 of 1997, while urging the government to adopt the measures necessary necessary to ensure all persons the rights to freely determine their place of residence and to ensure the the freedom of movement in Cuban territory.<sup>148</sup>

## 5. Afro descendants

77. In the Declaration issued by the Second Summit of CELAC, held in Havana in January 2014, the states participating, including Cuba, established that they would give priority attention to the Afro descendant population so as to promote the growth, progress, and social inclusion of their states<sup>149</sup> –all consistent with the International Decade for People of African Descent, approved by the United Nations (2015-2025).

78. The last census in Cuba (2012) determined that the Afro descendant population constitutes 9.2% of the Cuban population, that is, 879,512 persons.<sup>150</sup> In that respect, the *Cuban chapter of the Regional Coordination of Afro-descendants in Latin America and the Caribbean* (ARAAC: Articulación Regional Afrodescendiente para América Latina y el Caribe), during the celebration of the First Days against Racial Discrimination in Cuba (2014), noted that in reality the census in question does not recognize the “large sector of the [Afro descendant] Cuban population” that lives in the Cuban State, for more than 50 percent of the population is made up of “non-white” persons.<sup>151</sup> In addition, the *Comité Ciudadano para la Integración Racial* (CIR) stated its doubts on the accuracy of the statistics on the population of African descent in prior

<sup>144</sup> Public Hearing “Human Rights situation of LGBTI persons in Cuba” held on October 19, 2015. Audio and video available at [www.cidh.org](http://www.cidh.org).

<sup>145</sup> “Informe de derechos humanos sobre orientación sexual; identidad de género y situación de las personas con VIH-sida en Cuba 2015,” p. 4, submitted to the IACHR in September 2015.

<sup>146</sup> The Washington Blade, “[Cuban Trans Advocate: Government seeks to ‘destroy us.’](#)” May 20, 2015 (available only in English).

<sup>147</sup> “Informe de derechos humanos sobre orientación sexual; identidad de género y situación de las personas con VIH-sida en Cuba 2015,” submitted to the IACHR in September 2015.

<sup>148</sup> IACHR, 2014 Annual Report, Chapter IV, Cuba, paras. 205-208.

<sup>149</sup> Second Summit of CELAC, Declaration, II CUMBRE Doc. 3.1, Havana, January 28 and 29, 2014. Available at <http://www.sela.org/view/index.asp?ms=258&pageMs=97501>

<sup>150</sup> National Office of Statistics and Census – Republic of Cuba, Informe Nacional Censo de Población y Viviendas 2012, January 2014, <http://www.one.cu/informenacional2012.htm>

<sup>151</sup> CUBARTE, At Cuba I Jornada contra la discriminación racial, November 19, 2014. Available at: <http://archivo.cubarte.cult.cu/periodico/noticias/en-cuba-i-jornada-contra-la-discriminacion-racial/173899.html>

censuses.<sup>152</sup> This is due to the fact that “[t]he official data do not distinguish between ethnicity and race. They are focused on personal identification, based on ‘skin color’[.] The interviewers act directly as per their own criterion, without asking the interviewees, as they consider the matter unimportant or ‘offensive.’”<sup>153</sup>

79. For its part, the Commission notes the lack of official disaggregated data making it possible to evaluate the gains achieved and the challenges faced by the Afro descendant population in Cuba. Nonetheless, activists on the ground note that even though the First National Conference of the Communist Party, held on January 29, 2012, approved as objective 57 “confronting the prejudices and discriminatory conduct based on color of skin, gender, religious beliefs, sexual orientation, place of origin, and others, which are contrary to the Constitution and the laws”<sup>154</sup>, discrimination based on skin color and gender continue to be a matter “not resolved” by the Cuban Revolution.<sup>155</sup> It is ensured that “the Afro descendant population receives lower incomes, lives in worse housing, and has a smaller presence in higher education, managerial positions, and emerging sectors of the economy, such as tourism and the companies with foreign capital”<sup>156</sup>; it is added that “only nine percent of the university population in Havana is black or mestizo.”<sup>157</sup>

## 6. Conditions of detention

80. In the course of this year, the Commission continued receiving worrisome information about serious human rights violations of persons deprived of liberty in Cuba. Of these, special mention should be made of the subhuman conditions of confinement to which inmates are subjected, in particular the lack of medical care and inadequate hygiene and health conditions, acts of torture and other cruel, inhuman, and degrading treatment, the lack of judicial oversight of arrests, and the wide margin of discretion on the part of the police.

81. In this respect, the Commission recalls that every person deprived of liberty has the right to be treated humanely, with unrestricted respect for his or her inherent dignity, and for his or her rights and fundamental guarantees. This implies that the State, as guarantor of the rights of persons under its custody, not only has the special duty to respect and ensure their life and integrity, but must also ensure minimum conditions compatible with their dignity.<sup>158</sup> Such conditions should not constitute an additional affliction on top of the inherently punitive nature of the deprivation of liberty. Treating every person deprived of liberty with humanity and respect for their dignity is a universal norm that should be applied without any distinction whatsoever, and that cannot depend on the material resources of the State.<sup>159</sup>

<sup>152</sup> Comité Ciudadanos para la Integración Racial (CIR), ¿Cuánto va a demorar la integración racial en Cuba? February 7, 2012. Available at: <http://www.cir-integracion-racial-cuba.org/textosimprescindibles/%c2%bfcuanto-va-a-demorar-la-integracion-racial-en-cuba/>

<sup>153</sup> Article of July 31, 2015 at diariodecuba.com: *Mujer negra, ¿doble o tripe discriminación?*, available at: [http://www.diariodecuba.com/cuba/1438324616\\_16038.html](http://www.diariodecuba.com/cuba/1438324616_16038.html)

<sup>154</sup> First National Conference held January 29, 2012 in Havana, Cuba, Objetivos de Trabajo del Partido Comunista de Cuba, available at: [http://www.pcc.cu/pdf/congresos\\_asambleas/vi\\_congreso/tabloide\\_objetivos\\_conferencia.pdf](http://www.pcc.cu/pdf/congresos_asambleas/vi_congreso/tabloide_objetivos_conferencia.pdf)

<sup>155</sup> Article of February 23, 2015 at iosnoticias.net: *Cuba requiere actualizar contra nuevas formas de racismo*, available at: <http://www.ipsnoticias.net/2015/02/cuba-requiere-actualizar-lucha-contra-nuevas-formas-de-racismo/>

<sup>156</sup> Article of February 23, 2015 at iosnoticias.net: *Cuba requiere actualizar contra nuevas formas de racismo*, available at: <http://www.ipsnoticias.net/2015/02/cuba-requiere-actualizar-lucha-contra-nuevas-formas-de-racismo/>

<sup>157</sup> Article of February 23, 2015 at iosnoticias.net: *Cuba requiere actualizar contra nuevas formas de racismo*, available at: <http://www.ipsnoticias.net/2015/02/cuba-requiere-actualizar-lucha-contra-nuevas-formas-de-racismo/>

<sup>158</sup> IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* (Principle I).

<sup>159</sup> United Nations, Human Rights Committee, General Comment No. 21: Humane treatment of persons deprived of their liberty, adopted at the 44<sup>th</sup> session (1992), para. 4. In *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, Volume I, HRI/GEN/1/Rev.9 (Vol. I) adopted May 27, 2008, p. 242.

82. In the context of the hearing on the human rights situation in Cuba held during the 154<sup>th</sup> regular period of sessions, the IACHR also received information on the “inhuman conditions” and lack of medical care that prevail in Cuban prisons.<sup>160</sup> In addition, the IACHR continued receiving information on the arbitrary and abusive application of solitary confinement in punishment cells, and on the harassment to which those persons deprived of liberty who denounce their conditions are subjected.<sup>161</sup> On this point, the *Observatorio Cubano de Derechos Humanos* indicated in March of this year that the lack of food was one of the “methods of repression and punishment” used in Cuban prisons.<sup>162</sup> In addition, the IACHR takes note of what that *Observatorio* said, i.e. that in late 2014 there was an increase in the number of persons who had lost their lives due to suicide, said to be brought on by the cruel and degrading treatment to which they are subjected, in particular the use of solitary confinement for prolonged periods.<sup>163</sup>

83. As regards the hygiene and health conditions, this Commission has indicated that the State should ensure, among other things, the following essential minimum requirements: access to drinking water, adequate sanitary facilities for personal hygiene, and sufficient food.<sup>164</sup> In this regard, the IACHR has received information indicating that from late 2014 to date there have been several allegations on the negative health situations of persons deprived of their liberty due to the hygiene and health conditions in the Cuban prisons. On November 30, 2014, according to the *Observatorio de Derechos Humanos*, stemming from the contamination of the waters with wastewater (“*residuales*”) and the lack of hygiene in the preparation of the food, quarantine was declared due to the cholera epidemic in the Villa Clara prisons.<sup>165</sup> In late 2014, according to the national press, there was an outbreak of diarrhea at the El Guatao women’s prison in Havana, which had struck 100 women deprived of liberty.<sup>166</sup> In May 2015, according to the national press, there were such outbreaks as a result of rotten food at the following prisons: Penitenciaría Toledo 11, in Havana; Santa Rosa de Sabana, in the province of Guantánamo; Las Mangas, in Bayamo; and Palmas Altas, in Manzanillo.<sup>167</sup>

84. Finally, the IACHR observes that during the Seventh Summit of the Americas, held in Panama in April 2015, several Cuban organizations stated their concern with the prison situation in Cuba, and indicated that “the number of prisoners and prisons scattered about” shows the lack of effective social plans to tackle crime.” They also said that young persons, especially Afro descendants, make up the majority of the prison population.<sup>168</sup>

85. In light of the foregoing, the IACHR considers that prison conditions, compared to what was indicated in its 2014 Annual Report, have not changed substantially, and that this situation represents a high cost in terms of negative impacts on the life and integrity of the persons deprived of liberty in the Cuban

<sup>160</sup> IACHR, Hearing on the human rights situation in Cuba, 154<sup>th</sup> regular period of sessions, March 19, 2015.

<sup>161</sup> Information submitted by the petitioners in the context of the human rights situation in Cuba, held during the 154<sup>th</sup> regular period of session, March 19, 2015.

<sup>162</sup> Observatorio Cubano de Derechos Humanos, “[Sosa Fortuny: El Hambre continúa siendo uno de los métodos de tortura más crueles empleados en las Prisiones.](#)” March 18, 2015.

<sup>163</sup> Observatorio Cubano de Derechos Humanos, “[El año 2014 cierra con un notable crecimiento de muertes por Suicidio en el interior de las Prisiones Cubanas.](#)” February 16, 2015.

<sup>164</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, para. 432 IACHR, Follow-up Report - *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, OEA/Ser/L/V/II.135. Doc. 40, adopted August 7, 2009, Ch. V, para. 123.

<sup>165</sup> Observatorio Cubano de Derechos Humanos, “[Declaran cuarentena médica por epidemia de Cólera en Prisiones de Villa Clara.](#)” November 30, 2014.

<sup>166</sup> Hablemos Press, “[Brote diarreico en prisión de La Habana provoca malestar a decenas de reos](#)” May 10, 2015.

<sup>167</sup> Hablemos Press “[Brote diarreico en prisión de La Habana provoca malestar a decenas de reos.](#)” May 10, 2015; Hablemos Press, “[Crisis en cárceles del oriente cubano por brotes diarreicos.](#)” May 23, 2015.

<sup>168</sup> Forum for Rights and Freedoms, Report to the Civil Society Forum, Seventh Summit of the Americas, Panama, April 2015.

State. Therefore, it is essential that the State adopt measures aimed at ensuring conditions of detention compatible with the relevant international standards.

## 7. Freedom of expression<sup>169</sup>

86. The constant violations of the right to freedom of expression, freedom of association, and freedom of movement of independent journalists, opposition figures, and demonstrators continued in Cuba in 2015, with arbitrary detentions, attacks, persecution, harassment, and threats by state agents, or encouraged by them, in a legal context that imposes criminal and administrative sanctions when the exercise of the freedom of expression may bother the authorities or question any government policy. State control of the media also persisted, restricting information, forms of cultural expression, and the debate of ideas to which Cubans can accede through print, radio, television, and the Internet.<sup>170</sup> Nonetheless, the Commission also observes the concession of certain measures that show possible signs of opening in the context of the current process of the normalization of Cuba's relations with the United States and other countries.

### a. Progress

87. As a civil society initiative, the *Red de Bibliotecas Cívicas Comunitarias* (Network of Community Civic Libraries) approved on June 6, a new structure and code of ethics for the organization that includes upholding the truth and the commitment to the freedom of expression and information. This civil society network includes 33 libraries nationwide.<sup>171</sup>

88. While the Cuban population continues to contend with major difficulties accessing the Internet, 35 wireless connection points were started up in public spaces on July 1 that can only be used by those who have an account with the state phone company Etecsa. Etecsa, a public company that restricts content one can access in Cuba, has cut the cost of connecting to the Internet in half, from 4.5 to 2 convertible Cuban pesos (same in dollars) per hour.<sup>172</sup> Nonetheless, according to information received, there is still a scarcity and illegal sale of cards for connecting to the Internet via the Wi-Fi network. A resolution to avoid these situations was approved on August 18.<sup>173</sup>

### b. Attacks, threats, harassment and detentions of journalists, demonstrators, and media outlets

89. The Commission has expressed concern by the worsening repression, which seeks to prevent protests or peaceful meetings organized to discuss social or political issues. Evidence of this is found in the increase in the number of short-duration arrests, detentions, attacks, harassment, and threats against journalists, activists, human rights defenders, and members of the opposition to the government due to their expressions and positions critical of the official line, and in the context of peaceful demonstrations and protests against the government.

<sup>169</sup> This issue will be addressed with greater detail in the Annual Report of the Office of the Special Rapporteur for Freedom of Expression.

<sup>170</sup> IACHR. 2014 Annual Report I. Report of the Office of the Special Rapporteur for Freedom of Expression. [Ch. II \(Evaluation of the state of freedom of expression in the Hemisphere\)](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015, p. 122; Cubanet. June 29, 2015. [Periodismo cubano: la libertad de expresión es todavía un sueño](#).

<sup>171</sup> Cubanet. June 8, 2015. [La Red de Bibliotecas Cívicas Comunitarias se reorganiza](#).

<sup>172</sup> Infolatam. July 5, 2015. [Los cubanos estrenan entusiasmados sus nuevos espacios wifi en zonas públicas](#); La Capital. July 3, 2015. [Red wi-fi pública, el nuevo servicio que entusiasma en Cuba](#); EFE. July 2, 2015. [Los cubanos cuentan desde hoy con 35 zonas de internet wifi](#); Martí Noticias. July 2, 2015. [ETECSA ofrece a habaneros Wi-Fi por \\$2 la hora](#); Hipertextual. July 3, 2015. [Cuba lanza red inalámbrica en todo el país](#); Reuters. July 2, 2015. [Cuba, an Internet laggard, opens Wi-Fi hotspots across country](#).

<sup>173</sup> Cubanet. August 20, 2015. [Posible restricción al acceso Wifi](#); Cubanet. August 15, 2015. [Revendedores toman el Wifi por asalto \(VÍDEO\)](#).



90. In addition, it was learned that artist Tania Bruquera was detained on January 1 and released the next day. On December 30, 2014 she was arrested because she had invited Cuban citizens to speak at an open microphone set up in the Plaza de la Revolución for people to offer their opinions on the re-establishment of relations between Cuba and the United States. Other persons who attempted to participate in the event were detained along with the artist. The authorities confiscated her passport; she had lived abroad in recent years<sup>174</sup>. Almost five months later, on May 24, Bruquera was detained by state agents after a performance called *100 horas de lectura del libro "Los orígenes del totalitarismo"* (*100 hours of reading the book "The Origins of Totalitarianism"*), during the Havana Biennial. Hours later she was released<sup>175</sup>. Bruquera was detained once again on July 12 along with Claudio Fuentes, publisher of *Estado de Sats*; opposition figure Jorge Luis García "Antúnez"; and Berta Soler, member of the Ladies in White movement, when they were attending mass at the Santa Rita church. Several dozen human rights activists were there, including Ángel Moya, Egberto Escobedo, blogger Agustín López, reporters for *Hablemos Press*, and communicator Serafín Morán, were also arrested by the National Revolutionary Police [*Policía Nacional Revolucionaria*] (PNR) and agents of the State Security office allegedly in civilian dress.<sup>176</sup>

91. Journalist José Leonel Silva Guerrero, correspondent for *Hablemos Press*, was reportedly detained on March 11 for more than 10 hours and questioned by Security State Department [*Departamento de Seguridad del Estado*] (DSE) agents; according to his version, the objective was to intimidate him because of his journalistic coverage of a case involving deaths in the province of Holguín. It was not the first time he was attacked, for in 2014 the Police had confiscated his tools.<sup>177</sup>

92. In addition, on April 10 and 11 there were dozens of detentions to prevent the persons detained from attending a meeting in solidarity with members of the Cuban opposition who had attended the forum parallel to the Summit of the Americas held in Panama, and to prevent the transfers of demonstrators to cities where a fast would be held for the same reasons. On April 12, there were 52 arrests in Havana to prevent activists from receiving the participants in the parallel forum, and in subsequent days four persons were subjected to an "act of repudiation" in Villa Clara in retaliation for having participated in Panama.<sup>178</sup>

93. Lenier Cruz Safran was detained on January 17 for 96 hours, accused of unlawful activity for offering an Internet connection to youths. In addition, on March 19, Carlos Manuel Figueroa Álvarez was detained for three hours for staging a protest after allegedly being harassed for several days by state agents. Moreover, on May 5, purported para-police agents smeared the home of independent journalist Carlos Michael Morales Rodríguez with asphalt for his challenging ("*contestatario*") activism.<sup>179</sup>

<sup>174</sup> Martí Noticias. May 21, 2015. [Continúa en La Habana la performance de la artista cubana Tania Bruquera](#); Hablemos Press. March 18, 2015. [Bruquera denuncia la falta de libertad de expresión en Cuba](#); BBC. January 3, 2015. [Autoridades cubanas liberan a la artista Tania Bruquera](#); Martí Noticias. January 2, 2015. [Liberada Tania Bruquera tras su tercer arresto](#); BBC. December 30, 2014. [La artista que quiso abrir los micrófonos a los cubanos en la Plaza de la Revolución](#).

<sup>175</sup> Cubanet. May 25, 2015. [Fin de performance y arresto a Tania Bruquera en jornada represiva](#).

<sup>176</sup> Damas de Blanco. No date. [Informe resumen de actividades de la Asociación Damas de Blanco "Laura Pollán"](#); Cubanet. July 13, 2015. [Damas de Blanco rompen esquema represivo de la Seguridad del Estado](#).

<sup>177</sup> Reporters without Borders. March 17, 2015. [Detienen a un corresponsal de hablemos press en Holguín](#); Martí Noticias. March 17, 2015. [Reporteros sin Fronteras denuncia arresto de periodista holguinero](#).

<sup>178</sup> Comisión Cubana de Derechos Humanos y Reconciliación Nacional. April 2015. [Cuba: Algunos actos de represión política en el mes de abril de 2015](#).

<sup>179</sup> Comisión Cubana de Derechos Humanos y Reconciliación Nacional (CCDHRN). January 2015. [Cuba: Algunos casos de represión política en el mes de enero de 2015](#); CCDHRN. March 2015. [Cuba: Algunos actos de represión política en el mes de marzo de 2015](#); CCDHRN. Mayo de 2015. [Cuba: Algunos actos de represión política en el mes de mayo de 2015](#).



94. On May 5, independent Cuban journalists José Fornaris and Odelín Alfonso were said to have been questioned by immigration and customs agents at the José Martí International Airport, after returning from Latvia after participating in World Press Freedom Day, organized by UNESCO.<sup>180</sup>

95. Gorki Águila, a musician in the band “Porno para Ricardo,” was said to have been detained by agents of the State Security offices in front of the Museum of Fine Arts (Museo de Bellas Artes) of Havana on May 23. According to the information reported, after hanging a poster on the outside wall of the Museum with the word “Libertad” and the image of Danilo Maldonado, known as El Sexto, he was approached by the agents, who were alleged to have “forced” him into a car.<sup>181</sup>

96. Journalist Lázaro Yuri Valle said he was detained on June 7 by officers of the DSE, questioned, and threatened with a pistol to his head when he was leaving his home to cover an activity of the Ladies in White.<sup>182</sup> Shortly thereafter, on July 30, Valle and activist Yasser Rivero Boni were allegedly detained and beaten for filming a building collapse. They were released hours later without any charges.<sup>183</sup>

97. The Secretary General of the *Unión Patriótica de Cuba* (UNPACU) in Guantánamo, Yoandris Beltrán Gamboa, was said to have been beaten in public purportedly by workers of the Municipal Assembly of People’s Power on June 12. Beltrán Gamboa said that those acts had occurred when he, along with other members of the UNPACU, left for the Municipal Unit of the National Revolutionary Police to protest the purported illegal usurpation by the government agents of a cell phone the property of Roevis Cuba Sendó and of a bicycle of his. According to the information received, that property was seized from Roevis on June 7 after he was accused of putting up several stickers calling for democratic change and freedom for Cuba’s political prisoners in various places in the city.<sup>184</sup>

98. Yohannes Arce Sarmiento and Georvis Chibás Castillo were beaten allegedly by members of the Assault Brigade of the Ministry of Interior on June 22. According to the information received, the agents took from Chibás Castillo his motorcycle registration for having stickers that called for democratic change in Cuba. In response, he went up on the roof of his building and put up posters with the messages “Down with the Castros” [*Abajo los Castro*] and “Respect for human rights” [*Respeten los derechos humanos*]; and on a third banner he denounced what had happened. According to the reports received in response, the agents assaulted the roof of the building, beat Chibás Castillo and Arce Sarmiento, and detained them.<sup>185</sup>

99. On July 3 a police operation was said to have been carried out at the home of Famada Hernández, a young Wi-Fi network administrator. Famada Hernández was detained and had several pieces of equipment for wireless connection confiscated, including antennas one can build at home, and the personal computer to be used as the server for that network. Hernández said that night he slept in the police cell and they asked him about the audiovisual contents and games they would play on the network. The next day he was released and fined 1,000 pesos (1,000 dollars approx.) purportedly for having purchased the network

<sup>180</sup> Cubanet. May 7, 2015. [Autoridades del Aeropuerto José Martí detuvieron a periodistas independientes.](#)

<sup>181</sup> Diario de Cuba. May 24, 2015. [Detenido Gorki Águila frente al Museo de Bellas Artes.](#)

<sup>182</sup> Inter-American Press Association. June 22, 2015. [“Me siento como un reportero de guerra”: dijo Lázaro Yuri Valle Roca;](#) Diario las Américas. June 21, 2015. [La SIP expresa “preocupación” por el “acoso” que sufren periodistas cubanos;](#) Cuba en Vivo. June 23, 2015. [Carta abierta del Periodista Independiente Lázaro Yuri Valle Roca;](#) Diario de Cuba. June 19, 2015. [Periodista independiente denuncia a la SIP y RSF ‘secuestros’ y ‘amenazas de muerte’.](#)

<sup>183</sup> Martí Noticias. July 31, 2015. [Arrestan y golpean a periodista independiente por filmar un derrumbe;](#) Lázaro Yuri Valle Roca/YouTube. August 3, 2015. [Detenidos Yasser Rivero y yo mientras cubría una noticia en la Habana Vieja;](#) Comisión Cubana de Derechos Humanos y Reconciliación Nacional. July 2015. [Cuba: Algunos actos de represión política en el mes de julio de 2015.](#)

<sup>184</sup> Cubanet. June 13, 2015. [Apaleado dirigente de UNPACU en Guantánamo;](#) Martínoticias. June 15, 2015. [Agresión frente a unidad de la PNR contra opositor de Guantánamo.](#)

<sup>185</sup> Cubanet. June 25, 2015. [Golpeados y detenidos dos miembros de UNPACU en Caimanera.](#)

cable, which in Cuba supposedly is only found in the state enterprises. According to the information received, one week later the Wi-Fi antenna and his computer were returned.<sup>186</sup>

100. In addition, Niover García Founier, correspondent for *Hablemos Press*, was said to have been detained on July 15, in the province of Guantánamo. He was said to have one mobile telephone, two flash drives, his work equipment, and a block of notes seized.<sup>187</sup>

101. On July 20, painter Lázaro Morera, painter and producer Camila Lozano Padilla, and journalist Ernesto Santana Zaldívar, who was accompanying them to take photographs, were detained for three hours at the headquarters of the Writers' and Artists' Union [*UNEAC: Unión de Escritores y Artistas*] and questioned. According to the information received, the events occurred after Morera's performance through the streets of Cuba with a painting on wheels purportedly to celebrate the rapprochement between the governments of Cuba and the United States.<sup>188</sup>

102. Independent journalist Serafín Morán was along arrested when he was interviewing them, and he was released the next day. On July 27, his colleagues Lázaro Yuri Valle and Agustín López were detained along with Ladies in White and activists Antonio Rodiles, Ailer González, and Claudio Fuentes, of the Estado de Sats debate project, purportedly to keep them from reaching the Santa Rita church.<sup>189</sup> The members of that group had already been arrested the day before, with dissident Ángel Moya Acosta, coordinator of the Liberty and Democracy for Cuba [*Libertad y Democracia por Cuba*] movement, former political prisoner Egberto Ángel Escobedo Morales, and other members of the Frente de Resistencia Cívica "Orlando Zapata Tamayo," in addition to members of the Ladies in White and opposition organizations, bloggers, and independent journalists, many of whom were transferred to the Vivac center.<sup>190</sup> Rodiles was also beaten violently after a mobilization in early July, and suffered a broken nasal septum, an injury in one eye, and a fractured toe.<sup>191</sup>

103. The *Hablemos Press* Information Center denounced in August that arbitrary detentions of independent reporters had continued in July. It indicated that in August, 13 arrests were documented, including of Yuri Valle Roca, Vladimir Turro Páez, Ernesto Travieso Hernández, Agustín López Canino, Niover García Founier, Boris González Arena, and Claudio Fuentes Madan (photographer).<sup>192</sup>

104. The Cuban Institute for Freedom of Expression [*Instituto Cubano por la Libertad de Expresión y Prensa*] (ICLEP) denounced in August that the seven media outlets that come together in the ICLEP were being subjected to surveillance and that their journalists were being summonsed and arrested by the Police. That was the case of the director of the bulletin Luz Camagüeyana, Vladimir Osorio, who was detained on August 8 for the crime of espionage.<sup>193</sup>

<sup>186</sup> Cubanet. July 28, 2015. [Devuelven equipos Wi-Fi decomisados en sonado operativo policial.](#)

<sup>187</sup> Centro de Información Hablemos Press. August 4, 2015. [Informe sobre detenciones arbitrarias y otros abusos cometidos en Cuba en Julio de 2015.](#)

<sup>188</sup> Cubanet. July 22, 2015. [Crónica de un performance que terminó en la cárcel.](#)

<sup>189</sup> Damas de Blanco. Undated. [Informe resumen de actividades de la Asociación Damas de Blanco "Laura Pollán";](#) Martí Noticias. July 27, 2015. [Periodistas independientes denuncian a las autoridades cubanas por acoso.](#)

<sup>190</sup> Cubanet. July 26, 2015. [Damas de Blanco y activistas detenidos en otro domingo de represión.](#)

<sup>191</sup> Cubanet. July 6, 2015. [Ensangrentado domingo de represión.](#)

<sup>192</sup> Centro de Información Hablemos Press. August 4, 2015. [Informe sobre detenciones arbitrarias y otros abusos cometidos en Cuba en Julio de 2015.](#)

<sup>193</sup> Cubanet. August 11, 2015. [Intensa represión contra periodistas ciudadanos de ICLEP;](#) Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP). August 11, 2015. [ALERTA: El régimen desarrolla intensa represión contra periodistas ciudadanos de ICLEP.](#)

### c. Subsequent liabilities

105. Carlos Manuel Veranes Heredia, an activist with the Patriotic Union of Cuba [*Unión Patriótica de Cuba*] (UNPACU), was convicted on May 20 to one year of detention for the crime of “contempt” in a summary proceeding. Heredia was detained on May 17 and judged for acts that were said to have occurred in 2014. The crime of which he is accused is taking photographs of a contaminated ditch.<sup>194</sup>

106. As stated above, artist Danilo Maldonado, known as “El Sexto,” was detained for 10 months purportedly without any formal indictment by the prosecutor before the courts. Maldonado was arrested for contempt on December 25, 2014 when he was going to stage a performance in a Havana park that consisted of releasing two pigs painted green with two names written on their bodies in red, Fidel and Raúl. This allusion to the Castro brothers was intended to draw an analogy with the novel *Animal Farm* by George Orwell. No date was given for the start of the trial, and even though he filed a request to find out the reason for the detention, the motion was denied.<sup>195</sup> Finally in October was released from jail without having had a trial.<sup>196</sup>

107. Attorney Julio Alfredo Ferrer Tamayo, head of the *Dirección Letrada Jurídica Cubana* (AJC), continued to be detained at the Valle Grande prison, awaiting a new trial, and allegedly has been limited from exercising his profession for four years. Tamayo is said to face a new criminal case once the punishment of six months for criminal contempt has been served. That sanction was imposed on him during the defense of his wife Marienys Pavo Oñate, in which Tamayo demanded the annulment of the trial against her. The new criminal charges that he is said to face are related to the alleged counterfeiting of public documents during the purchase of their house. According to his representative, this new accusation may be a way to find a civil violation to punish them for common crimes, making it more difficult to defend them before international bodies.<sup>197</sup>

### d. Other relevant situations

108. Education authorities organized a survey, purportedly compulsory, of the students at the *Instituto Tecnológico José Ramón Rodríguez*, in the neighborhood of Vedado, on the existence of telephones and computers in the students’ homes. Several students said they were unaware of the purpose of the survey. The student who was the head of the group that conducted the survey said that he was only complying with the orientations of the office of the director of that school. In addition, he was informed that this consultation was also carried out in other schools.<sup>198</sup>

109. The Inter-American Commission reiterates that Principle 1 of the Declaration of Principles on Freedom of Expression of the IACHR establishes: “Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.” And Principle 5 of the Declaration provides:

<sup>194</sup>Diario de Cuba. May 20, 2015. [Condenan a un año de cárcel a un activista de la UNPACU por tomar fotos de una zanja contaminada.](#)

<sup>195</sup>ABC. June 27, 2015. [Preso en Cuba por intentar hacer una «performance» con dos cerdos llamados «Fidel» y «Raúl»](#); Del Sexto Blogspot. Available at: <http://delsexto.blogspot.com/>; Centro Cubalex. March 25, 2015. [Cuba: Artista encarcelado por pintar los nombres «Fidel» y «Raúl» en dos puerquitos](#); Diario de Cuba. June 30, 2015. [El Sexto asume su propia defensa y rechaza disponer de abogado](#). Diario de Cuba. December 26, 2014. [El Sexto acaba en Villa Marista por dos puercos con los nombres de Fidel y Raúl Castro](#); Martí Noticias. June 22, 2015. [Las muestras de solidaridad con el grafitero encarcelado Danilo Maldonado](#); Granma Today. March 31, 2015. [¡SORPRENDENTE! Mira por qué está preso un artista cubano.](#)

<sup>196</sup>El Mundo. October 20, 2015. [El grafitero 'El Sexto' es liberado tras 10 meses encarcelado sin juicio en Cuba](#); The Guardian. October 20, 2015. [Cuban artist El Sexto released from jail for planned art piece criticizing Castros.](#)

<sup>197</sup>Cubonet. July 10, 2015. [Opositores enjuiciados por delitos comunes.](#)

<sup>198</sup>Cubonet. June 1, 2015. [Cubanos sin derecho a la privacidad.](#)

“Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.” And Principle 13 affirms: “The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.” In addition, the state has the duty to adopt legislative and other measures necessary to ensure pluralism and diversity in media, including laws that prevent the existence of public or private monopolies.

110. In addition, as regards the application of prohibited categories of discrimination, contained in Article 1(1) of the American Convention, the Inter-American Court of Human Rights has noted “the need to protect the expression of the political opinions of persons in a democratic society.”<sup>199</sup> It also reaffirmed “the importance of the prohibition of discrimination based on the political opinions of a person or group of persons, and the consequent duty of the states to respect and ensure the rights contained in the American Convention without any discrimination for this reason.”<sup>200</sup>

## 8. Economic, social and cultural rights

111. The Cuban authorities have continued implementing actions for the promotion and implementation of economic, social, and cultural rights. In this respect, according to the Regional Overview of Food Insecurity, Latin America and the Caribbean 2015, of the Food and Agriculture Organization of the United Nations (FAO), Cuba is implementing social policies that seek to ensure access to food, health, education, and income, and to increase the quality of life of the population in general, placing emphasis on benefiting groups in vulnerable situations.<sup>201</sup> In particular, as regards the right to food, the FAO noted that “the State subsidizes the prices of basic food, covering more than half of the nutritional needs of Cubans; it maintains a food network for low-income people; and it distributes free or low-cost food in health centers, education institutions and other places.”<sup>202</sup> In addition, according to the FAO, access to basic services showed considerable improvements, including the increase in the percentage of the population with access to health facilities (in 2012 it was 92.6%, compared to 81.5% in 1990) and the 10 percentage point increase in access to drinking water supply during the same period.<sup>203</sup>

112. It is also important to note that Cuba met the target of the Millennium Development Goals and the World Food Summit as regards reducing hunger, with the prevalence of undernourishment below 5% since 2005. This result places Cuba among the 16 nations with successes reducing hunger in Latin America and the Caribbean.<sup>204</sup> In this respect, the Commission has valued the Cuban authorities’ efforts to fight hunger by implementing social policies to consolidate food and nutrition security.<sup>205</sup>

<sup>199</sup> I/A Court HR. *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C No. 293, para.226.

<sup>200</sup> I/A Court HR. *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C No. 293, para.226.

<sup>201</sup> Food and Agriculture Office of the United Nations (FAO), Regional Overview of Food Insecurity, Latin America and the Caribbean 2015, p. 44. Available at: <http://www.fao.org/3/a-i4636s.pdf>

<sup>202</sup> FAO, Regional Overview of Food Insecurity, Latin America and the Caribbean 2015, p. 44. Available at: <http://www.fao.org/3/a-i4636s.pdf>

<sup>203</sup> FAO, Regional Overview of Food Insecurity, Latin America and the Caribbean 2015, p. 44. Available at: <http://www.fao.org/3/a-i4636s.pdf>

<sup>204</sup> FAO, Regional Overview of Food Insecurity, Latin America and the Caribbean 2015, p. 44. Available at: <http://www.fao.org/3/a-i4636s.pdf>

<sup>205</sup> IACHR, 2014 Annual Report, Chapter IV.B, Cuba.

113. As for the labor rights situation in Cuba, information received by the IACHR indicates that Cuban workers have no right to strike and collective bargaining, while independent unions are illegal. This situation has been examined by the International Labour Organization (ILO), through its different organs, in particular through the Freedom of Association cases, which has recommended, among other things, "to adopt new provisions and measures fully to recognize in legislation and in practice the right of workers to establish the organizations they deem appropriate at all levels (in particular, organizations independent from the current trade union structure), and also the right of these organizations freely to organize their activities".<sup>206</sup> According to a communication from the Independent Trade Union Coalition of Cuba (CSIC: Coalición Sindical Independiente de Cuba) to the Commission of Experts on the Application of Conventions and Recommendations (CEACR), lack of independent unions continue, and the State maintains a conduct that repeatedly ignores the recommendations made by the international labor rights organizations.<sup>207</sup>

114. Furthermore, it is indicated that Cuban women earn average less than half of what men earn, mostly because men have access to higher-paying jobs.<sup>208</sup> On this issue, the CEACR, while examining Article 99 of the Labour Code of 1984 which refers to the principle of equal payment for equal work, found that the language used in that provision was more restrictive than the principle enshrined in the Equal Remuneration Convention. In that regard the CEACR stated that the concept of "work of equal value" seeks not only to guarantee equal pay for equal work, but also to achieve equal payments on jobs which, even though are different, happen to be of equal value.<sup>209</sup> The CEACR emphasized the need for statistics disaggregated by sex, age (distinguishing young adults), or any other characteristic, index numbers of wages and rates of wages and ordinary work hours.<sup>210</sup> Moreover, the Commission notes that, on June 17, 2014, entry into force the new Labor Code, whose Article 2 establishes as a fundamental principle "equal remuneration; work will be paid without discrimination of any kind, and in line with the products and services it generates, its quality and the actual time dispensed, which should govern the principle of every person should be rewarded for the amount they contribute to society."<sup>211</sup>

115. With respect to the right to education, the Commission values the recognition of Cuba in the "2015 Education for All Global Monitoring Report" of the United Nations Educational, Scientific and Cultural Organization (UNESCO).<sup>212</sup> That report indicates that Cuba reached a participation rate of 94% for children ages 3 to 5 years, and for pregnant women, in addition to having been the only country in Latin America and the Caribbean to meet all six objectives of "Education for All."<sup>213</sup>

<sup>206</sup> ILO. Case No. 2258 (Cuba) -Complaint date: 15 April 2003 (closed). Report in which the committee requests to be kept informed of development - Report No 337, June 2005. Available at: [http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:50002:0::NO::P50002\\_COMPLAINT\\_TEXT\\_ID:2907759](http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:2907759)

<sup>207</sup> Escrito dirigido a la CEACR por la Coalición Sindical Independiente de Cuba (CSIC) de 31 de agosto de 2015. Recibido por la CIDH el 6 de octubre de 2015.

<sup>208</sup> Freedom House, Freedom in the World 2015 - Cuba, Available at: <https://freedomhouse.org/report/freedom-world/2015/cuba#.VaQMv3lOXct>

<sup>209</sup> CEACR. Observation (CEACR) - adopted 2012, published 102nd ILC session (2013). [Equal Remuneration Convention, 1951 \(No. 100\)](http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3076284) - Cuba. Available at: [http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:3076284](http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3076284)

<sup>210</sup> CEACR. Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015). [Convention concerning Statistics of Wages and Hours of Work, 1938 \(No.63\)](http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3176731) - Cuba. Available at: [http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:3176731](http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3176731)

<sup>211</sup> Gaceta Oficial de la República de Cuba. Law No. 116, Labor Code. Published in Gaceta Oficial No. 29 Extraordinary on Junio 17, 2014. Available (only Spanish) at: [http://www.mtss.cu/sites/default/files/decretos/codigo\\_de\\_trabajo\\_2.pdf](http://www.mtss.cu/sites/default/files/decretos/codigo_de_trabajo_2.pdf)

<sup>212</sup> UNESCO, 2015 Education for All Global Monitoring Report, Education for All, 2000-2015: Achievements and Challenges. Available at: <http://unesdoc.unesco.org/images/0023/002324/232435s.pdf>

<sup>213</sup> Press release at UNESCO: *Presentan en Cuba Informe de Seguimiento de Educación para Todos*, 2015. Available at: <http://www.unesco.org/new/es/media-services/single-view/news/presentan-en-cuba-informe-de-seguimiento-de-educacion-para-todos-2015/#.VYHp3XlOXcs>



116. As regards the right to housing, according to information received by the Commission at the hearing about the “General human rights situation in Cuba,” some sectors of the Cuban population would not be protected in relation to this right given the number of evictions.<sup>214</sup> According to the organizations that participated in that hearing, on March 13, 2015 authorities of the province of Ciego de Ávila notified 124 families that they needed to abandon their houses immediately under the threat of forcible eviction and arrest. They also said that as of March 10, 2015, two houses had been demolished thus far, and the heads of the families were arrested.<sup>215</sup> In addition, the IACHR learned that on March 11, 2015, hundreds of residents of the town of Palma Soriano, in the province of Santiago de Cuba, protested facing off with the security forces to block the forced eviction of families living in poverty from the precarious dwellings they had built in the district known as Reparto La Concepción.<sup>216</sup> According to information in the public record, in May 2015 approximately 250 inhabitants of the province of Santa Clara, in Cuba, have indicated that they have received threats from the government and its offices that they must abandon their homes built on lots on the street known as la calle del Monte.<sup>217</sup>

117. In July 2015, both the World Health Organization (WHO) and UNICEF issued statements about Cuba’s efforts to prevent HIV so as to reduce new infections and its transmission. Cuba became the first country to successfully conclude the process of formal validation led by the WHO and UNICEF on eliminating mother-to-child transmission of HIV and congenital syphilis.<sup>218</sup> To achieve this, according to the WHO, Cuba has adopted, among others, the following measures: (a) ensuring early access to prenatal care and tests to detect HIV and syphilis for both pregnant women and their partners; (b) providing treatment to women who test positive and their babies; and (c) preventing HIV and syphilis before and during pregnancy through the use of condoms and other preventive measures. As a result of such efforts, in 2013 only two babies were born with HIV in Cuba, and only three with congenital syphilis, reflecting rates of transmission that are below the thresholds for elimination.<sup>219</sup>

#### IV. RECOMMENDATIONS

118. The scenarios of concern identified by the Commission in this report, – in particular as regards the violations of the rights to integrity and personal liberty, in addition to the arbitrary restrictions on political rights, the freedom of expression and dissemination of ideas, the lack of independence of the judicial branch and the improper limitations on the right to residence and movement – justify the special attention given to Cuba. Accordingly, pursuant to its mandate, the Commission urges the Cuban State:

<sup>214</sup> IACHR, Hearing about the “General human rights situation in Cuba,” March 19, 2015, 154<sup>th</sup> regular period of sessions. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/154/default.asp>

<sup>215</sup> IACHR, Hearing about the “General human rights situation in Cuba,” March 19, 2015, 154<sup>th</sup> regular period of sessions. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/154/default.asp>

<sup>216</sup> Directorio Democrático Cubano, Press Release, *Cientos Protestan Contra El Régimen Castrista En Palma Soriano. Activista De La Resistencia Golpeado*, March 11, 2015. Available at: [http://www.directorio.org/comunicadosdeprensa/note.php?note\\_id=4339](http://www.directorio.org/comunicadosdeprensa/note.php?note_id=4339)

<sup>217</sup> Cubanet, *Amenazan con desalojar a familias en Santa Clara*, May 25, 2015. Available at: <http://www.cubanet.org/noticias/amenazan-con-desalojar-a-familias-en-santa-clara/>

<sup>218</sup> WHO, Press Release, “[La OMS valida la eliminación de Cuba de la transmisión de madre a hijo del VIH y de la sífilis](http://www.paho.org/cub/index.php?option=com_content&view=article&id=470:la-oms-valida-la-eliminacion-de-cuba-de-la-transmision-de-madre-a-hijo-del-vih-y-de-la-sifilis&Itemid=418),” July 2, 2015. Available at: [http://www.paho.org/cub/index.php?option=com\\_content&view=article&id=470:la-oms-valida-la-eliminacion-de-cuba-de-la-transmision-de-madre-a-hijo-del-vih-y-de-la-sifilis&Itemid=418](http://www.paho.org/cub/index.php?option=com_content&view=article&id=470:la-oms-valida-la-eliminacion-de-cuba-de-la-transmision-de-madre-a-hijo-del-vih-y-de-la-sifilis&Itemid=418); UNICEF, “Cuba: un hito hacia una generación libre de sida,” July 10, 2015. Available at: <http://blogs.unicef.org/2015/07/10/cuba-un-hito-hacia-una-generacion-libre-de-sida/>

<sup>219</sup> WHO, Press Release, “[La OMS valida la eliminación de Cuba de la transmisión de madre a hijo del VIH y de la sífilis](http://www.paho.org/cub/index.php?option=com_content&view=article&id=470:la-oms-valida-la-eliminacion-de-cuba-de-la-transmision-de-madre-a-hijo-del-vih-y-de-la-sifilis&Itemid=418),” July 2, 2015. Available at: [http://www.paho.org/cub/index.php?option=com\\_content&view=article&id=470:la-oms-valida-la-eliminacion-de-cuba-de-la-transmision-de-madre-a-hijo-del-vih-y-de-la-sifilis&Itemid=418](http://www.paho.org/cub/index.php?option=com_content&view=article&id=470:la-oms-valida-la-eliminacion-de-cuba-de-la-transmision-de-madre-a-hijo-del-vih-y-de-la-sifilis&Itemid=418);

119. In relation to the right to vote and participate in government:
1. To adopt the legislative and other measures necessary to ensure an electoral system which, will be inclusive and ensures the free circulation of ideas and thought, making possible the free political participation of all Cuban citizens on an equal footing.
120. As for social activists and dissident people:
2. To adopt adequate mechanisms of prevention to avoid acts of harassment, threats, and attacks carried out by state authorities, or with their acquiescence, to the detriment of dissidents, activists, human rights defenders, journalists, and other media workers. It is recommended to include, as necessary measures, public condemnation of all acts of aggression, educating and training public officials and especially the police and security forces; taking the measures necessary to prevent violence in the context of public demonstrations; establishing reasonable limits, governed by the principles of legality, necessity, and proportionality, to ensure they unfold peacefully; and conduct serious, impartial, and effective investigations into the attacks, threats, and acts of intimidation committed to the detriment of the above-indicated persons.
  3. To bring its procedural rules into line with international standards of due process so that persons before the courts for a determination of their rights and responsibilities have minimum legal guarantees for putting on their defense.
  4. To abolish the death penalty from the Criminal Code and other related laws, or in the absence of such an initiative, to adopt the legislative or other measures necessary to ensure that the death penalty not be imposed in proceedings in which the guarantees of due process are not observed in a fair trial before a court that is competent, independent, and impartial, previously established by law, and where there are allegations that the defendant has engaged in conduct subject to criminal sanction set forth in ambiguous or vague provisions.
  5. To eliminate the use of the concepts of “dangerousness” (*“peligrosidad”*) and “special proclivity of a person to commit crimes” (*“especial proclividad en que se halla una persona para cometer delitos”*), contained in the Criminal Code.
121. As regards the right of residence and movement:
6. To adopt the measures necessary to ensure its citizens the right to freely determine their place of residence, freedom of movement in Cuban territory, and the freedom to exit and enter the country.
122. As regards LGTBI persons:
7. To adopt urgent measures to prevent, punish, and investigate with due diligence killings and other acts of violence and discrimination against LGBT persons.
  8. To collect data about the human rights situation of LGBT persons, particularly in relation to murders and other crimes aimed against said group.
  9. To adopt a law on non-discriminatory gender identity that recognizes the identity of trans people, without the need to present invasive medical or psychiatric certificates which “certify” the gender to which they identify; and to facilitate their access to bodily

transformations, without any discrimination, including policies, through the public health system.

10. To adopt all measures necessary, through the CENESEX or some other state entity, to ensure that LGBT persons are not subjected to torture or other cruel, inhuman, or degrading treatment by police agents (such actions may include adopting protocols for police organs, providing trainings on human rights and sexual and gender diversity, and strengthening mechanisms for lodging complaints and pursuing investigations in such cases).
11. To promote having all civil society organizations, including those that may be considered critical of the government, to participate in the public debate in relation to the rights of LGBT persons, and to guarantee that they will not be subject to discrimination or reprisals for their work protecting rights.
12. To adopt all the necessary measure to ensure that LGBT persons has access to education, work and health without discrimination.
123. As regards Afro descendant persons:
13. Once the Afro-Cuban population is identified, using disaggregated data, and diagnosing their socio-economic situation, design public policies that adequately address the problems facing this sector, in particular, with regard to its low rate of participation in education programs, including higher education, and representation at different levels in the labor market and public office.
124. As regards the right to freedom of expression:
14. To promote the repeal of statutes that enshrine contempt (*desacato*), given that these provisions are at odds with inter-American standards and restrict public debate, which is essential to a working democracy.
15. To promote the amendment of criminal defamation statutes to do away with the use of criminal proceedings to protect honor and reputation when information is disseminated on matters of public interest, public officials, or candidates for public office; to encourage democratic debate through statements, practices, and public policies that promote tolerance and respect for all persons, in equal conditions, whatever their thinking or ideas.
16. To eliminate any provisions that authorize prior censorship by any state organ, and also any prior questioning that may imply censorship of the freedom of expression, such as the *ex ante* requirements of truthfulness, timing, and impartiality in information; refraining from using public authority to punish or reward media outlets or journalists in relation to their editorial line or coverage of certain information, whether through the discriminatory and arbitrary assignment of government advertising or by other indirect means aimed at impeding the communication and circulation of ideas and opinions.
17. To promote legislation, policies, and effective practices that make possible access to information and the equal participation of all sectors of society so that their needs, opinions, and interests are considered in their design and decision-making.
18. To adopt legislative and other measures that are vital for ensuring pluralism, including statutes that prevent the existence of public or private monopolies in the media, and to adapt the institutional frameworks so as not only to prevent the possibility of state powers being

used to reward or punish the media depending on their editorial line, but also to foster pluralism and diversity in the public debate.

19. To ensure that the provisions that regulate access to the Internet in the country observe the international provisions that protect the right to freedom of expression and thought, including the right to privacy, and to seek, receive, and disseminate ideas and information.