

## CHAPTER IV.B CUBA

### I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”), in the exercise of its competence to promote and defend human rights in the Americas, closely followed the events that unfolded in late 2016 and 2017 in Cuba that could be relevant for the full enjoyment of human rights. And so the Commission, at the same time as it noted the adoption of positive measures and the openness of the government to the presence of human rights supervisory mechanisms, also took note of the continuation of certain situations of concern that continue to pose obstacles to the effective enjoyment of human rights for those persons under the jurisdiction of the Cuban State.

2. The persistent restrictions on political rights, the rights of assembly and association, and the right to freedom of expression and dissemination of ideas, in addition to massive violations of the rights to liberty, personal security, protection from arbitrary arrest, the inviolability of the home, the inviolability and transmission of correspondence, residence and movement, minimal judicial guarantees and judicial protection all continue to systematically curtail the human rights of the inhabitants of Cuba, in particular to the detriment of human rights defenders, social and political leaders, independent journalists, as well as Afro-descendants, women, LGTBI persons, among other vulnerable groups.

3. On evaluating the human rights situation in Cuba, the IACHR decided to include Cuba in this chapter<sup>1</sup> because it considers that it falls under Article 59(6)(a)(i) of its Rules of Procedure, which provides as a criterion for inclusion:

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

4. It also understood that the decision is in line with Article 59(6)(c) of the Rules of Procedure, which provides that:

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

5. Pursuant to Article 59.5 of the Rules of procedure of the IACHR, in drawing up this report, the Commission was able to use information from international organizations, civil society, and the Cuban Government itself (data from the website of the Ministry of Foreign Affairs of Cuba and other official media outlets). It has also drawn on the information obtained through the other mechanisms of protection of the IACHR, such as the system of petitions and cases and precautionary measures, among others. Once the IACHR receives the information available it analyzes it in the light of inter-American human rights standards,

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<sup>1</sup> Commissioner Paulo Vannuchi stated his opposition to Chapter IV B of the Annual Report of the IACHR, and therefore voted against it.

identifies sound government practices, and issues recommendations. It also avails itself of this opportunity to describe its activities in relation to Cuba in 2017.

6. The Commission is aware of the various changes that are continuously unfolding in the hemisphere, and the mounting challenges states face when it comes to achieving the ideal in terms of the enjoyment of human rights. The IACHR is available to all the actors, especially the authorities of the Cuban government, to provide technical support as necessary. It also aspires to greater openness so as to strengthen dialogue and allow for a greater inter-American exchange of good practices in the hemisphere.

7. Finally, the Commission wishes to convey its deepest solidarity to the Cuban people in light of the devastating effects of Hurricane Irma as it swept through the island, and, in particular, to express its sincere condolences to the family members of the women and men who died and all other persons who were injured as a result of Irma. The IACHR also reiterates to the states and to the international community the importance of offering an immediate response in the form of humanitarian assistance, which is fundamental for responding to the humanitarian crisis that affects the survivors of natural disasters; and at the same time it issues an appeal to the states of the region to adopt mechanisms for sharing responsibility and responding collectively to the situation of the population impacted.<sup>2</sup> In this regard, the IACHR applauds the humanitarian assistance offered by the Government of Cuba to the people of Puerto Rico.<sup>3</sup>

8. On November 3, 2017, the Commission sent the State of Cuba a copy of the preliminary draft of this report, in keeping with Articles 59(7) and 59(10) of its Rules of Procedure, with a term of one month for receiving its observations. The State did not respond. On December 26, 2017, the IACHR approved the final version of this chapter.

## II. PRELIMINARY MATTERS

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

9. On January 31, 1962, the Government of Cuba was excluded from participating in the inter-American system by Resolution VI adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs, held in Punta del Este, Uruguay.<sup>4</sup> On June 3, 2009, during the 39<sup>th</sup> Regular Session of the General Assembly, held in San Pedro Sula, Honduras, the General Assembly of the Organization of American States (OAS), by Resolution No. 2438, annulled that Resolution, and provided: “That the participation of the Republic of Cuba in the OAS will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS.”<sup>5</sup>

10. Since its exclusion from the inter-American system the government of Cuba has largely kept its distance from the OAS.<sup>6</sup> In 2017, the Consulate of Cuba in Washington, D.C. denied a request for a visa for

<sup>2</sup> IACHR, Press Release No. 139-17, [IACHR Expresses Solidarity with People Affected by Earthquake and Hurricanes in Countries of the Region and Urges States and the International Community to Take Steps to Address the Situation of Those Affected](#), September 12, 2017.

<sup>3</sup> Twitter, Rogelio Sierra Díaz @RogelioSierraD, Ofrece #Cuba ayuda a #PuertoRico por azote del #HuracámMaría, September 25, 2017. See also: Cuba Debate, [Cuba ofrece ayuda a Puerto Rico tras azote del huracán María](#), September 25, 2017; 14ymedio, [Cuba ofrece ayuda médica y eléctrica a Puerto Rico tras la devastación del huracán](#), September 26, 2017.

<sup>4</sup> The text of Resolution VI can be found at the “Eighth Meeting of Consultation of Ministers of Foreign Affairs Serving as Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance, Uruguay, January 22 to 31, 1962, Final Act,” Organization of American States, OEA/Ser.F/II.8, doc. 68, pp. 13-15.

<sup>5</sup> The text of Resolution AG/RES. 2438 (XXXIX-0/09) can be found in the “Thirty-Ninth Regular Session, San Pedro Sula, Honduras, June 2 to 4, 2009, Acts and Documents, Volume I,” Organization of American States, OEA/Ser.P/XXXIX-0.2, p. 12.

<sup>6</sup> The Government of Cuba participates in the Pan American Health Organization (PAHO), which is a specialized agency of the OAS. Its participation there does not stem from its status as a specialized organ of the OAS, but from the agreement between the World Health Organization and the PAHO, according to which PAHO serves as the regional office of the WHO, in which Cuba participates as a member (OAS, Permanent Council, The situation of Cuba in the OAS and the protection of human rights: Aide Memoire presented by the Secretariat of Legal Affairs, OEA/Ser.CP/CG-1527/03, April 25, 2003).

OAS Secretary General Luis Almagro to travel on his official OAS passport; he was to receive the Oswaldo Payá award.<sup>7</sup> During the same period, in several remarks President Castro and foreign minister Bruno Rodríguez, among other high-level authorities, have publicly expressed their strong repudiation of the work of the OAS in the region.<sup>8</sup>

## B. Situation of Cuba vis-à-vis the IACHR

11. The past situation of Cuba's exclusion by the OAS has not stood in the way of the Commission carrying out its mandate to protect and monitor human rights, since it recognizes that Cuba is "juridically answerable to the Inter-American Commission in matters that concern human rights" on being "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, not the State, from participation in the inter-American system."<sup>9</sup>

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

13. Accordingly, in the exercise of its competence, the Commission has continued monitoring the human rights situation in Cuba through special reports<sup>10</sup>; in Chapter IV, or its equivalent, of the Annual Report<sup>11</sup>; through the case system<sup>12</sup>; and by adopting and subsequently monitoring precautionary measures with the aim of protecting the life and integrity of every person under its jurisdiction. Notably, the Cuban State did not respond to the communications and decisions of the IACHR. Nonetheless, there is information

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Also worthy of special mention is the participation of President Raúl Castro Ruz at the Seventh Summit of the Americas held in Panama City, Panama, April 10 and 11, 2015, bringing together, for the first time, the 35 heads of state and government of the OAS member countries (Seventh Summit of the Americas, Panama City, 2015. Available: [http://www.summit-americas.org/vii/docs\\_en.htm](http://www.summit-americas.org/vii/docs_en.htm)).

<sup>7</sup> OAS, [Public letter from SG Luis Almagro](#), OSG/093-17, February 22, 2017.

<sup>8</sup> In April 2017, the Ministry of Foreign Affairs declared: "It is high time to recognize that the OAS is incompatible with the most pressing needs of the peoples of Latin America and the Caribbean. It is incapable of representing their values and interests. It imposed a false democratic creed, responsible for the deaths of hundreds of thousands of persons from Latin America and the Caribbean and for the poverty and exclusion of millions. The OAS attacks and imposes, and does not engage in reconciliation or dialogue; it is contemptuous of the equality and self-determination of states. It conspires and subverts genuine and legitimately constituted governments with manifest popular support. It is deserving of the most profound repudiation." (Ministry of Foreign Affairs, [Cuba ratifica firme compromiso de acompañar a Venezuela](#), April 27, 2017).

On June 1, 2017, during a speech made before the Cuban legislature, President Castro, referring to the current crisis in Venezuela, accused the OAS of being an interventionist entity (National Assembly of People's Power, [Full text of speech by Raúl at the Second Special Session of the National Assembly of People's Power](#), June 2, 2017).

Subsequently, foreign minister Bruno Rodríguez recalled before the Community of Latin American and Caribbean States (CELAC) "this history of complicity of the OAS in the face of coups d'état, social violence, forced disappearances, extrajudicial executions, assassinations of journalists and social activists, without counting the brutal effects of neoliberalism on the peoples" (Granma, [La Celiac contra la violencia golpista y en defensa del diálogo en Venezuela](#), May 2, 2017).

<sup>9</sup> IACHR: [2002 Annual Report, Chapter IV, Human Rights Developments in the Region, Cuba](#), OEA/Ser.L/V/II.117 Doc. 1 rev. 1, March 7, 2003, paras. 3-7; [Seventh Report on the Situation of Human Rights in Cuba](#), OEA/Ser.L/V/II.61 Doc.29 rev. 1, October 4, 1983, paras. 16-46.

<sup>10</sup> IACHR, Special Reports from the following years: 1962; 1963; 1967; 1970; 1976; 1979; 1983, available at: [www.cidh.org](http://www.cidh.org).

<sup>11</sup> IACHR, Chapter IV, or its equivalent, of the Annual Report for the following years: 1984-1985, 1985-1986, 1986-1987, 1987-1988, 1988-1989, 1989-1990, 1990-1991, 1991, 1992-1993, 1993, 1994, and without interruption from 1996 to 2016, available at: <http://www.oas.org/es/cidh/informes/anales.asp>.

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

about the impact of the Commission's pronouncements on the persons who they address; for example, when precautionary measures have been issued to protect life and integrity, the beneficiaries have reported having experienced the cessation or diminution in intensity, sometimes temporary, of the mistreatment, harassment, and/or assaults to which they were being subjected.<sup>13</sup>

14. The IACHR has not visited Cuba, so it once again takes the opportunity to reiterate its appeal to the Cuban State to give its consent and to facilitate its first onsite visit to the island, to enable it to observe the progress and challenges in the area of human rights.

### C. Cuba's relations vis-à-vis other actors

15. Since the announcement on December 17, 2014, of the reestablishment of relations between Cuba and the United States<sup>14</sup>, the Commission has continued monitoring the process of normalization in the hope that the historic news, in addition to strengthening relations between the two member countries of the OAS, might be followed by a greater openness to an international presence in Cuba, including human rights supervisory mechanisms, as well as the total lifting of the economic blockade by the U.S. Congress.<sup>15</sup>

- ***Opening to the monitoring of the Universal Human Rights System***

16. In this regard, it was learned that after 10 years and at the invitation of the Government of Cuba, the first visit was made by the United Nations Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, from April 10 to 14<sup>16</sup>; and that months later the United Nations Independent Expert on human rights and international solidarity, Virginia Dandan, was received, from July 10 to 14.<sup>17</sup>

- ***Relations with the EE.UU.***

17. The IACHR learned that the Cuba-U.S. Bilateral Commission, established in August 2015 to define the focal issues on the agenda for reestablishing relations between the two countries, held its fifth meeting on December 7, 2016, in Havana, Cuba; there is no record of any meetings by that Commission in the course of 2017. Nonetheless, according to official Cuban sources, both countries continue signing cooperation agreements and memoranda of understanding<sup>18</sup>, making official high-level visits<sup>19</sup>, holding technical and

<sup>13</sup> Meetings held at the headquarters of the Commission on June 9, 2016 with Sirley Avila León, beneficiary of Precautionary Measure 428-15, and June 23, 2016 with Iván Hernández Carrillo, beneficiary of Precautionary Measure 245-13; IACHR, Hearing on [Situation of human rights defenders in Cuba](#), 149<sup>th</sup> regular period of sessions, October 29, 2013.

<sup>14</sup> The White House, Press Release, [Fact Sheet: Charting A New Course On Cuba](#), December 17, 2014.

<sup>15</sup> IACHR, Press Release 156/2014: IACHR Welcomes Announcement to Reestablish Relations between the United States and Cuba. Washington, D.C., December 18, 2014.

<sup>16</sup> OHCHR, [Declaración del final de la visita a Cuba de la Relatora Especial sobre la trata de personas, especialmente mujeres y niños. Maria Grazia Giammarinaro \(10-14 de abril de 2017\)](#), April 20, 2017.

<sup>17</sup> OHCHR, [Experta de la ONU aplaude la solidaridad internacional de Cuba, pero pide progreso en DD HH](#), July 29, 2017.

<sup>18</sup> For example: Oil spill preparedness and response agreement, January 9, 2017; Joint Statement on migration and refugees, January 12, 2017; Memorandum of Understanding on cooperation in areas related to national security; Agreement on Aeronautic and Maritime Search and Rescue of January 18, 2017; Treaty on the Delimitation of the Continental Shelf in the Eastern Polygon of the Gulf of Mexico, January 18, 2017; Ciénaga de Zapata and Everglades National Parks Agreement, January 18, 2017; Memorandum of understanding on animal and plant health, January 19, 2017; Memorandum of Understanding between the National Port Administration of Cuba and the United States Port of Mobile, Alabama (See: Cuba Diplomática, Relaciones Bilaterales, available at: <http://www.cubadiplomacia.cu/eeuu/ES/RelacionesBilaterales/tabid/12111/currentpage/1/Default.aspx>); Memorandum of Friendship and Trade Cooperation signed by Cuba and the Houston Port Authority (Cubadebate, [Suscriben Cuba y Autoridades portuarias de Houston memorando de cooperación comercial \(+ Video\)](#), August 2, 2017); Meeting on the security for trade flows and the protection of persons between Cuba and the United States of November 16, 2017 (Minrex, [Meeting held on the security for trade flows and the protection of persons between Cuba and the United States](#), November 16, 2017); Round of migration talks with the United States of December 11, 2017 (Minrex, [Press release issued by the Cuban delegation to the round of migration talks with the United States](#), December 11, 2017); Cuba and the United States hold meeting on human smuggling and migration fraud on December 12, 2017 (Minrex, [Cuba y EE.UU. celebran encuentro sobre el tráfico ilícito de emigrantes y el fraude migratorio](#) (Cuba and the United States hold meeting on human smuggling and migration fraud)(Spanish only), December 12, 2017).

political meetings<sup>20</sup>, and conducting professional exchanges.<sup>21</sup> At the same time, the United States announced the appointment of Scott Hamilton as the *chargé d'affaires* at the U.S. Embassy, who were later replaced by Lawrence J. Gumbiner, replacing Jeffrey DeLaurentis, whose nomination, proposed by former President Obama as the first ambassador at the U.S. Embassy in Cuba since the breaking of diplomatic relations, did not make it through the U.S. Congress.<sup>22</sup>

18. This year, President Trump announced changes in U.S. policy to Cuba that translated into strict restrictions on travel and commercial exchanges tied to the Cuban military forces<sup>23</sup>; nonetheless, the embassies in both countries continue to be open and flights and cruise ships continue to arrive in Cuba from the United States. Nor was the elimination of the “wet foot, dry foot” policy undone, and as noted above, bilateral accords continue to be signed in several areas. On several occasions President Castro, among other high-level authorities, has expressed Cuba’s willingness to continue bilateral negotiations, which have stagnated under the new U.S. administration.<sup>24</sup>

19. In the wake of the alleged acoustic attacks suffered by several diplomatic staff at the U.S. Embassy in Havana and their family members, on May 23, 2017, the U.S. State Department informed the Cuban Embassy in Washington, D.C., that two of its staff were being expelled, which later became 15,<sup>25</sup> calling into question once again the status of diplomatic relations between the two countries,<sup>26</sup> to the point that consideration was being given to closing the embassy.<sup>27</sup> Due to the considerable reduction of the U.S. diplomatic delegation in Cuba, the processing of visas have been compromised, and which, according to Cuban officials, is seriously affecting family relations, among other exchanges between both peoples<sup>28</sup>. Nonetheless, a statement by the Ministry of Foreign Affairs of Cuba emphasized that Cuba had not allowed

<sup>19</sup> Such as: Visit to Cuba by Thomas J. Donohue, President of the United States Chamber of Commerce; visits to the United States (Florida, New Orleans, Virginia, Texas, Washington, D.C.) of a Cuban business delegation in January and February; visit to the state of Montana by the First Secretary of the Embassy of Cuba in the United States, February 20 to 25; visit by Republican representatives Tom Emmer and Jason Lewis, both of Minnesota; Roger Marshall of Kansas, James Comer of Kentucky, and Jack Bergman of Michigan to Havana on March 6 (See: Cuba Diplomática, Relaciones Bilaterales, available at: <http://www.cubadiplomatica.cu/eeuu/ES/RelacionesBilaterales/tabid/12111/currentpage/1/Default.aspx>); official working visit to Cuba by the governor of the state of Mississippi, Phil Bryant, on April 19, 2017 (Cubadebate, [Gobernador de Misisipi en visita de trabajo en Cuba](#), April 20, 2017).

<sup>20</sup> For example: Meeting on mutual compensation between Cuba and the United States of January 12, 2017; exchanges on human trafficking on January 12 and 13, 2017 (See: Cuba Diplomática, Relaciones Bilaterales, available at: <http://www.cubadiplomatica.cu/eeuu/ES/RelacionesBilaterales/tabid/12111/currentpage/1/Default.aspx>).

<sup>21</sup> Including: Cooperation project between the University of Illinois and the Ministry of Public Health of Cuba on January 9, 2017 (Cuba Diplomática, [Cuba y Chicago inician colaboración en materia de salud](#), January 9, 2017).

<sup>22</sup> OnCuba, [Jeffrey DeLaurentis leaves Cuba](#), July 17, 2017; Cubadebate, [Encargado de Negocios estadounidenses en Cuba, embajador Jeffrey DeLaurentis, culminó su misión en nuestro país](#), July 12, 2017.

<sup>23</sup> Cuba Debate, [Estados Unidos anuncia nuevas restricciones para los viajes y el comercio con Cuba](#), November 8, 2017; The New York Times, [Trump Tightens Cuba Embargo, Restricting Access to Hotels and Businesses](#), November 8, 2017; The White House, [Remarks by President Trump on the Policy of the United States Towards Cuba](#), June 16, 2017; The New York Times, [Trump Reverses Pieces of Obama-Era Engagement With Cuba](#), June 16, 2017.

<sup>24</sup> National Assembly of People’s Power of the Republic of Cuba, [Raúl Castro: Seguiremos avanzando en el camino escogido soberanamente por nuestro pueblo](#), July 14, 2017; Fifth Summit of CELAC, [Speech by the President of Cuba, Raúl Castro, at the Fifth Summit of CELAC](#), January 25, 2017. See also: El Nuevo Herald, [Canciller cubano reitera oferta de diálogo a presidente Trump](#), April 24, 2017.

<sup>25</sup> Diario de Cuba, [Washington pedirá a La Habana que retire a casi dos tercios de su personal diplomático en EEUU](#), Octubre 3, 2017; NYTimes, [U.S. Expels 15 Cuban Diplomats, in Latest Sign Détente May Be Ending](#), Octubre 3, 2017.

<sup>26</sup> NYTimes, [16 Americans Sickened After Attack on Embassy Staff in Havana](#), August 24, 2017; CNN, [Sonic attacks in Cuba hit more diplomats than earlier reported, officials say](#), August 20, 2017; NPR, [Cuban Diplomats Expelled After U.S. Embassy Staff 'Incidents' In Havana](#), August 9, 2017.

<sup>27</sup> CNN, [Rex Tillerson: US considering closing Havana embassy](#), September 18, 2017; Washington Post, [U.S. considering closing its embassy in Cuba](#), September 17, 2017; Reuters, [Tillerson says U.S. weighing closing embassy in Cuba over sonic attacks](#), September 17, 2017.

<sup>28</sup> Minrex, [Press release issued by the Cuban delegation to the round of migration talks with the United States](#), December 11, 2017; Reuters, [Cuba tells U.S. suspension of visas is hurting families](#), December 11, 2017.

and will not allow attacks against diplomatic personnel, and reiterated its willingness to cooperate to clarify the facts.<sup>29</sup>

20. The United States trade embargo on Cuba continues in place. For instance, in January 2017, the United States Department of Treasury imposed fines on the organizations Alliance for Responsible Cuba Policy Foundation (ARCPF) and the Canadian bank Toronto Dominion (TD) for violating the regulations of the Cuba blockade, and later in June, same sanction was imposed against the *American Honda Finance Corporation* (AHFC).<sup>30</sup> UN Independent Expert Virginia Dandan, during a press conference on the conclusion of her visit to the country, attributed Cuba's inability to access not only medical equipment, but also new technologies and external financing, in part on the economic blockade by the United States.<sup>31</sup> On November 1<sup>st</sup>, 2017, the United Nations General Assembly, with the favorable votes from 191 and two oppositions, adopted a resolution underlining the need to end the economic, commercial and financial embargo imposed by the United States against Cuba.<sup>32</sup>

21. According to official information, the main effects caused by the application of this measure are the difficulties faced by the Government of Cuba in acquiring raw materials, products and other equipment in the North American market. Consequently, the government has to recourse to other markets geographically more distant, increasing the costs such goods.<sup>33</sup> To illustrate such effects on the health sector, Cuba reports the refusal of the German company Otto Bock HealthCare GmbH to provide orthopedic prostheses, which would significantly improve the chances of recovery and mobility of people with lower limb amputation; the impossibility of using the Ciprofloxaxina Lacato Injection 200 MG, intravenous antibiotic of wide spectrum, since its manufacturer, Claris Otsuka, refuse to sell merchandise to Cuba; the refusal expressed by the German supplier Eckert & Ziegler Radiopharma GmbH to supply the Generator Ge-68 / Ga-68 Gallia Pharm GMP, which is used for the diagnosis of prostate cancer; among other situations. In the food and education sector as well as in sport and culture, the same report documented the frequent high freight charges of raw materials, equipment and spare parts, tools and new technologies, or the impossibility of accessing them.<sup>34</sup>

22. As noted in previous years, the IACHR agrees with the United Nations Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, when he notes: "The argument goes that if measures achieve their objectives rapidly and if these objectives are viewed as desirable by the international community, they may be considered as legitimate. However, this legitimacy is undermined if the measures have caused, by design or by default, egregious violations of basic human

<sup>29</sup> Cubadebate, [MINREX informa sobre incidente diplomático con Estados Unidos](#), August 9, 2017.

<sup>30</sup> U.S. Department of the Treasury, [Settlement Agreement between OFAC and Aban Offshore Limited: Settlement Agreement between OFAC and an Individual and the Alliance for Responsible Cuba Policy Foundation](#), January 12, 2017; Cuba Diplomática, [Impone Estados Unidos nuevas multas por violaciones del bloqueo a Cuba](#), January 16, 2017. See also: Ministry of Foreign Affairs of Cuba, Cuba Vs Bloqueo, [Report by Cuba: on Resolution 70/5 of the United Nations General Assembly, entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba."](#) June 2017, pp. 11-13.

<sup>31</sup> 14ymedio, [Virginia Dandan, la experta que no hace preguntas](#), July 15, 2017; Agencia EFE, [La relatora de la ONU elogia la solidaridad de Cuba, pero no se pronuncia sobre los DDHH](#), July 14, 2017.

<sup>32</sup> The United States and Israel opposed the document. Last year, these two countries, for the first time in the 25-year history of the annual review of the issue, abstained in the vote rather than rejecting the text. UN, [UN General Assembly again calls for lifting US embargo against Cuba](#), November 1, 2017.

<sup>33</sup> Ministry of Foreign Affairs of Cuba, Cuba Vs Bloqueo, [Report by Cuba: on Resolution 70/5 of the United Nations General Assembly, entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba."](#) June 2017, pp. 13-24.

<sup>34</sup> Ministry of Foreign Affairs of Cuba, Cuba Vs Bloqueo, [Report by Cuba: on Resolution 70/5 of the United Nations General Assembly, entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba."](#) June 2017, pp. 13-24.

rights.”<sup>35</sup> It is for this reason that the IACHR takes this opportunity to reiterate to the U.S. Congress that it should lift the embargo on Cuba and its population.

23. Without prejudice to what was already stated, the Commission understands that the economic embargo imposed on Cuba does not relieve the State from complying with its international obligations, nor does it excuse it for the breaches of the American Declaration of the Rights and Duties of Man (hereinafter “American Declaration”) described in this chapter.

### III. SITUATION OF HUMAN RIGHTS IN CUBA

#### A. Representative democracy: Lack of its essential attributes

24. The member states of the OAS, on adopting the Inter-American Democratic Charter, recognized that representative democracy is the system in which one attains stability, peace, and development in the region, which is fundamental for attaining the full exercise of fundamental rights. Article 3 of the same Charter established:

Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.<sup>36</sup>

25. The serious breach of the core requirements and institutions of representative democracy is one of the main criteria for including Cuba in this chapter of the Annual Report; it is provided for in Article 59(6)(a)(i) of the IACHR’s Rules of Procedure. Historically, the IACHR has been critical of the lack of conditions allowing for the genuine political participation of sectors with a different line of thinking in Cuba; in particular, it has criticized the holding of elections that lack plurality and independence, with insuperable obstacles that impede free access to diverse sources of information. Voices adverse to the government, in their effort to express themselves and participate in the conduct of the country’s affairs, end up being suppressed given the presence of a single party, the prohibition on association for political purposes, and the arbitrary restrictions on freedom of expression and the right of assembly, among other fundamental rights.

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

26. In the course of 2017, Cuba is holding the first elections without the presence of the historical leader of the Cuban Revolution, Fidel Castro Ruz, in the wake of his death on November 25, 2016. On June 13, the Council of State announced the elections of delegates to the municipal assemblies would be held October 22, for the first round, and October 29, for the second round in those districts in which no candidate has obtained more than 50% of the valid votes cast.<sup>37</sup> Nonetheless, in the wake of the serious impact of Hurricane Irma on Cuba, on September 19 the Council of State announced a change in the dates to November 26 and December 3, 2017, respectively.<sup>38</sup> According to what has been announced by the National Election Commission (CEN: Comisión Electoral Nacional), 12,515 delegates to the People’s Power structures are to be elected in the general elections.<sup>39</sup> The CEN indicated that the election process of municipal

<sup>35</sup> United Nations, Human Rights Council, Report by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, August 10, 2015.

<sup>36</sup> Inter-American Democratic Charter. Twenty-eighth Regular Period of Sessions. Adopted at the first plenary session on September 11, 2001. Lima, Peru. Available at: [http://www.oas.org/charter/docs\\_es/resolucion1\\_es.htm](http://www.oas.org/charter/docs_es/resolucion1_es.htm).

<sup>37</sup> Granma, [Convoca el Consejo de Estado a elecciones generales](#), June 13, 2017.

<sup>38</sup> Granma, [Modifica el Consejo de Estado fecha de las elecciones para delegados a las asambleas municipales del Poder Popular](#), September 19, 2017.

<sup>39</sup> Cubadebate, [Cuba elegirá 12 mil 515 delegados del Poder Popular en comicios generales \(+ Infografía\)](#), June 29, 2017.

delegates run satisfactorily, with the vote of 85.94% of the electoral population; the second round of elections took place in similar way.<sup>40</sup>

27. The civil society organizations informed the Commission that the platform *Ciudadanos Observadores de Procesos Electorales* (COPE) had been established for the purpose of observing, independently and as per international standards, the general elections to be held this year.<sup>41</sup> While performing its monitoring activities, COPE documented 'several irregularities' both in the Assemblies of Nomination of Candidates for Municipal Delegates and in the municipal elections held subsequently. In addition, some of its members were prevented from observing the elections.<sup>42</sup>

28. Despite what was announced by the Tenth Plenary of the Central Committee of the Communist Party of Cuba on February 23, 2015, that it would be at the Seventh Congress that the National Assembly of People's Power would be asked to amend the electoral process, in anticipation of the general elections of 2018<sup>43</sup>, the IACHR does not have any information that suggests the implementation of any measure in that direction. In its 2016 Annual Report the Commission documented several proposals to reform the electoral system presented by civil society organizations to the competent authorities, which, as they noted, were disregarded.<sup>44</sup>

29. In 2017 the Commission has received information with respect to certain actions of the Cuban State whose effect would appear to be to impede the full political participation of independent candidates in those elections. Such actions include: harassment, threats, and reprisals<sup>45</sup>; arbitrary arrests<sup>46</sup>;

<sup>40</sup> Granma, [A segunda vuelta 1 100 circunscripciones](#), November 28, 2017; 14 y medio, [La jornada electoral en Cuba transcurre sin sorpresas](#), November 27, 2017.

<sup>41</sup> Request for thematic hearing on violations of civil and political rights in the electoral process in Cuba, submitted by #Otro18 and Somos+, August 2, 2017. See also: El Nuevo Herald, [Opositores desafían el sistema electoral cubano con miras a las próximas elecciones](#), May 21, 2017.

<sup>42</sup> COPE, Preliminary report, November 27, 2017. IACHR Archive.

<sup>43</sup> Granma, [Efectuado X Pleno del Comité Central del Partido Comunista de Cuba](#), February 23, 2015.

<sup>44</sup> IACHR, 2016 Annual Report, Chapter IV, Human Rights Developments in the Region, [Cuba](#), DATE APPROVED, paras. 31-32.

<sup>45</sup> The Special Rapporteur for Freedom of Expression of the IACHR received with concern the information that in April journalism student Karla María Pérez González was expelled from the Universidad Central de Las Villas for belonging to the Movimiento Somos+, a Cuban civil society organization that promotes, among other issues, having multiple political parties, independent journalism, and open elections. According to the available information, fellow students decided that she should be expelled, a decision that was ratified by the Federación Estudiantil Universitaria (FEU) at that university. In its communication, the FEU indicated that she was a "member of an illegal and counterrevolutionary organization, contrary to the principles, objectives, and values of the Cuban Revolution" (Semana, [La estudiante a la que echaron de una universidad en Cuba por pertenecer a un grupo disidente](#), April 19, 2017; El País, [Una universidad cubana expulsa a una alumna de 18 años por disidente](#), April 19, 2017; BBC Mundo, ["Me expulsaron por no comulgar con las ideas comunistas": Karla María Pérez, la estudiante de periodismo a la que echaron de una universidad en Cuba por ser de un grupo disidente](#), April 19, 2017). In May, Pérez González reported that she was the victim of a systematic attack by journalists from official media, bloggers, as well as university authorities (Cuba en Miami, [Gobierno de Cuba inicia campaña mediática contra Karla Pérez](#), May 9, 2017; El Nuevo Herald, [La joven expulsada de la universidad en Cuba denuncia la represión a candidatos independientes de #Otro18](#), May 8, 2017; CubaNet, [Joven expulsada de la universidad denuncia campaña mediática en su contra](#), May 9, 2017).

In August 2017, Manuel Cuesta Morúa, spokesperson for the platform #Otro 18, denounced at a press conference the harassment and threats targeting its more than 170 independent candidates (El Nuevo Herald, [Opositores cubanos denuncian hostigamiento a candidatos independientes](#), August 24, 2017).

Other movements, such as Mesa de Unidad de Acción Democrática (MUAD) and Ciudadanos Observadores de Procesos Electorales (COPE), report situations of threats, attacks, harassment, and arrests, directed against their activists (14yMedio, [Detenidos dos activistas de la plataforma #Otro18](#), April 26, 2017; 14yMedio/EFE, [Varios opositores denuncian la represión contra candidatos independientes de #Otro18](#), April 18, 2017; EFE, [Opositores cubanos denuncian la represión a candidatos independientes de #Otro18](#), April 18, 2017; Cubanos en Spain, [Gobierno cubano comienza proceso para futuras 'elecciones'](#), May 18, 2017; Martí Noticias, [Cuba comienza proceso para futuras elecciones, pero no revela detalles o fechas](#), May 18, 2017).

<sup>46</sup> The Movimiento Somos+ estimates that there have been more than 30 arbitrary detentions of its members since November 2016 (Request for thematic hearing on violations of civil and political rights in the electoral process in Cuba, submitted by #Otro18 y Somos+, August 2, 2017).

Cuba Decide publicly denounced the detention of its coordinators Sayli Navarro, Iván Hernández, and Feliz Navarro by state security agents on May 8 when they were headed to the José Martí international airport to receive Rosa María Payá (Cuba Decide, Alerta

searches of homes and confiscation of property, generally associated with “fabricated” criminal cases<sup>47</sup>; obstacles to meeting or assembling for political purposes<sup>48</sup>; unlawful restrictions on leaving the country and deportations from Havana to other provinces of the interior<sup>49</sup>; in addition, stigmatization and discrediting<sup>50</sup>, all of which seek to obstruct the nomination of independent candidacies in the Assemblies for Nomination of Candidates, the applications to legalize civic organizations, holding training workshops on election-related issues, presenting citizen proposals to amend the election laws, and campaigns in favor of having binding plebiscites, among other related activities. Such repressive tactics are part of a pattern employed directly by the State, or by persons with its authorization, support, or acquiescence, to the detriment of any person whose work is identified as a threat to the current system of government, as will be seen below. Its effectiveness shows to be evident when observing that in the electoral process that took place in the current year any of the independent candidates proposed by several organizations opposed to the government were nominated.<sup>51</sup>

30. In the past, the Commission has highlighted the importance of the full exercise of political rights, which, along with other rights, make possible the adequate functioning of a democratic and plural system of government. The exercise of political rights takes in a wide array of activities which, individually or collectively, aspire to contribute to the conduct of public affairs. The right to elect and to be elected is one of

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por arresto de coordinadores de Cuba Decide antes de arribo de Rosa María Payá a La Habana, information received electrically by the Executive Secretariat of the IACHR on May 8, 2017).

<sup>47</sup> Civil society organizations denounce the search of the home and confiscation of property of Eliecer Ávila, president of the Movimiento Somos+, on April 8, 2017, due to the investigation against him for allegedly committing the crimes of receiving stolen property (*receptación*) and illegal economic activity. During the proceeding, the security corps of the State was said to have confiscated publicity material of the movement and other related organizations, books, copies of the Electoral Law, computers, USB memories, cell phones, and all other electronic accessories. The actions referred to, it is noted, coincide with the announcement of his candidacy to district delegate for the municipality of Cerro, in Havana (Request for thematic hearing on violations of civil and political rights in the electoral process in Cuba, submitted by #Otro18 y Somos+, August 2, 2017. See also: YouTube, [Eliecer Avila después del robo de sus pertenencias](#), Somos+, April 10, 2017). According to available public information, the home of independent candidate Ernesto López Matamoros, of the Movimiento Cristiano Liberación (MCL), was also searched, and several of his belongings were taken by officers of the State Security service and the National Revolutionary Police (PNR) on July 13, 2017; after being held for 48 hours, he was released with no charges (Diario de Cuba: [Fuerzas del régimen detienen en Santiago de Cuba a un candidato independiente](#), July 13, 2017; [Liberado el candidato independiente Ernesto López Matamoros](#), July 17, 2017).

Electoral Law No. 37 excludes from the exercise of the right to elect and be elected “persons who are mentally disabled” (“*los incapacitados mentales*”), “persons who have been judicially disqualified because of crime” (“*los inhabilitados judicialmente por causa de delito*”), and “those on whom a sanction of deprivation of public rights has been imposed, as of the serving of their sanction of deprivation of liberty.” Based on that law, Plataforma Ciudadana #Otro18 and the Movimiento Somos+ report multiple cases of independent candidates facing criminal charges or being criminally convicted, one immediate consequence of which is disqualification from participating in the current electoral process. For example, Eliecer Ávila, president of the Movimiento Somos+ and candidate for district delegate for the municipality of Cerro, in Havana, is reported to be associated with the criminal case for allegedly committing the crimes of receiving stolen property (*receptación*) and illegal economic activity; as well as Rolando Columbié Patterson, sentenced to six months of house arrest and the payment of a fine; José Cásares Soto, sentenced to five years of correctional work with confinement; Yamilka Abascal Sánchez, convicted and sentenced to two years of house arrest; Aleixei Gámez Alonso, accused of the crime of illegal economic activity; José Días Silva, accused of contempt; and 90 more candidates facing criminal charges (Request for thematic hearing on violations of civil and political rights in the electoral process in Cuba, submitted by #Otro18 and Somos+, August 2, 2017).

<sup>48</sup> Plataforma Ciudadana #Otro18 and the Movimiento Somos+ informed the IACHR of the routine impediments their members face when trying to meet to delineate strategies for the upcoming elections. In effect, they indicate that State Security agents and police officers would arrest persons trying to make their way to the meeting place or that they would keep them from leaving their homes (Request for thematic hearing on violations of civil and political rights in the electoral process in Cuba, submitted by #Otro18 and Somos+, August 2, 2017).

<sup>49</sup> See section on *Right of residence and movement* in this chapter.

<sup>50</sup> A video shows First Vice President Miguel Díaz-Canel explain how at least six projects seek to nominate “counter-revolutionary” candidates as delegates of the People’s Power structures, and then he states: “and now we are taking all the steps to discredit that, so that people have a perception of risk, so that the people know what it is about” (El Nuevo Herald, [Nuevo video filtrado de Díaz-Canel revela qué hará el gobierno con la oposición en próximas elecciones](#), August 29, 2017; 14ymedio, [Miguel Díaz-Canel incurre en un delito electoral](#), August 18, 2017). In the past, Cuban civil society organizations have informed the IACHR how the Cuban authorities have opted to stigmatize and discredit candidates, for example by changing their biographies, to reduce the possibility of success of candidates getting nominated who are contrary to the government.

<sup>51</sup> 14 y medio, [Cuba defiende su democracia pese a la ausencia de candidatos independientes](#), November 5, 2017; El Nuevo Herald, [Disidencia cubana no logra nominar candidatos a elecciones municipales](#), November 13, 2017.

the essential elements for the existence of democracy and one of the ways in which citizens freely express their will and exercises the right to political participation. This right implies that citizens can decide directly and choose freely and in equal conditions who will represent them in decision-making on public matters. At the same time, political participation by exercising the right to be elected presupposes that citizens can run as candidates on equal terms and that they can hold public office subject to election if they are able to get the number of votes needed.

31. The IACHR understands that in international law there is no single model for an electoral system and in particular, no single model for the way in which citizens exercise the right to vote and to be elected<sup>52</sup>, for it should be designed “according to their historical, political, social and cultural needs, which may vary from one country to another and even within one country, at different historical moments.”<sup>53</sup> And so the discretion states enjoy when it comes to designing their election system is limited by the principles of legality, necessity, and proportionality, for otherwise one would run the risk of rendering illusory the essence of the right.<sup>54</sup>

32. The Commission does not note any gain with respect to what has been reported in previous years. Unlawful restrictions persist on the right to political participation and all other fundamental rights relevant for its full exercise.

## 2. Independence of the Judicial Branch

33. Constitutionally, the Supreme People’s Court (Tribunal Supremo Popular) continues to be subordinated to the National Assembly of People’s Power and to the Council of State, which for the Commission has meant a violation of the guarantee of an independent and impartial judge, in addition to being at odds with the principle of separation or independence of branches of government, another essential attribute of a representative democracy.<sup>55</sup>

34. On this point, in March 2017, the Committee on Enforced Disappearances, in its final observations on the report submitted by Cuba, considered what the State indicated in terms of the judges being bound exclusively by the law, under Article 122 of the Constitution. Nonetheless, it indicated that

While it takes note of the affirmation by the State of the subordination of the courts to the National Assembly and the Council of State not implying any meddling in the judicial functions or in resolving any particular case, the Committee is concerned that the subordination of the courts to other organs of the State may negatively impact the guarantee of independence of the courts.<sup>56</sup>

35. The IACHR considers that the effective observance of the rights to justice (Article XVIII) and to due process of law (Article XXVI) of the American Declaration, derived from the classic separation of powers, is based on the independence of the judicial branch, which is an essential requirement for the practical observance of human rights in general.<sup>57</sup> In the view of the Commission, the subordination of the

<sup>52</sup> I/A Court HR. *Case of Castaneda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184, para. 162.

<sup>53</sup> I/A Court HR. *Case of Castaneda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184, para. 166.

<sup>54</sup> I/A Court HR. *Case of Yatama v. Nicaragua*. Judgment of June 23, 2005. Series C No. 127, para. 206.

<sup>55</sup> In this respect, the Commission has already noted Article 121 of the Constitution of Cuba, which provides: “The courts constitute a system of state organs, structured with functional independence from any other and subordinated to the National Assembly of People’s Power and the Council of State” (Constitution of the Republic of Cuba, Article 121, proclaimed February 24, 1976, and its subsequent reforms approved by the National Assembly of People’s Power, available at: <http://www.parlamentocubano.cu/index.php/constitucion-de-la-republica-de-cuba/>).

<sup>56</sup> United Nations, Committee on Enforced Disappearances, Final observations on the report submitted by Cuba pursuant to Article 29(1) of the Convention, CED/C/CUB/CO/1, March 14, 2017.

<sup>57</sup>IACHR, [Seventh Report on the Situation of Human Rights in Cuba](#), OEA/Ser.L/V/II.61 Doc.29 rev. 1, October 4, 1983, Chapter IV – Right to a fair trial and to due process of law, para. 2.

courts to the Council of State, headed by the Head of State, means that the Judicial Branch depends directly on the directives of the Executive Branch. Accordingly, the lack of independence of the Judicial Branch compromises its ability to provide guarantees for the enjoyment of human rights.<sup>58</sup>

## B. Activism and dissidence

36. In 2017, the IACHR observed the persistence of violations of the right to liberty, personal security, and integrity, protection from arbitrary arrest, and of the rights to the inviolability of the domicile, to the inviolability and transmission of correspondence, to residence and movement, and to minimum judicial guarantees and judicial protection for human rights defenders, social and political leaders, and independent journalists, on doing their work. The harassment and threats, followed by assaults and brief arbitrary detentions, along with criminal proceedings stripped of the minimum guarantees of due process that result in convictions and prison sentences in overcrowded, insalubrious, and violent prisons, seek to discourage expression critical of the government, obstruct the free expression of opinions and ideas, and impede the work of defense and promotion of fundamental rights and the rise of new leadership. This is why the IACHR understood that the situation also falls under Article 59(6)(c) of the Rules of Procedure, which refers to the commission, by a state, of massive, grave, and systematic violations of the human rights guaranteed in the American Declaration, the American Convention, or other applicable human rights instruments.

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

37. Since its 1992-1993 Annual Report<sup>59</sup> the Commission has observed with great concern the systematic use of summary arbitrary arrests as a method of harassment. As of 2017 the situation persists. According to the *Observatorio Cubano de Derechos Humanos* (OCDH), from January to August 2017 there have been 3,594 arbitrary arrests, one-third of them of Afro-Cuban women<sup>60</sup>; the figure was 9,351 for all of 2016.<sup>61</sup> The *Comisión Cubana de Derechos Humanos y Reconciliación Nacional* (CCDHRN) has documented 3,706 such detentions as of August 2017; and 9,940 in 2016.<sup>62</sup>

38. In the year under review, according to the information reported, the members of the movements Ladies in White (Damas de Blanco), whose members are beneficiaries of precautionary measures granted by this Commission<sup>63</sup>, and *Unión Patriótica de Cuba* (UNPACU) report being the main ones affected by the acts of repression carried out by state agents or civilians under the state acquiescence, though the members of other civil organizations and their family members continue to be targeted by various forms of intimidation and harassment.<sup>64</sup> These summary arrests reportedly are often accompanied by physical and

<sup>58</sup> IACHR, [Guarantees for the Independence of Justice Operators](#), OEA/Ser.L/V/II Doc. 44, December 5, 2013, para. 32.

<sup>59</sup> IACHR, 1992-1993 Annual Report, [Chapter IV. Status of Human Rights in Several Countries, Cuba](#): III. Methods of Harassment Used against Human Rights Activists, OEA/Ser.L/V/II.83, Doc. 14, March 12, 1993.

<sup>60</sup> OCDH: [Casi 500 detenciones en agosto en Cuba](#), September 1, 2017; [Más de 3.000 detenciones y la "Ley Cangrejo"](#), August 4, 2017.

<sup>61</sup> OCDH: Informe Anual 2016 del Observatorio Cubano de Derechos Humanos, information received electronically by the Executive Secretariat of the IACHR on January 6, 2017; [El 2016 se salda con 9.351 detenciones arbitrarias, aumentando en mas de 1.000 respecto a 2015](#), 2016.

<sup>62</sup> CCDHRN, [Cuba: Algunos actos de represión política en el mes de agosto de 2017](#), September 5, 2017.

<sup>63</sup> IACHR, [Resolution 6/2013](#), Precautionary Measure No. 264/13, Ladies in White with respect to the Republic of [Cuba](#), October 28, 2013, and its extension by [Resolution 12/2014](#), May 12, 2014.

<sup>64</sup> Husband and wife José Rolando Cáseres Soto and Yamilka Abascal Sánchez, members of the Mesa del Dialog de la Juventud Cubana (MDJC), were reportedly convicted and sentenced to five years correctional internment with forced labor, in his case, and to two years of house arrest, in her case, after they were detained on July 15, 2016, and accused of "attack on and contempt of" ("*atentado y desacato*") the authority (Directorio Cubano, Comunicado: Denuncian encarcelamiento ilícito y trabajo forzoso jóvenes activistas en Cuba, information received electronically by the Executive Secretariat of the IACHR on May 23, 2017).

Eduardo Cardet Concepción, leader of the Movimiento Cristiano Liberación (MCL), was convicted in the first instance on Monday, March 20, and sentenced to three years in prison after being accused of attack on the authority of the State for having publicly criticized the former Cuban leader Fidel Castro in an interview with esRadio a few days after his death (Amnesty International, Cuba: Activist sentenced to three years in jail after criticising Fidel Castro, March 21, 2017).

verbal aggression, which tends to be worse in the case of Afro-Cuban woman, beginning with insults related to the color of the victims' skin.<sup>65</sup> Once again, the Commission observes the use of repressive tactics, such as: the imposition of onerous fines; searches of homes and confiscation of property, generally associated with "fabricated" criminal proceedings; unlawful restrictions on leaving the country and on free movement in the national territory<sup>66</sup>; and stigmatization and being discredited.

39. With respect to the organization Ladies in White<sup>67</sup>, its members and their family members, the Commission learned that a few days after having participated, along with other Cuban civil society groups, in the hearing convened in 2016 on the [Situation of human rights defenders in Cuba](#), Berta Soler, a leader of the movement, was detained for nine hours, without water or food, by agents of the National Revolutionary Police when leaving her home in Havana; neither her family members nor the members of the movement were notified of her whereabouts.<sup>68</sup> At the moment of her release, Berta Soler was threatened with arrest any time she attempts to attend Sunday mass, which is when the Ladies in White meet, before and/or after, to march peacefully. That same day, María Cristina Labrada, Soldrelys Torruella, and María Hortensia Melián were also said to have been detained. On September 7, 2017, the headquarters of the Ladies in White in Havana was vandalized in an action that included the participation of private persons; stones and food were thrown, the outside walls painted, and offensive and threatening slogans were shouted.<sup>69</sup> It would appear that this was not a spontaneous or isolated situation,<sup>70</sup> based on the media reports.

40. The Commission has received similar information in relation to the members of the UNPACU. According to that information, from December 18, 2016 until August 1, 2017, the Cuban authorities carried out 380 to 400 arbitrary arrests of members of the group, most of which occurred through the excessive use of force by state agents, with the intent of instilling fear in the activists and the population that ends up witnessing such acts.<sup>71</sup> The violence is also said to come from civilians under the state acquiescence which, using cudgels, metal rods, stones, sticks, and martial arts techniques, caused injuries including fractures.

41. The members of the UNPACU arrested are generally prosecuted and convicted in criminal trials without the minimum judicial guarantees using criminal statutes such as those on contempt of public authority (*desacato*), attack (*atentado*), and public disorder (*desorden público*), so as to then be held in detention centers where they report being subject to "beatings, physical and psychological torture, and other forms of cruel, inhuman and degrading treatment."<sup>72</sup> The UNPACU reports having more than 100 members who have been fined, 46 deprived of liberty in different prisons across the country, and three who are under house arrest.<sup>73</sup> It was learned that after being detained for three months accused of the crimes of continuing

<sup>65</sup> Observatorio Cubano de Derechos Humanos, [559 detenciones arbitrarias en julio, 3.118 en el primer semestre de 2017 y la 'Ley Cangrejo'](#), July 2017; Agencia EFE, [Afrodescendientes cubanos denuncian el racismo del Gobierno ante la CIDH](#), March 21, 2017.

<sup>66</sup> See section on *Right to residence and movement* in this chapter.

<sup>67</sup> The Ladies in White (Damas de Blanco) movement was established in 2003 and is made up of wives, mothers, sons and daughters of men and women who are in prison in Cuba on grounds they consider unjust. Among their initiatives, together with the Foro Por los Derechos y Libertades, last year the campaign #TodosMarchamos por la libertad de los presos políticos (We all march for the freedom of the political prisoners) was launched; it involves organizing marches in different cities of the country every Sunday.

<sup>68</sup> Front Line Defenders, Urgent Appeal: Cuba Berta Soler and three other Ladies in White arbitrarily detained, one remains in incommunicado detention, December 16, 2016.

<sup>69</sup> Diario de Cuba, [Enviados del régimen lanzan piedras contra la sede de las Damas de Blanco y pintan su fachada](#), September 7, 2017.

<sup>70</sup> Diario Las Américas, [Denuncian al régimen castrista por vandalizar sede de las Damas de Blanco](#), May 25, 2017; Martí Noticias, [Lanzan piedras y pintura contra viviendas de Damas de Blanco y opositores en La Habana](#), May 23, 2017.

<sup>71</sup> Institute on Race, Equality and Human Rights, Request for a thematic hearing on violations of human rights of the members of the Unión Patriótica de Cuba, August 1, 2017.

<sup>72</sup> Institute on Race, Equality and Human Rights, Request for a thematic hearing on violations of human rights of the members of the Unión Patriótica de Cuba, August 1, 2017. See also: section of this chapter on *Persons deprived of liberty*.

<sup>73</sup> Institute on Race, Equality and Human Rights, Request for a thematic hearing on violations of human rights of the members of the Unión Patriótica de Cuba, August 1, 2017.

contempt, usurpation of functions, and resistance, Jorge Cervantes García, the coordinator of UNPACU, was released on bond on August 18.<sup>74</sup> In addition, on August 19, three activists from the same grouping – Jesús Sánchez Romero, Alexis Rodríguez Chacón, and Ovidio Martín Castellanos – were reportedly detained in Santiago; on August 23, Sánchez Romero was convicted and sentenced to a prison term of one year and six months in a very summary proceeding. Martín Castellanos continues to be held in pretrial detention, accused of the crime of attack (*atentado*), and Rodríguez Chacón was released.<sup>75</sup>

42. According to the UNPACU, in the last seven months combined operations of the Department of State Security, the National Revolutionary Police, and the Special Brigade of the Ministry of Interior executed 55 arbitrary searches of the homes of the organization's members, taking computers, printers, cell phones, photographic and video cameras, sound amplifiers, books, and office supplies, as well as refrigerators, food, medicine, films, and children's books. They also report the blockage of the cell phone lines of several coordinators of the UNPACU by the Ministry of Interior, in addition to illegally intervening in communications by telephone, email, and social networks.

43. At the same time, the IACHR raises the situation of the organization Cubalex, also a beneficiary of precautionary measures granted by this Commission.<sup>76</sup> In May 2017 Laritza Diversent, director of Cubalex, was reportedly summonsed to the Office of the Attorney General (Fiscalía General de la República) where she was notified of the outcome of the proceedings brought against the organization in September 2016, in which it was determined, among other things, that Cubalex was operating without authorization. In addition, it was suggested to Diversent that a legal proceeding might be brought against her. Given the worsening of the repression against the work of her organization, the team at Cubalex and Laritza Diversent traveled to the United States in May as political refugees.<sup>77</sup> In April 2016 Diversent had been detained without any explanation before boarding a plane to participate in a hearing before the IACHR during its 157<sup>th</sup> period of sessions, among other activities. Upon her return, books and brochures she brought back were confiscated from her.<sup>78</sup> In August 2016, on returning from Geneva, Diversent reported that once again she was detained and that among other documents, the report "*Situación del derecho a la libertad de opinión y expresión en Cuba*" ("Situation of the right to freedom of opinion and expression in Cuba") that she had presented to the UN Special Rapporteur for the promotion and protection of the right to freedom of opinion and expression, David Kaye, was seized from her.<sup>79</sup> Additionally, in September 2016, the offices of Cubalex were searched without a judicial warrant by police and state security officers, and her work materials and equipment were seized, as part of an alleged tax investigation into alleged illegal economic activities. On this point, in October 2016 the IACHR and its Office of Special Rapporteur for the Freedom of Expression, through a press release, expressed their concern over the retaliatory actions by the Cuban State against Cubalex.<sup>80</sup>

<sup>74</sup> UNPACU, [Liberan bajo fianza al coordinador de UNPACU en Las Tunas, Jorge Cervantes después de tres meses tras rejas, con 39 días en huelga de hambre](#), August 21, 2017.

<sup>75</sup> UNPACU, [Uno de los principales líderes de UNPACU, Ovidio Martín Castellanos, en prisión 'provisional', acusado de un falso delito de 'atentado' por ser víctima de violenta golpiza de la policía política](#), August 28, 2017; Martí Noticias, [Activista de UNPACU deberá esperar juicio en la cárcel](#), August 29, 2017; Martí Noticias, [Opositor de UNPACU detenido el sábado condenado a prisión en juicio sumarísimo](#), August 25, 2017.

<sup>76</sup> IACHR, [Resolution 13/2015](#), Precautionary Measure No. 96/15, Matter of members of Cubalex with respect to Cuba, April 22, 2015.

<sup>77</sup> El Nuevo Herald, [Activistas de Cubalex, el principal grupo legal opositor de Cuba, se marchan al exilio](#), May 4, 2017; Diario de Cuba, [Laritza Diversent: 'Salgo mañana del país y no me dejan regresar'](#), May 4, 2017; Martí Noticias, [Catorce miembros de Cubalex obtienen refugio político en Estados Unidos](#), May 4, 2017.

<sup>78</sup> Cubalex, Informe Especial sobre métodos de hostigamiento contra abogados y activistas defensores de derechos humanos miembros de Cubalex, 2016, p. 27. See also: Diario de Cuba, [El Tribunal Provincial de La Habana admite una demanda de Laritza Diversent contra la Aduana](#), September 16, 2016.

<sup>79</sup> Institute on Race, Equality and Human Rights, Actualizaciones sobre situaciones de defensoras de derechos humanos, Cuba, August 22, 2016, p. 2. See also: Diario de Cuba, [El Tribunal Provincial de La Habana admite una demanda de Laritza Diversent contra la Aduana](#), September 16, 2016.

<sup>80</sup> IACHR, Press Release R149/16: [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](#), October 13, 2016.

44. The Commission further observes that activists, though not identified as members of any dissident group, receive similar treatment. Such is the case of Daniel Llorente, who after capturing the attention of the press on hoisting the flag of the United States in the Plaza de la Revolución during the festivities on May 1, 2017, was violently detained and held at the 100 y Aldabó prison, so as to then be transferred, on May 30, to the Psychiatric Hospital (Hospital Psiquiátrico) of Havana, known as Mazorra, where he reported he was “locked up”; Llorente was removed from the room where he was being confined twice a day for 10 minutes each, to eat lunch and dinner, and had no exposure to sunlight.<sup>81</sup> On May 2, Lia Villares, also an independent activist, was held for three hours by an agent of the National Revolutionary Police.<sup>82</sup>

45. The Commission reiterates its concern over and condemnation of the acts described above directed against human rights defenders, activists, and social leaders, and in particular those who turn to the protection and spaces offered by regional and universal human rights bodies. Cuba should respect and defend their participation in procedures before human rights bodies, and the IACHR warns the State that any act of obstruction or retaliation aimed at repudiating this commitment is directly at odds with international human rights law.

- ***Right of residence and movement***

46. As regards the right of movement and residence, the Commission has indicated the restrictions that impede the full exercise of this right, both within the country and abroad.<sup>83</sup> Decree No. 217 of 1997 on Regulations on Internal Migration to the City of Havana and their infractions, originally intended to control the movement of persons to Havana and thereby diminish the very effects of overpopulation in terms of access to housing, stable employment, urban transport, and supply of water, electricity, and fuel, restricted the possibility of becoming domiciled, residing, or living with others on a permanent basis in a dwelling situated in the City of Havana.<sup>84</sup> That decree was modified by Decree No. 293 of 2011, which sets out some exceptions.<sup>85</sup>

47. Nonetheless, the use of such restrictions is said to be geared to impeding assemblies or activism in that locality.<sup>86</sup> In this respect, in 2017 the IACHR learned that on March 7, Anairis Miranda Leyva, of the *Movimiento Cubano de Reflexión*, was violently removed from a bus by officers of the Ministry of Interior of Cuba and placed in a police patrol car when heading to work from the city of Holguín to Havana, with the intent of delivering a letter to the Central Committee, denouncing the increased repression, providing information on the hunger strike she staged with her siblings Adairis Miranda Leyva and Fidel Manuel Batista Leyva when they entered prison, and calling for the release of the political prisoners, in particular Eduardo Cardet, leader of the *Movimiento Cristiano de Liberación*.<sup>87</sup> In addition, the Commission

<sup>81</sup> El País, [Cuba encierra en un psiquiátrico a un opositor](#), June 27, 2017; 14ymedio: [Por qué tienen a Daniel Llorente en Mazorra](#), June 24, 2017; [Daniel Llorente: "Estoy encerrado con candado"](#), June 6, 2017.

<sup>82</sup> 14ymedio, [Lia Villares viaja a Estados Unidos horas después de que se le impidiera hacerlo](#), May 3, 2017.

<sup>83</sup> IACHR, 2014, 2015, 2016 Annual Report, Chapter IV, Cuba.

<sup>84</sup> Decree No. 217 of 1997 establishes that persons who seek to become domiciled, reside, or live permanently with another person in a dwelling situated in the City of Havana, or who live in other municipalities of the City of Havana, but seek to become domiciled, reside, or live permanently in a dwelling situated in the municipalities of Habana Vieja, Centro Habana, Cerro, and Diez de Octubre must obtain a permit from the President of the Council of the Municipal Administration, after meeting certain requirements, under penalty of being fined or returned to their places of origin (Decree No. 217, Domestic Migration Regulations for the City of Havana and their violations, April 22, 1997, available in: <http://www.gacetaoficial.cu/html/regulacionesmigratoriasparaC.H.html>).

<sup>85</sup> Decree No. 293, Amending Decree No. 297 “Domestic Migration Regulations for the City of Havana and its violations, April 22, 1997,” published in the Official Gazette No. 39 Special, November 16, 2011, available at: [http://www.cubadebate.cu/wp-content/uploads/2011/11/go\\_x\\_039\\_2011.pdf](http://www.cubadebate.cu/wp-content/uploads/2011/11/go_x_039_2011.pdf).

<sup>86</sup> In this regard, *Human Rights Watch* has consistently reported that the purpose is to limit migration to the capital, and it has been applied to keep dissidents from traveling to Havana to attend rallies, as well as to persecute dissidents originally from other regions of Cuba who reside in the capital (Human Rights Watch, World Report 2016, [Cuba, Events of 2015](#)).

<sup>87</sup> Directorio Democrático, Comunicado: A menos de 24 horas del “día internacional de la mujer”, golpiza y detención con rumbo desconocido de la activista de derechos humanos Anairis Miranda Leyva en Cuba, information received electronically by the Executive Secretariat of the IACHR on March 7, 2017.

received information tied to the independent unionist and Secretary General of the *Asociación Sindical Independiente de Cuba* (ASIC), Iván Hernández Carrillo, a beneficiary of precautionary measures granted by this Commission<sup>88</sup>, who was reportedly detained on March 29 at 4:30 a.m. at the bus terminal in the city of Matanzas, when he was about to travel to Havana. As reported, two members of the national police transferred him in a patrol car to the police unit in Matanzas, where he was put into a cell 3x2 meters, in deplorable hygienic conditions, overcrowded, with the doorway partially closed, without electricity or drinking water, and the bed being of concrete. He remained there for more than 10 hours with no apparent charges; his identity papers were retained by the police authorities.<sup>89</sup> Similarly, the *Plataforma Ciudadana #Otro18* and the *Movimiento Somos+* reported to the IACHR the deportation of Joana Columbié, director of the Academia 1010 of the *Movimiento Somos+*, from Havana to Camagüey, after she was detained and interrogated on June 2, 2017.<sup>90</sup> For its part, the UNPACU denounced a similar situation to the detriment of hundreds of its members.<sup>91</sup>

48. According to the report *Negación, Exclusión y Represión*, those persons who do not have permission to be domiciled in Havana and in the marginal human settlements that have been emerging around it are generally captured by the police and detained, for not having papers, at the Vivac detention center, so as then to be deported to their places of origin.<sup>92</sup>

49. The Law on Migration, No. 1312 of September 20, 1976, has been amended twice, most recently by Decree Law No. 327 of January 3, 2015, which modified four provisions related to the issuance of a Cuban passport.<sup>93</sup> The Commission has acknowledged the gains in those amendments, such as partial elimination of the requirement to secure authorization to leave the territory, the extension of the period from 11 to 24 months abroad before a Cuban person can be recognized as an émigré; elimination of the letter of invitation to the destination country; and the possibility of children travelling temporarily, once they have the authorization of their parents or legal representatives.<sup>94</sup>

50. Nonetheless, Decree Law No. 302 of 2012, amending Law No. 1312, provides as grounds for denying a passport or departure from the country reasons of “defense and national security”; “[I]acking the established authorization, under rules aimed at preserving the labor force qualified for the country’s economic, social, and scientific-technical development, as well as for the security and protection of official information”; and “[w]hen for other reasons of public interest the authorities with such power so determine.”<sup>95</sup> In its Annual Reports the Commission has insisted that the general meaning of certain terms confers broad discretion on the Cuban authorities to allow or disallow the exit of Cuban nationals, provoking

<sup>88</sup> IACHR, Precautionary Measure 245-13, [Resolution 5/2013](#), Matter of Iván Hernández Carrillo with respect to the Republic of Cuba, October 28, 2013.

<sup>89</sup> ASIC, Information received electronically by the Executive Secretariat of the IACHR, August 9, 2017.

<sup>90</sup> According to the information received, the deportation of Columbié was accompanied by the denial of authorization for future visits to Havana and to the province of Santiago de Cuba (Request for thematic hearing on violations of civil and political rights in the electoral process in Cuba, submitted by #Otro18 and Somos+, August 2, 2017. See also: 14ymedio, [Deportada hacia Camagüey la activista Joanna Columbié](#), June 2, 2017; Diario de Cuba, [Deportada a Camagüey la activista Joana Columbié](#), June 2, 2017).

<sup>91</sup> Institute on Race, Equality and Human Rights, Request for thematic hearing on violations of the human rights of the members of the Unión Patriótica de Cuba, August 1, 2017.

<sup>92</sup> According to that report, a number of activists who work on issues of racial discrimination have developed initiatives to train communities in different provinces; nonetheless, when attempting to travel among municipalities and provinces they have had their right to movement and residence violated, on being detained during their travels and deported, no matter where they are. In addition, sub-groups of self-employed persons or entrepreneurs in the transport sector, who are mostly Afro-Cubans, have received severe fines and the seizure of pedicabs, carts, and motorcycles for moving between municipalities. They are also taken to the National Revolutionary Police to draw up letters with a pre-criminal warning (Comité Ciudadanos por la Integración Racial (CIR), *Negación, exclusión y Represión*, Informe sobre la situación de derechos humanos de la población afrocubana, June 2017).

<sup>93</sup> Decree Law No. 327, Amending Law No. 1312 “Law on Migration,” of September 20, 1976, January 31, 2015, published in the Official Gazette No. 23 Special of June 17, 2015.

<sup>94</sup> IACHR, Press Release No.130/12, [IACHR Welcomes Immigration Reforms in Cuba](#), November 5, 2012.

<sup>95</sup> [Decree Law No. 302](#), Amending Law No. 1312, “Law on Migration,” of September 20, 1976, October 11, 2012, published in Official Gazette No. 44 of October 16, 2012.

uncertainty among activists, human rights defenders, social and political leaders, independent journalists and other media workers. The Cuban immigration service (*Servicio de Inmigración y Extranjería*), using methods such as withholding passports, seizing personal effects and work materials, and subjecting persons to lengthy interrogations and detentions, have obstructed arrivals to or departures from Cuba.<sup>96</sup> In 2017 the Commission has received abundant information on such incidents to the detriment of the members of groups such as Ladies in White<sup>97</sup>, UNPACU<sup>98</sup>, *Plataforma Ciudadana #Otro18*, and *Movimiento Somos+*<sup>99</sup>, among other independent activists and trade unionists.<sup>100</sup>

51. With respect to the continuing restriction whereby if a person remains abroad for 24 months he or she may be considered an *émigré*, the Commission reiterates that this continues to be an unreasonable restriction on the exercise of the right to freedom of residence and movement. The IACHR wishes to reiterate to the Cuban State the need to guarantee the right to residence and movement established at Article VIII of the American Declaration of the Rights and Duties of Man, which includes the right to change residence and move within the country of one's nationality; and the right not to leave the country other than as a matter of one's own choice, which includes the possibility of going back. In addition, the IACHR expresses its concern with respect to the use of restrictions on the right to residence and movement with the aim of violating the right to defend human rights.

52. The impossibility of returning to one's country of origin keeps Cuban persons from enjoying an effective nationality, which entails other human rights violations, such as the right to family. In addition, it places Cuban persons who leave their country in a special situation of vulnerability, since they are in an irregular status in the country in which they find themselves, yet they cannot return to their own country. On January 12, 2017, former President of the United States Barack Obama announced the cancellation, after 20

<sup>96</sup> Comité Ciudadanos por la Integración Racial (CIR), *Negación, exclusión y Represión*, Informe sobre la situación de derechos humanos de la población afrocubana, para. 118.

<sup>97</sup> On March 21, Berta Soler is said to have been kept from leaving Cuba for the United States to attend a meeting with the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Diario de Cuba, [El régimen 'impide' a Berta Soler reunirse con el relator especial de la ONU sobre libertad de expresión y opinión](#), March 21, 2017; Martí, [Autoridades cubanas impiden a Berta Soler salir del país](#), March 21, 2017), and on May 13, the Cuban authorities once again kept her from traveling abroad, on that occasion to receive the Freedom Award, given by the International Republican Institute (IRI) (El Nuevo Herald, [Gobierno cubano impide a Berta Soler recibir premio en Washington junto a McCain](#), May 18, 2017; Cubanet, [Premio a la Libertad para las Damas de Blanco junto al senador John McCain](#), May 17, 2017; Diario de Cuba, [Las Damas de Blanco, distinguidas en Washington con el Premio Libertad](#), May 17, 2017).

Leticia Ramos Herrería, also a member of the movement, after returning to Cuba on April 27 from her trip to the United States, where she held meetings with staff of the IACHR on the human rights situation in Cuba, and with officials of the United States Department of State and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, was reportedly stopped at the airport in Varadero and questioned for five hours by state agents, who reviewed her luggage and confiscated three cell phones from her, in addition to setting up a major police operation around her home.<sup>97</sup> The Commission has been informed of the threats received by Ramos de Herrería, specifically on being detained, allegedly in arbitrary fashion, in August of this year, and "threatened with death if she sought to leave Cuba again" (Information communicated to the IACHR, International Institute on Race, Equality and Human Rights, Correspondence, April 1, 2017. See also: Diario de Cuba, [El régimen detiene a Leticia Ramos Herrería a su regreso de EEUU](#), April 27, 2017; Primavera Digital, *Informe Semanal de represión contra el Movimiento Damas de Blanco*, April 30, 2017, available at: [https://primaveradigital.org/cubaprimaveradigital/wp-content/uploads/2017/05/479\\_99tm.pdf](https://primaveradigital.org/cubaprimaveradigital/wp-content/uploads/2017/05/479_99tm.pdf)).

<sup>98</sup> The members of the UNPACU report that at least eight activists were prohibited from traveling abroad (Institute on Race, Equality and Human Rights, Request for thematic hearing on violations of the human rights of the members of the Unión Patriótica de Cuba, August 1, 2017).

<sup>99</sup> Members of the Plataforma Ciudadana #Otro18 and the Movimiento Somos+ report having been arbitrarily impeded from leaving the country to attend events to be held abroad related to their political activism, or having been held and interrogated upon their return to Cuba (Request for thematic hearing on violations of civil and political rights in the electoral process in Cuba, submitted by #Otro18 and Somos+, August 2, 2017).

<sup>100</sup> For example, on April 18 it was reported that Alejandro Enrique Sánchez Saldívar, an independent trade unionist and deputy secretary of the Asociación Sindical Independiente de Cuba (ASIC), and Ana Rosa Ledea Ríos, also an independent trade unionist and member of the ASIC, were detained when preparing to travel to the founding conference of the ASD in Bogotá, Colombia (Cuba Sindical, [Autoridades cubanas impiden asistencia de sindicalistas independientes al Congreso Fundacional de la ADS](#), April 18, 2017).

The Commission also learned of the case of Lia Villares, an independent activist, who on May 2 was held for three hours by an agent of the National Revolutionary Police without any justification whatsoever being given, leading her to miss her international flight (14ymedio, [Lia Villares viaja a Estados Unidos horas después de que se le impidiera hacerlo](#), May 3, 2017).

years, of the “wet foot, dry foot” policy, which allowed those Cuban migrants who reached United States soil to remain and become permanent residents.<sup>101</sup>

53. The Commission observes that the Memorandum of Understanding to guarantee a legal, orderly, and secure migratory flow between Mexico and Cuba came into force on May 1, 2016, by which Cuba undertook to

accept the return of its citizens in the following categories: (a) those who enter Mexican territory directly and unlawfully; (b) those who are temporarily abroad within the legal terms established by Cuba’s migration laws and whose immigration situation in Mexican territory is irregular, except for those authorized to travel to the United States of America; and (c) those who have emigrated directly and unlawfully to countries of Central America, and are in an irregular situation in Mexican territory, so long as they are included within the term counted from their exit from Cuba, which will be established by diplomatic means.<sup>102</sup>

54. After this decision, the National Migration Institute (INM: Instituto Nacional de Migración) of Mexico began to repatriate persons of Cuban nationality to Cuba much more frequently, once the Cuban authorities recognized their nationality. Deportations rose from 446 in 2015 to 3,617 in 2016.<sup>103</sup> In addition, the Commission observes a considerable increase in applications for the recognition of refugee status of Cubans in Mexico from 43 in 2016 to 767 in 2017, an increase of 1,683.72%.<sup>104</sup> Of these applications, 276 were abandoned, 15 persons were recognized as refugees, four persons received supplemental protection, and 107 were not recognized.

55. According to the International Organization for Migration (IOM), Cuba is the country that receives the fewest migrants in relation to its population (0.1 percent); most of those are from Haiti. Cuba is also one of the countries with the largest number of refugees in the Caribbean.<sup>105</sup> According to figures from the United Nations High Commissioner for Refugees (UNHCR), as of yearend 2016, Cuba had approximately 316 refugees.<sup>106</sup>

56. As regards human trafficking, the United Nations Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, on concluding her visit to Cuba, saluted several major gains by the State, such as the ratification of several relevant international instruments; the drawing up of the National Action Plan for preventing and fighting human trafficking and the protection of victims (2017-2020); implementing methodologies based on the best interests of the child to prevent their dual victimization; training and raising awareness about the issue; the existence of mechanisms for making reparation to victims of trafficking through the crime victims fund; as well as the fact of having been open to the visit.<sup>107</sup> In this regard, the IACHR salutes these gains and urges the Cuban State to continue the training and awareness-raising efforts, especially for persons in charge of responding to such crimes, which includes the treatment of victims and family members. These measures should be accompanied by measures of

<sup>101</sup> United States of America, [Statement by the President on Cuban Immigration Policy](#), January 12, 2017.

<sup>102</sup> Memorandum of Understanding between the Government of Cuba and the Government of Mexico to guarantee a legal, orderly, and secure migratory flow between the two countries.

<sup>103</sup> Migration Policy Unit of the Ministry of Interior, Boletín Estadístico 2016 and 2015, Foreigners presented and returned, available at: [http://www.politicamigratoria.gob.mx/es\\_mx/SEGOB/Boletines\\_Estadisticos](http://www.politicamigratoria.gob.mx/es_mx/SEGOB/Boletines_Estadisticos).

<sup>104</sup> Mexican Commission for Refugee Aid, Statistics 2013-2016, available at: [http://www.comar.gob.mx/work/models/COMAR/Resource/267/6/images/ESTADISTICAS\\_2013-agosto2017.pdf](http://www.comar.gob.mx/work/models/COMAR/Resource/267/6/images/ESTADISTICAS_2013-agosto2017.pdf).

<sup>105</sup> IOM, Cuba, available at: <https://www.iom.int/es/countries/cuba>.

<sup>106</sup> UNHCR, *Global Trends, Forced Displacement in 2016*, p. 60.

<sup>107</sup> OHCHR, [Declaración del final de la visita a Cuba de la Relatora Especial sobre la trata de personas, especialmente mujeres y niños, Maria Grazia Giammarinaro \(10-14 de abril de 2017\)](#), April 20, 2017. See also: Prensa Latina, [Visita de relatora expone tolerancia cero de Cuba a trata de personas](#), April 15, 2017; 14ymedio, [Relatora de la ONU espera que su visita a Cuba promueva diálogo más amplio en DDHH](#), April 15, 2017.

supervision and evaluation of the results, and application of sanctions when the state agents do not fulfill their obligations under the law.<sup>108</sup>

57. The main concerns with respect to the approach to human trafficking by the State of Cuba is the recognition, in the Cuban legal framework, of human trafficking only for purposes of sexual exploitation, to the exclusion of other purposes, such as labor exploitation. In addition, there is constant conflation of the terms “prostitution” (“*prostitución*”), “sex work” (“*trabajo sexual*”), and “sexual abuse of minors” (“*abuso sexual de menores*”); there are no standardized protocols to identify cases of human trafficking quickly and accurately; there is a lack of shelters for victims; and few such cases have been criminally prosecuted.<sup>109</sup> The Commission endorses the concern of the Special Rapporteur with respect to detention in “rehabilitation centers” of persons who engage in prostitution/sex work, including boys and girls ages 16 and 17, possible victims of human trafficking, a situation that re-traumatizes them and constitutes a violation of their rights.<sup>110</sup>

- ***Minimum due process guarantees***

58. The IACHR continues to be concerned about the death penalty being a sanction that can be applied to a significant number of types of criminal conduct.<sup>111</sup> Capital punishment is prescribed, in particular, for crimes against state security, described in broad or vague terms, and it can be applied through very summary proceedings<sup>112</sup> that do not offer the minimum and necessary guarantees for the accused to exercise the right to mount an adequate legal defense. According to information available to the Commission, the last time the death penalty was used in Cuba was in 2003. In any event, the IACHR considers that the fact that it is still part of the domestic legislation and could potentially be applied constitutes a latent threat. Accordingly, the Commission reiterates to the Cuban State its appeal to abolish it, this being a trend observed in the hemisphere.<sup>113</sup> For the Commission, capital punishment requires the existence of an independent judiciary where judges exercise strict scrutiny and where due process guarantees are observed, conditions that are not found under the existing legal framework.

<sup>108</sup> IACHR, Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 243.

<sup>109</sup> OHCHR, [Declaración del final de la visita a Cuba de la Relatora Especial sobre la trata de personas, especialmente mujeres y niños, María Grazia Giammarinaro \(10-14 de abril de 2017\)](#), April 20, 2017.

<sup>110</sup> OHCHR, [Declaración del final de la visita a Cuba de la Relatora Especial sobre la trata de personas, especialmente mujeres y niños, María Grazia Giammarinaro \(10-14 de abril de 2017\)](#), April 20, 2017.

<sup>111</sup> The maximum penalty is provided for in crimes against state security; peace and international law; public health; life and bodily integrity; the normal development of sexual relations; the normal development of childhood; and property rights. In crimes against state security, the criminal statutes that provide for the death penalty as the maximum punishment are the following: Acts against the Independence or Territorial Integrity of the State; Promotion of Armed Action against Cuba; Armed Service against the State; Aid to the Enemy; Espionage; Rebellion; Sedition; Usurpation of Police or Military Command; Sabotage; Terrorism; Hostile Acts against a Foreign State; Genocide; Piracy; Mercenary Activity; Crime of Apartheid and; other acts against state security. The death penalty is also provided for in the provisions on the following crimes: Unlawful Production, Sale, Demand, Trafficking, Distribution and Possession of Drugs, Narcotics, Psychotropic Substances, and Others with Similar Effects; Murder; Rape; Pederasty with Violence; Corruption of Minors; and, Robbery with Violence or Intimidation of Persons. In addition, the death penalty continues to be a sanction in a significant number of broad or vague criminal statutes, which include reference, for example, to “dangerousness” (“*Estado de Peligrosidad*”).

<sup>112</sup> The Law on Criminal Procedure establishes the very summary procedure in Articles 479 and 480:

Article 479: In the event that special circumstances so advise, the Attorney General of the Republic may suggest to the President of the Supreme People’s Court, who may so decide, to prosecute the criminal acts that fall under the jurisdiction of any of the courts of justice by very summary procedure, except those that are under the jurisdiction of the Municipal People’s Courts.

Article 480: In the highly summary procedure the terms that this Law establishes for the processing of the prior procedures, oral trial, and appeals may be reduced, to the extent the court with jurisdiction considers it necessary. Law on Criminal Procedure. On Special Procedures. Title X. Very Summary Procedure. Articles 479 and 480.

<sup>113</sup> IACHR, [The Death Penalty in the Inter-American System: From Restrictions to Abolition](#), OEA/Ser.L/V/II. Doc. 68, December 31, 2011.

59. The Commission has noted a similar vagueness in the description of “dangerous state” (*Estado peligroso*), provided for at Articles 72 ff. of the Criminal Code.<sup>114</sup> As laid out there, a “dangerous state” can be deduced from the special proclivity of the individual to commit crimes, given the observed “manifest contradiction with the norms of socialist morality,” displayed when any of the “indices of dangerousness” are shown, as: habitual inebriation and dipsomania, drug abuse, and antisocial conduct. Antisocial conduct is understood to be that which

Habitually violates the rules of community life by acts of violence, or by other provocative acts, violates the rights of others or due to the behavior in general harming the rules of community life or disturbing the community order, or lives as a social parasite from the work of others or exploits or engages in socially reproachable vices.<sup>115</sup>

60. According to Decree Law No. 128 of June 18, 1991, on Articles 415 ff.,<sup>116</sup> the declaration of pre-criminal dangerousness of antisocial conduct also takes place through a summary proceeding, and may result in arbitrary deprivation of personal liberty by trials without even the minimal judicial guarantees provided for in the American Declaration of the Rights and Duties of Man. In this regard, the organs of the inter-American human rights system have agreed: “Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty.”<sup>117</sup>

61. As regards the military jurisdiction, the Committee on Enforced Disappearances noted with concern the jurisdiction of the military courts in criminal proceedings in which the accused is a member of the military, even when one or more of the participants or the victim is or are civilians, or the acts were committed in military zones, independent of whether the participants in the events in question were civilians or members of the military forces. In this respect, the Committee reiterated:

While note is taken that the military courts have the power to decline jurisdiction and refer matters to the regular courts, the Committee recalls its position that, in principle, military courts do not offer the guarantees of independence and impartiality required by the Convention to hear cases of enforced disappearance (Articles 11 and 12).<sup>118</sup>

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<sup>114</sup> Law No. 62, Criminal Code, December 29, 1987, available at: [http://oig.cepal.org/sites/default/files/1987\\_codigopenal\\_cuba.pdf](http://oig.cepal.org/sites/default/files/1987_codigopenal_cuba.pdf), at Articles 72 to 74:

Article 72. Dangerous is considered the special proclivity of a person to commit crimes, demonstrated by the conduct observed, in manifest contradiction with the norms of socialist morality.

Article 73. 1. Dangerousness is noted when any of the following indicia of dangerousness is present: (a) habitual drunkenness and dipsomania; (b) drug abuse; and (c) antisocial conduct.

2. One is considered in a dangerous state due to antisocial conduct who habitually breaks the rules of community life by acts of violence, or by other provocative acts, violates the rights of others, or by behavior which in general harms the rules of community life or disturbs the order of the community or lives as a social parasite from the work of others or exploits or engages in socially reproachable vices.

Article 74. Also considered dangerous is the state of mentally ill persons and those with delayed mental development if, due to this cause, they are not capable of understanding the scope of their actions or of controlling their conduct, when it poses a threat to the security of persons or the social order.

<sup>115</sup> Law No. 62, Criminal Code, December 29, 1987, available at: <http://www.parlamentocubano.cu/index.php/documento/codigo-penal/>.

<sup>116</sup> Office Gazette No. 7 Special, Decree Law No. 128, June 18, 1991, available at: <https://www.gacetaoficial.gob.cu>.

<sup>117</sup> I/A Court HR. *Case of Castillo Petruzzi et al. v. Peru*, Judgment of May 30, 1999, Series C. No. 52, para. 121.

<sup>118</sup> United Nations, Committee on Enforced Disappearances, Final observations on the report submitted by Cuba pursuant to Article 29(1) of the Convention, CED/C/CUB/CO/1, March 14, 2017.

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

62. The Commission reminds the State of Cuba that as regards said special jurisdiction, it is only strictly applicable to members of the military on active duty for committing offenses or infractions which by their very nature attack legal interest particular to the military order. Otherwise, the right of every person to be heard by a competent, independent, and impartial judge or court would be violated.

### C. Freedom of expression<sup>119</sup>

63. In 2017, the IACHR and the Office of the Special Rapporteur for Freedom of Expression continued receiving worrisome information about unlawful restrictions on the freedom of expression in Cuba and about state actions aimed at inhibiting or punishing – through the criminal justice system – expressions and positions critical of government. Of particular concern is the steady rise of a selective and deliberate persecution of independent media and organizations that disseminate information outside of the control of the State and opinions on matters of public interest. This situation unfolds in a legal framework that does not protect independent journalism. There was also a persistence of state control over the media and over access to digital media, given the limited connectivity of the Cuban population and the blockade of the critical media outlets, which restricts information, cultural expression, and the debate of ideas to which Cubans can gain access through the press, radio, television, and Internet.

- ***Violence for exercising the freedom of expression and situation of impunity***

64. As documented in this chapter<sup>120</sup>, non-governmental organizations report the continuation of a policy of harassing journalists, human rights defenders, and political dissidents, among others, by the security agencies of the State. Several measures are said to be used by state agents to impede the free development of their activities by these persons, such as arbitrary detentions – generally short – the use of the criminal justice system to criminalize them, internal deportations, summonses to police facilities, searches of their homes, and searches of their work materials. They also reported restrictions on the right to demonstrate, the excessive use of force in this context, and the impunity in these cases.

65. According to the *Observatorio Cubano de Derechos Humanos* (OCDH), the government increased the use of other repressive tactics, such as the prohibition on and physical impediment of activists leaving their own residences; the “fabrication” of common criminal offenses to intimidate or detain opposition figures; and the pressures and direct assaults on activists’ children and family members.<sup>121</sup> The OCDH indicated that the government initiated “a new scale of harassment and repression” against independent journalists, after an alleged sort of “moratorium” in the repression against them. They noted in this regard the examples of Henry Constantín Ferreiro and Sol García Basulto, journalists with *La Hora de Cuba* and who have worked with the digital daily publication *14ymedio*, and Manuel Alejandro León Velázquez, who has worked with *Radio Martí* and *Diario de Cuba*.<sup>122</sup> In addition, on August 31, independent journalist Carlos Alberto Torres Fleites, who worked as an observer in the *Asociación Pro Libertad de Prensa* (APLP), was summonsed and threatened by an agent of the political police of the State in Santa Clara with

<sup>119</sup> The preparation of this chapter was entrusted by the IACHR to the Office of the Special Rapporteur for Freedom of Expression. This chapter is a summary version of the Annual Report on the situation of freedom of expression in the Hemisphere, issued by the Office of the Special Rapporteur for Freedom of Expression of the IACHR.

<sup>120</sup> See section on *Activism and dissidence: Right to liberty, person security, and integrity, to protection from arbitrary arrest, the inviolability of the home, and the inviolability and transmission of correspondence*.

<sup>121</sup> CubaNet, [Más de 2 mil detenciones arbitrarias en Cuba en lo que va de año](#), June 5, 2017; Observatorio Cubano de Derechos Humanos (OCDH), [2.149 detenciones arbitrarias desde enero en un claro recrudecimiento de técnicas represivas](#), June 5, 2017.

<sup>122</sup> Diario de Cuba, [El OCDH condona la 'escalada represiva contra los periodistas independientes' en Cuba](#), June 26, 2017; El Nuevo Herald, [Denuncian augment de la persecucion contra el periodismo independiente en Cuba](#), June 26, 2017; CubaNet, [Interrogatorio del MININT a Henry Constantín se postpone indefinidamente](#), July 5, 2017; Communication from the Centro para la Apertura y el Desarrollo de América Latina (CADAL), July 27, 2017, available at: Files of the Office of the Special Rapporteur for Freedom of Expression.

years of imprisonment and reprisals against his family “if he continued with his regular activities and his ties with the APLP.” Also from this province journalists *Carlos Alejandro Rodríguez Martínez* and *Maily Esteves Pérez* were said to have been kept from travelling to Mexico on August 18 to participate in a journalism workshop, along with journalist *Joan Manuel Núñez Díaz*.<sup>123</sup> In addition, on September 1, journalist *Ramón Góngora*, with the publication *Palanque Visión*, was detained, beaten, and questioned for hours. This occurred less than one week after another journalist from the same outlet was detained for five hours in the city of *Bayamo*.<sup>124</sup> Similarly, it was learned that there was a search of the residence of independent trade union journalist *Yoanny Limonta García*, who resides in the city of Cienfuegos (province of Cienfuegos), at 8:00 a.m. on March 28. After a meticulous search, *Limonta García* was arrested and taken to the municipal police unit, where he was interrogated by officers of the State Security agency, and threatened with imprisonment if he were to continue his activities.<sup>125</sup> The *Instituto Cubano por la Libertad de Expresión y Prensa* (ICLEP) reported that during the first 20 days of May the political police had committed 13 acts of repression against citizen journalists who were working in media outlets of the ICLEP.<sup>126</sup>

66. In that context of repression and harassment, described in the section *Right to vote and to participate in government*, against those who have expressed their intention to run in the 2018 elections in Cuba, on September 2 independent journalist *Serafín Moran Santiago* was reportedly detained for six hours in the municipality of Plaza when leaving the home of Juan Antonio Madrazo, where he was said to have had a meeting about the alleged harassment by the government of members of the platform #Otro18<sup>127</sup>, which promotes independent candidates for the municipal elections to be held in October 2017.

67. The Inter-American Commission reiterates that principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression establishes: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.” In addition, as has been established by the United Nations Special Rapporteur on the right to freedom of opinion and expression and the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States (OAS), the State “has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities.” Moreover, “the authorities must not stigmatize or stereotype demonstrators and their demands. They must refrain from generalizing based on isolated events or the conduct of particular groups.”<sup>128</sup>

- **Direct censorship**

68. In April journalism student *Karla María Pérez González* was expelled from the Universidad Central de Las Villas for belonging to the opposition movement *Somos+*, a Cuban civil society organization that promotes, among other things, multi-partisan politics, having an independent press, and holding open elections. According to the information available, colleagues of hers in the program decided that she should

<sup>123</sup> CubaNet, [APLP denuncia amenazas y ofensas a periodista independiente en Santa Clara](#), August 31, 2017; Martí Noticias, [Periodistas denuncian amenazas de la Seguridad del Estado para que dejen de informar](#), August 30, 2017; Revista El Estornudo, [Persona controlada](#), August 29, 2017.

<sup>124</sup> Martí Noticias, [Policía amenaza a periodista con "partirle las piernas" si sigue con Palenque Visión](#), September 3, 2017.

<sup>125</sup> ASIC, Information received electronically by the Executive Secretariat of the IACHR, August 9, 2017.

<sup>126</sup> Instituto Cubano por la Libertad de Expresión y Prensa (ICLEP), [La Policía Política liberó sin cargos al Director Ejecutivo del ICLEP Raúl Velázquez](#), May 22, 2017.

<sup>127</sup> CubaNet, [Arrestos y allanamientos a miembros de la sociedad civil este fin de semana](#), September 4, 2017; Cuba Sindical, [Liberado el periodista independiente Serafín Morán, bajo 'amenazas' y 'vigilancia'](#), September 3, 2017.

<sup>128</sup> United Nations Special Rapporteur for the protection and promotion of the right to freedom of opinion and expression and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the OAS, [Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests](#), September 13, 2013.

be expelled, a decision that was ratified by the *Federación Estudiantil Universitaria* (FEU: University Student Federation) at that university. In its press release, the FEU indicated that she was “a member of an illegal and counterrevolutionary organization, contrary to the principles, objectives, and values of the Cuban Revolution.”<sup>129</sup> In May, Pérez González alleged that she was the victim of a systematic attack by journalists working with official media, bloggers, and university authorities.<sup>130</sup>

69. On August 17, graffiti artist Yulier Rodríguez Pérez was reportedly detained for 48 hours when he attempted to paint a mural in *Centro Habana*. He was released after the authorities had him sign a commitment to erase his paintings within seven days, with the warning that if he failed to do so he could be sanctioned by a fine or detention for the offense of property damage.<sup>131</sup> In addition, according to members of the punk rock music group *Porno para Ricardo*, they were the target of harassment and censorship by the government, and could not put on a public show in Cuba due, among other things, to a repertoire that apparently goes against the regime.<sup>132</sup>

70. Principle 5 of the IACHR’s Declaration of Principles provides: “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

- ***Freedom of expression and the Internet***

71. Even though the use of the Internet and the development of digital media – especially those geared to the international community and to exiles – have begun to open up new spaces for the circulation of information and ideas beyond government control, access to digital media is obstructed by the limited connectivity of the Cuban population and the blockade of critical media outlets.<sup>133</sup> According to information reported to the Commission, the number of websites censored by the government has grown in recent years, and in order to access them – such as the news sites *CiberCuba*, *14ymedio*, and *Cubanet* – Cuban citizens have used the services of virtual private networks (VPNs) or webpages that operate as anonymous proxies.<sup>134</sup>

72. According to a report published in August by Amnesty International, there is a dual Internet system in Cuba, a cheaper one subject to “strict censorship” by the government through access to selected information; and the global Internet, which is inaccessible to most Cubans.<sup>135</sup> In addition, it indicated that according to a study by the Open Observatory of Network Interference (OONI) 41 websites are blocked in Cuba, among them *14yMedio*, *Martí Noticias*, *Damas de Blanco*, and *La Nueva Cuba*. These websites had in common that they express criticisms of the government, deal with human rights issues, and provide

<sup>129</sup> Semana, [La estudiante a la que echaron de una universidad en Cuba por pertenecer a un grupo disidente](#), April 19, 2017; El País, [Una universidad cubana expulsa a una alumna de 18 años por disidente](#), April 19, 2017; BBC Mundo, ["Me expulsaron por no comulgar con las ideas comunistas": Karla María Pérez, la estudiante de periodismo a la que echaron de una universidad en Cuba por ser de un grupo disidente](#), April 19, 2017.

<sup>130</sup> Cuba en Miami, [Gobierno de Cuba inicia campaña mediática contra Karla Pérez](#), May 9, 2017; El Nuevo Herald, [La joven expulsada de la universidad en Cuba denuncia una campaña mediática en su contra](#), May 8, 2017; CubaNet, [Joven expulsada de la universidad denuncia campaña mediática en su contra](#), May 9, 2017.

<sup>131</sup> Diario de Cuba, [La Policía da siete días a un artista para borrar sus pinturas en edificios ruinosos de La Habana](#), August 19, 2017; Diario de Cuba, [Grafitero Yulier P: 'Voy a defender mi obra y asumir las consecuencias'](#), August 22, 2017; Amnesty International, [Cuba: artista urbano en peligro en Cuba](#), August 24, 2017.

<sup>132</sup> Puente Democrático, [El punk rock cubano en Buenos Aires](#), May 3, 2017.

<sup>133</sup> Infobae, [Internet en Cuba: lenta y cara, pero cada vez más masiva](#), May 7, 2016; CubaNet, [ETECSA, un monopolio capitalista en Cuba](#), February 8, 2016; The Knight Center for Journalism in the Americas, [ISOJ 2016: Yoani Sánchez explica cómo la tecnología ha hecho más libres a los cubanos](#), April 16, 2016.

<sup>134</sup> 14ymedio, [Recetas para sortear la censura en internet](#), August 9, 2017.

<sup>135</sup> Amnesty International, [La paradoja de Internet de Cuba: El control y la censura de Internet hacen peligrar los logros de Cuba en materia de educación](#), August 29, 2017.

information on techniques for getting around the censorship.<sup>136</sup> This lack of access to the Internet in Cuba was noted by the participants in the hearings on the *Situation of human rights of Afrodescendants in Cuba*, held March 21, during the 161<sup>st</sup> period of sessions of the IACHR. According to the participants, the lack of access to media and to the Internet in Cuba affects their rights to free expression and their work as human rights defenders.<sup>137</sup>

73. According to the Joint Statement by the rapporteurs for freedom of expression of the United Nations, the OSCE, the OAS, and the African Commission in 2011<sup>138</sup>: “Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.” They also recalled, among other things: “Content filtering systems which are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior censorship and are not justifiable as a restriction on freedom of expression.”

#### IV. OTHER PRIORITY ISSUES AND GROUPS

##### A. Afrodescendants

74. In the area of protecting the rights of Afrodescendants and fighting racial discrimination, the Commission notes that the Cuban State has recognized the racial disparities found in Cuban society and has affirmed that it is working to achieve racial equality.<sup>139</sup> At the same time, it observes that the State has not shown that it has made sufficient efforts to fight the structural discrimination in Cuba.

75. Through its systematic monitoring the Commission has corroborated the existence of racial stereotypes and profiles in the emerging job market, such as tourism, which results in the marginalization of Afro-Cubans from jobs that involve direct contact with the customer, while leading to an overrepresentation of Afro-Cubans in marginal jobs in this sector.<sup>140</sup> The Afro-Cuban population has also been excluded from the main scenarios of job mobility in the context of Cuba’s economic opening.<sup>141</sup>

76. As described above in this chapter<sup>142</sup>, the effects of the violence, harassment, threats, stigmatization, persecution, and criminalization of human rights defenders, activists, social and political leaders, and journalists, by state agents, or with their authorization or acquiescence, are aggravated in the case of persons of African descent. This is appreciated, for example, in the large number of arbitrary summary

<sup>136</sup> Amnesty International, *La paradoja de Internet de Cuba: El control y la censura de Internet hacen peligrar los logros de Cuba en materia de educación*, August 29, 2017; Periódico Cubano, *Cuba bloquea 41 sitios de internet en los puntos Wifi, señala informe del Observatorio Abierto de Interferencias en la Red (LISTADO)*, August 31, 2017.

<sup>137</sup> IACHR, Hearing on *Situation of the human rights of Afrodescendants in Cuba*, 161<sup>st</sup> special period of sessions, March 21, 2017.

<sup>138</sup> United Nations Special Rapporteur for the protection and promotion and the right to freedom of opinion and expression; the Organization for Security and Cooperation in Europe Representative on Freedom of the Media; the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States; and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#).

<sup>139</sup> Committee on the Elimination of Racial Discrimination (CERD), Consideration of reports submitted by States parties under article 9 of the Convention. Nineteenth to twenty-first periodic reports of States parties due in 2013: Cuba, CERD/C/CUB/19-21, September 9, 2016.

<sup>140</sup> IACHR, Hearing *Situation of human rights of Afrodescendants in Cuba*, 161<sup>st</sup> special period of sessions, March 21, 2017.

<sup>141</sup> Comité Ciudadanos por la Integración Racial (CIR), Negación, exclusión y represión: Informe sobre la situación de derechos humanos de la población afrocubana, July 2017.

<sup>142</sup> See section on *Activism and dissidence: Right to liberty, personal security, and integrity, to protection from arbitrary arrest, inviolability of the home, and inviolability and transmission of correspondence*.

detentions documented to the detriment of Afro-Cuban women this year, which are usually accompanied by insults related to the victims' skin color and greater intensity of force that is used.<sup>143</sup>

### 3. Children and adolescents

77. In the sphere of protecting the rights of children and adolescents, the Cuban State has shown a strong political will to guarantee the adequate development and well-being of all children. According to what is reported, Cuba has made major strides such as universal basic primary health care, universal immunization, a low mortality rate in children under 5 years of age, the registration of all births, prenatal care that includes an average of 10 checkups per pregnancy, in addition to becoming the first country in the world certified to be free from maternal-child transmission of HIV and from congenital syphilis.

78. In 2017, however, the Commission received worrisome information during the hearings on the [Situation of persons with disabilities in Cuba](#), held September 5 in the context of the 164<sup>th</sup> regular period of sessions, regarding the alleged under-registration of births with low life expectancy, so that the State could submit reports showing a reduction in child mortality.<sup>144</sup>

79. Another aspect of concern with respect to the protection of children in Cuba continues to be the definition of child in Cuban legislation, as a child is considered any person under 16 years of age. The special protection to which children are entitled and that is recognized in the American Convention and the American Declaration, and in the Convention on the Rights of the Child of the United Nations, does not reach persons ages 16 and 17 in Cuba, even though the Convention on the Rights of the Child defines as a child all persons up to the age of 18 years. This regulation of age of majority has implications with respect to the minimum age for marriage, criminal liability, reinforced protection vis-à-vis certain situations (such as the use of children in prostitution and pornography, "crime of corruption of minors"), and protection from child labor, especially in modalities in which it could impact their integrity and development, such as work at night.

80. The protection of children and adolescents from all forms of economic and sexual exploitation, in particular in the context of the tourism industry, is also an area of concern. While the Criminal Code punishes the use of children in prostitution and pornography (Article 310.1, corruption of minors) and the sale of children (Article 316.1), these provisions only cover children under 16 years of age. Adolescents ages 16 and 17 who are used and exploited in prostitution can be placed in "re-education centers," without being guaranteed the treatment appropriate for victims or adequate services for their recovery, social reinsertion, and rehabilitation.

81. In this regard, and as noted earlier in this chapter<sup>145</sup>, the United Nations Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, during her visit to Cuba, identified women and girls as victims of domestic human trafficking for sexual exploitation in most cases, a situation that is not being addressed exhaustively in the legal framework.<sup>146</sup> In this regard, the Rapporteur indicated that the offenses of procuring (*proxenetismo*) and human trafficking were conflated in the Criminal Code; human trafficking in all its forms was not defined or recognized; and the protection of children from sexually-motivated crimes was only provided for those under 16. The Rapporteur recognized the political disposition of the Cuban State vis-à-vis prevention and combatting the phenomenon of human

<sup>143</sup> IACHR, Hearing on [Situation of human rights of Afrodescendants in Cuba](#), 161<sup>st</sup> special period of sessions, March 21, 2017. See also: OCDH: [Casi 500 detenciones en agosto en Cuba](#), September 1, 2017; [Más de 3.000 detenciones y la "Ley Cangrejo"](#), August 4, 2017; Diario de Cuba, ["Nos llaman negras payasas". Damas de Blanco denuncian el racismo de las fuerzas represivas](#), March 28, 2017; Agencia EFE, [Afrodescendientes cubanos denuncian el racismo del Gobierno ante la CIDH](#), March 21, 2017.

<sup>144</sup> Civil society organizations reported the case of a girl born with infantile cerebral palsy as the result of medical malpractice who, due to the high risk of early death, the authorities opted not to enter in the Civil Registry at birth, but only once the risk of early death had subsided (IACHR, Hearing on [Situation of persons with disabilities in Cuba](#), 164<sup>th</sup> period of sessions, September 5, 2017).

<sup>145</sup> See section on *Right to residence and movement*.

<sup>146</sup> OHCHR, [Declaración del final de la visita a Cuba de la Relatora Especial sobre la trata de personas, especialmente mujeres y niños. Maria Grazia Giammarinaro \(10-14 de abril de 2017\)](#), April 20, 2017. See also: Prensa Latina, [Visita de relatora expone tolerancia cero de Cuba a trata de personas](#), April 15, 2017; 14ymedio, [Relatora de la ONU espera que su visita a Cuba promueva diálogo más amplio en DD HH](#), April 15, 2017.

trafficking, expressed in the gains already mentioned in the section *Right to residence and movement*; it identified challenges in swiftly and accurately identifying cases, which have resulted in the low rate of prosecution.<sup>147</sup>

82. Adolescents ages 16 and 17 in conflict with the criminal law are treated as adults, though moderate sentences appear to be imposed on them; yet they are not tried in specialized juvenile justice courts, and they are held in detention facilities together with adults, as those described below in this chapter, in the section on *Persons deprived of liberty*. As regards children under 16, they cannot be found criminally liable, and their cases are examined by administrative authorities (minors' councils). In this respect, the main motive of concern is that children under 15 years may be held in institutional settings (Schools for Integral Education [*Escuelas de Formación Integral*]), even for committing minor offenses, without the legal guarantees demanded in criminal proceedings, as the United Nations Committee on the Rights of the Child has indicated. The Commission urges the Cuban State to ensure that the deprivation of liberty of a child be in keeping with the law, as a last resort reserved for very serious offenses and ordered by specialized courts, for the shortest possible time and ensuring that they are kept separate from adults.

#### 4. LGTBI persons

83. The IACHR received important information in 2017 about noteworthy efforts to protect the rights of LGBTI persons in Cuba. This year progress was made in authorizing sex reassignment surgery<sup>148</sup> and making it possible for gay persons to complete their active military service in Cuba.<sup>149</sup> In addition, according to information received by the IACHR, the National Center for Sex Education has worked to give visibility to protecting the human rights of LGBTI persons through, for example, campaigns such as “For schools without homophobia and transphobia.”<sup>150</sup>

84. Nonetheless, situations of violations of human rights by acts of discrimination and violence against LGBTI persons in Cuba persist.<sup>151</sup> For example, the IACHR received information that violence against LGBTI human rights defenders is very much present in Cuba, as in the case of Juana Mora Cedeño, director of the organization *Arco Iris Libre de Cuba* (ALCU) and coordinator of the *Alianza Manos*, and Mario José Delgado González, director of the *Fundación Cubana Cristiana LGBTIQ Divina Esperanza*. The IACHR has received information indicating that these persons were detained by two agents of Cuban State Security for meeting in the home of a member of *Candidatos por el Cambio* working group, after giving a talk to members and human rights activists of that project on the issue of sexual diversity.<sup>152</sup> Both are beneficiaries of precautionary measures granted by this Commission.<sup>153</sup>

85. The IACHR states its concern over the lack of official data on the human rights situation of LGBTI persons in Cuba; and in particular the lack of data and statistical information about violence against

<sup>147</sup> OHCHR, [Declaración del final de la visita a Cuba de la Relatora Especial sobre la trata de personas, especialmente mujeres y niños, Maria Grazia Giammarinaro \(10-14 de abril de 2017\)](#), April 20, 2017. See also: Prensa Latina, [Visita de relatora expone tolerancia cero de Cuba a trata de personas](#), April 15, 2017; 14ymedio, [Relatora de la ONU espera que su visita a Cuba promueva diálogo más amplio en DD HH](#), May 15, 2017.

<sup>148</sup> El Periódico, [Cuba celebra una década de activismo LGBTI, que se cuela en agenda política](#), May 13, 2017.

<sup>149</sup> El Nuevo Herald, [Homosexuales cubanos podrían cumplir servicio militar activo](#), August 8, 2017; Diario de Cuba, [Las FAR autorizan a los homosexuales a hacer el Servicio Militar, pero con particularidades](#), August 9, 2017.

<sup>150</sup> UNESCO, *La lucha contra la homofobia y la transfobia en las escuelas cubanas*, June 22, 2017.

<sup>151</sup> El País, [La revolución de la comunidad gay en Cuba](#), May 9, 2017.

<sup>152</sup> IACHR, Resolution 37/2016, Precautionary Measure No. 236-16, [Matter of Juana Mora Cedeño and one other with respect to Cuba](#), July 2016. Diario de las Américas, [En Cuba exigir los derechos de los LGBTI es más peligroso que ser homosexual](#), January 2, 2017.

<sup>153</sup> IACHR, Resolution [37/2016](#), Precautionary Measure No. 236-16, Matter of Juana Mora Cedeño and one other with respect to Cuba, July 3, 2016.

them.<sup>154</sup> The scarcity of data not only renders the problem invisible, but also makes it difficult to perform a more in-depth analysis of the actual situation of human rights for LGBTI persons in Cuba.

86. As a result, the Commission recommends that the Cuban State make the efforts needed so that, in coordination with all the branches of the State, relevant statistical data can be collected systematically on the prevalence and nature of violence and discrimination due to prejudice against LGBTI persons, or those who are perceived as such. Information on violence against LGBTI persons should be collected in the most disaggregated manner possible, including factors such as ethnicity; race; sex; gender; immigration status and situation of displacement; age; whether the person is a human rights defender; whether the person is subject to deprivation of liberty; socioeconomic situation, among others, as recommended by the IACHR in its report [Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas](#). Access to disaggregated information and statistics will facilitate identifying the factors that generate violence and the evaluation of the effectiveness of the measures implemented by the state to prevent, punish, and eradicate them. The IACHR also reminds the State of Cuba of the importance of adopting all measures within its reach to guarantee a safe context for LGBTI persons and human rights defenders, which is fundamental for building a solid and inclusive rule of law.

## 5. Persons deprived of liberty

87. In the course of this year, the Commission continued receiving worrisome information about the situation of persons deprived of liberty in Cuba. Despite the lack of public information, the Commission has received information that describes the persistence of the deplorable conditions of detention and serious human rights violations that persons deprived of liberty in Cuba face, among which special mention should be made of: overcrowded prisons; shortages of drugs, food, and drinking water; inadequate hygiene and unsanitary conditions; deficient medical care; the inability of the authorities to prevent violent acts; and the broad margin of discretion prison personnel enjoy to ensure order.

88. There continues to be a lack of public information on the number of persons deprived of liberty and their conditions. According to information published in media reports, official figures place at 57,300 the total number of persons deprived of liberty (approximately, 510 inmates per 100,000 inhabitants); nonetheless, civil society organizations estimate that the actual number is 70,000<sup>155</sup> or an estimate of 623 inmates per 100,000 inhabitants.

89. The overcrowding, together with the deficient sanitary and food conditions, and the negligent medical care, exacerbates the characteristic tension of the detention centers; the conditions become propitious for worrisome violent episodes, perpetrated by other prisoners or self-inflicted, that bring on responses, resulting in serious injuries to the integrity and life of the persons in prison. When intervening, the prison authorities have a propensity to use force disproportionately and to apply punishments that do not respect the absolute prohibition on torture and cruel, inhuman or degrading treatment.

90. In fact, civil society organizations reported to the Commission how the inmates are "exemplary punished" when expressing dissatisfaction for alleged arbitrary searches or demanding better conditions of detention.<sup>156</sup> Such punishments begin "with aggressive verbal offenses against their honor, and continue with slaps, bites, blows and direct kicks to the face and throughout the body, in which they use indistinctively neutralizing tangerine spray, massive hoses or canes that they call 'tonfa', often with handcuffs in the back"; prolonged isolation in dark and unsanitary cells with little ventilation is also a possibility.

91. For example, the IACHR learned of the contents of a denunciation signed by 18 prisoners held in the prison of the municipality of Melena del Sur, province of Mayabeque, in May 2017, and directed to the United Nations Human Rights Council, alleging:

<sup>154</sup> Alianza Cubana Manos, Informe sobre Derechos Humanos de las Personas LGBT en Cuba, June 2017.

<sup>155</sup> Hablemos Press, [Prisiones cubanas siguen siendo campos de concentración](#), February 7, 2017.

<sup>156</sup> Cubalex, *Retrosos en la protección de los derechos de las personas privadas de libertad en las cárceles cubanas y otros actos que constituyen tortura y malos tratos o atentan contra la dignidad humana*, 2017.

In these first four months of the year, four prisoners have died, and a few days ago Rafael Arredondo Jardines died due to a blow, while he was handcuffed, by the officers at this prison; all are common prisoners. We want justice and respect for Human Rights in this place.<sup>157</sup>

92. In addition, in July 2017, the Commission learned of the public denunciation by Yosvany Martínez and Ismael Boris Reñí, members of the UNPACU, in which they described the “subhuman” conditions they experienced in the Combinado del Este maximum security prison: “the water from the toilets would run along the walls and the ceiling ... the beatings of ‘handcuffed prisoners’ were frequent.” They also denounced the death of prisoner Hermenegildo Duvergel, due to the lack of medical care for multiple rib fractures as the result of a major beating inflicted on him for celebrating the death of former President Fidel Castro.<sup>158</sup> Earlier, in February 2017, UNPACU had publicly denounced the death of Hamell Santiago Más Hernández due to the difficult prison conditions and lack of medical care, and in April 2017 the death of Alberto Delgado Valle, after he was beaten by guards, both at that same prison.<sup>159</sup>

93. The IACHR observes with great concern that persons held in prisons often resort to hunger strikes, self-flagellation, and suicide, to call for improved prison conditions, and respect for minimum judicial guarantees in the proceedings against them, among other demands.<sup>160</sup> The self-inflicted wounds include amputating fingers and hands, lacerating lips, gouging out eyes, injecting fecal matter and gasoline, ingesting objects (needles, spoons, scalpel, wires), in addition to setting themselves on fire.<sup>161</sup>

94. In the course of 2017, the Committee on Enforced Disappearances, on referring to the inspection of places where persons are deprived of liberty, took note of the information provided by the State when it indicated that state and non-state actors can visit those centers. At the same time, it made reference to the periodic inspection visits made by the Office of the Attorney General, most without prior notice, though it observed that no specific and independent mechanism has been established that makes periodic visits to all places where persons deprived of liberty may be held.<sup>162</sup> Accordingly, the Committee recommended to the Cuban State that it establish a specific and independent mechanism that can make unannounced periodic

<sup>157</sup> Directorio Democrático Cubano, Press Release: Audio of letter/denunciation by prisoners to the UN and human rights organizations: <https://youtu.be/Ty5nhPzOayA>, June 1, 2017. See also: Martí Noticias, [Escriben a ONU 17 reos para denunciar muerte de 5 presos por “golpizas” en cárcel de Cuba](#), June 2, 2017.

<sup>158</sup> Martí Noticias, [Opositores liberados revelan “condiciones infrahumanas” en Combinado del Este](#), July 13, 2017. See also: YouTube, [Las prisiones en Cuba](#), UNPACU, March 18, 2017.

<sup>159</sup> Hablemos Press, [Asesinado un activista cubano en una cárcel castrista](#), April 29, 2017; ABC Internacional, [Muere un preso político cubano por «falta de atención médica y malas condiciones de presidio»](#), February 25, 2017; Martí Noticias, [Miembro de UNPACU muere en la prisión Combinado del Este](#), February 25, 2017. See also: YouTube, [Las prisiones en Cuba](#), UNPACU, March 18, 2017.

<sup>160</sup> In the period under review, Reinier Rodríguez Mendoza, a member of UNPACU and an HIV patient, held at the San José de las Lajas prison, began a hunger strike in April 2017 after being transferred to a pavilion for highly dangerous prisoners, without adequate medical care (Diario de Cuba, [Activista de la UNPACU con VIH inicia una huelga de hambre en demanda de atención médica](#), April 28, 2017; Martí Noticias, [Preso político enfermo de VIH exige atención médica con una huelga de hambre](#), April 28, 2017); Jorge Cervantes, a member of the UNPACU, was on a hunger strike for 39 days, calling for his prompt release (Martí Noticias, [Preso político Cervantes se recupera de los 39 días de huelga de hambre](#), July 26, 2017; 14ymedio, [Jorge Cervantes cumple un mes en huelga de hambre y “está muy débil”](#), June 22, 2017. See also: Amnesty International, Urgent Action: Opposition Activist in Maximum Security Prison, July 5, 2017); and Hugo Angel Riverón Aguilera, common prisoner, died in July 2017 after remaining on a hunger strike for 57 days, demanding the review of his criminal case (Diario de Cuba, [Muere un preso común tras 57 días de huelga de hambre](#), July 10, 2017).

In April 2017, an interview with Yosvanny Rivalta Diez shows his mutilated fingers on both hands and the numerous scars on his back and legs, as a result of self-inflicted lesions, a practice which, as noted, is commonly used by prisoners to get better conditions (YouTube, [Horrores en la cárcel](#), UNPACU, April 19, 2017).

For its part, Cubalex reported that since the 2013 Universal Periodical Review (UPR) there have been 22 suicides of inmates by hanging (Cubalex, *Retrosos en la protección de los derechos de las personas privadas de libertad en las cárceles cubanas y otros actos que constituyen tortura y malos tratos o atentan contra la dignidad humana*, 2017).

<sup>161</sup> YouTube: [Las prisiones en Cuba](#), UNPACU, March 18, 2017; [Horrores en la cárcel](#), UNPACU, April 19, 2017. See also: Hablemos Press, [Prisiones cubanas siguen siendo campos de concentración](#), February 7, 2017.

<sup>162</sup> United Nations, Committee on Enforced Disappearances, Final observations on the report submitted by Cuba pursuant to Article 29(1) of the Convention, CED/C/CUB/CO/1, March 14, 2017.

visits, without obstacles, to any place where persons deprived of liberty are held. Similarly, the Committee called on the State to reconsider ratifying the Optional Protocol to the Convention against Torture.

95. Based on the foregoing, the IACHR considers that the prison conditions observed have not changed substantially, compared to what was reported in the 2016 Annual Report, and that this situation has taken a high toll in terms of negative impacts on the lives and integrity of persons deprived of liberty in Cuba. Accordingly, it is essential that the State adopt measures aimed at ensuring conditions of detention that are compatible with the relevant international standards. The Commission reminds the State of Cuba that every person deprived of liberty has the right to be treated humanely, with absolute respect for his or her inherent dignity, rights, and fundamental guarantees. This implies that the State, as the guarantor of the rights of the persons under its custody, not only has the special duty to respect and ensure their right to life and integrity, but must also ensure minimum conditions that are compatible with their dignity. Treating every person deprived of liberty with humanity and respect for their dignity is a universal norm that must be applied without any type of distinction, and that cannot depend on the material resources of the State.<sup>163</sup>

## 6. Persons with disabilities

96. In the course of 2017, the Commission convened a hearing on the [Situation of persons with disabilities in Cuba](#) in which the civil society organizations reported on the serious obstacles that persons with disabilities face when it comes to exercising their rights, which in turn is conditioned mainly by political assessments made by the government entities.<sup>164</sup>

97. The civil society organizations referred to discrimination on the grounds of political opinion promoted by state institutions, and how this has negative repercussions on the free exercise of the fundamental rights and freedoms provided for in the Constitution and in international human rights instruments. As regards the rights of assembly and association, the requesting organizations informed the Commission of the existence of three official registered associations that work on issues related to persons with disabilities in Cuba: the *Asociación Nacional de Sordos de Cuba* (ANSOC: National Association of Deaf Persons of Cuba); the *Asociación Nacional de Ciegos* (ANCI: National Association of Blind Persons); and the *Asociación Cubana de Limitados Físicos y Motores* (ACLIFIM: Cuban Association of Persons with Physical and Motor Skill Limitations). They indicated that to become a member one must show adherence to the policies of the government, since the bylaws of those organizations included ideological limitations that expressly discriminated on grounds of political opinion. As a result, persons adverse to the government, or perceived as such, were not able to join any of these organizations, or could be expelled from them, and, therefore, were kept from forming part of the specialized programs; nor could they engage in advocacy to defend the rights of persons with disabilities vis-à-vis the local, provincial, or national authorities.<sup>165</sup>

98. As regards the right to health, the organizations described the difficulties that children with disabilities face when their mothers or fathers are critical of the government, and persons with disabilities themselves who are averse to the government, when they attempt to access the health services and care offered by the State of Cuba.<sup>166</sup>

<sup>163</sup> IACHR: [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#), OEA/Ser.L/V/II. Doc. 64, December 31, 2011, para. 61; [Report on Terrorism and Human Rights](#), OEA/Ser.L/V/II.116. Doc. 5 rev. 1 corr., October 22, 2002, para. 147.

<sup>164</sup> IACHR, Hearing on [Situation of persons with disabilities in Cuba](#), 164<sup>th</sup> period of sessions, September 5, 2017.

<sup>165</sup> This is reported to be the situation of EEP, a person with an auditory disability, and FEP, a person with a visual impairment, both of whom were expelled from their associations because of their political ideas. Mr. Juan Goberna, with a visual impairment, denounced in the public hearing that he has been kept out of the Asociación Nacional de Ciegos (ANCI: National Association of the Blind) due to his political position, accordingly he has not received training in the technique for using his cane or in Braille, limiting his mobility and independence (IACHR, Hearing on [Situation of persons with disabilities in Cuba](#), 164<sup>th</sup> period of sessions, September 5, 2017. See also: 14ymedio, [Un grupo de se organiza al margen del Estado](#), July 24, 2017).

<sup>166</sup> The organizations presented a public denunciation by Juan Alberto de la Nuez Ramírez, Coordinator of the Movilización Ciudadana del #FANTU and the father of MANQ, who states that he faces serious difficulties meeting the child's needs and receiving social assistance due to his political position vis-à-vis the government. In addition, the case of Juan Goberna was described; visually impaired, he is a human rights defender who does not receive any social assistance despite having a Certificate of Disability issued by the

99. As indicated above in this chapter<sup>167</sup>, the hearing also included reports of violations of the right to identity by the public authorities to the detriment of newborn children with disabilities and little chance of survival, as efforts to register them are denied.<sup>168</sup> With that, the State seeks to reduce infant mortality records and show that it has been overcome in Cuba.

100. Similar patterns of persecution, harassment, and threats against defenders of the rights of persons with disabilities, such as those already described in this chapter<sup>169</sup>, were reported to the Commission.<sup>170</sup>

101. The Commission reminds the Cuban State that non-discrimination and equality before the law are essential components of international human rights, and are fundamental for the enjoyment and exercise of all human rights. Accordingly, the State has the obligation to guarantee non-exclusion, no restrictions, and no preference whatsoever whose purpose or effect is to diminish or annul the recognition, enjoyment, or exercise, by persons with disabilities, of human rights and fundamental freedoms in the political, economic, social, cultural, and civil spheres, or in any other. At the same time, the State should create conditions of real equality for groups that have historically been excluded and are at greater risk of suffering discrimination.

## 7. Older persons

102. The IACHR has received information on the invisibility of the human rights situation of older persons in Cuba and the situation regarding their basic needs.<sup>171</sup> In Cuba, it has been documented that a significant proportion of older persons lack effective opportunities for enjoying a dignified life.<sup>172</sup> This is due to a confluence of variables, including increasing social inequality with age, and the need for appropriate social programs to cover the demand for care. Special mention should also be made of the particular pressure women face to care for older persons, which affects their insertion in the labor market and the democratic balance of family responsibilities.<sup>173</sup>

103. In view of the foregoing, the IACHR recommends to the Cuban State that it elevate the plural discussion on the challenges that older persons face when it comes to fully exercising their human rights, and then, once the legal and factual obstacles are identified, that it make the legal adjustments needed, as per the applicable international standards, and take affirmative or genuinely equal measures that translate into significant improvements in their quality of life, guaranteeing access to goods and services on an equal footing and without discrimination.

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competent authority (supporting information provided in the hearing on [Situation of persons with disabilities in Cuba](#), 164<sup>th</sup> period of sessions, September 5, 2017).

<sup>167</sup> See section on *Children and adolescents*.

<sup>168</sup> In this regard, the requesting organizations presented the case of HCAB who, after being born with infantile cerebral palsy due to alleged medical malpractice, was reportedly not entered in the Civil Registry until the risk of death had subsided; it is reported that there are eight similar cases that have not been publicly denounced for fear of reprisals (IACHR, Hearing on [Situation of persons with disabilities in Cuba](#), 164<sup>th</sup> period of sessions, September 5, 2017).

<sup>169</sup> See section on *Activism and dissidence: Right to personal liberty, security, and integrity, protection from arbitrary arrest, inviolability of the home, and inviolability and transmission of correspondence*.

<sup>170</sup> For example, they reported that on February 25, 2017, five members of the Red de Cultura Inclusiva Cuba were arbitrarily arrested and three were kept from leaving their homes, making it impossible to hold the meeting scheduled to organize the activities of that organization; and on August 15, 2017 Rolando Ferrer Espinosa was detained and threatened when preparing to attend a meeting of the organization in the central part of the country (IACHR, Hearing on [Situation of persons with disabilities in Cuba](#), 164<sup>th</sup> period of sessions, September 5, 2017).

<sup>171</sup> Cuba Possible, [Más viejos y desprotegidos: déficits y desigualdades en el cuidado hacia las personas mayores en Cuba](#), June 8, 2017.

<sup>172</sup> Cuba Possible, [Más viejos y desprotegidos: déficits y desigualdades en el cuidado hacia las personas mayores en Cuba](#), June 8, 2017.

<sup>173</sup> Cuba Possible, [Más viejos y desprotegidos: déficits y desigualdades en el cuidado hacia las personas mayores en Cuba](#), June 8, 2017.

## 8. Economic, social, cultural and environment rights (ES CER)

104. With respect to economic, social, cultural, and environmental rights, the Commission observes that the State of Cuba has continued to implement actions aimed at promoting and ensuring the effective enjoyment thereof. According to the information available, on April 11, 2017, the State issued new regulations in connection with upholding the right to housing on the island—given the high prices and housing shortage—in an effort to ensure that citizens are able to purchase unfinished houses or legalize residences built without the necessary documentation.<sup>174</sup> In the regulations, the “one-time sale of 16,887 affordable housing units currently under construction to citizens of the island who are able to pay the value of the property transfer and complete the building within five years, during which time the houses must be finished and legalized” stands out. Housing coverage is reportedly one of the most sensitive issues given that for decades new affordable housing has only been built for victims of the frequent hurricanes that hit the country or of collapses due to the poor condition of some buildings.<sup>175</sup> The information indicates that 20,021 victims of hurricanes who built their homes or began repairs without the proper documentation will also be able to legalize their situation, which will make them eligible for subsidies.<sup>176</sup>

105. Regarding the right to health, it is important to reiterate that deaths caused by infectious and parasitic diseases have fallen to 1.3 percent of the total number of deaths and, as validated by the World Health Organization (WHO), in 2015 it was revealed that Cuba was the first country in the world to eliminate mother-to-child transmission of HIV/AIDS and syphilis.<sup>177</sup>

106. It is also worth noting that the United Nations has recognized Cuba’s pro-environment efforts.<sup>178</sup> During the celebration of a national event to observe World Environment Day, held in the province of Sancti Spiritus, the United Nations resident coordinator in Cuba, Myrta Kaulard, stated that “Cuba was extensively involved in the preparation and negotiation of the 2030 Sustainable Development Agenda and the Paris Agreement, high-level instruments that envision the future efforts of the global community.”<sup>179</sup> The State’s plan—also known as *Tarea Vida* [Vital Work]—to tackle climate change is a document adopted by the Council of Ministers that brings together 11 tasks, among them the availability and efficient use of water as part of the way to contend with drought, the use of renewable sources of energy, food security, health, and tourism.<sup>180</sup> *Tarea Vida* contains a series of actions aimed at countering impacts in vulnerable areas, such as not allowing the building of new homes in coastal settlements and reducing croplands near the coasts or damaged by seawater intrusion into underground aquifers, etc.<sup>181</sup>

<sup>174</sup> *Nuevo Herald*, [Cuba renueva normas de vivienda ante altos precios y déficit habitacional](#) [Cuba overhauls housing regulations in view of high prices and a housing shortage], April 11, 2017.

<sup>175</sup> *Nuevo Herald*, [Cuba renueva normas de vivienda ante altos precios y déficit habitacional](#) [Cuba overhauls housing regulations in view of high prices and a housing shortage], April 11, 2017.

<sup>176</sup> *Nuevo Herald*, [Cuba renueva normas de vivienda ante altos precios y déficit habitacional](#) [Cuba overhauls housing regulations in view of high prices and a housing shortage], April 11, 2017.

<sup>177</sup> United Nations, Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under Article 9 of the Convention, CERD/C/CUB/19-21, September 9, 2016, paragraphs 126-135; World Health Organization, [The WHO validates countries’ elimination of mother-to-child transmission of HIV and syphilis](#), June 8, 2016; Pan-American Health Organization, [Factsheet: Mother-to-child transmission of HIV and syphilis](#), latest update, November 30, 2015; *Excelsior*, [Cuba elimina la transmisión de madre a hijo del VIH y de la sífilis](#) [Cuba eliminates mother-to-child transmission of HIV and syphilis], August 16, 2016.

<sup>178</sup> *Radio Rebelde*, [Naciones Unidas Reconoce labor de Cuba a favor del Medio Ambiente](#) [United Nations Recognizes Cuba’s Pro-environment Efforts], September 9, 2017.

<sup>179</sup> *Radio Rebelde*, [Naciones Unidas Reconoce labor de Cuba a favor del Medio Ambiente](#) [United Nations Recognizes Cuba’s Pro-environment Efforts], September 9, 2017.

<sup>180</sup> *Radio Rebelde*, [Naciones Unidas Reconoce labor de Cuba a favor del Medio Ambiente](#) [United Nations Recognizes Cuba’s Pro-environment Efforts], September 9, 2017.

<sup>181</sup> *Radio Rebelde*, [Naciones Unidas Reconoce labor de Cuba a favor del Medio Ambiente](#) [United Nations Recognizes Cuba’s Pro-environment Efforts], September 9, 2017.

107. The IACHR has received information about serious situations of race- and gender-based discrimination in Cuba.<sup>182</sup> An investigation conducted by a group of activists and human rights defenders between 2016 and 2017 was able to determine that among the employers surveyed, none were black, 50% were mestizo, and 50% white. Labor stratification is widespread, also at a regional level. Within this population, women suffer even more discrimination.<sup>183</sup>

108. According to information received by the IACHR at the hearing held during its 163<sup>rd</sup> Regular Session, persons with disabilities in Cuba come up against serious obstacles when it comes to enjoying their rights in the same conditions as other people, insofar as such enjoyment relies primarily on policy judgments made by government entities. This situation has a troubling impact on the right to health of persons with disabilities.<sup>184</sup>

109. With respect to the right to education, it should be noted that information has been received that indicates a number of impacts on Cuba's education plan.<sup>185</sup> Indeed, reduced investment in education, and in social spending in general, was verified and this seemingly had an effect on the education system. The growth of the older adult population has reportedly led to increased social spending at the same time that the active working population is shrinking, causing an inevitable economic imbalance, which is reflected in sectors like education. The information reveals that teaching is among the worst paid professions in the country,<sup>186</sup> making it difficult for teachers to survive and prompting an exodus of professionals to other, better-paid fields, which has resulted in a chronic lack of teachers.

110. The IACHR also believes it is important to mention the impact of Hurricane Irma, which hit the island between September 7–10, 2017, triggering severe coastal flooding, strong winds, and intense rains, mainly in the north from Camagüey to Artemisa.<sup>187</sup> Camagüey, Ciego de Avila, Sancti Spiritus, and Villa Clara were the provinces most affected.<sup>188</sup>

111. According to the data provided by the *Oficina Nacional de Estadísticas e Información* [National Office of Statistics and Data] (ONEI) and the reports given daily by the three chiefs of the Strategic Regions to the chairman of the National Defense Council, of the 1,863,589 people who received assistance in the aftermath of Hurricane Irma, 11,689 were still receiving state support in the form of food and other essentials in Ciego de Avila, Camagüey, Villa Clara, Holguin, Sancti Spiritus, Havana, Las Tunas, Matanzas, and Guantanamo.<sup>189</sup> Reports indicate that 158,554 houses were affected: 14,657 total collapses and 16,646 partial collapses.<sup>190</sup>

112. The data available reveal that in response to this situation, the government decided that the State Budget would cover 50 percent of the price of construction materials sold to victims whose homes were

<sup>182</sup> *Negación, Exclusión y Represión: Informe sobre la situación de derechos humanos de la población afrocubana* [Denial, Exclusion, and Repression: Report on the human rights situation of the afro-Cuban population]. *Comité Ciudadanos por la Integración Racial* [Citizens' Committee for Racial Integration] (CIR), June 2017.

<sup>183</sup> *Discriminación racial en el mercado laboral cubano: Informe investigativo realizado desde la sociedad civil independiente* [Racial Discrimination in the Cuban Labor Market: Investigative report conducted by independent civil society]. *Comité Ciudadanos por la Integración Racial* [Citizens' Committee for Racial Integration] (CIR), May 2017, p. 52.

<sup>184</sup> VID, <https://www.oas.org/es/cidh/prensa/comunicados/2017/157.asp>.

<sup>185</sup> *Nuevo Harold*, [Las estadísticas reflejan la grave crisis del sistema educativo cubano](#) [The data reflect serious crisis in the Cuban education system], September 9, 2017.

<sup>186</sup> *Nuevo Harold*, [Maestros de escuela cubanos, la pobre remuneración hace inevitable el éxodo](#) [Cuban school teachers: Low pay makes their exodus inevitable], September 9, 2017.

<sup>187</sup> *Gramma*, Official Daily of the Central Committee of the Communist Party of Cuba. Havana, September 9, 2017.

<sup>188</sup> *Gramma*, Official Daily of the Central Committee of the Communist Party of Cuba. Havana, September 9, 2017.

<sup>189</sup> *Gramma*, Official Daily of the Central Committee of the Communist Party of Cuba. Havana, September 9, 2017.

<sup>190</sup> *Gramma*, Official Daily of the Central Committee of the Communist Party of Cuba. Havana, September 9, 2017.

either totally or partially destroyed<sup>191</sup> and 50 percent of the current retail price of basic goods for the affected population, including mattresses, toiletries and hygiene products, cooking gear, and home furnishings (in cases of greater need, 100% of the value has been covered); as well as to have approximately 900 prepared food stands set up, with reduced prices, among others.<sup>192</sup>

113. It is important to note as well that the information available indicates that Cuba will also receive aid from other countries<sup>193</sup> and organizations, like the World Food Program (WFP), which announced they would be offering emergency aid in the amount of US\$7.2 million given the devastation caused by Hurricane Irma in Cuba.<sup>194</sup>

114. In this regard, the IACHR expresses its solidarity with the victims and all those affected by Hurricane Irma and urges the State to continue to deploy relevant efforts to assist the victims, especially individuals, groups, and communities living in situations of historical discrimination and poverty.

115. With this in mind, the IACHR encourages the State of Cuba to continue to promote and effectively protect economic, social, and cultural rights.

## V. CONCLUSIONS AND RECOMMENDATIONS

116. The Commission salutes the openness of the Cuban Government on receiving, in the course of 2017, the United Nations Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro<sup>195</sup>, and the United Nations Independent Expert on human rights and international solidarity, Virginia Dandan<sup>196</sup>, and urges it to continue opening up to the monitoring done by international human rights mechanisms. In this vein, the IACHR wishes to reiterate its interest in making its first onsite visit to Cuba in order to initiate a closer relationship and a respectful dialogue with the Cuban State and people, and thereby to provide such technical support in the area of human rights as may be required to foster their observance and defense.

117. The IACHR also applauds the actions taken to foster economic, social, and cultural rights in Cuba and highlights the international cooperation that the people of Cuba offer to the region in the areas of health, education, and culture, among others.

118. The Commission also notes with great concern that, mindful of the recommendations made in the chapters IV of annual reports from prior years, and in light of the information collected this year, the Commission does not observe any improvement in aspects such as the violations of the rights to liberty and integrity, arbitrary restrictions on the right to vote and to participate in government, the freedom of expression and dissemination of ideas, violations of due process guarantees, and unlawful limitations on the right to residence and movement, among others. Moreover, the IACHR regrets that the official information available is so limited, and also laments the historical distance between the State and this regional human rights body.

<sup>191</sup> *Nuevo Herald*, [El Gobierno cubano financiará mitad reconstrucción casas dañadas por huracán](#) [Cuban Government will fund half of the reconstruction of houses damaged by the hurricane], September 9, 2017.

<sup>192</sup> *Gramma*, Official Daily of the Central Committee of the Communist Party of Cuba. Havana, September 9, 2017.

<sup>193</sup> *Nuevo Herald*, [Cuba recibe donativos de varios países para damnificados del huracán Irma](#) [Cuba receives donations from several countries for victims of Hurricane Irma], September 9, 2017; *Cuba si*, [China entregará donaciones a Cuba tras embate del huracán Irma](#) [China will deliver donations to Cuba in the wake of Hurricane Irma], September 9, 2017.

<sup>194</sup> TVI24, [Huracán Irma: ONU ayuda a Cuba con seis millones de euros](#) [Hurricane Irma: UN helps Cuba with six million euros], September 9, 2017.

<sup>195</sup> OHCHR, [Declaración del final de la visita a Cuba de la Relatora Especial sobre la trata de personas, especialmente mujeres y niños, Maria Grazia Giammarinaro \(10-14 de abril de 2017\)](#), April 20, 2017.

<sup>196</sup> OHCHR, [Experta de la ONU aplaude la solidaridad internacional de Cuba, pero pide progreso en DD HH](#), July 29, 2017.

119. This is why, pursuant to its mandate, the Commission urges the Cuban State to:

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

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

As regards the independence of the Judicial Branch:

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

As regards activists and dissidents:

3. Adopt adequate prevention mechanisms to avoid acts of harassment, threats, assaults, stigmatization, persecution, and criminalization committed by the state authorities, or with their acquiescence, to the detriment of dissidents, activists, human rights defenders, journalists, and other media workers. The following measures are considered necessary: It is recommended that the education and training of public officials, and especially of police and security officials, include the importance of publicly condemning every act of aggression; take the measures necessary to prevent violence in the context of public demonstrations; establish reasonable limits, governed by the principles of legality, necessity, and proportionality, to ensure their peaceful development, as well as undertake serious, impartial, and effective investigations into the aggressions, threats, and acts of intimidation committed to the detriment of those already referred to;
4. Ensure that in the exercise of the right to movement, human rights defenders, activists, independent journalists, and social and political leaders are not subjected to unjustified obstacles, refraining from confiscating or destroying their materials and working instruments;
5. Abolish the death penalty in the Criminal Code and all related provisions, or at least impose a moratorium on its application, and in the meantime adopt the legislative and other measures necessary for ensuring that the death penalty not be imposed in proceedings in which due process guarantees are not observed and in which no free trial is held before a competent, independent, and impartial court, previously established by law, and in the face of allegations of having engaged in criminally punishable conduct provided for in ambiguous and vague legal provisions;
6. Eliminate the references to “dangerousness” and “special proclivity of a person to commit crimes,” contained in the Criminal Code; and
7. Adjust the procedural laws of the Cuban State to applicable international standards on due process so that persons who go before the courts for a determination of their rights and responsibilities can have minimum legal guarantees for mounting their defense.

As regards the right to freedom of expression:

8. Adopt the measures necessary for guaranteeing the free exercise of journalism and the security of those subject to a special risk because of exercising their right to freedom of expression, whether the threats come from state agents or private persons. In addition, besides guaranteeing diligent, impartial and effective investigations into the facts set forth above, the IACHR urges the State of Cuba to guarantee that the persons responsible be tried

by impartial and independent courts, removing the legal obstacles to investigating and punishing such offenses;

9. Promote the repeal of the laws that enshrine the offense of contempt (*desacato*), whatever form they take, as such laws are contrary to inter-American standards and restrict public debate, which is an essential element of any democracy. In addition, reform the criminal defamation statutes that aim to protect reputation and honor when information is disseminated on matters of public interest, on public officials, or on candidates for public positions; encourage democratic debate through declarations, practices, and public policies that promote tolerance and respect for others, in equal conditions, whatever their thinking or ideas; and
10. Expand the connectivity of the Internet without restrictions, thereby promoting universal access to the Internet to ensure the effective enjoyment of the right to freedom of expression. The IACHR also reiterates to the Cuban government that it should guarantee that the provisions that regulate access to the Internet in Cuba observe the international provisions that protect the right of freedom of expression and thought, including the right to privacy and the right to seek, receive, and disseminate ideas and information without unnecessary restrictions.

As regards Afro-descendent persons:

11. Adopt urgent measures aimed at overcoming the situation of structural discrimination that affects the Afrodescendant population, as well as positive measures to eliminate racial discrimination and ensure that Afrodescendant persons can exercise their rights in equal conditions as the rest of the population; and
12. Adopt the measures necessary for Afro-Cuban women to be able to exercise their rights to assembly, freedom of thought and expression, residence, and movement, among others, free from all forms of violence and discrimination. To that end, it is recommended that any public official or individual who, having been guaranteed access to justice and judicial protection, has been found responsible for such acts, be investigated, prosecuted and punished in exemplary fashion.

As regards children and adolescents:

13. Review the national legislation with a view to bringing it into line with the Convention on the Rights of the Child, especially the Code of the Family, the Code of Children and Youth, and the Criminal Code, all of which predate the entry into force of the Convention on the Rights of the Child. While many programs and practical interventions are in line with the Convention, there needs to be a comprehensive updating of the laws to ensure that the statutes respect the rights of children in keeping with international standards;
14. Adapt the definition of child to what is established in the Convention on the Rights of Child, i.e. grant the special protection recognized by international human rights law to all children and adolescents under 18 years of age; and
15. Review the laws, policies, and practices to guarantee effective protection of children and adolescents from all forms of exploitation, in particular labor and sexual, and offer victims adequate care.

As regards LGBTI persons:

16. Implement adequate and effective efforts for the protection of all the rights of LGBTI persons and of the defenders of their rights.

As regards persons with disabilities:

17. Adopt the measures necessary for guaranteeing persons with disabilities access to social programs and public services of health and education, without any discrimination whatsoever. In addition, facilitate the free assembly, association, expression, and discussion of ideas so as to guarantee the plural participation of the population in the design of public policies and social programs aimed at addressing the pressing needs of this group.

As regards older persons:

18. Foster greater plural discussion on the challenges that older persons face when it comes to fully exercising their human rights. Once the legal and factual obstacles are identified, adapt the domestic legislation and adopt the affirmative measures necessary to ensure access to goods and services in equal conditions and without discrimination.

As regards ESCER:

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