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CASE 13.639

ADMISSIBILITY AND MERITS REPORT (PUBLICATION)

YOANI MARÍA SÁNCHEZ CORDERO
CUBA

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I. INTRODUCTION

1. On September 28, 2012, the Inter-American Commission on Human Rights (“the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition from J.A.O., B.A. and H.E.S.¹ (“the petitioning party” or “the petitioners”), representatives of Ms. Yoani María Sánchez Cordero (“the alleged victim”), a well-known independent journalist in Cuba. The petition alleges the international responsibility of the Republic of Cuba (“the State” or “Cuba”) for the violation of several rights enshrined in the American Declaration of the Rights and Duties of Man (“the American Declaration” or the “Declaration”) through measures taken against the alleged victim in retaliation for exercising her right to freedom of expression. These measures included telephone wiretaps, residential surveillance, persecution, threats, detentions, and ill-treatment. The alleged victim was also barred from public places and denied authorization for travel abroad. The petition states that, compounding the above, the State failed to respond to the administrative complaints and petitions Yoani Sánchez Cordero filed at the domestic level.

2. On November 9, 2012, the IACHR granted precautionary measures (MC-350-12) on behalf of the alleged victim.² The IACHR asked the State of Cuba to take the necessary measures to guarantee the life and physical integrity of Yoani María Sánchez Cordero and her family; to agree with the beneficiary and her representatives on the measures to be taken; and to report on the actions taken to investigate the facts that gave rise to the precautionary measures. The State took no measures, nor did it send information on the status of the measures to the IACHR.

3. On July 23, 2018, the Commission informed the parties that, under Resolution 1/16, it would defer its consideration of the admissibility of the matter until the debate and decision on the merits, since the case related to a precautionary measure in force.³ The Commission made itself available to the parties to initiate a friendly settlement process, but the conditions were not conducive to such a process. The parties were given the statutory deadlines to submit their observations on the case. All the information received was duly transmitted between the parties, but the State did not submit observations on admissibility or merits.⁴

II. POSITIONS OF THE PARTIES

A. The petitioners

4. The petitioners state that, in 2004, Yoani María Sánchez Cordero and a group of other Cubans founded *Consenso*, a magazine for reflection and debate. In April 2007, she also started a blog called *Generación Y*, which was critical of the Cuban regime and served as a space in which she could say things she was not allowed to express through civic action. The petitioners assert that her blog gained worldwide recognition.

5. The petitioners claim that, since March 2008, the Cuban government has used internet filters to block access to the *Generación Y* blog from public internet sites in Cuba. Because of this, the alleged victim needs “the solidarity of friends outside the island to post her texts on the internet.”

¹ The petitioners requested that their identity be withheld based on Article 28.2 of the Rules of Procedure of the IACHR, which establishes that “Petitions addressed to the Commission shall contain the following information: [...] 2. whether the petitioner wishes that his or her identity be withheld from the State, and the respective reasons.”

² The petitioners filed a request for precautionary measures on September 28, 2012, in the same brief as the initial petition. On October 5, 2012, they amended that information, and on October 17, 2012, they provided further information to the IACHR at its request. The IACHR requested observations from the Cuban State, which did not reply. The precautionary measures were adopted in a communication dated November 9, 2012, and, as of the date of issue of this report, remain in force. IACHR. Communication of November 9, 2012. MC-350-12. Yoani María Sánchez Cordero, Cuba.

³ Communication sent by the IACHR to the State of Cuba on July 23, 2018, giving notice of its decision to implement Resolution 1/16 of October 18, 2016.

⁴ On July 26, 2016, the IACHR forwarded the relevant parts of the petition. The State did not submit observations on the petition, even though the IACHR reiterated its request. After the adoption and publication of Resolution 1/16, the State still did not submit observations on the admissibility or merits of the case. On February 11, 2019, the petitioning party submitted its observations on the merits.

6. They also indicate that the alleged victim won several awards for her work on the blog, which she has been unable to collect personally “because she has been denied the right to leave her own country.” In this regard, they report that between 2007 and 2012 Ms. Sánchez requested permission to leave Cuba on 20 occasions and that every time the government either denied permission or delayed its response past the valid date of the respective visa.

7. The petitioners additionally state that, since late 2007, Ms. Sánchez has been the victim of various acts of persecution and physical assaults by police forces and social groups sympathetic to the Cuban regime because she has exercised her right to freedom of expression through her blog *Generación Y*. The petitioners allege that these acts of intimidation and persecution include the wiretapping of her telephones; intimidation of her family and physical surroundings; surveillance of her residence; pressure on her social circle to cut ties with her; a smear campaign on television; direct verbal threats; restriction of access to public places, mainly cultural and public speaking venues; and the design of an online media harassment campaign, in addition to the denial of due process in her attempts to gain access to justice. They also report that her husband, Ronaldo Escobar, has been assaulted, intimidated, and detained by people sympathetic to the Cuban regime.

8. According to the petitioners, the alleged victim was arbitrarily detained for brief periods on three occasions by “public authorities to intimidate her and attempt to restrict her freedom of expression,” and was subjected to cruel, inhuman, and degrading treatment. They indicate that she was first arbitrarily detained on November 6, 2009, by persons in civilian clothes; the second time was on February 24, 2010, when she was detained by police officers; and the third time was on October 4, 2012, when she was also detained by State agents. The petitioners also point out that the detentions were not carried out pursuant to warrants issued by a judge and that the alleged victim was never informed of the charges against her.

9. The petitioners assert that the alleged victim filed a complaint with the Office of the Military Prosecutor and the Office of the Attorney General at the end of 2009 after her November 6, 2009 detention, but never received a response from the authorities. After the second arrest in February 2010, she filed another complaint with the Attorney General’s Office on March 10, 2010, which also went unanswered. The petitioners contend that it is “impossible in Cuba’s current judicial system to have recourse to the courts.”

10. After Yoani Sánchez was denied permission to leave the country (and given no explanation for the denial), she filed a formal “request for a response” with the Immigration and Alien Affairs Bureau of the Ministry of the Interior on November 5, 2010. This request went unanswered. In view of this “silence,” on March 30, 2012, Ms. Sánchez filed an appeal against the Minister of the Interior of Cuba. The petitioners state that, to date, the Cuban government has not answered this appeal either.

11. The petitioners argue that, although the alleged victim attempted to exhaust domestic remedies, the State’s continued silence and lack of response demonstrates that she was prevented from doing so. Either they do not exist, or she has not had access to them, “under all the exceptions to the requirement to exhaust domestic remedies provided in Article 1(2) of the Rules of Procedure of the [IACHR].”

12. Regarding the merits, the petitioners argue that Cuba violated the alleged victim’s right **not to be arbitrarily arrested** (Article XXV of the American Declaration) when she was detained in 2009, 2010, and 2012 without a warrant and without being informed of the reasons for her detention.

13. The petitioners argue that Cuba violated Yoani Sánchez’s **right to life, liberty, and personal security** (Article I of the American Declaration) because violating the right to protection from arbitrary arrest violates Article I. They point out that Yoani cannot move around Havana safely and that the frequent attacks against her in the media put her in an especially vulnerable position. They stress that she could be arbitrarily detained again at any moment; an attempt could even be made on her life, which would go unpunished, as it has with other dissidents on the island. The petitioners allege that Ms. Sánchez was subjected to cruel, inhuman, and degrading treatment while detained. They allege that she was beaten during her 2009 detention and because of this violence had to use crutches for a week. In 2010 and 2012, she was again beaten in detention. This last time, the petitioners state, the alleged victim was subjected to violence resulting in a broken tooth and bruised ribs, and she was also subjected to an attempt at forced nudity.

14. The petitioners argue that Cuba violated the alleged victim's **right to residence and movement** (Article VIII of the American Declaration), which includes a person's right to leave their country of their own free will, because it refused to authorize her departure to receive several journalism and blogging awards without justifying or explaining how such a limitation was necessary and compatible with her rights. They also contend that Cuba violated **the right to a fair trial and the right of petition** (Articles XVIII and XXIV of the American Declaration) by failing to answer any of the appeals the alleged victim filed at the domestic level in response to the authorities' refusal to authorize her departure from the country or the complaints about the detentions and abuse to which she had been subjected.

15. The petitioners further indicate that barring the alleged victim's access to various places and public meetings—including the demonstrations over the death of Oswaldo Payá—plus the social isolation instigated and promoted by the Cuban government to discourage her friends and acquaintances from interacting with her socially after she was declared a pariah in Cuban society, violated her **right of assembly and association** (Articles XXI and XXII of the American Declaration).

16. The petitioners allege that, since 2007, Yoani Sánchez has been the target of far-fetched accusations intended to socially isolate and discredit her through Cuban media television programs that labeled her, with no evidence, as a “mercenary” of the United States or a “terrorist.” They note that the Cuban State has incited the civilian population to cause her physical harm. All of this violated her **right to the protection of her honor and personal reputation** (Article V of the American Declaration). The petitioners also note that the wiretapping of Yoani's telephone and communications is part of a common and systematic police practice against persons considered political dissidents to allow the government to learn about meetings and demonstrations they may be planning. This violated the blogger's **right to the inviolability and transmission of correspondence** (Article X of the American Declaration).

17. They assert that persons linked to the regime constantly monitor the surroundings of the alleged victim's residence, sometimes even questioning people who visit her, which infringes her **right to the inviolability of the home** (Article IX of the American Declaration).

18. The petitioners submit that the State violated the blogger's **right to freedom of expression** (Article IV of the American Declaration) because the denials of her requests to leave the country, the public campaigns to discredit, insult, and threaten her, and the arbitrary detentions all stem from the exercise of her right to freedom of expression and are a form of reprisal. They point out that the State's use of filters to block access to the *Generación Y* blog from public internet sites in Cuba also violates this right. According to the petitioners, this persecution is part of a broader scenario of persecution of journalists and a failure to recognize the right to freedom of expression in Cuba, which the IACHR has identified.

19. The petitioners also consider that the State violated Yoani Sánchez's **right to vote and to participate in government** (Article XX of the American Declaration). They indicate that this right includes the right to freely express criticism of the government and to propose political reforms. The petitioners allege that the State violated this right due to the police persecution and arrests of the blogger based on her speech against the government and her complaints of abuses and lack of freedoms in Cuba. They state that freedom of expression is essential for “making decisions that affect the community” and, therefore, is intimately related to voting and political participation.

20. Finally, the petitioners contend that Yoani Sánchez is being persecuted, tortured, and denied permission to leave the country solely based on her political opinions and the exercise of her right to freedom of expression. The petitioners maintain that there are people who can leave the country without incident and who can freely express their political opinions as long as they are in line with socialism and the official doctrine of the Cuban government. This differential treatment violates the **right to equality before the law** (Article II of the American Declaration).

B. The State

21. As of the time of this report, the State has provided no observations on the admissibility of the petition or the merits of the case.

III. ADMISSIBILITY ANALYSIS**A. Competence, duplication of procedures, and international res judicata**

<i>Competence Ratione personae:</i>	Yes
<i>Competence Ratione loci:</i>	Yes
<i>Competence Ratione temporis:</i>	Yes
<i>Competence Ratione materiae:</i>	Yes, American Declaration (instrument of ratification of the OAS Charter deposited on July 16, 1952).
<i>Duplication of procedures and international res judicata</i>	No

B. Admissibility requirements**1. 1. Exhaustion of domestic remedies**

22. Article 31.1 of the Rules of Procedure of the IACHR (“Rules of Procedure”) requires prior exhaustion of the remedies available under domestic law in accordance with generally recognized principles of international law, as a requirement for the admission of the claims presented in the petition. The purpose of this requirement is to enable the national authorities to take cognizance of the alleged violation of a protected right and, if appropriate, to resolve the situation before it is heard by an international body. Article 31.2 of the Rules of Procedure provides that the requirement of prior exhaustion of domestic remedies is not applicable when: (i) the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated; (ii) the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (iii) there has been unwarranted delay in the final adjudication of those remedies.⁵

23. The petitioners allege that Yoani Sánchez was detained three times. The first detention occurred on November 6, 2009, after which the alleged victim filed a complaint. The second detention occurred on February 24, 2010, and the petitioners allege that on March 10, 2010, the alleged victim filed complaints with the Offices of the Attorney General and the Military Prosecutor and with the National Assembly, the Council of State, the National Revolutionary Police (PNR), and the Infanta and Manglar police station. The third arrest occurred on October 4, 2012. The alleged victim did not inform the IACHR whether she filed a complaint regarding this detention, nor can this be determined from the case file.

24. The Commission notes that the State has not presented its observations regarding the admissibility or merits of this case. Therefore, based on Article 38 of the Rules of Procedure, the facts presented by the petitioners are presumed to be true unless other evidence leads to a different conclusion. The State neither submitted arguments regarding the exhaustion of domestic remedies nor contested the petitioners’ arguments on the issue. Article 31.3 of the Rules of Procedure of the IACHR establishes that, when the petitioners allege that an exception to the exhaustion of domestic remedies applies, it is up to the State to demonstrate that they have not been exhausted, unless this is clear from the record. Although the IACHR has no evidence before it regarding the complaint about the detention of November 6, 2009, the petitioners maintained that said events occurred, which was not disputed by the State. Accordingly, the IACHR finds that the alleged victim filed a complaint regarding the first detention. As for the second detention, the IACHR has evidence that several complaints were filed with the Cuban authorities, as alleged by the petitioners. This was not contested by the

⁵ IACHR. Report No. 71/16. Petition 765-09. Admissibility. Q’oq’ob Community of the Municipality of Santa María Nebaj. Guatemala. December 6, 2016, para. 27; IACHR. Report No. 77/20. Petition 1756-10. Inadmissibility. Ismael Estrada. United States of America. March 25, 2020, para. 8.

State. From the information available to the IACHR, it does not appear that the journalist filed a complaint in connection with the third detention.

25. On November 5, 2010, the alleged victim also filed a “request for response.” Subsequently, when she did not hear back from the State, she filed an appeal on March 30, 2012, with the Ministry of the Interior, seeking an explanation of the reasons the State did not authorize her to leave the country between 2007 and 2012 and asking for the prohibition to be lifted.

26. Based on the information available to the IACHR, to date—approximately eleven years after she filed them—the Cuban State has not processed any of Yoani Sánchez’s complaints, opened any investigations, or provided responses to the petitions filed with the Ministry of the Interior regarding the blocking of her departure from the country.

27. The petitioners argue that the lack of response to the domestic proceedings pursued by the alleged victim demonstrates that effective remedies are either nonexistent or they were unavailable to her because she was a journalist critical of the Cuban regime.

28. The Commission notes that, according to the petitioner’s allegations, some domestic remedies were filed that were never processed by the Cuban State. It also notes that certain facts were not reported, due to the complete absence of any response from the State. Accordingly, the IACHR will analyze the exhaustion of domestic remedies based on the exception in Article 31.2(a) of its Rules of Procedure.

29. As a first step, the Commission recalls that invoking the exceptions to the rule on the exhaustion of domestic remedies provided for in Article 31.2 of the Rules of Procedure is closely linked to determining possible violations of rights enshrined in the American Declaration, such as the right to a fair trial, the right of petition, and the right to due process of law. However, the rule on the exhaustion of domestic remedies, given its nature and purpose, is a rule with autonomous content vis-à-vis substantive human rights norms. Therefore, the matter of whether exceptions to the rule on the exhaustion of domestic remedies apply to the case at hand must be determined prior to and separately from the analysis of the merits, since it turns on a different standard of appreciation⁶ from the one used to determine possible violations of articles of the American Declaration.

30. The Commission recalls that the standard of evaluation at the admissibility stage differs from that used to rule on the merits of a petition. The Commission must make a *prima facie* assessment to determine whether the petition establishes the basis for a possible or potential violation of a right guaranteed by the Declaration, but not to establish a violation of rights. This assessment of whether there is a colorable claim of violations of the American Declaration is a primary analysis, which does not entail prejudging the merits of the case.⁷ This means that, here, the analysis of access to justice in Cuba will be the subject of a substantive determination at the merits phase of this proceeding. But these issues must also be examined *a priori* in this section, exclusively to determine the admissibility of the petition, without prejudging its merits, which will be addressed in the legal analysis section.

31. From the time of the facts alleged in the petition to the present, the IACHR has repeatedly noted the lack of judicial independence in Cuba. It did so, *inter alia*: (i) in the 2007 Annual Report;⁸ (ii) in the 2008 Annual Report;⁹ (iii) in the 2009 Annual Report;¹⁰ (iv) in the 2010 Annual Report;¹¹ (v) in the 2011 Annual Report;¹² (vi) in the 2012 Annual Report;¹³ (vii) in the 2013 Annual Report;¹⁴ (viii) in the 2014 Annual Report;¹⁵ (ix) in

⁶ IACHR. Report No. 8/21, Petition 992/10. Admissibility. Guillermo Zuloaga Núñez. Venezuela. January 10, 2021, para. 15.

⁷ IACHR, Report No. 69/08, Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008, para. 48, and Report No. 8/21, Petition 992/10. Admissibility. Guillermo Zuloaga Núñez. Venezuela. January 10, 2021, para. 15.

⁸ Ch. IV.B, Cuba, paras. 99-101.

⁹ Ch. IV.B, Cuba, paras. 168-175.

¹⁰ Ch. IV.B, Cuba, paras. 237-243.

¹¹ Ch. IV.B, Cuba, paras. 323-329.

¹² Ch. IV.B, Cuba, paras. 211-216.

¹³ Ch. IV.B, Cuba, paras. 107-114.

¹⁴ Ch. IV.B, Cuba, paras. 158-159.

¹⁵ Ch. IV.B, Cuba, paras. 202-204.

the 2015 Annual Report;¹⁶ (x) in the 2016 Annual Report;¹⁷ (xi) in the 2017 Annual Report;¹⁸ (xii) in the 2018 Annual Report;¹⁹ (xiii) in the 2018 report on the “Situation of Freedom of Expression in Cuba”;²⁰ (xiv) in the 2019 Annual Report;²¹ and (xv) in the 2020 report on the “Situation of Human Rights in Cuba.”²²

32. In addition to the above, the IACHR notes that Cuba has been included in Chapter IV, or its equivalent, of the Annual Report in the years 1984-1985 to 1994, and without interruption from 1996 to 2020. Since the 2013 amendments to the IACHR Rules of Procedure, the inclusion of Cuba in the annual reports has been based on the criteria set forth in Article 59.²³ In other words, The IACHR has repeatedly and consistently considered that Cuba meets these criteria for inclusion in Chapter IV.B: The State has committed or massive, serious and widespread violations of human rights guaranteed in the American Declaration and violations against the institutions of representative democracy, such as the lack of independence of the powers of the State.

33. The findings of the IACHR in each of these reports have been thorough and forceful. For this admissibility review, we can conclude—without prejudging the merits of this case—that in Cuba, in principle, judicial independence, due process of law, and access to justice are not guaranteed, especially for persons considered dissidents or labeled enemies of the Cuban government. For them, remedies are merely procedural formalities. The bodies of the judiciary or administrative authorities routinely fail to apply constitutional norms independently and impartially in proceedings involving dissidents.²⁴

34. The information received by the IACHR notes that the judiciary has been under the executive branch since the 1976 Cuban Constitution, Article 121 of which established the subordination of the courts to the Council of State, led by the Head of State. This means that the judicial branch answers directly to the executive branch.²⁵ This situation remained unchanged despite the constitutional reform, since the 2019 Constitution gives the Assemblies of People’s Power a great deal of influence over the appointment of judges; judges are accountable to them for their actions and can be removed by the body that elects them, so there are no rules to ensure that judges can render justice when their decisions may conflict with the political interests of the government.²⁶ This staggering accumulation of information, verified by the IACHR, shows there is no legal basis or political practice that allows for real independence in the administration of justice in Cuba—particularly in cases such as this one—and supports the application of the exception set forth in Article 36.2(a). As the IACHR has consistently stated, this is part of a context of serious disregard for the essential elements of representative democracy and its institutions because Cuba is a single-party communist State that inhibits and represses political dissent, and whose elections lack plurality and independence, as well as opposition parties.²⁷ Its Constitution provides for the defense of the socialist homeland and defines treason as the most serious crime, laying the foundations of a State that fails to provide institutional guarantees for the rule of law and protect the rights of all persons without political distinction.²⁸ The constitutional hierarchy of this approach establishes a

¹⁶ Ch. IV.B, Cuba, paras. 55-56.

¹⁷ Ch. IV.B, Cuba, paras. 62-64.

¹⁸ Ch. IV.B, Cuba, paras. 33-35.

¹⁹ Ch. IV.B, Cuba, paras. 26-28.

²⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba. OAS/SER.L/V/II CIDH/RELE/INF.21/18. December 31, 2018, para. 184.

²¹ Ch. IV.B, Cuba, paras. 6, 9, 19.

²² IACHR. Report on the Situation of Human Rights in Cuba. OEA/Ser.L/V/II. Doc 2. February 3, 2020, paras. 114 *et seq.*

²³ IACHR. Annual Report 2020. Ch. IV.B. Cuba, paras. 4, 14. Pursuant to Article 59 subsection 6, literal a.i and c of the Rules of Procedure, Cuba meets the following criteria to be included in Chapter IV.B: (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; and (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.

²⁴ *Mutatis mutandi*. IACHR. Report on the Situation of Human Rights in Cuba. OEA/Ser.L/V/II. Doc 2. February 3, 2020, paras. 114, 126.

²⁵ IACHR. Annual Report 2007. Ch. IV.B. Cuba. OEA/Ser.L/V/II. 130. Doc. 22 rev. 1. 29 December 2007, para. 101.

²⁶ IACHR. Report on the Situation of Human Rights in Cuba. OEA/Ser.L/V/II. Doc 2. February 3, 2020, paras. 114 and 117.

²⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* paras. 1-2.

²⁸ IACHR. Report on the Situation of Human Rights in Cuba. OEA/Ser.L/V/II. Doc 2. February 3, 2020, paras. 106, 113. *See* Articles 5 and 65 of the 1976 Constitution of the Republic of Cuba and Articles 4 and 5 of the [2019 Constitution of the Republic of Cuba](#). Adopted and published in the Official Gazette of the Republic on April 10, 2019. Article 4 of the 2019 Constitution provides that the defense of the

[continúa...]

broadly discretionary and vague limitation, which hardly fosters the creation of a legal framework conducive to exercising freedom of expression and other human rights.

35. Although the alleged victim filed administrative complaints and requests with the intention of exhausting some of the existing remedies, the total lack of response from the State—against the backdrop of smear campaigns and attacks targeting her as a political dissident because of her critical speech against the Cuban government—are *prima facie* evidence in the specific case of what the IACHR has found in the reports cited in the paragraphs above.

36. The IACHR thus finds that the exception to the requirement to exhaust domestic remedies in Article 36.2(a) of the Rules of Procedure of the IACHR applies in this case.

2. 2. Timeliness of the petition

37. Article 32.1 of the Rules of Procedure establishes that for a petition to be found admissible by the Commission, it must be lodged within six months from the date on which the alleged victim received notice of the final decision that exhausted the remedies. Here, the IACHR has established that the exception to the exhaustion of domestic remedies under Article 31.2(a) of the Rules of Procedure applies. Article 32.2 of the Rules of Procedure states that when the exceptions to the prior exhaustion of domestic remedies apply, the petition must be filed within a reasonable period, as determined by the Commission. To this end, the Commission must consider the date on which the alleged violation of rights occurred and the circumstances of each case.²⁹

38. In the case under analysis, the IACHR has found that the exception to the exhaustion of domestic remedies provided for in Article 31.2(a) of the Rules of Procedure is applicable. The petition before the IACHR was received on September 28, 2012. The facts alleged in the petition began in 2007, and their effects are ongoing. Therefore, given the context and characteristics of this case, the Commission finds that the petition was filed within a reasonable time and that the admissibility requirement pertaining to the filing deadline has been met.

3. 3. Analysis of colorable claim

39. For purposes of admissibility, the Commission must decide whether the alleged facts tend to establish a violation of rights, as stipulated in Article 34(a) of the Rules of Procedure, or whether the petition is “manifestly groundless or out of order” under Article 34(b).

40. The petitioners maintain that, between 2007 and 2012, Yoani María Sánchez Cordero was prevented from leaving Cuba to receive “various prestigious international awards for her blog and her journalistic work” because the Cuban authorities denied her permission to travel. They claim that because of her work as a journalist and blogger and her criticism of the Cuban government, she has been the victim of “various acts of persecution and physical assaults by police forces and social groups sympathetic to the Cuban regime.” According to the petitioners, Yoani Sánchez was arbitrarily detained on different occasions by State authorities and was the victim of cruel, inhuman, and degrading treatment while in custody. They assert that the alleged victim is “constantly” under surveillance; her private telephone communications are intercepted; her friends and associates have been pressured to suspend “all contact with her”; she is denied access to various places and public events in Cuba; and she has been denied “the most basic elements of due process in her contact with the government.” All of the above, according to the petitioners, is retaliation for the exercise of her right to freedom of expression through her journalistic work and her blog critical of the State, access to which is blocked by the authorities from public internet sites in Cuba.

41. At the time of this writing, the State has submitted no observations on the admissibility or merits of the case. In light of the factual and legal arguments presented by the petitioners and the nature of the matter before

socialist homeland “is the greatest honor and supreme duty of every Cuban,” and “[t]reason is the most serious of crimes. Anyone who commits treason is subject to the most severe penalties.”

²⁹ IACHR. Report No. 18/14. Petition 1625-07. Admissibility. Nicolasa and Family. Colombia. April 3, 2014, para. 45; IACHR. Report No. 62/16. Petition 4449-02. Admissibility. Saulo Arboleda Gómez. Colombia. December 6, 2016, para. 32.

it, the IACHR finds that the allegations set forth are not manifestly groundless and require an analysis of the merits since, if proven, they could all constitute violations of the rights protected in Articles I (right to life, liberty and personal security), II (right to equality before the law), IV (right to freedom of investigation, opinion, expression, and dissemination), V (right to protection of honor, personal reputation, and private and family life), VIII (right to residence and movement), IX (right to the inviolability of the home), X (right to the inviolability and transmission of correspondence), XVIII (right to a fair trial), XX (right to vote and to participate in government), XXI (right of assembly), XXII (right of association), XXIV (right of petition), and XXV (right of protection from arbitrary arrest) of the American Declaration of the Rights and Duties of Man.

42. Under the principle of *iura novit curia*, the Commission also declares this petition admissible with respect to Article XXVI of the American Declaration (right to due process), since the absolute lack of a response to the remedies pursued at the domestic level could violate the right to have public bodies or authorities determine rights independently and impartially.

IV. FINDINGS OF FACT

43. The Commission notes that, despite its repeated requests, the State has so far failed to provide observations, information, or evidence contradicting the petitioners' allegations. The Commission also notes that the facts alleged by the petitioners describe the situation of the alleged victim with specificity, and that some of these facts are also corroborated by evidence provided or documented in other sources.

44. Based on these considerations, and on the absence of evidence leading to a contrary conclusion, the Commission will apply Article 38 of its Rules of Procedure in this case to the relevant extent. Article 38 establishes that:

The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the period set by the Commission under the provisions of Article 37 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion.

45. Therefore, in line with its prior decisions,³⁰ the Commission finds that the facts described in these paragraphs about the alleged victim have been proven.

A. Constitutional regulation of the right to freedom of expression

46. Article 53 of the 1976 Constitution of the Republic of Cuba,³¹ in force at the outset of the facts alleged, established: "Citizens have freedom of speech and of the press in keeping with the objectives of socialist society. Material conditions for the exercise of that right are provided by the fact that the press, radio, television, movies, and other mass media are State or social property and can never be private property. This ensures that they are used at the exclusive service of the working people and in the interest of society. The law regulates the exercise of these freedoms."

47. Article 62 of the 1976 Constitution provided that: "None of the freedoms to which citizens are entitled may be exercised against those established in the Constitution and the laws, nor against the existence and aims of the socialist state, nor against the decision of the Cuban people to build socialism and communism. Violations of this principle are punishable."

48. Cuba adopted a new Constitution on April 10, 2019.³² Articles 53 and 54 recognize the rights of access to information and freedom of expression, respectively. The former provides that: "Every person has the right to request and receive truthful, objective, and timely information from the State, and to access information generated by State bodies and entities, under the established regulations." The latter stipulates that: "The State recognizes, respects, and guarantees individual freedom of thought, conscience, and expression. Conscientious

³⁰ IACHR, Report No. 27/18, Case No. 12.127, Merits (Publication). Vladimiro Roca Antúnez and Others. Cuba. February 24, 2018, para. 23.

³¹ [Constitution of the Republic of Cuba of 1976](#).

³² [Constitution of the Republic of Cuba of 2019](#). Adopted and published in the Official Gazette of the Republic on April 10, 2019.

objection may not be invoked to evade compliance with the law or prevent others from complying with it or exercising their rights.” The general obligation of the State to recognize, respect, and guarantee freedom of thought, conscience, and expression was not expressly included in the 1976 Constitution, nor does it contain a similar provision.

49. Article 55 of the new Constitution replaces Article 53 of the 1976 Constitution and establishes that: “Freedom of the press is recognized. This right is exercised according to the law and for the purposes of society. The fundamental means of social communication, in any of their forms, are the socialist property of all people or of political, social, and mass organizations; they are not subject to any other type of ownership. The State establishes the principles of organization and operation for all means of social communication.”

50. The new Constitution keeps the current legal system’s main restrictions on freedom of expression. Although Article 55 no longer expressly establishes that freedom of the press is subject to the “objectives of socialist society,” it maintains the prohibition of private (non-state) media ownership. As this article expressly states, the media “are the socialist property of all people.” Under the new Constitution, the Communist Party remains the sole party and the highest leading political force in society and the State. The new Constitution also maintains other provisions that prevent political pluralism and non-state ownership of the media in any of its forms. Moreover, the reform fails to establish judicial actions to guarantee or protect the exercise of fundamental freedoms.³³

B. Context of persecution of dissident political journalists in Cuba

51. Cuba was repeatedly included in Chapter IV.B of the Annual Report from 1984 to 1994, and continuously from 1996 to 2020, because the Commission has verified the existence of serious violations of fundamental rights; massive, gross, and systematic violations of the human rights guaranteed in the American Declaration; and violations against institutions of representative democracy, such as the separation of powers.

52. The one-party system, which subordinates the exercise of human rights to socialist objectives, has suppressed the voices of government critics who have tried to express themselves and engage in the conduct of the country’s affairs. The prohibition on association for political purposes and arbitrary restrictions on freedom of expression, the right of assembly, the right of movement, and due process, among other fundamental rights, are very common on the island.³⁴ In recent decades, including the years referred to in the facts alleged, the Commission has verified the serious context of repression in which journalists, human rights defenders, and political dissidents find themselves in Cuba, especially with regard to the exercise of their right to freedom of expression and related rights. Restrictions on access to online content, harassment, criminalization, and arbitrary detentions are among the practices carried out in Cuba against such persons.³⁵

53. Cuba has remained for decades among the countries of the Hemisphere with the worst conditions and least favorable environment for the exercise of the right to freedom of expression. The international organization Reporters Without Borders (RSF) ranks Cuba 171st out of 180 countries in its 2020 global ranking, which it carries out based on the degree of freedom enjoyed by journalists. Year after year, Cuba continues to

³³ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Report on the Situation of Freedom of Expression in Cuba](#), *supra* para. 43.

³⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Report on the Situation of Freedom of Expression in Cuba](#), *supra* paras. 1-2.

³⁵ IACHR. Annual Report 2007. Ch. IV.B (Human Rights Developments in the Region - Cuba); IACHR. Annual Report 2008. Ch. IV.B (Human Rights Developments in the Region - Cuba); IACHR. Annual Report 2009. Ch. IV.B (Human Rights Developments in the Region - Cuba); IACHR. Annual Report 2010. Ch. IV.B (Human Rights Developments in the Region - Cuba); IACHR. Annual Report 2011. Ch. IV.B (Human Rights Developments in the Region - Cuba); IACHR. Annual Report 2012. Ch. IV.B (Human Rights Developments in the Region - Cuba); IACHR. Annual Report 2013. Ch. IV. B (Situation of Human Rights in Cuba); IACHR. Annual Report 2014. Ch. IV. B (Situation of Human Rights in Cuba); IACHR. Annual Report 2015. Ch. IV. B (Situation of Human Rights in Cuba); IACHR. Annual Report 2016. Ch. IV.b (Situation of human rights in Cuba); IACHR. Annual Report 2017. Ch. IV. B (Situation of human rights in Cuba); IACHR. Annual Report 2018. Ch. IV.b (Situation of human rights in Cuba); IACHR. Special Report on the Situation of Freedom of Expression in Cuba, 2018, OEA/SER.L/V/II IACHR/RELE/INF.21/18; IACHR. Annual Report 2019. Ch. IV. B (Situation of human rights in Cuba); IACHR. Situation of Human Rights in Cuba, 2020, OEA/Ser.L/V/II Doc.2/20.

be the worst rated country in the Americas.³⁶ According to the Committee to Protect Journalists (CPJ), Cuba is one of the 10 countries with the most censorship in the world and the only one in the Hemisphere on this list.³⁷ In addition, the legal system subordinates the exercise of rights to the protection of certain purposes and interests, i.e., the socialist State, and the State has maintained a permanent monopoly over all communications media, as well as the internet.³⁸

54. The above has been repeatedly noted by the IACHR in its many reports. For example, in its 2007 annual report, the IACHR noted that:

“The Commission has repeatedly held that Cuba is the only country in the Hemisphere where it can be categorically said that there is no freedom of expression. Such statements are based essentially on the persistent problems reflected in the following conditions: (a) deprivation of personal freedom as a result of expression of opinions or criticism by journalists and dissidents; (b) restrictions to the right of access to information over the Internet; (c) indirect restrictions on the practice of journalism applied to the international media and correspondents; and (d) the criminalization of public demonstrations.”³⁹

55. In 2008, although the IACHR highlighted advances during that year regarding citizens’ access to the internet, its Office of the Special Rapporteur for Freedom of Expression underscored that “there were problems accessing the blogs of the *desdecuba.com* platform, including Yoani Sánchez’s *Generation Y*, one of the most popular in the country.”⁴⁰ The Office further noted that there were “instances of intimidation and harassment of journalists by police agents,”⁴¹ that there were continued “actions taken to repress social demonstrations,”⁴² and that Cuba was “the country with the highest number of imprisoned journalists in the region.”⁴³

56. Likewise, the 2009 report of the Office of the Special Rapporteur for Freedom of Expression noted that “some journalists who did not support the Cuban government were reportedly threatened and beaten by security forces.”⁴⁴ The case of Yoani Sánchez was pointed out as one of them.⁴⁵

57. In 2010, the IACHR identified that in Cuba there was a “tactic of political repression based on systematic arrests for several hours or a few days, threats, acts of repudiation, and other forms of harassment of opposition activists.”⁴⁶ In 2011, through its Office of the Special Rapporteur for Freedom of Expression, the IACHR noted the “context of worsening arrests and harassment against political and human rights activists.”⁴⁷

58. In 2012, the Commission identified “temporary arbitrary detentions were still being made and could last hours or even a few days. The victims were persons identified as opponents of the regime and the idea was to prevent them from participating in political activities or to respond to demonstrations or the circulation of messages critical of the government.”⁴⁸

59. In its 2012 Annual Report, the IACHR noted that these actions were part of a pattern in Cuba. For the IACHR, “The restrictions on political rights, on the right to freedom of association, freedom of expression, freedom of thought, the lack of elections, the lack of an independent judicial branch and restrictions on freedom

³⁶ Reporters Without Borders (RSF). 2021 Ranking. Table of countries: <https://rsf.org/en/ranking-table>; IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* paras. 3 *et seq.*

³⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* paras. 3 *et seq.*

³⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* paras. 26-27.

³⁹ IACHR. Annual Report 2007. Ch. IV.B (Human Rights Developments in the Region - Cuba), para. 127.

⁴⁰ IACHR, Annual Report 2008, Report of the Office of the Special Rapporteur for Freedom of Expression, para. 91.

⁴¹ IACHR, Annual Report 2008, Report of the Office of the Special Rapporteur for Freedom of Expression, para. 94.

⁴² IACHR. Annual Report 2008. Report of the Office of the Special Rapporteur for Freedom of Expression, para. 97.

⁴³ IACHR. Annual Report 2008. Report of the Office of the Special Rapporteur for Freedom of Expression, para. 84.

⁴⁴ IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression, para. 182

⁴⁵ IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression, para. 184.

⁴⁶ IACHR. Annual Report 2010. Ch. IV (Human Rights Development Situation in the Region - Cuba), para. 312.

⁴⁷ IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression, para. 184

⁴⁸ IACHR. November 9, 2012. IACHR Condemns Arbitrary Arrests of Human Rights Defenders in Cuba. Press Release 132/12.

of movement have, over the decades, become permanent fixtures in systematic violations of the human rights of the Cuban people.”⁴⁹

60. In its 2013 Annual Report, the IACHR similarly identified the continuation of arrests, attacks, and threats against journalists, members of the opposition, and demonstrators, in addition to censorship and the seizure of journalistic material.⁵⁰ It therefore recommended that Cuba conduct “serious, impartial, and effective investigations into attacks, threats, and acts of intimidation committed against journalists and others working in the media.”⁵¹

61. In 2014, the IACHR held a hearing on the “human rights situation of journalists in Cuba.” At this hearing, the Commission received information on the ongoing violations of the rights to freedom of expression, association, and freedom of movement of independent journalists in Cuba. This is reflected in arbitrary detentions, assaults, persecution, harassment, surveillance, seizure of work equipment, and threats by state agents. The petitioners noted that, in the first months of the year, the authorities reportedly detained 1,817 members of civil society, 31 of whom were independent journalists. They also pointed out that, at that time, there were at least 68 human rights activists in prison in the country, three of them journalists who had been arrested for having expressed themselves freely.⁵²

62. The lack of independence of the judiciary and investigative bodies in Cuba provide even more opportunities for attacks against freedom of expression. Regarding the functioning of the courts in Cuba, the IACHR pointed out the following in its 2015 Annual Report:

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.⁵³

63. Given the close relationship between access to justice and the enjoyment of human rights, in 2016 the IACHR identified the non-existence of guarantees for the free practice of journalism and the safety of those who are especially at risk due to exercising their right to freedom of expression, whether the threats come from State agents or private individuals, and the lack of diligent, impartial, and effective investigations into these facts. The IACHR also urged the State of Cuba to ensure that the perpetrators are tried by impartial and independent courts, removing any legal obstacles that may arise in the investigation and prosecution.⁵⁴

64. Likewise, in 2016, the IACHR also took note of “retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression.”⁵⁵ In 2017 and 2018, the IACHR, especially through its annual reports, remained attentive to context of the persecution of journalists in Cuba and noted that violence as a consequence of the exercise of freedom of expression continued to be met with impunity. The IACHR noted that “the lack of independence of the judicial branch compromises its ability to provide guarantees for the enjoyment of human rights.”⁵⁶ In 2018, there was an increase in repression against journalists in Cuba:

In 2018, non-governmental organizations reported the continuation of a policy of the security agencies of the State harassing journalists, human rights defenders, activists and political dissidents. According

⁴⁹ IACHR. Annual Report 2012. Ch. IV.B, Cuba, para. 14.

⁵⁰ IACHR. Annual Report 2013, Ch. IV.B, Cuba, paras. 176 and *et seq.*, and 202 *et seq.*

⁵¹ IACHR. Annual Report 2013. Ch. IV.B, (Cuba), para. 209.

⁵² IACHR. Annual Report 2014, Ch. IV.B, Cuba, para. 216.

⁵³ IACHR. Annual Report 2015. Ch. IV.B, Cuba, para. 57.

⁵⁴ IACHR. Annual Report 2016. Ch. IV.B, Cuba, para. 115.

⁵⁵ IACHR. October 13, 2006. Press Release R149/76. *IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression.*

⁵⁶ IACHR. Annual Report 2017. Ch. IV.B, Cuba, para. 35.

to these organizations, there has been “increased repression” in Cuba since 2017, when the government set into motion the process of general elections. According to available information, in order to prevent these individuals from freely practicing their professions, the Cuban State used arbitrary arrests –generally for short periods of time – the criminal justice system as a tool to prosecute them (‘criminalize’ them, that is, charge them on bogus criminal charges), internal deportations, summonses to police facilities, raids of their homes and family pressure, travel restrictions, and confiscation of the tools of their trade and work materials. The information received indicates that those affected are intercepted on the street, State agents often conduct “confiscations” during raid and search operations of their homes, their family is intimidated and the journalist is arrested. In these cases, the authorities have refused to return the confiscated items to the owners and, according to reports, when the work materials and equipment are seized, the police refuse to provide a copy of the list of these items.⁵⁷

65. In 2019, through its Office of the Special Rapporteur, the IACHR published the report “Freedom of Expression in Cuba,” in which it clearly underscored the existence of a context of persecution against journalists critical of the Cuban regime in 2019. According to the IACHR:

The IACHR and its Office of the Special Rapporteur have consistently observed a serious practice of repressing political dissidents on account of their condemnation of the lack of political rights and freedoms or simply for trying to express an opinion and participate in political affairs. The most commonly reported forms of harassment against dissidents include internal deportations, summonses to police centers, searches of their homes or of the offices of political organizations, and being prevented from attending meetings of their organizations. There have also been reports of the use of physical assault, vandalism, and acts of repudiation, among others, to harass Cuban dissidents.⁵⁸

66. The IACHR “has learned that independent journalists are frequently subject to interrogations designed to intimidate them. According to available information, independent journalists have been directly threatened by State agents with deprivation of liberty or other retaliation for the practice of journalism.”⁵⁹ At the same time, “threats, surveillance, and harassment of journalists’ families and associates”⁶⁰ were also common.

67. The Commission has also “received information on the use of arbitrary arrest as a method of intimidation or retaliation against journalists,” especially short-term detentions in which detainees are physically abused but no charges are filed. Many times, “journalists were reportedly held incommunicado and crowded into cells alongside prisoners detained for common crimes.” Several of these detentions also had “the apparent aim of preventing travel or blocking the coverage of social protests”⁶¹ occurring near the date of the arrest or “on dates close to events related to domestic policy issues, participation in international forums, or human rights.”⁶²

68. The IACHR also addressed the common practice of barring individuals from leaving the country in retaliation for critical or dissident journalism in Cuba. These bans have generally been issued “verbally, without written documents or a specific reply.”⁶³

69. This pattern has been perpetrated over the years not only against traditional print media journalists but also against internet journalism. In the report, which highlights the case of journalist and blogger Yoani Sánchez as an example, the IACHR has noted that

⁵⁷ IACHR. Annual Report 2018. Ch. IV.B, Cuba, para. 48.

⁵⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* para. 147.

⁵⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* para. 91.

⁶⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* para. 111.

⁶¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* para. 98.

⁶² IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* para. 99.

⁶³ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* para. 117.

Government surveillance of web activity has reportedly been used as a way to identify independent journalists and political dissidents, leading to patterns of harassment—traditionally used against the print media—against those engaged in these types of online activities, as well as to arbitrary arrests [...].⁶⁴

70. Finally, in 2020, the IACHR reaffirmed these conclusions in its Report on the Situation of Human Rights in Cuba. Yoani Sánchez was cited as one of several journalists “who have been repeatedly and deliberately harassed in Cuba over the last five years.”⁶⁵

71. The Commission once again noted the persecution of the independent press in Cuba and stressed that journalists and political dissidents have no way to obtain access to justice; the IACHR “has repeatedly stated that there is no proper separation of powers between the branches of the Cuban government to ensure that the justice system is free from influence from the other branches.”⁶⁶ It asserted that:

One of the Commission’s greatest concerns regarding access to justice in Cuba relates to the effective application of constitutional norms in administrative and judicial [proceedings]. The Commission notes that the absence of judicial independence has serious repercussions on judges’ decisions. In specific cases of dissidents, testimonies indicate that there is a lack of impartiality, and guarantees such as the right to a public trial are not fulfilled.⁶⁷

72. Finally, the IACHR has observed over the years that the persecution of journalists, human rights defenders, and political dissidents in Cuba has been coupled with their identification as subversives and counterrevolutionaries.⁶⁸ These and other similar labels, such as the accusation of ties to foreign countries⁶⁹ (especially accusations of working for the United States), are used not only by individuals, the Committees for the Defense of the Revolution, and the People’s Rapid Response Detachments⁷⁰ but also by State authorities.⁷¹ The IACHR considers that the stigmatization of journalists with pejorative labels is a repeated practice on the island.

C. Journalist and blogger Yoani María Sánchez Cordero

73. Yoani María Sánchez Cordero was born on September 4, 1975.⁷² From 1995 to 2000, she attended the College of Arts and Letters, where she completed a major in Hispanic Philology and specialized in contemporary Latin American literature. After obtaining her degree, she worked at *Editorial Gente Nueva* and as a Spanish teacher for tourists. She emigrated to Switzerland in 2002 and returned to Cuba in 2004.⁷³

⁶⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* para. 241.

⁶⁵ IACHR. [Report on the Situation of Human Rights in Cuba](#). OEA/Ser.L/V/II. Doc 2. February 3, 2020, para. 207.

⁶⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* p. 184.

⁶⁷ IACHR. [Report on the Situation of Human Rights in Cuba](#). OEA/Ser.L/V/II. Doc 2. February 3, 2020, para. 126.

⁶⁸ IACHR, Report No. 27/18, Case No. 12.127, Merits (Publication). Vladimiro Roca Antunez and Others. Cuba. February 24, 2018, paras. 52, 61; IACHR, Report No. 67/06, Case No. 12.476. Merits (Publication). Oscar Elías Biscet et al. Cuba. October 21, 2006, paras. 13, 204, 205, 212, 224; IACHR. Annual Report 2002. Ch. IV - Human Rights Developments in the Region - Cuba. OEA/Ser.L/V/II.117, Doc. 1, rev. 1, March 7, 2003, para. 27; IACHR. Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression. OEA/Ser.L/V/II. Doc. 69, 30 December 2011, para. 142. IACHR. Special Report on the Situation of Freedom of Expression in Cuba, OEA/SER.L/V/II IACHR/RELE/INF.21/18, 2018, para. 142.

⁶⁹ IACHR. Resolution 19/2019, Precautionary Measures No. 1025-18, Manuel Alejandro León Velázquez et al. regarding Cuba (Journalists of “Diario de Cuba”), April 4, 2019, para. 7; IACHR. Annual Report 2008. Ch. IV. B. Cuba. OEA/Ser.L/V/II.134, Doc. 5 rev. 1, 25 February 2009, para. 219.

⁷⁰ IACHR. Annual Report 2008. Ch. IV. B. Cuba. OEA/Ser.L/V/II.134, Doc. 5 rev. 1, 25 February 2009, para. 205.

⁷¹ IACHR. Annual Report 2012. Ch. IV. B. Cuba. OEA/Ser.L/V/II.147, Doc. 1, 5 March 2013, paras. 78, 118.

⁷² Annex 1. Passport. Annex 1 to the petitioner’s observations on the merits of February 11, 2019.

⁷³ Initial Petition of September 28, 2012, pp. 5-6.

74. After her return, she and a group of fellow Cubans founded the magazine *Consenso*, and in April 2007, she created the blog *Generación Y*.⁷⁴ Currently, she is a journalist and the founding director of the digital newspaper *14ymedio.com*,⁷⁵ the first independent news website in Cuba, which is hosted outside the country.⁷⁶

75. Yoani has published numerous articles critical of the Cuban government. Both in her articles and in her blog, she has narrated episodes of her life and of political and social events in Cuba. She has addressed topics such as internet access in Cuba and the lack of new technologies, the socioeconomic living conditions, poverty, corruption, the lack of freedom of expression, impediments to leaving the country, and the persecution of political dissidents.⁷⁷

76. The blog has gained worldwide recognition. In 2008, the alleged victim received the Ortega y Gasset Journalism Award,⁷⁸ was selected by *Time* magazine among the 100 most influential people in the world in the “Heroes and Pioneers” category,⁷⁹ and had her blog listed among the top 25 by the *Time* magazine and by *CNN*, in 2009.⁸⁰ She also took first place in *The BOBs* competition of the German magazine *Deutsche Welle*.⁸¹ In 2009, she received the Maria Moors Cabot Prize from Columbia University,⁸² and in 2011, *Foreign Policy* chose her in its ranking of “The FP Top 100 Global Thinkers.”⁸³

77. In the following years, Yoani Sánchez continued to receive public recognition for her work on her blog and as a journalist. She received at least 21 awards between 2009 and 2012, from institutions, newspapers, and magazines in Argentina, Cuba, Denmark, the United States, Spain, Mexico, the Netherlands, the United Kingdom, and Switzerland.⁸⁴

D. Detentions and assaults against Yoani Sánchez Cordero while she was deprived of her liberty

78. On November 6, 2009, Yoani Sánchez was deprived of her liberty by three men in civilian clothes who approached her in a vehicle and abducted her. A short time later, they threw her out of the vehicle onto the street. While she was deprived of her liberty, one of the men put his knees on her sternum as another hit her ears and pulled her hair. These assaults resulted in serious bodily injuries. For a week, she used crutches to walk. She was also unable to move her head backwards on her left side for a year. However, doctors from the Cuban public health system refused to certify her injuries.⁸⁵

79. On February 24, 2010, unknown persons dressed in civilian clothes approached the alleged victim and her sister on the street as they were going to sign condolence books for the death of Orlando Zapata Tamayo.⁸⁶

⁷⁴ Initial Petition of September 28, 2012, p. 5.

⁷⁵ Profile of Yoani Sánchez. Cuban newspaper *14ymedio.com*. Available at: <https://www.14ymedio.com/blogs/generacion-y/generacion-y-yoani-sanchez-cuba-habana-7-1558714114.html>

⁷⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Special Report on the Situation of Freedom of Expression in Cuba*. OAS/SER.L/V/II CIDH/RELE/INF.21/18. December 31, 2018, para. 233.

⁷⁷ *Generación Y* blog. October 22, 2007. *Yo sospecho, tú sospechas, todos sospechamos*; July 11, 2008. *Democracia de Chevrolet*; July 21, 2008. *Ciber-mutilados*; July 26, 2009. *Leche, agua y sombra*; March 15, 2010. *Tropical mafia*; *Generación Y* blog in Portuguese. April 10, 2010. *Do leite à barricada*; May 7, 2010. *El Iphone de Rosa Diez*; *Generación Y* blog in Portuguese. August 2, 2011 *Na própria carne*; February 29, 2012. *La planta, nuestra planta*.

⁷⁸ *El País*. April 4, 2008. *The Ortega awards the bravery of investigative journalism*; *Periodismo ciudadano*. Undated. *La Bloguera Cubana Yoani Sánchez Gana El Premio Ortega Y Gasset De Periodismo Digital* [Cuban Blogger Yoani Sánchez Wins Ortega Y Gasset Award for Digital Journalism].

⁷⁹ *Time*. Undated. *The 2008 Times 100: heroes and pioneers. Yoani Sánchez*; *Periodismo ciudadano*. Undated. *La Bloguera Cubana Yoani Sánchez, Elegida Por La Revista Times Como Una De Las 100 Personas Más Influyentes* [Cuban Blogger Yoani Sánchez Named One of Time Magazine’s 100 Most Influential People].

⁸⁰ *Time*. Undated. *25 best blogs: Generación Y*; International Press Institute. September 2, 2010. *Cuban blogger Yoani Sánchez is named IPI’s 60th and final World Press Freedom Hero*.

⁸¹ Deutsche Welle. November 27, 2008. *Generation Y Wins 2008 Best of the Blogs Award*; *El Nuevo Herald*. November 27, 2008. *Yoani wins The Bobs Award for Best Blog of 2008*.

⁸² Columbia. January 26, 2021. *Past Maria Moors Cabot Prizes Winners*; Reuters. October 13, 2009. *Cuba stops blogger traveling to NYC to accept prize*.

⁸³ *Foreign Policy*. November 28, 2011. *The FP Top 100 Global Thinkers*; Foundation for Human Rights in Cuba. January 8, 2012. *Yoani Sánchez Included in Foreign Policy Magazine’s “Top 100 Global Thinkers” List*.

⁸⁴ Initial Petition of September 28, 2012, pp. 6-8.

⁸⁵ Initial Petition of September 28, 2012, p. 13.

⁸⁶ Initial Petition of September 28, 2012, p. 14.

The civilians, two of whom were women, held Yoani Sánchez and asked her to identify herself. She refused on the grounds that they were dressed in civilian clothes, were not authorities, and did not have the authority to do so. When the journalist tried to make a call to report what was happening to her, the women tried to restrain her and take away her cell phone.⁸⁷

80. Yoani requested the help of uniformed officers, who—rather than protecting her—allowed the civilians to continue assaulting her.⁸⁸ The police continued to beat the journalist and put her in a “cage car.” Yoani resisted, saying, “You are a police officer, and you represent me as a citizen. You cannot hit me.” The officer replied, “I represent the Cuban revolution.”⁸⁹ The police vehicle took her to the Fourth Police Station at Infanta and Manglar. When she arrived there, she was met by police officers without badges. They took her out of the vehicle by force and continued assaulting her, kicking her to make her get up from the ground. Yoani stated that she was there against her will and that she had been arbitrarily detained by unidentified police.⁹⁰

81. The police officers took Yoani and her sister Yunia to a men’s⁹¹ holding cell and labeled them as counterrevolutionaries, calling Yoani the “ringleader.”⁹² The alleged victim identified two policemen as her assailants. Yoani was released on the same day, without being informed of the reasons for her detention and without there being any arrest file or record of her interrogation.⁹³

82. On October 4, 2012, Yoani Sánchez was detained for the third time, along with her husband, Reynaldo Escobar, and a friend, Agustin Lopez,⁹⁴ in the city of Bayamo, without being informed of the reason. Yoani was in Bayamo reporting for the newspaper *El País* on the trial of Ángel Carromero, accused of murdering political dissidents Oswaldo Payá Sardinás and Harold Cepero.⁹⁵ Their cell phones and the cameras they were carrying were confiscated.⁹⁶

83. The journalist was taken to the Bayamo police station, where three policewomen surrounded her, took away her belongings, and tried to remove her clothes. When she resisted, they threw her to the ground, breaking one of her teeth and bruising her ribs. After a further attempt to undress her, Yoani continued to resist, and the police left her in a cell where she was then interrogated. A man filmed part of what happened. The alleged victim was allowed to call her daughter in the early hours of the morning after having been denied a call for several hours.⁹⁷

84. The alleged victim went on a hunger and thirst strike while in custody and was released after more than 30 hours. She was not informed of the reasons for her detention, nor was any record of her detention or interrogation⁹⁸ issued.

E. Impediments to Yoani Sánchez Cordero’s departure from the country between 2007 and 2012

85. Yoani Sánchez was granted several visas to travel to receive awards and prizes for her blog and her journalistic work. According to the evidence before the IACHR, the blogger had visas to travel to Argentina (May 3, 2010), Canada (December 3, 2009), Brazil (January 25, 2012), Chile (February 23, 2010), the United States

⁸⁷ Annex 2. Transcript of the recording of the arrest of February 24, 2010, made by Yoani Sánchez. Annex 6 to the petitioner’s observations on the merits of February 11, 2019. The alleged victim recorded part of these events and submitted a transcript of the recording.

⁸⁸ Annex 2. Transcript of the recording of the arrest of February 24, 2010, made by Yoani Sánchez. Annex 6 to the petitioner’s observations on the merits of February 11, 2019.

⁸⁹ Annex 2. Transcript of the recording of the arrest of February 24, 2010, made by Yoani Sánchez. Annex 6 to the petitioner’s observations on the merits of February 11, 2019.

⁹⁰ Annex 2. Transcript of the recording of the arrest of February 24, 2010, made by Yoani Sánchez. Annex 6 to the petitioner’s observations on the merits of February 11, 2019.

⁹¹ Initial Petition of September 28, 2012, p. 14.

⁹² Annex 2. Transcript of the recording of the arrest of February 24, 2010, made by Yoani Sánchez. Annex 6 to the petitioner’s observations on the merits of February 11, 2019.

⁹³ Initial Petition of September 28, 2012, p. 14.

⁹⁴ Petitioner’s observations on the merits of February 11, 2019, p. 11.

⁹⁵ Annex 3. News on the detention of Yoani Sánchez. Annex 1 to the petitioner’s request for precautionary measures of October 5, 2012. See also, Petitioner’s request for precautionary measures of October 5, 2012, p. 1.

⁹⁶ Petitioner’s observations on the merits of February 11, 2019, p. 11.

⁹⁷ Petitioner’s observations on the merits of February 11, 2019, p. 12.

⁹⁸ Petitioner’s observations on the merits of February 11, 2019, p. 12.

(November 13, 2008, November 13, 2008, August 25, 2009, October 4, 2010, and August 5, 2011), and various States within the Schengen area (May 1, 2008, June 15, 2009, September 13, 2010, December 14, 2010, May 1, 2011, and October 13, 2011).⁹⁹

86. Between 2007 and 2012, the Bureau of Immigration and Alien Affairs repeatedly (at least 20 times) denied Yoani Sánchez's requests for permission to travel abroad.¹⁰⁰ These denials were evidenced mainly by the bureau's return of the administrative filing fee Sánchez had paid when requesting the respective exit permit from the country—with no explanation of the reasons for the denials—or the by a delay in the bureau's response until after the effective date of the visa.¹⁰¹ The Bureau of Immigration and Alien Affairs returned the fees paid by Yoani Sánchez on May 14, 2008, March 20, 2009, May 4, 2011 and August 15, 2011. These documents stated that Yoani Sánchez "would not travel for the time being."¹⁰²

87. On February 3, 2012, after applying for a new permit to leave the country, the alleged victim appeared at the Immigration and Alien Affairs office on Calle 17 between J and K (Vedado, Havana) at 1:33 p.m. to inquire about the status of her application.¹⁰³ The head of the department called her for an interview and told her: "Look, you have not been authorized to travel. I am giving you your passport and your check with the form for you to get your money back. It's there, at this address, right where you bought it."¹⁰⁴ During the interaction between the two, the official confirmed that this was the nineteenth time Yoani had requested permission to leave the country—to no avail—and informed her that she could try as many times as she wanted.¹⁰⁵

88. In November 2012, after the IACHR granted precautionary measures, the State authorized the alleged victim to leave the country.¹⁰⁶

89. On October 16, 2012, Decree-Law No. 302,¹⁰⁷ enacted by the Council of State to amend the 1976 Law on Migration, was published in the Official Gazette of the Republic of Cuba. This reform entered into force on January 14, 2013. The main amendments to the Law on Migration include the partial elimination of the requirement for authorization to leave Cuban territory.¹⁰⁸

⁹⁹ Annex 4. Passport and visas. Annex 1 to the petitioner's observations on the merits dated February 11, 2019.

¹⁰⁰ Initial Petition of September 28, 2012, p. 15.

¹⁰¹ Initial Petition of September 28, 2012, p. 15.

¹⁰² Annex 5. Requests from the Bureau of Immigration and Alien Affairs to bank branches for the refund of travel fees. Annex 2 to the petitioner's observations on the merits of February 11, 2019.

¹⁰³ Annex 6. Audio of interview at the Immigration and Alien Affairs office on Calle 17, February 3, 2012. Annex 2 to the petitioner's brief of May 10, 2012, received by the IACHR on October 2, 2012. Yoani Sánchez recorded the interview, which is part of the evidence before the IACHR.

¹⁰⁴ Annex 6. Audio of interview at the Immigration and Alien Affairs office on Calle 17, February 3, 2012. Annex 2 to the petitioner's brief of May 10, 2012, received by the IACHR on October 2, 2012.

¹⁰⁵ Annex 6. Audio of interview at the Immigration and Alien Affairs office on Calle 17, February 3, 2012. Annex 2 to the petitioner's brief of May 10, 2012, received by the IACHR on October 2, 2012.

¹⁰⁶ Petitioner's observations on the merits of February 11, 2019, p. 3.

¹⁰⁷ Council of State. Decree Law No. 302. Amending Law No. 1312 "Law on Migration" of September 20, 1976. Published in the Official Gazette of the Republic of Cuba on October 16, 2012.

¹⁰⁸ According to public information, Cuba partially eliminated the requirement for authorization to leave the country. Reuters. October 16, 2012. *Cuba eliminates restrictions on foreign travel*; BBC. October 16, 2012. *Cuba eliminates exit permit to travel abroad*. The IACHR noted in its 2012 annual report that Decree-Law No. 302, enacted by the Council of State to amend the 1976 Law on Migration, was published in the Official Gazette of the Republic of Cuba on October 16, 2012, and entered into force on January 14, 2013. The main amendments to the Law on Migration included the partial elimination of the requirement for authorization to leave Cuban territory; the extension, from 11 to 24 months, of the period required for a Cuban national who has traveled abroad to be considered an emigrant; and the elimination of the need for a letter of invitation from the destination country, among others. Although Decree-Law No. 302 of 2012 reflects progress with respect to the Law on Migration, the Commission notes that the Decree-Law establishes a set of conditions under which certain Cuban nationals residing in Cuba may not obtain a current passport or may not leave the country for reasons of "national defense and security," for "lack of the established authorization, by virtue of regulations aimed at preserving the qualified labor force for the country's economic, social, scientific, and technical development, as well as for the security and protection of official information"; and "when, for other reasons of public interest, it is determined by the competent authorities"; among other reasons. The Commission observes that the breadth of certain terms gives the Cuban authorities a wide margin of discretion to allow or block the departure of Cuban nationals. IACHR. 2012 Annual Report. Ch. IV.B. Cuba, paras. 95, 96. Available at: <https://www.oas.org/en/iachr/docs/annual/2012/Chap.4.Cuba.doc>.

F. Complaints regarding the arrests of 2009 and 2010

90. At the end of 2009, Yoani Sánchez filed a complaint with the Office of the Military Prosecutor and the Office of the Attorney General regarding her detention and assault on November 6, 2009. To date, there have been no responses or investigations of the complaints.¹⁰⁹

91. On March 10, 2010, the alleged victim filed a complaint regarding her detention and the events of February 24, 2010, with the Office of the Attorney General, the Office of the Military Prosecutor, the National Assembly, the Council of State, the National Revolutionary Police (PNR), and the Infanta and Manglar police station.¹¹⁰ As of the date of this report, there have been no State response to these complaints.

G. Request for response and appeal to the Bureau of Immigration and Alien Affairs and the Ministry of the Interior regarding the impediments to Yoani Sánchez Cordero's departure from the country between 2007 and 2012

92. On November 5, 2010, Yoani Sánchez filed a formal request for response with the Bureau of Immigration and Alien Affairs of the Ministry of the Interior, under Article 63 of the Cuban Constitution, seeking an explanation of the factual and legal grounds on which she was not allowed to travel abroad, which she considered a violation of her human rights.¹¹¹

93. On March 30, 2012, Yoani Sánchez filed an appeal with the Ministry of the Interior, also under Article 63 of the Constitution of Cuba, since the Bureau of Immigration and Alien Affairs had failed to reply within 60 days.¹¹² The alleged victim asked the Minister of the Interior to order the Director of Immigration and Alien Affairs to inform her of the reasons or grounds for not allowing her to leave the country and to overturn those decisions, since the grounds for denial were not stated and the prohibition violated her human rights.¹¹³ As of the date of this report, none of these administrative requests have been answered.

H. Wiretapping, residential surveillance, intimidation, and attacks against the journalist and blogger

94. Since October 2007, Yoani Sánchez's home phone and cell phone have been wiretapped by the Cuban government.¹¹⁴ Since that time, the State has also been continuously monitoring Yoani Sánchez and her family, interrogating people before and after they visit her home.¹¹⁵

95. On December 3, 2008, the alleged victim was summoned to appear before the National Revolutionary Police, where she was threatened and warned to suspend a blogger training event scheduled to be held on December 6, 2008 with the participation of nine active bloggers.¹¹⁶ The police told her, "We want to warn you that you have exceeded all limits of tolerance with your connections and contact with members of the counterrevolution. This disqualifies you from any dialogue with the Cuban authorities. The activity planned for the next few days cannot be held. We will take all the appropriate measures, file the respective reports, and take the necessary actions. This activity, when the nation is recovering from two hurricanes, will not be

¹⁰⁹ Initial Petition of September 28, 2012, p. 13.

¹¹⁰ Annex 7. Acknowledgement of receipt of complaints of March 10, 2012. Annex 5 to the petitioner's observations on the merits of February 11, 2019.

¹¹¹ Annex 8. Request for response filed with the Bureau of Immigration and Alien Affairs on November 5, 2010. Annex 3 to the petitioner's observations on the merits of February 11, 2019.

¹¹² Annex 9. Appeal to the Minister of the Interior dated March 30, 2012. Annex 4 to the petitioner's observations on the merits of February 11, 2019.

¹¹³ Annex 9. Appeal to the Minister of the Interior dated March 30, 2012. Annex 4 to the petitioner's observations on the merits of February 11, 2019.

¹¹⁴ Initial Petition of September 28, 2012, p. 9.

¹¹⁵ Initial Petition of September 28, 2012, p. 11.

¹¹⁶ Initial Petition of September 28, 2012, p. 11.

allowed.”¹¹⁷ Based on the threats, the blogger organized the event online and without the inaugural public meeting.¹¹⁸

96. At different times, the alleged victim was subjected to censorship, harassment, personal attacks, direct threats, intimidation, and smear campaigns on television and the internet. For example: (i) in March 2008, the State of Cuba implemented web filtering to block access to the *Generación Y* blog from within the country;¹¹⁹ (ii) in 2009, representatives of the Cuban regime approached one of the alleged victim’s friends and told him to warn Yoani “to shut up”;¹²⁰ (iii) in February 2011, Yoani broadcast a video about the cyber fight against Cuban dissidents in which a counter-intelligence officer provided guidance to the military audience on how to neutralize the impact of the alternative blogosphere on the Cuban regime, with special mention of journalist Yoani Sánchez, and discussed the creation of a State office to combat independent bloggers in Cuba;¹²¹ (iv) on official Cuban television, the journalist was described as a “public enemy,” a “terrorist,” “fake,” a “mercenary,” and “trained by the Pentagon,” and accused of “receiving support from the CIA of the United States.”¹²² (v) on March 23, 2011, the report “*Ciberguerra*” [Cyberwarfare] was published as part of the series *Razones de Cuba*, a program on *TV Cubana*.¹²³ The videos condemn “cyber dissidents,” including Yoani Sánchez and her blog *Generación Y*, characterizing their activities as tactics for destabilizing the Cuban government and aligning with the United States and Europe; and (vi) on November 8, 2011, Mariela Castro, daughter of the then incumbent president, Raul Castro, used the social network Twitter to describe the alleged victim and other dissidents as “despicable parasites.”¹²⁴

97. On March 5, 2012, the video “Yoani Sánchez’s fraud on Twitter does not reach the media” was also published by *Cuba Información TV* on its YouTube channel.¹²⁵ The video alleged that more than 50,000 of Yoani Sánchez’s followers were ghost accounts and that she was a political media figure with close ties to the United States, created by the international bourgeoisie to discredit Cuba.¹²⁶ It also claimed that Yoani Sánchez was financed by the international opposition through prize money and that the content she created was garbage.¹²⁷

98. From June 21 to 23, 2012, the official government website published an article accusing the alleged victim of having “proven and systematic links to the United States government and its agents.”¹²⁸ The petitioners also indicated that on July 24 and 25, 2012, the *Cubavisión* channel aired programs attacking Yoani Sánchez during prime time.¹²⁹

99. As of the filing date of the petition, the alleged victim was barred from various public places where public speaking or cultural events were held, having been denied access by agents of the State with the acquiescence of the police.¹³⁰

¹¹⁷ Initial Petition of September 28, 2012, p. 12.

¹¹⁸ Initial Petition of September 28, 2012, p. 11.

¹¹⁹ Initial Petition of September 28, 2012, p. 6.

¹²⁰ Initial Petition of September 28, 2012, p. 11.

¹²¹ Initial Petition of September 28, 2012, pp. 11-12. See also Reuters. February 7, 2011. *Cuba fears U.S. is pushing cyber-dissidence, according to video*; *El Nuevo Herald*. February 8, 2011. *Video delata delata de gobierno cubano temor a internet* [Video betrays Cuban government’s fear of the internet].

¹²² Initial Petition of September 28, 2012, p. 10.

¹²³ *Televisión Cubana*. YouTube Channel. *Razones de Cuba* Series. *Ciberguerra* Ch. March 21, 2011. Available at: <https://www.youtube.com/watch?v=9r6fXWI98HU>. See also Initial Petition of September 28, 2012, p. 10.

¹²⁴ BBC. November 8, 2011. *Cuba: a debate that doesn’t happen on the streets takes to Twitter*. See also Initial Petition of September 28, 2012, p. 10.

¹²⁵ *Cuba Información TV*. YouTube Channel. *El fraude de Yoani Sánchez en Twitter no llega los medios* [Yoani Sánchez’s fraud on Twitter does not reach the media]. Available at: <https://www.youtube.com/watch?v=D-5DjXeAovY>

¹²⁶ *Cuba Información TV*. YouTube Channel. *El fraude de Yoani Sánchez en Twitter no llega los medios* [Yoani Sánchez’s fraud on Twitter does not reach the media]. Available at: <https://www.youtube.com/watch?v=D-5DjXeAovY>

¹²⁷ *Cuba Información TV*. YouTube Channel. *El fraude de Yoani Sánchez en Twitter no llega los medios* [Yoani Sánchez’s fraud on Twitter does not reach the media]. Available at: <https://www.youtube.com/watch?v=D-5DjXeAovY>

¹²⁸ Initial Petition of September 28, 2012, p. 9. According to the petitioners, “this website is only available in Spanish in Cuba. Outside of Cuba, the English version is accessible, but contains fewer articles. See several articles critical of Yoani Sánchez at: <http://www.cubadebate.cu/?s=Yoani>.

¹²⁹ Initial Petition of September 28, 2012, p. 9.

¹³⁰ Initial Petition of September 28, 2012, p. 11.

V. LEGAL ANALYSIS

100. As established in the findings of fact, Yoani Sánchez Cordero is a journalist and blogger who is well-known in Cuba and internationally. Through her journalistic work and her blog, *Generación Y*, she has expressed her critical stance toward the Cuban government and denounced abuses and the lack of freedoms due to the country's political structure. Yoani Sánchez is considered a political opponent of the Cuban regime, and has been subject to arrests, attacks, impediments to leaving the country, telephone wiretaps, intimidation, threats, and smear campaigns. Her blog has been blocked inside Cuba. These events are framed within a context of persecution against journalists who are political dissidents or critics of the Cuban government because of the work they do. The IACHR notes that this case does not focus on the analysis of isolated events, but rather on alleged persecution carried out through a sequence of human rights violations from 2007 to the present.

101. It is up to the IACHR to establish whether these alleged acts of persecution are attributable to the State and whether they constitute violations of various rights of the American Declaration, in particular the right to freedom of expression.

102. Considering the arguments presented, and the facts before it, the Commission will address the scope and protection of each of the rights alleged to have been violated in this specific case and will refer to its doctrine on the permissible limits to these rights.

A. Preliminary Issue: application and interpretation of the American Declaration of the Rights and Duties of Man

103. The petitioners alleged that the State of Cuba is responsible for violating the rights enshrined in Articles I (right to life, liberty, and personal security), II (right to equality before the law), IV (right to freedom of investigation, opinion, expression, and dissemination), V (right to protection of honor, personal reputation, and private and family life), VIII (right to residence and movement), IX (right to the inviolability of the home), X (right to the inviolability and transmission of correspondence), XVIII (right to a fair trial), XX (right to vote and to participate in government), XXI (right of assembly), XXII (right of association), XXIV (right of petition), and XXV (right of protection from arbitrary arrest) of the American Declaration of the Rights and Duties of Man, to the detriment of Yoani Sánchez Cordero. Under the principle of *iura novit curia*, the Commission also found this petition admissible with respect to Article XXVI of the American Declaration (right to due process).

104. The Commission reaffirms that it has competence to examine petitions and cases regarding Cuba. It has repeatedly held that the Cuban State “is legally answerable to the Inter-American Commission in matters that concern human rights” because “it is party to the first international instruments established in the American Hemisphere to protect human rights” and because Resolution VI of the Eighth Meeting of Consultation “excluded the present Government of Cuba, and not the State, from participation in the inter-American system” In this regard, the IACHR stated that “[...] it has always considered that the purpose of excluding Cuba from the inter-American system by the Organization of American States was not to leave the Cuban people unprotected. The exclusion of that Government from the regional system by no means implies that it can cease to comply with its international obligations in the area of human rights.”¹³¹

105. As the Commission has stated on several occasions,¹³² the American Declaration creates an international legal obligation for all member states of the Organization of American States, including Cuba. In relation to OAS member states that are not parties to the American Convention, the Commission is authorized by Article 20 of its Statute and Articles 50 and 51 of its Rules of Procedure to receive and examine any petition that alleges violations of the human rights enshrined in the American Declaration.

¹³¹ IACHR. Annual Report 2016. Ch. IV.B. Situation of human rights in Cuba, para. 12; Annual Report 2020. Ch. IV.B. Situation of human rights in Cuba, paras. 10-14.

¹³² IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet et al. (Cuba). October 21, 2006, paras. 40-44; Report No. 68/06. Case 12.477. Merits. Lorenzo Enrique Copello Castillo et al. Cuba. October 21, 2006, paras. 49, 52; IACHR. Merits Report No. 47/96, Case 11.436, Victims of the Tugboat “13 de Marzo,” October 16, 1996; Merits Report No. 86/99, Case 11.589, Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales, September 29, 1999.

106. According to the case law of the inter-American human rights system, the provisions of its instruments, including the American Declaration, must be interpreted and applied in the context of the inter-American and international human rights systems and, more broadly, in light of developments in international human rights law.¹³³

107. The bodies of the inter-American system have maintained that the evolution of the body of international human rights law pertaining to the interpretation and application of the American Declaration can be extracted from other regional and international human rights instruments. This includes the American Convention and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará Convention), which often can be considered representative of the fundamental principles established in the American Declaration. It also includes the provisions of other multilateral treaties adopted within and outside the framework of the inter-American system, including the International Covenant on Civil and Political Rights and the Convention on the Elimination of all Forms of Discrimination against Women, the latter ratified by Cuba on July 17, 1980.¹³⁴

108. In its analysis, the Commission will—to the extent appropriate—interpret and apply the provisions of the American Declaration in light of current developments in international human rights law, as illustrated by treaties, custom, and other relevant sources of international law.¹³⁵

109. In view of these principles, the Commission will consider and apply the relevant provisions of the American Declaration to determine whether the State of Cuba violated the rights enshrined in the abovementioned articles.

B. Right to life, liberty, and personal security (Article I)¹³⁶, right to equality before law¹³⁷, and right of protection from arbitrary arrest (Article XXV)¹³⁸

1. Illegality and arbitrariness of the detentions

110. Article XXV of the American Declaration establishes guarantees that seek to protect persons from unlawful or arbitrary interference with their liberty by the State. The IACHR has held that “among the protections guaranteed are the requirements that any deprivation of liberty be carried out in accordance with pre-established law, that a detainee be informed of the reasons for the detention and promptly notified of any charges against them, that any person deprived of liberty is entitled to juridical recourse, to obtain, without delay, a determination of the legality of the detention, and that the person be tried within a reasonable time or released pending the continuation of proceedings.”¹³⁹

111. Under inter-American human rights law, no one may be subjected to arrest or detention for reasons or by methods that—although classified as lawful—may be incompatible with the fundamental rights of the individual because they are, *inter alia*, unreasonable, unforeseeable, or disproportionate.¹⁴⁰ Therefore, not only

¹³³ IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet et al. Cuba. October 21, 2006, para. 41; Report No. 68/06. Case 12.477. Merits. Lorenzo Enrique Copello Castillo et al. Cuba. October 21, 2006, para. 50.

¹³⁴ IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet et al. (Cuba). October 21, 2006, paras. 42; Report No. 68/06. Case 12.477. Merits. Lorenzo Enrique Copello Castillo et al. Cuba. October 21, 2006, para. 51.

¹³⁵ IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet et al. (Cuba). October 21, 2006, para. 43; Report No. 68/06. Case 12.477. Merits. Lorenzo Enrique Copello Castillo et al. Cuba. October 21, 2006, para. 52.

¹³⁶ Article I of the American Declaration states that: “[a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.”

¹³⁷ Article II of the American Declaration states that: “[e]very human being has the right to life, liberty, and the security of his person.”

¹³⁸ Article XXV of the American Declaration provides that: “[n]o person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law. No person may be deprived of liberty for nonfulfillment of obligations of a purely civil character. Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.”

¹³⁹ IACHR. Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116.Doc.5 rev.1, October 22, 2002, para. 120.

¹⁴⁰ IACHR. Application before the Inter-American Court of Human Rights in the case of Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo. Case 12.091. Ecuador. June 23, 2006, para. 59.

must any detention be carried out in keeping with domestic law, but the domestic law, the applicable procedure, and the related express or implied general principles must also be compatible with inter-American instruments and norms.¹⁴¹

112. According to the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, “any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.”¹⁴² The requirement that detention not be left to the sole discretion of the State agents responsible for carrying it out is so fundamental that it cannot be ignored in any context. The supervision and control of detention is an essential safeguard since it provides effective guarantees that the detainee is not solely at the mercy of the detaining authority. Under normal circumstances, the lawfulness of detention should be reviewed without delay, which generally means as soon as possible.¹⁴³

113. According to the IACHR, the compatibility of the deprivation of liberty with the prohibition against illegal or arbitrary detention is determined using a three-step analysis. The first step consists of examining the legality of the detention from a substantive and procedural viewpoint. This involves ascertaining whether the action is compatible with the domestic law of the State in question. The second step entails analyzing those domestic provisions within the context of the guarantees established by the inter-American human rights instruments, to determine whether they are arbitrary. Finally, even if the detention meets the requirements of a domestic legal provision compatible with those instruments, it must be determined whether the law was applied arbitrarily in the specific case.¹⁴⁴ The IACHR has stated that, in light of democratic principles, the exercise of freedom of expression, assembly, and association cannot constitute a legitimate reason for the deprivation of a person’s liberty, and therefore results in an arbitrary deprivation of liberty.¹⁴⁵ In other words, detention for this purpose does not meet the compatibility criteria identified by the IACHR for the deprivation of liberty.

114. Article XXV of the American Declaration also provides that “every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court.” In this regard, any person deprived of liberty has the right to simple, prompt, and effective recourse before competent, independent, and impartial authorities against acts or omissions that violate or threaten to violate his human rights. This includes the right to bring any action, whether by himself or through a third party, to safeguard his personal liberty or to challenge the lawfulness of his detention.¹⁴⁶

2. The humane treatment of persons in the custody of the State, the right to equality and non-discrimination, and gender-based violence against women

115. The right of persons deprived of their liberty to humane and dignified treatment in the custody of the State is a universally accepted norm in international law. The American Declaration contains several provisions in this regard. The Commission has interpreted Article I of the Declaration (Right to life, liberty, and personal security) as containing a prohibition similar to that of Article 5 of the American Convention.¹⁴⁷ In addition, Article XXV of the Declaration refers to the right to humane treatment in the context of the right to protection from arbitrary arrest.¹⁴⁸

116. The bodies of the inter-American system have held that all persons deprived of their liberty are entitled to live in conditions of detention compatible with their personal dignity, and that the State must

¹⁴¹ IACHR. Report 129/17. Case 12.315. Merits. Carlos Alberto Fernández and Carlos Alejandro Tumbeiro. Argentina. October 25, 2017, para. 50.

¹⁴² UN. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly Resolution 43/173 of 9 December 1988, Principle 4.

¹⁴³ IACHR, Report No. 8/16. Case 11.661. Merits (Publication). Manickavasagam Suresh. Canada. April 13, 2016, para. 73.

¹⁴⁴ IACHR. Application before the Inter-American Court of Human Rights in the case of Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo. Case 12.091. Ecuador. June 23, 2006, para. 72.

¹⁴⁵ IACHR. Report No. 71/15, Case 12.879. Merits. Vladimir Herzog et al. Brazil. October 28, 2015, para. 149.

¹⁴⁶ IACHR. Report No. 27/18, Case No. 12.127. Merits. Vladimiro Roca Antúnez et al. Cuba. February 24, 2018, para. 134.

¹⁴⁷ IACHR. Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116.Doc.5 rev.1, October 22, 2002, para. 155.

¹⁴⁸ IACHR. Report No. 27/18, Case No. 12.127. Merits. Vladimiro Roca Antúnez et al. Cuba. February 24, 2018, para. 143.

guarantee their right to humane treatment. The State, as the entity responsible for detention facilities, is the guarantor of these detainee rights.¹⁴⁹

117. The case law of the inter-American system has established the principle that the State is the guarantor of the rights of persons deprived of liberty, and therefore must take the necessary measures to respect and guarantee the rights of individuals in its custody,¹⁵⁰ regardless of the type of deprivation of liberty in question, its duration, or where it takes place. The Commission has explained this concept as follows:

[T]he State, by depriving a person of his liberty, places itself in the unique position of guarantor of his right to life and to humane treatment. When it detains an individual, the State introduces that individual into a “total institution”—such as a prison—where the various aspects of his life are subject to an established regimen; where the prisoner is removed from his natural and social milieu; where the established regimen is one of absolute control, a loss of privacy, limitation of living space and, above all, a radical decline in the individual's means of defending himself. All this means that the act of imprisonment carries with it a specific and material commitment to protect the prisoner's human dignity so long as that individual is in the custody of the State, which includes protecting him from possible circumstances that could imperil his life, health, and personal integrity, among other rights.¹⁵¹

118. The legal consequence of the State's position as guarantor is the rebuttable presumption that the State is internationally responsible for violations of the rights to life and humane treatment committed against persons in its custody.¹⁵²

119. The IACHR has indicated that any use of force not strictly necessary to ensure the proper behavior of detainees constitutes an attack on the dignity of the person.¹⁵³ Considering the State's position as guarantor, when a detainee sustains physical injuries because of an arrest and excessive use of force, the State incurs international responsibility for failing to guarantee humane treatment and personal security in violation of Article I of the American Declaration.¹⁵⁴

120. The State must protect not only physical integrity but also moral and psychological integrity, as the IACHR has stated in its Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas¹⁵⁵ Hence, detainees may not be subjected to, for example, unnecessary and humiliating searches.¹⁵⁶

121. The State's position as guarantor becomes particularly nuanced when the detainee is female, as women are exposed to greater risk of mistreatment in detention—including violence and sexual assault—by State agents,¹⁵⁷ especially if they are male. Female detainees therefore must be supervised and searched by female officers and separated from male detainees.¹⁵⁸ However, such violence is not perpetrated exclusively by male

¹⁴⁹ IACHR. Report No. 27/18. Case No. 12.127. Merits. Vladimiro Roca Antúnez et al. Cuba. February 24, 2018, para. 144.

¹⁵⁰ IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas* (2011), para. 50. This principle was first developed by the Inter-American Court of Human Rights in *Neira Alegría v. Peru* and further developed in later cases. In the same vein, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas establishes that “All persons subject to the jurisdiction of any Member State of the Organization of American States shall be treated humanely, with unconditional respect for their inherent dignity, fundamental rights and guarantees [...] taking into account the special position of the States as guarantors regarding persons deprived of liberty, their life and personal integrity shall be respected and ensured, and they shall be afforded minimum conditions compatible with their dignity” (Principle I).

¹⁵¹ IACHR, Merits Report No. 41/99, *Minors in Detention*, Honduras, March 10, 1999, para. 135; IACHR, *Special Report on the Situation of Human Rights in Challapalca Prison*, Peru, para. 113.

¹⁵² IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas* (2011), para. 57; *see also* para. 349.

¹⁵³ IACHR. Report No. 29/20. Case 12.865. Merits (Publication). Djamel Ameziane. United States of America, April 22, 2020, para. 143.

¹⁵⁴ IACHR, Report No. 12/14, Case 12.231. Merits (Publication). Peter Cash. Commonwealth of the Bahamas. April 2, 2014, para. 98.

¹⁵⁵ IACHR. Resolution 1/08. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, 31 March 2008.

1. ¹⁵⁶ IACHR. Extension of PM 259/02-2013, Detainees at the U.S. Military Base at Guantanamo Bay, United States, July 23, 2013.

¹⁵⁷ International Committee of the Red Cross (ICRC). *Protecting People Deprived of Their Liberty*. December 2016, p. 42. *See also*, for example, I/A Court HR. *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 27, 2013. Series C No. 275; *Case of Espinoza González v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. Series C No. 289, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371.

¹⁵⁸ IACHR. *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*. 2008. Principle XX.

actors. The IACHR has recognized this serious risk faced by women detainees in its Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.¹⁵⁹

122. Regarding the treatment of women in detention or under arrest, the United Nations High Commissioner for Human Rights has stated that “they should not be subject to discrimination and should be protected from all forms of violence.” The Committee on the Elimination of Discrimination against Women and the inter-American system have noted that gender-based violence against women constitutes a form of discrimination against women.¹⁶⁰ The Committee has noted that such discrimination includes gender-based violence, “that is, violence that is directed against a woman because she is a woman or that affects women disproportionately” and that includes “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”¹⁶¹

123. Indeed, the right of women to live a life free of violence is closely related to the right to non-discrimination.¹⁶² The right to equality and non-discrimination established in Article II of the Declaration, in the current stage of the evolution of international law, has entered the domain of *jus cogens*. On it rests the legal framework of national and international public order and permeates the entire legal system.¹⁶³

124. In turn, gender-based violence is one of the most extreme and widespread forms of discrimination, which severely prevents and nullifies the exercise of women's rights.¹⁶⁴ There is a broad consensus in the international community that gender-based violence against women is a human rights problem that requires State action.¹⁶⁵ In this regard, the Committee has considered that “the *opinio juris* and the practice of the States suggest that the prohibition of gender-based violence against women has become a principle of customary international law.”¹⁶⁶ Said prohibition is expressly included in the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (“Convention of Belém do Pará”).

125. Likewise, the Commission in its decisions has repeatedly established that the American Declaration requires the States to adopt measures to give legal effect to the rights enshrined therein; a principle applicable in cases where the violation of Article II is alleged. The Commission has not only required the States to refrain from committing human rights violations in contravention of the provisions of the Declaration. It has also required the States to adopt affirmative measures to guarantee that the people under their jurisdiction can exercise and enjoy the rights contained in the American Declaration.¹⁶⁷ In this sense, the obligations established in this article of the Declaration include respect, prevention, and eradication of violence against women as a crucial component of the State's duty to eliminate direct and indirect forms of discrimination. The adoption of these measures also protects the rights to personal integrity and life of women.

¹⁵⁹ IACHR. *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*. 2008. Preamble.

¹⁶⁰ Committee on the Elimination of Discrimination against Women (CEDAW). *General Recommendation No. 35 “On gender-based violence against women, updating General Recommendation No. 19”*. CEDAW/C/GC/35. July 26, 2017, paras. 2, 21.

¹⁶¹ Committee on the Elimination of Discrimination against Women (CEDAW). *General Recommendation No. 19 “Violence against women”*. Doc. HRI/GEN/1/Rev. 1 at 84 (1992), para. 6; and General Recommendation No. 35 “On gender-based violence against women, updating general recommendation no. 19”. CEDAW/C/GC/35. July 26, 2017, para. 1.

¹⁶² IACHR, Report No. 28/07, Cases 12.496-12.498, *Claudia Ivette González et al., (Mexico)*, March 9, 2007, and Report No. 80/11. Case No. 12.626. Merits. *Jessica Lenahan (González) and others. USA*. July 21, 2011, para. 110.

¹⁶³ I/A Court HR. Rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a gender perspective (interpretation and scope of articles 13, 15, 16, 24, 25, and 26 in relation to articles 1(1) and 2 of the American Convention on Human Rights; articles 3, 6, 7, and 8 of the Protocol of San Salvador; articles 2, 3, 4, 5, and 6 of the Convention of Belém do Pará; articles 34, 44, and 45 of the Charter of the Organization of American States; and articles II, IV, XIV, XXI, and XXII of the American Declaration on the Rights and Duties of Man). Advisory Opinion OC-27/21 of May 5, 2021. Series A No. 27, para. 61; IACHR, Report No. 80/11. Case No. 12.626. Merits. *Jessica Lenahan (González) and others. USA*. July 21, 2011, para. 107.

¹⁶⁴ IACHR, Report No. 80/11. Case No. 12.626. Merits. *Jessica Lenahan (González) and others. USA*. July 21, 2011, para. 110.

¹⁶⁵ IACHR, Report No. 80/11. Case No. 12.626. Merits. *Jessica Lenahan (González) and others. USA*. July 21, 2011, paras. 123 and 124; In this sense, the inter-American system has the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (“Convention of Belém do Pará”) adopted on June 9, 1994, in force since March 5, 1995. This Convention has been ratified by 32 of the 35 States parties to the OAS. Cuba is not a State party to this Convention.

¹⁶⁶ Committee for the Elimination of Discrimination against Women (CEDAW). *General Recommendation No. 35 “On gender-based violence against women, updating general recommendation no. 19”*. CEDAW/C/GC/35. July 26, 2017, para. 2.

¹⁶⁷ IACHR, Report No. 80/11. Case No. 12.626. Merits. *Jessica Lenahan (González) and others. USA*. July 21, 2011, para. 118.

126. States obligations to this respect and their due diligence to protect and prevent acts of violence, as well as to investigate, punish and repair them, have special connotations in the case of women, due to historical and structural discrimination they have suffered as a group.¹⁶⁸ The violation of these obligations constitutes a form of discrimination, and a denial of their right to equal protection of the law.¹⁶⁹ In this sense, the obligations of respect, prevention, prosecution, and eradication of violence against women must include the organization of the entire state structure -including the legislative framework, public policies, the bodies in charge of implementing the law such as the police, and the judicial system- to prevent and respond adequately and effectively to these problems.¹⁷⁰

127. For its part, the IACHR, through its Office of the Special Rapporteur, has highlighted that the documented attacks on female journalists present, in a differentiated form, sexual violence in captivity or in detention.¹⁷¹ In this regard, the Commission has also recognized that certain groups of women suffer discrimination based on more than one factor, which increases their risk of suffering acts of violence.¹⁷² The risk of violence can be aggravated not only because of their gender but also because of the work that a journalist performs in society and her critical stance, facing sexist stereotypes that reject her public participation, especially when they have a high profile public.¹⁷³ Women journalists are subjected to violence, particularly of a sexual nature, in order to silence them, but also with the aim of sending a dissuasive message about the consequences that could occur against people who think like her.¹⁷⁴

128. Forced nudity is a form of gender-based violence against women that may be committed because of their status as women or may affect them disproportionately, as it usually occurs when the person is under the absolute control of the State, such as while deprived of her liberty. Forced nudity violates the personal dignity of women and men differently. It places women in an even more vulnerable situation, as they are naked and helpless¹⁷⁵ during detention, which can increase the victim's psychological terror of what might happen to her. It constitutes a particularly serious act taking into account the vulnerability of the victim and the abuse of power deployed by the agent.¹⁷⁶ Likewise, it is considered a form of sexual violence for having a sexual nature or consisting of a sexualized form of violence.¹⁷⁷ The inter-American system has defined sexual violence as "[acts] of a sexual nature committed against an individual without her consent, which in addition to the physical invasion of the human body, may include acts that do not involve penetration or even physical contact."¹⁷⁸

¹⁶⁸ See, for example, Resolution of the United Nations General Assembly, Human Rights Council, Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention, A/HRC/14/L. 9/ Rev.1, June 16, 2010; Resolution of the United Nations General Assembly, Intensification of efforts to eliminate all forms of violence against women, A/RES/64/137, February 11, 2010 and A/RES/63/155, January 30, 2009; United Nations, Declaration on the Elimination of Violence against Women, General Assembly Resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994; United Nations, Beijing Declaration and Platform for Action, Fourth World Conference on Women, September 15, 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995); CEDAW, General Recommendation 19, Violence against Women (11th Period of Sessions 1992), UN Doc. A/47/38 (1993). IACHR, Report No. 80/11. Case No. 12.626. Merits. *Jessica Lenahan (González) and others. USA*. July 21, 2011, para. 129.

¹⁶⁹ UN. CEDAW Committee, Communication 2/2003, *Mrs. A.T. v. Hungary*, Jan 26, 2005; European Court of Human Rights, *Case of Opuz v. Turkey*, Petition No. 33401/02, June 9, 2009; IACHR, Report No. 80/11. Case No. 12.626. Merits. *Jessica Lenahan (González) and others. USA*. July 21, 2011, para. 111.

¹⁷⁰ IACHR, Report No. 80/11. Case No. 12.626. Merits. *Jessica Lenahan (González) and others. USA*. July 21, 2011, para. 125; See article 7 of the Belém do Pará Convention.

¹⁷¹ IACHR. Women Journalists and Freedom of Expression. OEA/Ser. L/V/II. IACHR/RELE/INF.20/18. October 31, 2018, para. 38.

¹⁷² IACHR, Report No. 28/07, Cases 12.496-12.498, *Claudia Ivette González et al., (Mexico)*, March 9, 2007, paras. 251-252; and Report No. 80/11. Case No. 12.626. Merits. *Jessica Lenahan (González) and others. USA*. July 21, 2011, para. 127.

¹⁷³ IACHR. Women Journalists and Freedom of Expression. OEA/Ser. L/V/II. IACHR/RELE/INF.20/18. October 31, 2018, para. 3.

¹⁷⁴ IACHR. Women Journalists and Freedom of Expression. OEA/Ser. L/V/II. IACHR/RELE/INF.20/18. October 31, 2018, paras. 50 and 76.

¹⁷⁵ UN. *Mutatis mutandi*, Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. August 9, 1999, para. 215.

¹⁷⁶ I/A Court HR. *Case of Women Victims of Sexual Torture in Atenco v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371, para. 196.

¹⁷⁷ IACHR Court. *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paras. 304 *et seq*; and *Case of Women Victims of Sexual Torture in Atenco v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371, para. 188.

¹⁷⁸ IACHR. Women Journalists and Freedom of Expression. OEA/Ser. L/V/II. IACHR/RELE/INF.20/18. October 31, 2018, para. 36; I/A Court HR. *Case of Women Victims of Sexual Torture in Atenco v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371, paras, 181, 187, and 188.

129. The IACHR and its Office of the Special Rapporteur have noted that since 2011 and 2012 the violent repression occurring in Cuba has included particular cruelty toward women.¹⁷⁹ In these reports, the Commission recounted violent practices carried out by police officers against women in their custody, including a significant increase in the practice of forcibly stripping female opponents of the regime and conducting unnecessary body searches,¹⁸⁰ in which the facts of this case are inserted.

3. Analysis of the case

130. Here, Yoani Sánchez was detained by the police twice: on February 24, 2010, and October 5, 2012. On the latter occasion, she was detained for 30 hours without being allowed to communicate with her daughter for several hours. The State did not demonstrate a legal basis to justify either of the two arrests, they did not show a warrant for her arrest, the victim was not informed of the reasons for her detention or the charges against her, and the police did not provide her with a written record of her arrest. There is also no record that Yoani Sánchez was detained *in flagrante delicto*, under circumstances of manifest criminal activity, or that she was brought before a judge to promptly determine the lawfulness of the arrest.

131. Although the State did not present substantive arguments before the IACHR or identify the applicable law, the IACHR notes that both Article 58 of the Constitution¹⁸¹ and Article 241 of the Criminal Procedure Act of Cuba, in force at the time of the events, provided that no one could be detained except in the cases, in the manner, and with the guarantees prescribed by law, and that the detainee's personal integrity was inviolable. Articles 242 and 243 of the Criminal Procedure Act established that an arrest could be made pursuant to an arrest warrant or in the case of flagrancy, among other grounds.¹⁸² Yoani Sánchez's arrests were not carried out in keeping with Cuba's own domestic laws and were therefore illegal.

132. The arrests were also arbitrary, since they were aimed at punishing Yoani Sánchez for her critical stance against the Cuban government, her political opinions and expressions, and her civic activism; that is, they were based on a restriction of the exercise of her rights to freedom of thought and expression. They were also part of a systematic pattern of detaining and imprisoning critical journalists for exercising their human rights¹⁸³ that has been clearly identified by the IACHR in its annual reports on Cuba. During Yoani's 2010 arrest, the police officers at the station where she was being held described her as the "ringleader of the counterrevolutionaries," identifying her as a political dissident. The IACHR has held that, in light of democratic

¹⁷⁹ IACHR. Annual Report 2011. Ch. IV.B. Situation of human rights in Cuba, paras. 239, 243, 246 *et seq*; Annual Report 2012. Ch. IV.B. Situation of Human Rights in Cuba, paras. 64, 68.

¹⁸⁰ IACHR. Annual Report 2011. Ch. IV.B. Situation of human rights in Cuba, paras. 239, 243, 246 *et seq*; Annual Report 2012. Ch. IV.B. Situation of Human Rights in Cuba, paras. 64, 68; IACHR. Public hearing "Complaints of attacks against women human rights defenders in Cuba" held during the 144th regular session. March 23, 2012. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=125>; See also Cubalex. *Así reprimen a las mujeres cubanas (This is how Cuban women are repressed)*. August 4, 2020.

¹⁸¹ Constitution of the Republic of Cuba of 1976. Article 58. This article establishes that: "[f]reedom and inviolability of the person are guaranteed to all who reside in the national territory. No one may be detained except in the cases, in the manner, and with the guarantees prescribed by law. The personal integrity of a detainee or prisoner is inviolable."

¹⁸² National Assembly of the People's Power of the Republic of Cuba. Criminal Procedure Act of the Republic of Cuba. July 1977. Articles 241 to 244. Article 241. No person may be arrested except in the cases and following the procedures prescribed by law.

Any person may arrest: 1. any other person who is attempting to commit an offense, at the moment he or she is about to commit it; 2. any person in flagrante delicto; 3. any person who, by escaping, violates the imprisonment or pretrial security measure to which he or she is being subjected; and 4. any accused person found to be in contempt of court. Whoever arrests a person under the provisions of the preceding paragraph shall immediately hand him over to the Police.

The authority or police officer has the obligation to arrest: 1. anyone in any of the situations described in the article above; anyone who has escaped while in custody or in pretrial detention; or anyone with a warrant for their arrest; 2. anyone accused of a crime against the security of the State; 3. anyone accused of a crime for which the penalty is more than six years' deprivation of liberty; 4. anyone accused of any crime, provided that any of the following circumstances exist: (a) the acts have caused alarm or are of the kind frequently committed in the municipality's jurisdiction; (b) there is sufficient evidence to reasonably believe that the accused is attempting to evade justice.

When a person is arrested, a record shall be drawn up immediately, stating the time, date, and reason for the arrest, as well as any other particulars of interest. The record shall be signed by the officer and the detainee. At the request of the detainee or his family members, the police or the detaining authority shall disclose the arrest and the place where the detainee is being held, as well as facilitate communication between them within the time limits and in the manner established in the respective provisions.

¹⁸³ IACHR, Report No. 27/18, Case 12.127. Merits (Publication). Vladimiro Roca Antúnez et al. Cuba. February 24, 2018, para. 133.

principles, exercising freedom of expression cannot constitute a legitimate basis for detention, and any resulting deprivation of liberty is arbitrary.¹⁸⁴

133. Regarding the journalist's 2009 detention by persons dressed in civilian clothes, the IACHR understands that in the Cuban context it may have been carried out by civilians who were supported by, directed by, or linked to the government or some state institution or entity. However, in this specific case, it does not have sufficient evidence or clear arguments from the petitioners to prove this for purposes of attributing international responsibility to the Cuban State for that detention.

134. The IACHR further notes that Yoani Sánchez was the victim of physical assaults before and during the 2010 and 2012 detentions. During the 2010 detention, Yoani Sánchez was physically assaulted by two civilian women, and even though the police witnessed these assaults, they not only failed to protect her from them, but they detained her and continued the physical violence against her, using force both when they took her into the vehicle to transport her to the police station and when they arrived at the police station. At the police station, the receiving officers—who were wearing no badges or identification—kicked her to get her off the ground. Yoani Sánchez was also detained in a men's holding cell on that occasion, contrary to the standards cited above.

135. During her 2012 arrest, the policewomen who interrogated her tried to forcibly undress her twice, in response to which Yoani stated that “[they] could have her soul, but not her body.” Because she resisted, the officers pushed her to the ground, causing her to break a tooth and bruise her ribs. These attempts to undress her, as the IACHR has concluded, took place during an unlawful and arbitrary detention. They constituted unwarranted interference with the victim's body and acts of abuse of power by police officers, placing her in an even more vulnerable situation, given the potential of being naked and helpless, and increasing her fear of what might happen to her. The IACHR finds that the attempts at forced nudity constituted acts of gender-based violence against Yoani Sánchez consistent with other similar acts reported in Cuba, and that they were carried out to humiliate her and punish her for her work as a journalist and blogger. These kinds of acts have also had a disproportionate impact on women deprived of their liberty in Cuba, when compared to their male counterparts. The attempts at forced nudity were also a violation of the journalist's personal dignity and constituted a form of sexual violence because they involved acts of a sexual nature that were committed without her consent and included the physical invasion of the human body by attempting to undress her in front of the policewomen and a man who had recorded part of the events. Furthermore, sexual violence against Yoani constituted a form of discrimination based on her gender and the nature of her work as a leading female journalist in Cuba. Accordingly, the IACHR concludes that the State violated Yoani Sánchez's right to personal integrity, her right to humane and dignified treatment in custody, as well as their right to equality and non-discrimination.

136. The IACHR concludes that the State of Cuba is responsible for the unlawful and arbitrary detention of Yoani Sánchez on two occasions, and for having violated her rights to equality, dignity, and humane treatment during her arrest and while in the custody of State agents. In this connection, the State is responsible for the violation of Articles I, II, and XXV of the American Declaration, to the detriment of Yoani Sánchez Cordero.

C. Right to residence and movement (Article VIII) 185

137. The IACHR has noted that the right of every person to live in his or her country of nationality, and to leave it and return when he or she wishes, is a basic right recognized not only in the inter-American system, but also by other international instruments for the protection of human rights, such as the Universal Declaration of Human Rights (Article 13) and the International Covenant on Civil and Political Rights (Article 12).¹⁸⁶

¹⁸⁴ IACHR, Report No. 71/15, Case 12.879. Merits. Vladimir Herzog et al. Brazil. October 28, 2015, para. 149.

¹⁸⁵ Article VIII of the American Declaration establishes that: “Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.”

¹⁸⁶ IACHR, *Seventh Report on the Situation of Human Rights in Cuba, Ch. VIII*. OEA/Ser.L/V/II.61, Doc.29 rev. 1. 4 October 1983, para. 2; IACHR, *Ten Years of Activities 1971-1981*, General Secretariat of the Organization of American States, Washington, D.C., 1982, p. 327.

138. The IACHR has maintained that Article VIII of the American Declaration enshrines the “right of every person to live in his own country, to leave and return when he deems fit.” The right of movement refers to the right of every person to move freely from one place to another and to settle freely in the place of their choosing. The enjoyment of this right should not depend on any particular purpose or motive of the person wishing to move or stay in a place.¹⁸⁷ It also includes the right to freely leave any country, including one’s own, and is an indispensable condition for the free development of a person.

139. The United Nations Human Rights Committee has noted that “Freedom to leave the territory of a State may not be made dependent on any specific purpose or on the period of time the individual chooses to stay outside the country. Thus, travelling abroad is covered, as well as departure for permanent emigration. Likewise, the right of the individual to determine the State of destination is part of the legal guarantee.”¹⁸⁸ According to the Committee, any restrictions to this right must be provided by law, must be necessary in a democratic society for the protection of national security, public order (*ordre public*), public health or morals and the rights and freedoms of others; they must also be compatible with all other recognized rights of the individual.¹⁸⁹

140. The jurisprudence of the inter-American system has similarly held that the right of a citizen to leave his or her country may be restricted only in line with the requirements of legality, necessity, and proportionality of the restrictions to the extent necessary in a democratic society.¹⁹⁰ Regarding the first requirement, “should define precisely and clearly by law, the exceptional circumstances under which a measure such as the restriction to leave the country is admissible.”¹⁹¹ As for the second, “the State must be able to offer sufficient evidence to show that the restriction on the right to personal liberty and freedom of movement is reasonable.”¹⁹² Finally, a restriction is proportional if it is applied “when there is no other less restrictive measure and during the time that is strictly necessary to comply with its purpose.”¹⁹³

141. The IACHR has noted that, for instance, if a government refuses to provide its citizens with the necessary documents for international travel, especially a passport, it violates Article VIII of the American Declaration, unless there is some justified and lawful circumstance.¹⁹⁴ Likewise, the IACHR has concluded in another Cuban case that the repeated failure to respond to requests for permission to leave the country, and barring such travel without legitimate reasons, violates Article VIII of the Declaration.¹⁹⁵ This last scenario is the one that concerns us in this case.

142. Here, the IACHR first notes that State agents prevented Yoani Sánchez—for no reason—from accessing public places where public and cultural events were being held, limiting her right to freedom of movement within the territory.

143. Second, the IACHR underscores that, under the law in force at the time, the Law on Migration (Law No. 1312 of 1976), Cubans needed a permit to leave the country. This permit was issued by the immigration authorities of the Ministry of the Interior, which gave the authority broad discretion to either grant or deny authorization. Yoani Sánchez applied to leave the country 20 times between 2007 and 2012, and all of her applications were denied. Not once did the authorities state or substantiate the factual or legal reasons for

¹⁸⁷ UN. Human Rights Committee. General Comment No. 27. Article 12: Freedom of movement. Sixty-seventh session. U.N. Doc. HRI/GEN/1/Rev.7 at 202 (1999), para. 5.

¹⁸⁸ UN. Human Rights Committee. General Comment No. 27. Article 12: Freedom of movement. Sixty-seventh session. U.N. Doc. HRI/GEN/1/Rev.7 at 202 (1999), para. 8.

¹⁸⁹ UN. Human Rights Committee. General Comment No. 27. Article 12: Freedom of movement. Sixty-seventh session. U.N. Doc. HRI/GEN/1/Rev.7 at 202 (1999), para. 11.

¹⁹⁰ I/A Court H.R. *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 123.

¹⁹¹ I/A Court H.R. *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 125.

¹⁹² IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking, and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System, OEA/Ser.L/V/II, Doc. 46/15, 31 December 2015, para. 261.

¹⁹³ I/A Court H.R. *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 133.

¹⁹⁴ IACHR, Resolution 18/83, Case 2711, Uruguay, June 30, 1983, para. 4 and operative para. 2.

¹⁹⁵ IACHR. Resolution 42/81, Case 3992, Cuba, June 25, 1981, operative paragraph 2.

keeping her from leaving the country. The victim only received a form for the refund of administrative fees paid to the Ministry of the Interior for the respective application. The IACHR considers that the prohibitions against leaving the country constituted retaliatory measures for her critical stance against the Cuban regime.

144. The IACHR also notes that since 1983, when it published its seventh report on the situation of human rights in Cuba, it has highlighted the lack of constitutional protection of the right to freedom of movement in the 1976 Constitution, in force at the time of the facts of this case, as well as the unwarranted prohibitions on leaving the country.¹⁹⁶ The IACHR observed that, until 2012:

According to the Law on Migration, Law No. 1312 of 1976, to leave and enter the national territory, Cubans require a current passport and a permit to enter and leave, granted by the Ministry of Interior. In practice the Cuban authorities have a series of requirements that pose an obstacle for Cubans to be able to exit and enter the country freely. Some of these requirements include the need for certificates or declarations from employers or their family members in support of the request, the exact description of the itinerary, the requirement of posting a repatriation bond, being in possession of a return ticket, and having an invitation from the destination State or from persons who live there, among others. In addition, the Law does not stipulate a time for the authority to rule on the request for permission; in general, the requesters have to wait a long time to obtain permission to exit or enter. The decisions of the Ministry of Interior officials who refuse the exit or entry permits cannot be appealed to a court since they emanate from the exercise of a discretionary power.¹⁹⁷

145. The law cited above (which has since been amended) was applied to this case. The IACHR considers that this regulation violated the right to residence and movement and failed to meet the standards of legality, necessity, and proportionality. However, the IACHR notes that the Cuban Constitution of 2019 recognizes the right to freedom of movement and the right of citizens to leave the country.¹⁹⁸ Law No. 1312 of 1976 was amended by Decree-Law No. 302¹⁹⁹ on October 16, 2012, partially eliminating the requirement of authorization to leave the territory. But a set of circumstances were maintained under which certain Cuban nationals residing in Cuba could not obtain passports or leave the country for ambiguously worded reasons, and the Cuban authorities still have broad discretion over the departure of Cuban nationals. Even when the petitioners reported that Yoani Sánchez has been able to leave the country since late 2012, and no information has been provided on the application of Decree-Law No. 302 in this specific case, the IACHR stresses that while this regulation has signified progress, it has failed to prevent unwarranted travel restrictions against political dissidents and opposition journalists who wish to leave the island,²⁰⁰ which can be applied to the journalist at any time.

146. Therefore, the Commission concludes that the State violated Article VIII of the American Declaration, to the detriment of Yoani Sánchez.

D. Right to freedom of assembly (Article XXI)201 and association (Article XXII)202

147. The right of assembly protects the peaceful, intentional, and temporary congregation of people in a given space to achieve a common goal, including protest. As such, it is indispensable for the collective expression of people's opinions and points of view. The exercise of the right of assembly is vitally important for the consolidation of the democratic life of societies and is therefore of compelling social interest.²⁰³

¹⁹⁶ IACHR. Seventh Report on the Situation of Human Rights in Cuba, Ch. VIII, OEA/Ser.L/V/II.61, Doc.29 rev. 1, 4 October 1983, para. 6.

¹⁹⁷ IACHR. Annual Report 2012. Ch. IV.B (Human Rights Development Situation in the Region - Cuba), para. 94.

¹⁹⁸ IACHR. Report on the Situation of Human Rights in Cuba. OEA/Ser.L/V/II. Doc 2. February 3, 2020, para. 89.

¹⁹⁹ IACHR. Annual Report 2012. Ch. IV.B (Human Rights Development Situation in the Region - Cuba), para. 95.

²⁰⁰ IACHR, 2015 Annual Report (Ch. IV.B, Cuba), paras. 66-70; IACHR, 2017 Annual Report (Ch. IV.B, Cuba), para. 50; IACHR, 2018 Annual Report (Ch. IV.B, Cuba), paras. 55-60; IACHR. Report on the Situation of Human Rights in Cuba. OEA/Ser.L/V/II. Doc 2. 3 February 2020, para. 203.

²⁰¹ Article XXI of the American Declaration states that: "[e]very person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature."

²⁰² Article XXII of the American Declaration establishes that: "[e]very person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature."

²⁰³ IACHR. Office of the Special Rapporteur for Freedom of Expression. Report on Protest and Human Rights. OEA/Ser.L/V/II IACHR/RELE/INF.22/19, 2019, para. 19.

148. Freedom of assembly allows people to exchange opinions, express their positions on human rights, and coordinate plans of action, whether at assemblies or public demonstrations,²⁰⁴ for example. It means that citizens may “freely meet in private locations with the consent of the owners, in public places [...] and in places of business, in the case of workers.”²⁰⁵

149. Freedom of association presupposes the right of assembly and is characterized by authorizing individuals to create or participate in entities or organizations in order to act collectively to achieve very diverse purposes, provided they are legitimate. This entails the “the right and the freedom to associate in order to seek together a lawful purpose, without pressure or interference that can alter or distort this purpose.”²⁰⁶

150. By the same token, freedom of association protects the freedom to associate *inter alia* for ideological and political purposes, free from intervention by the authorities that limits or hinders the exercise of this right, and not just the right to join a trade union or professional organization. The protection granted by this right not only guarantees the right to form and join an association or organization, but also extends to all activities that are essential for its effective functioning, including the possibility of expressing opinions and disseminating information to further the group’s aims.²⁰⁷

151. The right to freedom of association has two dimensions: an individual and a social one. The individual dimension involves the right to freely associate with other people without government intervention that limits or hinders this right. As for its collective dimension, it is the right and freedom to pursue a lawful aim, without pressure or interference that may alter or change its purpose.²⁰⁸

152. Unlike freedom of association, the right of assembly does not necessarily entail the creation of or participation in an entity or organization. It may take the form of a sporadic meeting or congregation to achieve the most diverse purposes, so long as they are peaceful and legitimate.²⁰⁹ In contrast, persons who gather to exercise the right of association do not do so sporadically but tend to meet continuously over time.

153. The rights enshrined in Articles XXI and XXII of the American Declaration are not absolute; however, to be legitimate, any restrictions on them must be expressly established by law and be necessary to ensure respect for the rights of others or the protection of national security, public order, or public health or morals.²¹⁰ Hence, for example, the Commission has referred to the baseless arrest of participants in peaceful demonstrations as a violation of freedom of assembly.²¹¹

154. Here, the IACHR notes that Yoani Sánchez was barred from public places, especially venues for cultural events or public lectures, without State agents establishing any grounds for the legitimacy of this prohibition. Yoani Sánchez was also summoned by the police in December 2008 as a warning to stop organizing an event for bloggers, who were considered counterrevolutionaries. The police warned Yoani that such an event would not be allowed, so although they did meet, they did so online and not in person as planned. The alleged victim was also arbitrarily detained while on her way to the celebration and demonstration after the death of Oswaldo Payá.

155. In previous cases, the IACHR has noted that “the Cuban authorities’ intolerance of any form of political opposition is the principal cause of the constraints placed on freedom of assembly and association.”²¹² In the case at hand, the IACHR finds that the State kept Yoani Sánchez from exercising her right of assembly on several

²⁰⁴ IACHR. Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II 124. Doc 5 rev. 1. March 7, 2006, para. 52.

²⁰⁵ IACHR. Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II 124. Doc 5 rev. 1. March 7, 2006, para. 53.

²⁰⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Report on Protest and Human Rights*. OEA/Ser.L/V/II IACHR/RELE/INF.22/19, 2019, para. 20.

²⁰⁷ IACHR, Report No. 27/18, Case No. 12.127, Merits (Publication). Vladimiro Roca Antúñez et al. Cuba. February 24, 2018, para. 83.

²⁰⁸ IACHR, Report No. 73/11, Case 11.395 9. Juan José López, Argentina, July 20, 2011, para. 56.

²⁰⁹ I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, para. 169.

²¹⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Report on Protest and Human Rights*. OEA/Ser.L/V/II IACHR/RELE/INF.22/19, 2019, para. 31.

²¹¹ IACHR, Annual Report 1979-1980, pp. 96-98.

²¹² IACHR. Report No. 67/06. Case No. 12.476. Merits. Oscar Elías Biscet et al. Cuba. October 21, 2006, para. 222.

occasions to prevent her from sharing her thoughts with others, while sending a collective message about the consequences for like-minded people, which does not constitute a legitimate restriction of this right. Therefore, the Commission concludes that the State violated the right to freedom of assembly enshrined in Article XXI of the American Declaration to the detriment of Yoani Sánchez.

156. Regarding freedom of association, the IACHR notes that it has neither been alleged nor inferred from the case file that the State has restricted Yoani Sánchez's right to create or participate in an association or organization with other persons to act collectively for a common purpose on a continued basis over time, which distinguishes this right from freedom of assembly. Therefore, the Commission concludes that the State is not responsible for violating the right to freedom of association.

E. Right to the inviolability of the home (Article IX)²¹³ and the inviolability and transmission of correspondence (Article X)²¹⁴

157. The Commission notes that the right to the inviolability of the home is a fundamental right established to guarantee individual privacy, which must be free from any outside intrusion, whether by third parties or by the authorities.²¹⁵ Protection from arbitrary or abusive interference with the home requires the acknowledgement of a personal sphere that must be free and immune from arbitrary or abusive invasion or attack. In this sense, the home becomes a space in which private life can evolve freely.²¹⁶

158. Although the right to the inviolability of correspondence is explicitly protected by Article X of the Declaration, the jurisprudence has extended this protection to "communications," including telephone communications²¹⁷ and communications through new technologies, such as the internet.²¹⁸ The protection of communications extends to data that may identify the communication, such as numbers called and the frequency and duration of calls. This information is an integral part of communication, the same as its actual content, and storing it also constitutes an invasion of a person's privacy and communications. In addition, not only interception is prohibited, but the right to the confidentiality of all the data produced in that private space gives rise to a corresponding prohibition on the disclosure or circulation of information captured without the consent of its owner in that space of private protection reserved to the individual.²¹⁹

159. The right to not be subjected to arbitrary or abusive interference with one's home or correspondence is a prerequisite for exercising the right to freedom of expression, which must be protected by law and rigorously promoted in public policy. This is closely linked to the State's obligation to create a safe environment for the exercise of freedom of expression, since violating the privacy of communications has a chilling effect and hinders the full exercise of the right to communicate.²²⁰

²¹³ Article IX of the American Declaration establishes that: "[e]very person has the right to the inviolability of his home."

²¹⁴ Article X of the American Declaration provides that: "[e]very person has the right to the inviolability and transmission of his correspondence."

²¹⁵ IACHR. Report No. 67/06. Case No. 12.476. Merits. Oscar Elías Biscet et al. Cuba. October 21, 2006, para. 259.

²¹⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, para. 188; I/A Court H.R., *Case of Escué Zapata v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165; I/A Court H.R., *Case of Vereda La Esperanza v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 341.

²¹⁷ IACHR. Report No. 67/06. Case No. 12.476. Merits. Oscar Elías Biscet et al. Cuba. October 21, 2006, para. 242.

²¹⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, para. 189. See also, ECtHR. *Klass et al. v. Germany*. Judgment of 6 September 1978, para. 29; *Halford v. United Kingdom*. Judgment of 27 May 1997, para. 44; *Amann v. Switzerland*. Judgment of February 16, 2000, para. 44; and *Copland v. United Kingdom*. Judgment of March 13, 2007, para. 41.

²¹⁹ IACHR. Report No. 67/06. Case No. 12.476. Merits. Oscar Elías Biscet et al. Cuba. October 21, 2006, para. 242; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, paras. 189 and 191.

²²⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, para. 10; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Report on the Situation of Freedom of Expression in Cuba](#). OAS/SER.L/V/II CIDH/RELE/INF.21/18. December 31, 2018, para. 243.

160. However, the rights to the inviolability of the home and correspondence are not absolute and may be restricted if there is an order from a competent authority.²²¹ For the restriction to be legitimate, it must be provided by law, pursue a legitimate purpose, and meet the requirements of suitability, necessity, and proportionality, i.e., it must be necessary in a democratic society.²²²

161. The permissible instances and conditions of surveillance must be expressly, explicitly, specifically, precisely, and clearly established in advance in a law, in both the formal and material sense. Given the intrinsic risk of abuse of any surveillance system, such measures must be based on unambiguous legislation, with clear and detailed rules. The purposes for which the monitoring or interception of communications is authorized should be expressly stated in the law, and in all cases the laws should establish the need for a prior court order.²²³ The nature of the measures, as well as their scope and duration, must be regulated establishing the circumstances under which they may be issued and the bodies responsible for authorizing, implementing, and monitoring them.²²⁴

162. The facts of this case indicate that the State has restricted or intercepted Yoani Sánchez's telephone communications because of her journalism criticizing the regime and because of the content of her blog. These telephone wiretaps are consistent with the context described above, in terms of the State's increased use of surveillance to identify the activity of independent journalists and political dissidents, particularly on the web. The State has provided no information to show that the wiretapping was done pursuant to a court order, nor that it was carried out based on the requirements of legality, suitability, necessity, and proportionality. The IACHR thus concludes that the interception of Yoani Sánchez's communications constitutes arbitrary intrusions by the State, amounting to the violation of the right to the inviolability of correspondence. Therefore, the Commission finds that the State violated Article X of the American Declaration to the detriment of Yoani Sánchez.

163. Regarding the inviolability of the home, the Commission notes that it has neither been alleged nor inferred from the case file that State or non-state agents entered Yoani Sánchez's residence. In its jurisprudence, the IACHR has found violation of Article IX of the American Declaration when the authorities enter the victim's home without his or her permission and without a court order, as in cases of searches not authorized by a competent authority.²²⁵ In this regard, the surveillance of the area surrounding her residence and the interviews with her visitors are not sufficient evidence to conclude the violation of this right. These acts may, however, constitute harassment against the journalist, as discussed in the next section of this report.

164. Therefore, according to the facts alleged by the petitioners, the Commission does not find a violation of the right to the inviolability of the home enshrined in Article IX of the American Declaration.

F. Right to freedom of investigation, opinion, expression, and dissemination (Article IV),²²⁶ right to vote and to participate in government (Article XX),²²⁷ and right to protection of honor, personal reputation, and private and family life (Article V)²²⁸ of the American Declaration

²²¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, para. 188.

²²² IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, para. 216; I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 55.

²²³ UN. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/23/40. April 17, 2013, para. 81.

²²⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, para. 217.

²²⁵ IACHR, Report No. 67/06, Case No. 12.476, Merits, Oscar Elías Biscet et al, Cuba, October 21, 2006, para. 261.

²²⁶ Article IV of the American Declaration states that: "[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever."

²²⁷ Article XX of the American Declaration establishes that: "[e]very 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."

²²⁸ Article V of the American Declaration prescribes that: "[e]very person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life."

1. Right to freedom of expression

165. The IACHR has repeatedly recognized that the freedom to express ideas and disseminate information of all kinds, regardless of borders, is a fundamental and inalienable right inherent to all persons. It is “one of the individual rights that most clearly reflects the virtue that marks—and characterizes—human beings: the unique and precious capacity to think about the world from our own perspective and communicate with one another in order to construct, through a deliberative process, not only the model of life that each one has a right to adopt, but the model of society in which we want to live.”²²⁹

166. It is, moreover, an essential prerequisite for the very existence of a democratic society. The purpose of this right is to strengthen the functioning of pluralistic and deliberative democratic systems, through the protection and promotion of the free flow of information, ideas, and expressions.²³⁰ In Advisory Opinion No. 5, the Inter-American Court affirmed that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.²³¹

167. The IACHR has held that “when Article IV of the Declaration proclaims that ‘every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas’ by any means, it is indicating that the expression and dissemination of ideas is indivisible, so that a restriction of the possibility to impart thoughts represents directly, and to the same degree, a restriction of the right to express oneself freely.”²³² Indeed, according to the doctrine and case law of the inter-American system, freedom of expression has an individual dimension and a social dimension, which must be fully guaranteed simultaneously to give effect to the right to freedom of expression.²³³ Freedom of expression requires, on the one hand, that no one be arbitrarily hindered or prevented from expressing his or her own thoughts and disseminating information of any kind; but it also entails a collective right to receive any information and to have access to the thoughts expressed by others.²³⁴ According to the IACHR, “[t]he two dimensions of freedom of expression are of equal importance; they are inter-dependent and must be guaranteed simultaneously, in full, in order for the right enshrined in the Inter-American instruments to be completely effective.”²³⁵ One of the main consequences of the duty to guarantee both dimensions simultaneously is that one of them cannot be undermined by invoking the preservation of the other. Thus, for instance, “one cannot legitimately rely on the right of a society to be honestly informed in order to put in place a regime of prior censorship for the alleged purpose of eliminating information deemed to be untrue in the eyes of the censor. It is equally true that the right to impart information

²²⁹ IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Ch. III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 7. IACHR. Report No. 27/18, Case No. 12,127. Vladimiro Roca Antúnez et al. Cuba. February 24, 2018, para. 79.

²³⁰ IACHR, Report No. 103/13, Case 12.816, Merits. Adán Guillermo López Lone et al. Honduras. November 5, 2013, para. 210; IACHR, Report No. 27/15, Case 12.795, Merits. Alfredo Lagos del Campo. Peru. July 21, 2015, para. 75; IACHR. Pleadings before the Inter-American Court in the *Case of Ivcher Bronstein v. Peru*. Transcribed in I/A Court H.R. *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para. 143(d); IACHR. Pleadings before the Inter-American Court in the *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*. Transcribed in I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 61(b).

²³¹ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70.

²³² IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet et al. (Cuba). October 21, 2006, para. 198.

²³³ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30. IACHR. Report No. 148/19. Case 12.971. Ronald Moya Chacón and Freddy Parrales Chaves. Costa Rica. September 28, 2019, para. 39.

²³⁴ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30. IACHR. Report No. 148/19. Case 12.971. Ronald Moya Chacón and Freddy Parrales Chaves. Costa Rica. September 28, 2019, para. 39.

²³⁵ IACHR. Inter-American Legal Framework regarding the Right to Freedom of Expression. OAS Ser.L/V/II IACHR/RELE/INF doc. 2/09. December 30, 2009, para. 16.

and ideas cannot be invoked to justify the establishment of private or public monopolies of the communications media designed to mold public opinion by giving expression to only one point of view.”²³⁶

168. As with all fundamental rights and freedoms, the Commission has observed that States are not only obliged to ensure the protection of the substantive right,²³⁷ but must also adopt the legislative, regulatory, and other measures necessary to guarantee the effective enjoyment of the rights protected by the American Declaration,²³⁸ in this case the right to freedom of expression.

169. Similarly, Principle 2 of the IACHR Declaration of Principles on Freedom of Expression establishes that “[...] All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”

170. In this way, and as consistently stated in the case law of the bodies of the inter-American system²³⁹ and the universal system for the protection of human rights,²⁴⁰ the right to freedom of expression cannot be subject to prior restraint by the State. It can be subject only to the imposition of subsequent liability, provided it is not abusive or arbitrary; restrictions must be provided by law, pursue a legitimate aim, and comply with the requirements of suitability, necessity, and proportionality. The Commission has specifically indicated that restrictions to the right to freedom of expression recognized in the American Declaration “should be established in a law and aim to protect legitimate objectives [and] should be necessary to ensure such protection and may not be applied before an idea or information is imparted, only afterwards.”²⁴¹ The State should also recall that direct or indirect restrictions on freedom of expression, especially threats of criminal penalties against journalists or acts of aggression and persecution, have an “clear” and “inevitable” chilling effect on the exercise of this right, and discourage investigative journalists in general—not necessarily only the threatened individual—from reporting on matters of public interest.²⁴² This inhibition also affects speech on issues of public interest and access to information for society as a whole.²⁴³

171. Under Article XXVIII of the American Declaration, restrictions on fundamental rights are permissible only to ensure “the rights of others,” “the security of all,” and “the just requirements of the general welfare and democratic development.” These elements must provide the protection of a democratic order, understood as the existence of structural conditions for all persons, without discrimination, to exercise their rights freely, vigorously, and without fear of punishment.²⁴⁴

172. Similarly, when examining the validity of restrictions, it must be considered that the freedom to express opinions and disseminate information that is political or that criticizes the actions of state authorities or a government is a cornerstone of the right protected by Article IV of the American Declaration. The Commission has consistently held that States have a more limited scope to impose restrictions on freedom of expression when it concerns speech about the State, matters of public interest, public officials in the performance of their duties, candidates for public office, or private individuals voluntarily involved in public affairs, as well as political speech and debate.²⁴⁵

²³⁶ IACHR. Inter-American Legal Framework regarding the Right to Freedom of Expression. OAS Ser.L/V/II IACHR/RELE/INF doc. 2/09. December 30, 2009, para. 17.

²³⁷ IACHR, Report No. 40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District* (Belize), October 12, 2004, para. 162.

²³⁸ IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 108; IACHR, Report No.40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District* (Belize), October 12, 2004, para. 162.

²³⁹ IACHR, Report on the Compatibility between Contempt Laws and the American Convention on Human Rights. OEA/ser L/V/II.88, Doc. 9 rev (1995), pp. 210-223, Annex D.

²⁴⁰ UN. Human Rights Committee. General Comment No. 34: Article 19 Freedom of opinion and freedom of expression. 12 September 2011.

²⁴¹ IACHR. Report No. 67/06, adopted on October 21, 2006, in case 12.476 Oscar Elías Biscet et al. (Cuba).

²⁴² IACHR, Report No. 4/17, Case 12.663, Merits. Tulio Alberto Álvarez. Venezuela. January 26, 2017, para. 88.

²⁴³ IACHR. Inter-American Legal Framework regarding the Right to Freedom of Expression. OAS Ser.L/V/II IACHR/RELE/INF doc. 2/09. December 30, 2009, paras. 110 *et seq.*

²⁴⁴ IACHR, Report No. 27/18, Case No. 12.127, Merits (Publication). Vladimiro Roca Antunez and Others. Cuba. February 24, 2018, para. 103.

²⁴⁵ IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Ch. III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para 100; IACHR. Annual Report 1994. Ch. V. Report on the Compatibility between “*Desacato*” Laws and the American Convention on Human Rights. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

173. Prior censorship is prohibited in the inter-American system. Principle 5 of the Declaration of Principles on Freedom of Expression establishes that “[p]rior 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.”

174. The three-part test for restrictions to freedom of expression and the prohibition of censorship assumes specific characteristics in the exercise of the right to freedom of expression online, especially when the internet is monopolized by the State.

1.1. Censorship and other restrictions on freedom of expression on the internet

175. The IACHR recalls that the internet is a unique instrument that provides enormous potential for the enjoyment of human rights—especially the right to freedom of expression—across broad sectors of the population. In other words, it has a critical impact not only on the individual dimension of the right to freedom of expression, but also on its social dimension.²⁴⁶ Given the particular characteristics of the internet, access to it has acquired unprecedented potential for the effective realization of the right to seek, receive, and impart information.²⁴⁷ The IACHR and the Office of the Special Rapporteur for Freedom of Expression have emphasized that access to the internet is a condition *sine qua non* for the effective exercise of human rights, including especially the rights to freedom of expression and opinion, association and assembly, education, health, work, and access to culture.²⁴⁸

176. The internet’s relevance as a platform for the enjoyment and exercise of human rights is directly linked to network architecture and its governing principles, including the principles of openness, decentralization, and neutrality. The activity of the State, the development of public policies, and the actions of individuals in the digital environment must conform to the principles of equal access, pluralism, non-discrimination, and privacy, with net neutrality and multi-sector governance as cross-cutting components.²⁴⁹

177. Maximizing the number and diversity of voices able to participate in the public debate is both a condition and an essential aim of the democratic process.²⁵⁰ Robust guarantees for the exercise of freedom of expression online are now a prerequisite for opening up the public sphere.²⁵¹ Therefore, States have the duty not only to ensure the conditions for people to connect to the internet, but also to provide the resources and measures so people can use it autonomously, independently, and responsibly, with the ability to access the largest amount of information and ideas circulating online. States “should protect the multidirectional nature of the Internet and promote platforms that allow for the search for and circulation of information and ideas of all kinds.”²⁵² In particular, net neutrality is a necessary condition for exercising freedom of expression. The purpose of this principle is to ensure that free access and user choice to use, send, receive, or offer any lawful

²⁴⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, para. 84.

²⁴⁷ United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (OAS), and Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights (ACHPR). Joint Declaration on Freedom of Expression and the Internet. June 1, 2011.

²⁴⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, para. 32; IACHR. SACROI: COVID-19 Practical Guide No. 3. How to Promote Universal Internet Access during the COVID-19 Pandemic.

²⁴⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, para. 6.

²⁵⁰ IACHR, Freedom of Expression and the Internet, OEA/Ser.L/V/II. IACHR/RELE/INF. 11/13, December 31, 2013, para.18.

²⁵¹ IACHR, Freedom of Expression and the Internet, OEA/Ser.L/V/II. IACHR/RELE/INF. 11/13, December 31, 2013, para.18.

²⁵² IACHR, Freedom of Expression and the Internet, OEA/Ser.L/V/II. IACHR/RELE/INF. 11/13, Dec. 31, 2013, para. 19.

content, application, or service over the internet is not conditioned, directed, or restricted by blocking, filtering, or interference.²⁵³

178. Freedom of expression applies to the internet just as it does to all means of communication. Restrictions on freedom of expression on the internet are only acceptable if they comply with established international standards, including that they are provided for by law, and that they are necessary to protect an interest recognized under international law (the “three-part” test).²⁵⁴ In addition to observing all these parameters, content restrictions must include user safeguards, “such as transparency with regard to the content whose removal has been ordered, as well as detailed information regarding the measures’ necessity and justification.”²⁵⁵

179. In no case may an *ex-ante* measure be implemented to block the circulation of any content that enjoys a presumption of protection. Content filtering systems put in place by governments or commercial service providers that are not controlled by the end user constitute a form of prior censorship and an unwarranted restriction on freedom of expression under the aforementioned criteria.²⁵⁶ By the same token, interference in the transmission of internet traffic can be justified only when the measure is “necessary and proportional in order to preserve the integrity and security of the network; to prevent the transmission of online content at the express request—free and not incentivized—of the user; and to temporarily and exceptionally manage network congestion. In this latter case, the measures employed should not discriminate between types of applications or services.”²⁵⁷ Similarly, “[i]n exceptional cases of clearly illegal content or speech that is not covered by the right to freedom of expression (such as war propaganda and hate speech inciting violence, direct and public incitement to genocide, and child pornography), the adoption of mandatory measures to block and filter specific content is admissible. In these cases, the measure must be subjected to a strict proportionality [test] and be carefully designed and clearly limited so as to not affect legitimate speech that deserves protection.”²⁵⁸

180. The mandatory blocking or suspension of entire websites, platforms, channels, IP addresses, domain name extensions, ports, network protocols, or any other kind of application, as well as measures intended to delete links, data, and websites from the server where they are hosted, constitute prohibited restrictions that are admissible only on in exceptional cases and “strictly pursuant to the terms of Article 13 of the American Convention.”²⁵⁹ If unwarranted, it would be an extreme measure analogous to banning a newspaper or radio or television broadcaster.²⁶⁰

181. State monopolies or control over internet access services presents an additional risk to freedom of expression since the parameters of connectivity and net neutrality can be easily violated. Absolute government control of the internet may make it impossible to ensure the diversity of internet service providers by concentrating the service in the hands of the State, creating serious obstacles to internet access and the plurality and diversity of content. It may affect pricing structures and people’s ability to afford service, as well as connection quality and speed, and the quality of the information flow. A State monopoly on the web can lead to the blocking and filtering of content—mainly content critical of the State—that is of public interest to citizens, thus violating both dimensions of the right to freedom of expression. Under Article IV of the American Declaration, States have the obligation to ensure that all persons are able to exercise their right to freedom of

²⁵³ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, para. 11.

²⁵⁴ Joint Declaration on Freedom of Expression and the Internet. June 1, 2011, *supra*.

²⁵⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, para. 89.

²⁵⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, para. 91.

²⁵⁷ IACHR. Freedom of Expression and the Internet. OEA/Ser.L/V/II. IACHR/RELE/INF. 11/13. December 31, 2013, para. 30.

²⁵⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, para. 88.

²⁵⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.L/V/II IACHR/RELE/INF.17/17. March 5, 2017, paras. 87-88; IACHR. Office of the Special Rapporteur for Freedom of Expression. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#), Point 3 (a); [Joint Declaration on Freedom of Expression and “Fake News”](#). [Disinformation and Propaganda](#), March 2017.

²⁶⁰ Joint Declaration on Freedom of Expression and the Internet. June 1, 2011, *supra*.

expression “by any medium” of their choice. The right to choose the medium includes the freedom to choose technology as a means of expression, which requires States to foster competition and the development of a market that can provide individuals with options for connection technologies. Without options to choose from, the right to express oneself “by any medium” is meaningless.

2. Participation in government

182. The inter-American case law has noted that political participation can include widespread and varied activities that people perform individually or within an organization to intervene in the appointment of those who will govern a State or conduct public affairs.²⁶¹ According to the IACHR, political participation has two clearly identifiable aspects: the right to hold office directly and the right to elect others to hold office.²⁶²

183. The Commission considers that the right to vote and participate in government also includes the right to organize political parties and associations which, through the free debate of ideas, excludes the monopoly of power by a single group or individual. Thus, the right to political participation goes beyond the right of association for exclusively political purposes. In this sense, the right to vote and participate in government also includes the possibility of freely exercising, within the limits of the rule of law and the democratic regime, criticism, and political opposition to the government. The right to vote and to participate in government also includes the ability to freely express—within the limits of the rule of law and the democratic system—criticism and political opposition to the government.²⁶³

184. The Commission has said that “governments have, in the face of political rights and the right to political participation, the obligation to permit and guarantee: the organization of all political parties and other associations, unless they are constituted to violate human rights; open debate of the principal themes of socioeconomic development; the celebration of general and free elections with all the necessary guarantees so that the results represent the popular will.”²⁶⁴

185. The full exercise of freedom of expression, association, and assembly is also essential to having a direct role in shaping the decisions that affect the community.²⁶⁵

3. Stigmatizing statements and the right to honor and reputation

186. The IACHR has established that acts of public repudiation, accusations, and stigmatization may violate the stigmatized person’s right to honor, reputation, dignity, and freedom of expression when such acts come from people who hold positions of power, or are prominent or public figures, and who seek to intentionally discredit the victims in the eyes of the public.²⁶⁶ This is exacerbated if public officials are the ones intentionally making the stigmatizing statements, since the fact that they hold positions of high public trust dramatically increases the risk that the stigmatized person’s rights to life and personal integrity will be violated.²⁶⁷ Politicians and public officials may legitimately express criticism, corrections, or objections to speech or certain information; but when doing so, they should always be mindful of their obligations to guarantee rights. They should ensure that their remarks do not stigmatize or disparage individuals—especially journalists—or heighten the risks faced by stigmatized persons.²⁶⁸

²⁶¹ 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. 146.

²⁶² IACHR. Annual Report 2002, 2003, Ch. IV. B. Cuba, para. 11.

²⁶³ IACHR. Report No. 67/06. Case No. 12.476. Merits. Oscar Elías Biscet et al. Cuba. October 21, 2006, para. 245.

²⁶⁴ IACHR. Report No. 67/06. Case No. 12.476. Merits. Oscar Elías Biscet et al. Cuba. October 21, 2006, para. 246.

²⁶⁵ IACHR. Report No. 67/06. Case No. 12.476. Merits. Oscar Elías Biscet et al. Cuba. October 21, 2006, para. 256.

²⁶⁶ CIDH. Informe No. 67/06. Caso No. 12.476. Fondo. Oscar Elías Biscet y otros. Cuba. 21 de octubre de 2006, párr. 232 a 234, e Informe No. 57/19. Caso No. 12.380. Fondo. Miembros de la Corporación Colectivo de Abogados José Alvear Restrepo. Colombia. 4 de mayo de 2019, párrs. 322 y 323.

²⁶⁷ CIDH, Verdad, Justicia y reparación: Cuarto informe sobre la situación de derechos humanos en Colombia, OEA/Ser.L/V/II.Doc.49/13, 31 de diciembre de 2013, párr. 775, e Informe No. 57/19. Caso No. 12.380. Fondo. Miembros de la Corporación Colectivo de Abogados José Alvear Restrepo. Colombia. 4 de mayo de 2019, párrs. 322 y 323.

²⁶⁸ Relatoría Especial para la Libertad de Expresión. 2 de mayo de 2018. *Declaración Conjunta sobre la Independencia y la Diversidad de los Medios de Comunicación en la era Digital*.

187. The IACHR has established that the disparagement of journalists and critical media outlets by State authorities jeopardizes the free practice of journalism and undermines the obligation to maintain public discourse that contributes to the prevention of violence against journalists.²⁶⁹ Stigmatizing statements expose journalists to a greater risk of violence, harassment, and threats,²⁷⁰ and make them even more vulnerable than they already are due to the nature of their work, since the content of such statements may even be interpreted by individuals and groups of individuals in such a way that they lead to acts of violence and the obstruction of journalistic work.²⁷¹

188. When State authorities make such stigmatizing statements openly, including on State media channels, they foster, contribute to, exacerbate, or accentuate situations of hostility, intolerance, or animosity by some sectors of the population toward the stigmatized persons.²⁷² As part the duty to protect and guarantee human rights, public authorities must not make statements that expose journalists and media workers to a greater risk of violence.²⁷³ Any authority with public responsibilities must refrain from speech that encourages hatred or the use of violence against individuals.²⁷⁴

189. Public officials are called upon to foster the use of language favorable to public deliberation and to ensure that their speech does not harm the rights of others who contribute to the discourse through the expression and dissemination of their thoughts. Public officials should strongly condemn attacks on journalists and consistently, clearly, publicly, and firmly recognize the legitimacy and value of the work that journalists do, even when the information they disseminate is critical of the government or inconvenient to its interests.²⁷⁵

4. Analysis of the case

190. The Inter-American Commission has repeatedly maintained that Cuba is the only country in the Hemisphere where the right to freedom of expression is subject to the objectives of the socialist State, and there is no law or practice that protects the right and guarantees its free and full exercise. This assertion is borne out by the context described in the respective section of this report: there continue to be reports from Cuba of the persecution of independent journalists, threats, summonses, interrogations for purposes of intimidation, illegal and arbitrary detentions, impediments to leaving the country, blocks and restrictions on internet access, harassment, smear campaigns, prior censorship, acts of intimidation against journalists, and indirect violations of freedom of expression, among others.

191. Cuba also has a legal system that is highly restrictive of freedom of expression. Article 53 of the Cuban Constitution, in force at the time of the facts alleged, made the exercise of freedom of the press conditional on the aims of the socialist State, even stating that the violation of this condition was punishable by law. This is at odds with international standards, according to which the recognition of freedom of expression cannot be subject to any condition, much less when such condition limits the possibility of an open, plural, and democratic debate on political issues or issues of public interest. The exercise of fundamental freedoms, such as freedom of expression, cannot be subject to the political ideas of a party or to the absolute control of government power.

²⁶⁹ United Nations (UN) Special Rapporteur for the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the OAS. September 13, 2013. [Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests](#).

²⁷⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Silenced Zones: Highly dangerous areas for the exercise of freedom of expression](#). OEA/Ser.L/V/II/CIDH/RELE/INF.16/17, March 15, 2017, para. 158.

²⁷¹ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, paras. 142, 143, 148; *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, paras. 154, 155, 160.

²⁷² IACHR Court. *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 360.

²⁷³ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Silenced Zones: Highly dangerous areas for the exercise of freedom of expression](#). OEA/Ser.L/V/II/CIDH/RELE/INF.16/17, March 15, 2017, para. 158.

²⁷⁴ IACHR. Press Release 05/2021. IACHR Condemns Violence Against Congress and Against the Democratic Processes in the United States. January 8, 2021.

²⁷⁵ IACHR Court. *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, paras. 151 *et seq.*; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Silenced Zones: Highly dangerous areas for the exercise of freedom of expression](#). OEA/Ser.L/V/II/CIDH/RELE/INF.16/17, March 15, 2017, para 158.

By establishing that these freedoms must be consistent with the aims of socialist society, the Cuban State is empowered to control the information that reaches its people.

192. The constitutional reform has retained the previous Constitution's main restrictions on freedom of expression, which render the exercise of this right illusory and make it a merely rhetorical recognition. Although the new Constitution no longer expressly states that freedom of the press is subject to the "objectives of socialist society," it still prohibits private (as opposed to state-owned) media and establishes that the mass media "are the socialist property of all the people." Coupled with this is the fact that the Communist Party continues to be the only party and the highest leading force in the country. The absolute monopoly of the State over the media in any of its forms does not allow for the creation of an environment conducive to the free and full exercise of the right to freedom of expression.

193. The IACHR emphasizes that, under the aforementioned laws, attempting to condition speech on the political ideas of Cuba's sole party does not seek to protect a legitimate aim consistent with democratic order, understood as the existence of structural conditions for all persons, without discrimination, to exercise their rights freely and without fear of punishment; rather, it seeks to protect an authoritarian "order."

194. The IACHR considers that both the 1976 and 2019 constitutional formulas set arbitrary limits on the right to freedom of expression and were contrary to the American Declaration.

195. Arbitrary restrictions on freedom of expression have also been applied to digital spaces. Although communication technologies are still developing slowly and gradually in Cuba, with severe restrictions, digital platforms have gained relevance in a country whose legal media are controlled by a one-party State. In recent years, the use of the internet and the development of digital media has allowed spaces to open up for the circulation of information and ideas outside official government control. It has been thanks to these technologies that independent media have emerged, as well as blogs and websites dedicated to cultural groups, activism, and social demands,²⁷⁶ including *Generación Y*, the blog authored by the victim in this case.

196. The emergence of the internet as a content distribution platform was viewed with outright suspicion by the Cuban authorities, who considered it a "subversive" medium.²⁷⁷ Today, the regime's top cadres seem to recognize its importance, but this has not led to a change in Cuba's media policies and regulation. Indeed, the current policy framework generally regards the internet as the main platform for the dissemination of content and knowledge, on the condition that it does not run counter to the norms and principles aimed at maintaining and favoring the regime. Using the internet for other purposes, particularly the overt criticism of the system, means running the risk of having content removed, blocked, or filtered from the web by the authorities.²⁷⁸ Far from embodying the standards for a free, open, and inclusive internet, regulatory developments and practices in Cuba create a controlled and biased space.²⁷⁹

197. For instance, according to Resolution No. 179 of 2008, public access internet service providers (ISP) must:

take the necessary measures to prevent access to sites whose contents are contrary to the interests of society, morals, and decency; as well as the use of applications that affect the integrity or security of the State"; and "to establish procedures to identify the origin of access, as well as to record it and

²⁷⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Report on the Situation of Freedom of Expression in Cuba](#). OAS/SER.L/V/II CIDH/RELE/INF.21/18. December 31, 2018, para. 197.

²⁷⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Report on the Situation of Freedom of Expression in Cuba](#). OAS/SER.L/V/II CIDH/RELE/INF.21/18. December 31, 2018, para. 198, citing La pupila insomne. Fidel Castro: "Internet es un instrumento revolucionario". [Fidel Castro: "Internet is a revolutionary instrument"]. March 7, 2012. In 1995, Fidel Castro believed that the Internet would serve as a "Trojan horse" seeking to promote subversion and division, or an instrument for the dissemination of imperialist propaganda and the manipulation of consciences. Fidel Castro himself described the Internet in 2012 as "a revolutionary instrument that allows us to receive and transmit ideas, in both directions, something that we must know how to use".

²⁷⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Report on the Situation of Freedom of Expression in Cuba](#), *supra* para. 198.

²⁷⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. [Special Report on the Situation of Freedom of Expression in Cuba](#), *supra* para. 200.

maintain such records for a period of not less than one (1) year.” Those ISPs that fail to perform these and various other duties correctly are subject to the temporary or permanent suspension of their contract with the Cuban Telecommunications Company (*Empresa de Telecomunicaciones de Cuba S. A.* - ETECSA), a state-owned company with a monopoly on telecommunications services.²⁸⁰

198. Cuba’s Ministry of Information Technology and Communications “controls the Internet in the country, mainly through the state-run Cuban Telecommunications Company (ETECSA). There is a dual system: an intranet that is provided to the public, with filtered content that is subject to government restrictions; and the global internet, which is inaccessible to the Cuban population.”²⁸¹

199. It is within this context and regulatory framework that the IACHR examines the present case. Yoani Sánchez is a blogger and journalist critical of the Cuban government. In her blog, she expresses her opinions and perspectives on daily life in Cuba and exposes the abuses and lack of freedoms on the island, which are issues of great public interest. Yoani Sánchez has been able to disseminate her ideas, opinions, and expressions on a larger scale precisely thanks to technology, and has established herself as an independent media outlet through her blog and her digital media articles. However, this exercise has been arbitrarily restricted due to the implementation of a computer filter that blocks access to *Generación Y* from public internet sites in Cuba, so the journalist has had to rely on the help of friends outside the island to post on her blog.

200. The IACHR finds that blocking access to Yoani Sánchez’s blog constitutes prior censorship, contravenes the principle of net neutrality and, therefore, violates the right to freedom of expression. It does so not only in its individual aspect, by preventing a woman blogger from freely expressing information and ideas of all kinds, but also in its social or collective aspect, by depriving Cuban citizens of access to content of public interest, directly attacking the plurality of voices in the public debate. This blocking of Yoani Sánchez’s blog was notably facilitated or encouraged by the internet monopoly system in Cuba under the control of *Empresa de Telecomunicaciones de Cuba, S.A.* and, therefore, attributable to the Ministry of Information Technology and Communications of Cuba.

201. As stated above in the facts, her critical stance toward the government has caused Yoani Sánchez to be labeled as the “main ringleader of the counterrevolutionaries,” and to be identified on Cuban public television, as well as on her respective social media channels, as a “public enemy,” “cyber dissident” who intends to destabilize the Cuban government, a “terrorist,” “fake,” and a “mercenary” “trained by the Pentagon.” She was also accused of “receiving support from the CIA of the United States.” Mariela Castro, the daughter of then President Raul Castro, also called her a “despicable parasite” on Twitter.

202. In this case, Yoani Sánchez was the victim of a government smear campaign waged by the state-owned media. The statements against her constituted stigmatization by State agents because of her critical stance towards the government, and were made in front of her family, friends, colleagues, and the entire Cuban society. The Commission takes the view that these acts of harassment, in a context such as Cuba’s, were designed—by the State—to intentionally discredit the victim by undermining her honor and reputation in the eyes of public opinion. Furthermore, the constant harassment and government surveillance of her home play a role in Cuban society’s perception of how the journalist’s opinions and expressions are received. It also has a chilling effect not only on other journalists but also on the broader population, which knows the consequences of speaking out against the regime.

203. In a context such as the Cuban one, these acts could create or increase the risk to Yoani Sánchez’s physical integrity and personal freedom or security. They place her in a situation of heightened vulnerability, not only because of the content of the statements, but also because they could be interpreted by individuals and groups of individuals in a way that leads them to engage in harassment or violence, or to interfere with the exercise of her right to freedom of expression.

²⁸⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* para. 213.

²⁸¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* para. 219.

204. The IACHR has concluded in this report that Yoani Sánchez was persecuted in the following manner: (a) she was the victim of two unlawful and arbitrary arrests, during which she was physically assaulted and subjected to an attempt at forced nudity by three female police officers. The latter is particularly serious when committed against a woman journalist, since it affects her personal dignity differently than a man's. It is a form of violence against women that has a disproportionate impact on account of the victim's gender and the sexual nature of the act;²⁸² (b) during an arrest, both her cell phone and the camera she was carrying were seized without a warrant, despite the fact that her work as a journalist should have been protected;²⁸³ (c) the State prevented her from leaving the country on 20 occasions; (d) she was subjected to a smear campaign; (e) she was prevented from gathering with other people at public events and from accessing those events; (f) she was the target of threats, harassment, and intimidation, including warnings not to organize events with other bloggers, harassment of her family and friends, surveillance of her residence, and monitoring; (g) her telephone communications were intercepted; (h) her blog was blocked; and (i) her complaints and petitions to state authorities were never answered.

205. The IACHR is of the opinion that all these State practices carried out against Yoani Sánchez were reprisals for her journalistic activity and for the opinions and expressions of criticism and opposition to the Cuban government published on her blog, *Generación Y*. They were also intended to silence her dissident voice to keep others from having access to essential information of public interest that the State would prefer to conceal. These acts follow the general pattern of selective and deliberate persecution against independent journalists and persons perceived as enemies of the government, and the lack of respect for and guarantee of the right to freedom of expression in Cuba. The IACHR concludes that these practices constituted arbitrary restrictions on the right to freedom of expression.

206. The Commission underscores that “journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental, or moral attacks or other acts of harassment.”²⁸⁴ That is not what occurred in this case. On the contrary, violence—and particularly gender-based violence—as well as other acts of persecution against Yoani as a woman journalist, not only violated her right to freedom of expression, but also had an impact on the rest of critical and dissident women journalists in Cuba. Thus, “attacks can also have a chilling effect on other women journalists. The effect is an absence of women's voices and perspectives in the media on a wide range of issues, with serious implications for a free, pluralistic media”²⁸⁵ and for society as a whole. This exclusion entrenches discrimination and inequality.

207. Finally, regarding the right to participate in government, the IACHR considers this right to be intrinsically related to the right to freedom of expression, since criticism and political opposition can be expressed through the exercise of this right. Notwithstanding this, the IACHR regards each of these rights as having autonomous content, with its own scope. Here, the Commission finds that Yoani Sánchez's opposition and criticism of the government, her aspirations for political and social change, as well as her condemnation of abuses and the lack of freedoms in Cuba, were expressed mainly through her critical articles and her blog, *Generación Y*. Such acts are protected under the right to freedom of expression and have been analyzed above under the relevant standards. The petitioners have not alleged specific restrictions to Yoani Sánchez's right, for instance, to associate or to create political parties to express a specific political position, which falls mainly within the exercise of the right to political participation; therefore, an independent analysis or evaluation of the issue is unwarranted.

208. The Commission concludes that the State of Cuba violated the rights to investigation, opinion, expression, and dissemination, as well as the right to honor and reputation, recognized in Articles IV and V of the American Declaration, to the detriment of Yoani Sánchez. In addition, the IACHR concludes that the State is not

²⁸² IACHR. [Women Journalists and Freedom of Expression](#). OEA/Ser. L/V/II. IACHR/RELE/INF.20/18. 31 October 2018, paras. 29, 36.

²⁸³ *Mutatis mutandi*, United Nations (UN) Special Rapporteur for the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the OAS. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests](#).

²⁸⁴ I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012 Series C No. 248, para. 209.

²⁸⁵ United Nations General Assembly. The safety of journalists and the issue of impunity: report of the Secretary-General. A/72/290. 4 August 2017, para. 12.

responsible for violating the right to vote and to participate in government, recognized in Article XX of the American Declaration.

G. Right to a fair trial (Article XVIII),²⁸⁶ right of petition (Article XXIV),²⁸⁷ and right to due process of law (Article XXVI)²⁸⁸

209. The IACHR has held that these rights include trial rights and judicial protection²⁸⁹ that should be applicable not only to strictly judicial proceedings, but also to administrative proceedings related to rights violations.²⁹⁰

210. In this vein, the inter-American jurisprudence on access to justice stresses that it is not only a fundamental human right but an essential prerequisite for the protection and promotion of all other rights. It is a core principle that the formal existence of a legal remedy is not enough; States must also ensure that remedies are suitable and effective in practice to determine whether a human rights violation has occurred and to provide redress. An effective remedy is one that can produce the result for which it was designed, has a useful effect (*effet utile*), and is not illusory.²⁹¹ In addition, to be effective, the remedy must be adjudicated within a reasonable time.²⁹²

211. Also, States have the duty to investigate, identify, prosecute, and punish all those responsible, including the perpetrators, masterminds, participants, collaborators, and possible accessories to human rights violations.²⁹³

212. Especially in cases involving violence against journalists, the inter-American standards have established that, in meeting their obligation to investigate, prosecute, and punish the perpetrators, the States must place special emphasis on certain obligations, including: (i) the obligation to adopt an adequate institutional framework for the effective investigation, prosecution, and punishment of violence against journalists; (ii) the obligation to exercise due diligence and exhaust lines of inquiry related to the victim's practice of journalism; (iii) the obligation to conduct investigations within a reasonable time period; and (iv) the obligation to facilitate victim participation in the investigations.²⁹⁴

213. The Commission recalls that the bodies of the inter-American system have considered these factors in analyzing reasonable time according to the circumstances of each case: (i) the complexity of the matter; (ii) the procedural steps taken by the interested party; (iii) the actions of judicial authorities; and (iv) the impact on the legal status of the person involved in the case.²⁹⁵

214. In this case, the IACHR established that Yoani Sánchez filed a complaint with the Office of the Military Prosecutor and the Office of the Attorney General in late 2009 regarding the detention and assaults of November 6, 2009. On March 10, 2010, she also filed a complaint with the Office of the Attorney General, the Office of the Military Prosecutor, the National Assembly, the Council of State, the PNR, and the Infanta and Manglar police station in connection with the detention and events of February 24, 2010. To date—more than

²⁸⁶ Article XVIII of the American Declaration of the Rights and Duties of Man establishes that: "[e]very person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights."

²⁸⁷ Article XXIV determines that: "[e]very person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon."

²⁸⁸ Article XXVI states that: "[e]very 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."

²⁸⁹ IACHR, Report No. 121/18, Case 10.573. José Isabel Salas Galindo et al. United States. October 5, 2018, para. 437.

²⁹⁰ IACHR, Report No. 53/16, Case 12.056 Merits. Gabriel Oscar Jenkins. Argentina. December 6, 2016, para. 150 *et seq.*

²⁹¹ IACHR, Report No. 29/20, Case 12.865. Merits (Publication). Djamel Ameziane. United States of America, April 22, 2020, para. 211.

²⁹² IACHR, Report No. 53/16, Case 12.056 Merits. Gabriel Oscar Jenkins. Argentina. December 6, 2016, para. 152.

²⁹³ IACHR. Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression. Ch. III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. 31 December 2013. Para. 166.

²⁹⁴ IACHR, Report No. 7/16, Case 12.213. Merits. Aristeu Guida da Silva and Family. Brazil. April 13, 2016, para. 150.

²⁹⁵ IACHR, Report No. 74/17, Case 12.656. Merits. Victorio Spoltore. Argentina. July 5, 2017, para. 41.

11 years after the complaints were filed—the State has opened no investigations. The Commission concludes not only that this violates the reasonable time guarantee, but also that the total failure to investigate, prosecute, and punish those responsible for the arbitrary detentions and assaults suffered by the victim renders the remedy ineffective.

215. On November 5, 2010, Yoani Sánchez filed a request for a response, in the exercise of her right to petition, questioning the factual and legal reasons for barring her from leaving the country. After more than 14 months without a response—even though the legally established deadline was 60 days—Yoani Sánchez filed an appeal with the Ministry of the Interior on March 30, 2012 to learn the reasons for the denial of her exit permit and request its reversal. To date, more than 11 and 9 years, respectively, after she filed those requests, the journalist has not received a response. It is the Commission’s understanding that this request was submitted to the immigration authorities at the Ministry of the Interior, whose conduct must also be governed by the State’s human rights obligations. The Commission concludes that the above violated the reasonable time guarantee, and that the State, through its absolute administrative inaction, failed to promptly resolve the denial of authorization for the victim to leave the country, thus preventing her from leaving Cuba, without reasonable cause, from 2007 to 2012.

216. Based on the foregoing, the IACHR concludes that Cuba is responsible for violating Articles XVIII and XXIV of the American Declaration, to the detriment of Yoani Sánchez.

1.1 Guarantees of independence and impartiality

217. The principle of judicial independence and impartiality is an inherent requirement of a democratic system and a fundamental prerequisite for the protection of human rights.²⁹⁶ The IACHR has held that “international law views independence as two-dimensional: the first [dimension] is institutional or systemic, while the second is functional, referring to judges’ individual independence in performing their functions.”²⁹⁷ The first is related to the independence of the judiciary as a system and the second concerns the guarantees that must be provided to judges for them to make decisions independently. However, the Commission has consistently maintained that Cuba lacks the separation of powers that ensures a judiciary free of interference from other branches of government.²⁹⁸

218. Article 121 of the 1976 Constitution of Cuba, in force at the time of the facts alleged, established that “[t]he 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.” The Commission has asserted “that the subordination of the courts to the Council of State, led by the Head of State, demonstrates the direct dependence of the judiciary on the directives of the executive branch, and that this dependence prevents individuals identified by the State as ‘dissidents’ or ‘opponents’ and accused of political crimes from obtaining an impartial trial as required under the American Declaration, as seen in this case.”²⁹⁹

219. The independence and impartiality of the authorities that investigate human rights violations, such as prosecutors’ offices, must also be guaranteed in a State governed by the rule of law. The long-standing precedents of the inter-American system reflects the State’s obligation to conduct not only a thorough and immediate, but also an impartial and independent investigation into allegations of human rights violations.³⁰⁰ The IACHR has concluded that “international law has underscored how important it is that investigations and, on a broader level, any activities associated with the prosecution of crime, be independent and impartial so that crime victims are assured access to justice.”³⁰¹

²⁹⁶ United Nations. Human Rights Committee. General Comment No. 32, CCPR/C/GC/32, August 23, 2007, para. 19.

²⁹⁷ IACHR. Report 103/13, Case 12.816, Adan Guillermo Lopez Lone et al. Honduras. November 5, 2013, para. 113.

²⁹⁸ IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet et al. Cuba. October 21, 2006, para. 169; Report No. 68/06. Case 12.477. Merits. Lorenzo Enrique Copello Castillo et al. Cuba. October 21, 2006, paras. 50, 119.

²⁹⁹ IACHR, Report No. 27/18, Case No. 12.127, Merits (Publication). Vladimiro Roca Antunez and Others. Cuba. February 24, 2018, para. 141.

³⁰⁰ IACHR. Report No. 92/05, Case 12.148. Merits. Michael Gayle. Jamaica, October 24, 2005, para. 56.

³⁰¹ IACHR. Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas, OEA/Ser.L/V/II. Doc. 44, 5 December 2013, para. 36.

220. Investigating effectively requires the “absence of any institutional or hierarchical relationship, as well as independence in practice.”³⁰² The IACHR has held that the need for individual independence is also a guarantee for prosecutors. According to the IACHR, justice authorities must have “the guarantees of independence that will enable them to freely discharge their functions within the institutions of justice in cases they are to decide, prosecute, or defend.”³⁰³ Hence, the IACHR has established that, although in several Latin American countries the prosecution service is part of the executive branch, the State must provide guarantees to the prosecutor’s office so it remains autonomous within that branch of government.³⁰⁴ Furthermore, regardless of the position of the prosecutor’s office within the branches of government, the investigation must be impartial and effective, aimed at determining the truth and at pursuing, arresting, prosecuting, and eventually punishing the perpetrators.³⁰⁵

221. Regarding Cuba in particular, the IACHR has previously noted that “in accordance with Article 128 of the Constitution, the Office of the Attorney General is subordinate to the National Assembly and the Council of State, and Article 130 orders the Attorney General to render account of his work to the National Assembly. All these provisions further impede the impartiality and independence of the Cuban judiciary, thereby restricting the fulfillment of all human rights and fundamental freedoms of Cuban women and men.”³⁰⁶ Here, although Yoani Sánchez has filed complaints with various Cuban prosecutors’ offices regarding arbitrary detentions and assaults at the hands of the police in 2010 and 2012, so far there is no indication that any investigation has been opened. This omission, together with the other facts of the case, leads to the reasonable conclusion that the lack of independence of the Attorney General’s Office affected its impartiality and has prevented the effective investigation of the human rights violations alleged by the victim.

222. Finally, there are the requests that were filed with the Ministry of the Interior. Although the administrative authorities called upon to adjudicate the requests are part of the ministry—and therefore of the executive branch—they must render decisions not only impartially but also based on the operational independence that the State should guarantee them. Administrative decision-making authorities are not necessarily institutionally independent of the executive branch (on the contrary, in this case, they are part of it), but whenever State bodies make decisions that determine the scope of an individual’s human rights or restrict them in an individualized administrative proceeding, those authorities must comply with the guarantees designed to ensure that the decision is not arbitrary.³⁰⁷ The government’s discretion has insurmountable limits, one of which is respect for human rights.³⁰⁸ One such right is the guarantee of impartiality and the IACHR has pointed out that “the guarantee of impartiality means that the members of the sanctioning authority have no direct interest, stance, or preference for any of the parties, and that they are not involved in the dispute.”³⁰⁹ The authorities adjudicating their rights must also be and appear to be independent. The latter means that they are not placed under undue pressure or restrictions in the performance of their duties from within their own institution when making a particular decision.

223. In the case before us, the broad discretion to grant exit permits under Law on Migration (Law No. 1312) further underscored the need for the authorities to make decisions based on the guarantee of

³⁰² I/A Court H.R., *Case of Favela Nova Brasília v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 16, 2017. Series C No. 333, para. 187.

³⁰³ IACHR. Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas, OEA/Ser.L/V/II. Doc. 44, 5 December 2013, para. 27.

³⁰⁴ IACHR. Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas, OEA/Ser.L/V/II. Doc. 44, 5 December 2013, para. 38.

³⁰⁵ IACHR, Report No. 150/18, Case 12.954. Merits. Jineth Bedoya Lima and Other. Colombia. December 7, 2018, para. 107.

³⁰⁶ IACHR. Annual Report 2002. Ch. IV - Development of Human Rights in the Region - Cuba. OEA/Ser.L/V/II.117. *Citing United Nations Economic and Social Council, Integration of the Human Rights of Women and the Gender Perspective, Violence against Women, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy*, submitted in accordance with Commission on Human Rights resolution 1997/44, Report on the Mission to Cuba, 56th session, item 12(a) of the provisional agenda, E/CN.4/2000/68/Add.2, February 8, 2000, paragraph 6.

³⁰⁷ I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paras. 118 and 119.

³⁰⁸ I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, para. 126.

³⁰⁹ IACHR, Report No. 17/19, Case 12.702, Merits. Bonifacio Rios Avalos and Carlos Fernández Gadea. Paraguay. February 12, 2019, para. 56.

impartiality and independence. However, the authorities in charge of granting Yoani's permission to leave the country not only denied it 20 times, but also never provided her with an explanation of the factual and legal reasons for the denial, even though she filed two requests in this regard. The IACHR finds that the repeated denial of the permit, the State's complete failure to respond, interpreted in the Cuban context and in light of the facts of this case, and the perception that Yoani Sánchez was an enemy of the Cuban people, allow it to reasonably conclude that the Ministry's authorities also failed to act impartially and independently.

224. The Commission concludes that the State has failed to investigate, prosecute, and punish the individuals responsible for the arbitrary detention and physical violence against the victim more than 11 years after the first detention and subsequent complaints. In addition, the State has never answered the appeals filed by the victim challenging the prohibition against her leaving the country. Therefore, Cuba is responsible for violating Articles XVIII and XXIV of the American Declaration, to the detriment of Yoani Sánchez. Given the violation of the guarantees of independence and impartiality by the justice authorities, and in the exercise of its competence *iura novit curia*, the Commission concludes that the State also violated the right to due process recognized in Article XXVI of the American Declaration to the detriment of the blogger.

H. Right to equality before the law (Article II) 310

225. The Commission has repeatedly noted that the right to equality and nondiscrimination, set forth in Article II, is a fundamental principle of the inter-American human rights system.³¹¹ The principle of nondiscrimination is the cornerstone of the universal and regional systems for the protection of human rights and belongs to the sphere of *jus cogens*³¹² "because the whole legal structure of national and international public order rests on it [...]. Nowadays, no legal act that is in conflict with this fundamental principle is acceptable, and discriminatory treatment of any person, owing to gender, race, color, language, religion or belief, political or other opinion, national, ethnic or social origin, nationality, age, economic situation, property, civil status, birth or any other status is unacceptable."³¹³

226. As with all fundamental rights and freedoms, the Commission has observed that States are not only obliged to ensure equal protection under the law,³¹⁴ but must also adopt such legislative, regulatory, and other measures as may be necessary to guarantee the effective enjoyment of the rights protected by Article II of the American Declaration.³¹⁵

227. The concept of equality formulated in the American Declaration refers to the application of substantive rights and to the protection to be given to them in the case of acts by the State or others.³¹⁶ The Commission has clarified that the right to equality before the law does not necessarily mean that the substantive provisions of the law are the same for all, but that the law must be applied equally to all without discrimination.³¹⁷ In practice, this means that States have the obligation to take the necessary measures to recognize and guarantee

³¹⁰ Article II of the American Declaration provides: "[a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor."

³¹¹ IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 107; IACHR, Report 40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District* (Belize), October 12, 2004, para. 163; IACHR, Report 67/06, Case 12.476, *Oscar Elías Biscet et al.* (Cuba), October 21, 2006, para. 228; IACHR, *Report on Terrorism and Human Rights*, OEA Doc. Doc. 5 rev. 1 corr. 22 October 2002, para. 335.

³¹² See, e.g., the International Covenant on Civil and Political Rights (arts. 2, 26), the International Covenant on Economic, Social and Cultural Rights (arts. 2.2, 3), the European Convention on Human Rights (art. 14) and the African Charter on Human and Peoples' Rights (art. 2).

³¹³ I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, para. 101. IACHR, Report No. 29/20, Case 12.865, *Djamel Ameziane*. United States. April 22, 2020, para. 249.

³¹⁴ IACHR, Report No. 40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District* (Belize), October 12, 2004, para. 162.

³¹⁵ IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 108; IACHR, Report No.40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District* (Belize), October 12, 2004, para. 162.

³¹⁶ IACHR, Report No. 51/01, Case 9903, *Rafael Ferrer-Mazorra et al.*, United States, April 4, 2001, para. 23; IACHR, *Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System*, Feb. 28, 2000, OEA/Ser.L/V/II.106 Doc. 40 rev. para. 96 (citing the Inter-American Juridical Committee, "Draft Declaration of the International Rights and Duties of Man and Accompanying Report" (1946)); IACHR, Report No. 51/96, IACHR Annual Report 1996, p. 550, paras. 177-178.

³¹⁷ IACHR, Report No. 57/96, Case 11.139, *William Andrews* (United States), December 6, 1996, para. 173.

the effective equality of all persons before the law, to not enact legal provisions that discriminate *de jure* or *de facto* against certain groups, and to combat discriminatory practices.³¹⁸

228. The Commission has recognized that, although Article II does not prohibit all differences in treatment in the enjoyment of protected rights and freedoms, it requires that any permissible distinctions be based upon objective and reasonable justification, that they further a legitimate objective, “regard being had to the principles which normally prevail in democratic societies, and that the means are reasonable and proportionate to the end sought.”³¹⁹

229. The Commission also takes account of the evolution of standards in the area of discrimination and considers that what the Human Rights Committee has said in relation to the International Covenant on Civil and Political Rights equally applies in the inter-American system:

the Committee believes that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.³²⁰

230. The IACHR has previously noted that in Cuba there is a grave situation of politically motivated, structural discrimination in the exercise of human rights, since anyone who thinks or express themselves differently from the regime cannot exercise their rights freely without being threatened. This is supported by multiple provisions of the legal framework, including the new Constitution of 2019. Although the Constitution does acknowledge the right to equality and nondiscrimination in broader terms, it does not consider equality based on political motives. While it includes prohibited grounds of discrimination—such as gender, gender identity, sexual orientation, ethnic origin and disability—political opinion is not protected in the text of the Constitution, even though it is also a prohibited ground of discrimination widely recognized in human rights instruments. A democratic system requires regulatory conditions that allow all people, without discrimination, to exercise their rights freely.³²¹

231. In the instant case, the IACHR found that the State committed a number of human rights violations against Yoani Sánchez. It will now examine whether the motive for the violations was related to her critical stance against the Cuban regime and the exercise of her freedom of expression. In this regard, the IACHR considers that Yoani Sánchez was subjected to differential treatment not based on objective reasons to justify or maintain such treatment.

232. The Commission has sufficient evidence to conclude that the difference in treatment was based precisely on Yoani Sánchez’s critical opinion of the Cuban government—a political position contrary to the communist ideology—expressed in her journalistic work and on her blog, *Generación Y*. The domestic laws and regulations; the arbitrary detentions; the restrictions to her freedom of movement; the refusals to authorize her to travel abroad and the complete denial of access to justice to challenge such acts; the harassment and attacks linked to her blogging activity; the unwarranted requests to appear before the police for questioning; the interference in her communications; the prohibition against frequenting public places; the stigmatizing statements that labeled her a “terrorist” or “counterrevolutionary”; and the warnings to suspend events with other bloggers the State identified as “counterrevolutionary” are evidence of this. All these acts constituted differentiated treatment by the State, in contrast to its treatment of other journalists sympathetic to the regime. There was no objective, reasonable justification for this differentiated treatment; on the contrary, it was intended to punish the journalist for her critical political opinions, and to send a message to other journalists

³¹⁸ IACHR, Report No. 67/06, Case 12.476, *Oscar Elías Biscet et al.* (Cuba), October 21, 2006, paras. 228-231; IACHR, Report No. 40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District* (Belize), October 12, 2004, paras. 162, 166.

³¹⁹ IACHR, Report No. 51/01, Case 9903, *Rafael Ferrer-Mazorra et al.*, United States, April 4, 2001, para. 238 (citing Eur.Ct.H.R., *Belgian Linguistics Case*, July 23, 1968, Series A No. 6, 1 E.H.R.R. 252, p. 35, para. 10).

³²⁰ United Nations Human Rights Committee, Compilation of general comments and general recommendations adopted by human rights treaty bodies, HRI/GEN/1/Rev.1 (1994), General Comment 18, Non-discrimination, p. 26.

³²¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on the Situation of Freedom of Expression in Cuba, *supra* para. 126.

and dissidents about the consequences of not adhering to communist ideology in Cuba. This, notably, does not meet the criteria of a justified difference in treatment. The differentiation was arbitrary because it was based on a specific motive and its purpose was to silence opponents.

233. Therefore, the IACHR concludes that the State of Cuba is responsible for violating the right to equality, established in Article II of the American Declaration, to the detriment of Yoani Sánchez.

VI. REPORT No. 102/21 AND COMPLIANCE INFORMATION

234. On June 26, 2021, the Commission adopted Admissibility and Merits Report No. 102/21 on the present case, which includes paragraphs 1 to 233 above, and made the following recommendations to the State:

1. Make full and comprehensive reparations, both pecuniary and non-pecuniary, for the human rights violations declared in this report, which must include reparation for the stigmatization to which Yoani Sánchez has been subjected.
2. Immediately cease all persecution against Yoani Sánchez Cordero, in particular, acts of harassment, smear campaigns, wiretapping, attacks, arbitrary police summonses, guaranteeing that the journalist can carry out her work without fear of intimidation or reprisals, and without undue restrictions on her right to freedom of expression, of assembly and other rights analyzed in this report.
3. Take the necessary measures to fully guarantee Yoani Sánchez's right to leave and enter Cuba freely and to move freely within the country.
4. Conduct a thorough, impartial, effective, and expeditious investigation to clarify the circumstances of the unlawful and arbitrary detentions and physical assaults perpetrated against Yoani Sánchez, especially the facts related to the attempted forced nudity, and determine the responsibility of both the direct perpetrators and the masterminds and adopt measures to prevent events like these from happening again.
5. Deactivate the computer filter that blocks access to the blog "Generación Y" from public internet sites in Cuba and allow access to Yoani Sánchez's online content within Cuba, adhering to the principle of net neutrality under the standards described in this report.
6. Adopt the following guarantees of non-repetition, for which the State must: i) Adapt its laws, procedures and practices to the international norms and standards on human rights established in this report, for which it must, among other things, modify its internal regulations, including those relating to the digital environment, in order to ensure the effective exercise and enjoyment of the rights analyzed, especially the right to freedom of expression, without conditioning on the defense of the socialist State, and ii) Adopt adequate and effective prevention, investigation, and sanction mechanisms, with a gender perspective, to avoid and combat violence and harassment against journalists and/or social communicators, whether they come from state agents or third parties. The foregoing should include public condemnation of any act of aggression, including gender violence, especially from the highest levels of government; refraining from resorting to stigmatizing statements by public authorities or people who use public communication media, as well as the adoption of necessary measures to guarantee the initiation of investigations and judicial processes when complaints are filed for the commission of acts of violence, in accordance with the provisions of this report.
7. Refrain from exercising absolute control over the internet, as well as filtering and blocking content arbitrarily, that is, for restrictions on freedom of expression on the Internet to be legitimate, they must comply with the requirements of legality, legitimate purpose, necessity, and proportionality. The State must adopt safeguards to guarantee transparency regarding the contents whose removal has been ordered, based on the requirements described above.

8. Adopt the necessary measures to guarantee the independence and impartiality, both institutional and functional, of the fiscal and judicial authorities and of any other type of state officials that adopt decisions that determine the scope of human rights of the people, such as the Directorate of Immigration and Foreigners, in accordance with the criteria established in this report.

235. On July 20, 2021, the Commission transmitted the report to the State with a two-month deadline to report on the measures adopted to comply with its recommendations. On that same date, the IACHR notified the petitioners of the approval of the report. To date, the IACHR has not received a response from Cuba in relation to Report No. 102/21.

VII. FOLLOW-UP TO REPORT No. 267/21 AND COMPLIANCE INFORMATION

236. The Commission adopted Merits Report No. 267/21 on September 28, 2021 and transmitted it to the State on September 30 of the same year, granting it a period of 15 days to inform the IACHR on the measures adopted to comply with its recommendations. To date, the Commission has not received a response from the State of Cuba with respect to Report No. 267/21.

VIII. CONCLUSIONS AND FINAL RECOMMENDATIONS

237. Based on the considerations of fact and law contained in this report, the IACHR concludes that the State of Cuba violated the rights recognized in Articles I (right to life, liberty and personal security), II (right to equality before the law), IV (right to freedom of investigation, opinion, expression, and dissemination), V (right to protection of honor, personal reputation, and private and family life), VIII (right to residence and movement), X (right to the inviolability and transmission of correspondence), XVIII (right to a fair trial), XXI (right of assembly), XXIV (right of petition), XXV (right of protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man, to the detriment of Yoani Sánchez Cordero. The Commission also concludes that the State is not responsible for violating the rights enshrined in Articles IX (right to the inviolability of the home), XX (right to vote and to participate in government), and XXII (right of association), to the detriment of Yoani Sánchez Cordero.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THAT THE STATE OF CUBA:

1. Make full and comprehensive reparations, both pecuniary and non-pecuniary, for the human rights violations declared in this report, which must include reparation for the stigmatization to which Yoani Sánchez has been subjected.
2. Immediately cease all persecution against Yoani Sánchez Cordero, in particular, acts of harassment, smear campaigns, wiretapping, attacks, arbitrary police summonses, guaranteeing that the journalist can carry out her work without fear of intimidation or reprisals, and without undue restrictions on her right to freedom of expression, of assembly and other rights analyzed in this report.
3. Take the necessary measures to fully guarantee Yoani Sánchez's right to leave and enter Cuba freely and to move freely within the country.
4. Conduct a thorough, impartial, effective, and expeditious investigation to clarify the circumstances of the unlawful and arbitrary detentions and physical assaults perpetrated against Yoani Sánchez, especially the facts related to the attempted forced nudity, and determine the responsibility of both the direct perpetrators and the masterminds and adopt measures to prevent events like these from happening again.
5. Deactivate the computer filter that blocks access to the blog "Generación Y" from public internet sites in Cuba and allow access to Yoani Sánchez's online content within Cuba, adhering to the principle of net neutrality under the standards described in this report.

6. Adopt the following guarantees of non-repetition, for which the State must: i) Adapt its laws, procedures and practices to the international norms and standards on human rights established in this report, for which it must, among other things, modify its internal regulations, including those relating to the digital environment, in order to ensure the effective exercise and enjoyment of the rights analyzed, especially the right to freedom of expression, without conditioning on the defense of the socialist State, and ii) Adopt adequate and effective prevention, investigation, and sanction mechanisms, with a gender perspective, to avoid and combat violence and harassment against journalists and/or social communicators, whether they come from state agents or third parties. The foregoing should include public condemnation of any act of aggression, including gender violence, especially from the highest levels of government; refraining from resorting to stigmatizing statements by public authorities or people who use public communication media, as well as the adoption of necessary measures to guarantee the initiation of investigations and judicial processes when complaints are filed for the commission of acts of violence, in accordance with the provisions of this report.
7. Refrain from exercising absolute control over the internet, as well as filtering and blocking content arbitrarily, that is, for restrictions on freedom of expression on the Internet to be legitimate, they must comply with the requirements of legality, legitimate purpose, necessity, and proportionality. The State must adopt safeguards to guarantee transparency regarding the contents whose removal has been ordered, based on the requirements described above.
8. Adopt the necessary measures to guarantee the independence and impartiality, both institutional and functional, of the fiscal and judicial authorities and of any other type of state officials that adopt decisions that determine the scope of human rights of the people, such as the Directorate of Immigration and Foreigners, in accordance with the criteria established in this report.

IX. PUBLICATION

238. In light of the above and in accordance with Article 47.3 of its Rules of Procedure, the IACHR decides to make this report public, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by Cuba with respect to the above recommendations until it determines there has been full compliance.

Approved by the Inter-American Commission on Human Rights on the 30th day of October 2021. (Signed): Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández García and Edgar Stuardo Ralón Orellana, Commissioners.