

CUBA

I. HUMAN RIGHTS SITUATION IN CUBA

287. Based on the criteria set forth by the IACHR in 1997 to identify the states whose human rights practices merit special attention, the human rights situation in Cuba fits under the first and fifth criteria, which are the failure to observe the political rights set forth in the American Declaration and the persistence of structural situations that have a serious and grave impact on the enjoyment and observance of the fundamental rights enshrined in the American Declaration.

288. The IACHR has observed and evaluated the human rights situation of the Cuban State in the course of 2010, and decided to include, in this chapter of its annual report, considerations regarding the situation of political rights; guarantees of due process and independence of the judicial branch; restrictions on the right of residence and movement; deprivation of liberty of political dissidents; restrictions on the freedom of expression; and the situation of human rights defenders. Consideration is also given to the economic and trade sanctions imposed on the Government of Cuba. In this respect, the IACHR reiterates its position in terms of the impact of such economic sanctions on the human rights of the Cuban population, which is why it insists that the embargo should be ended.

289. Special mention should be made this year of the release of dissidents, opposition figures, human rights activists, and independent journalists who were arrested in March 2003 for exercising their right to freedom of expression, most of them victims in case 12,476 approved by the IACHR in October 2006. The IACHR expressed its positive view of this decision in press release 69/10 of July 13, 2010, and encouraged the Cuban State to continue and release all political prisoners. Similarly, the IACHR values that, according to the United Nations Children's Fund (UNICEF), in Cuba there are no problems of severe child malnutrition and reiterates its recognition of the gains in Cuba in relation to the millennium development goals set by the United Nations.

290. In order to draw up this report, the Commission has obtained information from international organizations, civil society, and the Government of Cuba through its official websites. In addition, it received information in the public hearing held during its 140th regular period of sessions.

291. On February 2, 2011, the Commission sent this report to the State of Cuba and asked for its observations. The State did not respond.

292. The Commission considers it important to take into account, in this report, Resolution AG/RES. 2438 (XXXIX-O/09)⁴⁷⁶ of the OAS General Assembly of June 3, 2009, which set aside the decision adopted in 1962 to exclude the Government of Cuba from active participation in the OAS. This decision opened up new possibilities for developing, at the request of Cuba's Government, a dialogue aimed at its renewed full participation in the OAS.

293. The Commission observes that the information available on the human rights situation in Cuba is scant as a result of a state policy restricting the flow of information. For example, the IACHR has received information on more than one occasion on allegations of torture in Cuba, but the restrictions on access to information imposed by the Cuban Government made it impossible for the Commission impossible to verify the truth of those allegations. This constitutes an obstacle to the work of the Commission and is not consistent with the international obligations taken on by the Cuban State.

II. COMPETENCE OF THE IACHR TO OBSERVE AND EVALUATE THE HUMAN RIGHTS SITUATION IN CUBA

294. The competence of the Inter-American Commission on Human Rights to observe the human rights situation of the member states derives from the Charter of the OAS, the Commission's Statute, and the Commission's Rules of Procedure. According to the Charter, all member states undertake to respect the fundamental rights of individuals, which, in the case of those states that are not

⁴⁷⁶ Resolution AG/RES. 2438 (XXXIX-O/09) of the OAS General Assembly, of June 3, 2009.

parties to the Convention, are the rights established in the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration”), which constitutes a source of international obligations.⁴⁷⁷ The Statute entrusts the Commission with paying special attention to the task of observing the human rights recognized in Articles I (right to life, liberty, and personal security), II (right to equality before the law), III (right to religious freedom and worship), IV (right of freedom of investigation, opinion, expression, and dissemination), XVIII (right to justice), XXV (right to protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration on exercising its jurisdiction with respect to those countries that are not parties to the American Convention on Human Rights (hereinafter “American Convention”).⁴⁷⁸

295. For decades, the Inter-American Commission on Human Rights has paid special attention to the human rights situation in Cuba. On January 31, 1962, the Government of Cuba was excluded from participation in the inter-American system by means of Resolution VI, adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs, held in Punta del Este (Uruguay) from January 22 to 31, 1962.⁴⁷⁹ From that moment, the position of the Commission was to recognize the Cuban State as “juridically answerable to the Inter-American Commission in matters that concern human rights” considering that it “is a party to the international instruments initially adopted in the Western 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.”⁴⁸⁰

296. On June 3, 2009, during the Eighth Meeting of Consultation of Ministers of Foreign Affairs, which was held in Honduras, the General Assembly of the Organization of American States terminated the resolution that excluded the Government of Cuba from its participation in the OAS. In addition, it established that “the participation of the Republic of Cuba in the OAS will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS.”

297. Exercising its competence, the IACHR has observed and evaluated the human rights situation in Cuba in special reports⁴⁸¹; in Chapter IV of the Annual Report⁴⁸², and through the case

⁴⁷⁷ I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, paras. 43-46.

⁴⁷⁸ Statute of the IACHR, Article 20(a).

⁴⁷⁹ The complete text of Resolution VI can be found in the “Eighth Meeting of Consultation of the Ministers of Foreign Affairs to serve as an Organ of Consultation in Application of the Inter-American Reciprocal Assistance Treaty, Punta del Este, Uruguay, January 22 to 31, 1962, Meeting Documents,” Organization of American States, OEA/Ser.F/II.8, doc. 68, pages 17-19. The above mentioned Resolution VI, established:

1. That adherence by any member of the Organization of American States to Marxism-Leninism is incompatible with the inter-American system and the alignment of such a government with the communist block breaks the unity and solidarity of the hemisphere.
2. That the present Government of Cuba, which has officially identified itself as a Marxist-Leninist government, is incompatible with the principles and objectives of the inter-American system.
3. That this incompatibility excludes the present Government of Cuba from participation in the inter-American system.
4. That the Council of the Organization of American States and the other organs and organizations of the inter-American system adopt without delay the measures necessary to comply with its resolution.

⁴⁸⁰ IACHR, *Annual Report 2002*, Chapter IV, Cuba, paras. 3-7. See also IACHR, *Annual Report 2001*, Chapter IV, Cuba, paras. 3-7. IACHR, *Seventh Report on the Situation of Human Rights in Cuba*, 1983, paras. 16-46.

⁴⁸¹ See IACHR, Special Reports of the following years: 1962; 1963; 1967; 1970; 1976; 1979; 1983.

⁴⁸² See IACHR, Chapter IV of the Annual Report for the following years: 1990-1991; 1991; 1992-1993; 1993; 1994; 1996; 1997; 1998; 1999; 2000; 2001; 2002; 2003; 2004; 2005; 2006; 2007, 2008.

system.⁴⁸³ In addition, the IACHR on several occasions has asked the Cuban State to implement precautionary measures in order to protect the life and personal integrity of Cuban citizens.⁴⁸⁴

298. In this context, the Commission reiterates its commitment to work with the Cuban State and appeals for a dialogue with a view to contributing to the development and strengthening of human rights in that country. In particular, it urges the Cuban State to respond to the requests of the IACHR to follow up on the matters that refer to the human rights situation of all persons in Cuba.⁴⁸⁵

III. ECONOMIC SANCTIONS

299. In prior reports the IACHR has reported on the economic and trade embargo ordered by the United States of America against Cuba as of 1961, and the impact of those economic sanctions on the human rights of the Cuban population. Especially important is the negative impact that the embargo on Cuba has had on improving the economic conditions of Cubans.

300. In this respect, the application of economic sanctions against Cuba continues. On October 26, 2010, the United Nations General Assembly approved, by a large majority, a resolution that once again calls for lifting the economic and trade embargo that the United States has imposed on Cuba for more than half a century. The document secured the almost unanimous support of the 192 countries that make up the United Nations, with 187 members in favor, two against (the United States and Israel), and three abstentions (Marshall Islands, Palau, and Micronesia). This is the 19th consecutive occasion on which the United Nations General Assembly has approved such a resolution calling for an end to the economic and trade sanctions.⁴⁸⁶

301. In this respect, the IACHR reiterates its position in terms of the impact of such economic sanctions on the human rights of the Cuban population; accordingly, it reiterates and insists that the embargo should end.⁴⁸⁷ Without prejudice to the foregoing, the economic embargo imposed on Cuba does not exempt the State from carrying out its international obligations, nor does it excuse it for violations of human rights described in this report.

IV. STRUCTURAL SITUATIONS THAT HAVE A GRAVE IMPACT ON THE FULL ENJOYMENT AND OBSERVANCE OF HUMAN RIGHTS IN CUBA

302. The restrictions on political rights, freedom of expression and of dissemination of thought have over the decades come to constitute permanent and systematic violations of the human rights of the

⁴⁸³ See: IACHR, Report on the Merits No. 47/96, Case 11,436, Victims of the Tugboat "13 de marzo," October 16, 1996; IACHR, Report on the Merits No. 86/99, Case 11,589, Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales, September 29, 1999; IACHR, Admissibility Report No. 56/04, Petition 12,127, Vladimiro Roca Antúnez *et al.*, October 14, 2004; IACHR, Report on Admissibility No. 57/04, Petitions 771/03 and 841/03, Oscar Elías Biscet *et al.*, October 14, 2004; IACHR, Report on Admissibility No. 58/04, Petition 844/03, Lorenzo Enrique Copello Castillo *et al.*, October 14, 2004; IACHR, Report on the Merits No. 67/06, Case 12,476, Oscar Elías Biscet *et al.*, October 21, 2006; IACHR, Report on the Merits No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006.

⁴⁸⁴ The Cuban State, when notified of a decision of the IACHR, does not respond, or sends a note indicating that the Inter-American Commission on Human Rights does not have the jurisdiction and that the Organization of American States does not have the moral authority to analyze matters in Cuba.

⁴⁸⁵ Cuba has not responded to the communications directed to it by the Commission in relation to its annual reports, processing of cases, or precautionary measures, which are the instruments available to the IACHR to perform its functions aimed at protecting human rights.

On May 8, 2009, Fidel Castro criticized the section on Cuba of Chapter IV of the IACHR's Annual Report for 2008. In http://www.eluniversal.com/2009/05/08/int_ava_fidel-castro-calific_08A2322563.shtml

⁴⁸⁶ See articles at the following links: http://www.lostiempos.com/diario/actualidad/internacional/20101027/la-onu-condena-embargo-a-cuba_96190_186010.html; <http://www.europapress.es/internacional/noticia-asamblea-onu-condena-decimonovena-vez-bloqueo-eeuu-cuba-20101026194518.html>.

⁴⁸⁷ On October 30, 2007, the United Nations General Assembly adopted resolution A/RES/62/3 on the "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba." See at www.un.org

inhabitants of Cuba. This situation has been particularly aggravated by the lack of judicial independence, which is required for impartial adjudication of the claims of persons affected.

1. Political Rights

303. Political rights are of fundamental importance and are closely related to all other rights that make democracy possible. According to the Inter-American Democratic Charter, signed in Lima, Peru, on September 11, 2001, representative democracy is the system recognized and required by the OAS for stability, peace, and development in the region. The existence of free elections, independent and effective public institutions, and full respect for freedom of expression, are among the foundational characteristics of democracy that cannot be evaluated in isolation. From this perspective, the full guarantee of human rights is not possible without the effective and unrestricted right of persons to build and participate in political groups.

304. In that sense, “the right to political participation makes possible the right to organize parties and political associations, which through open discussion and ideological struggle, can improve the social level and economic circumstances of the masses and prevent a monopoly on power by any one group or individual⁴⁸⁸”. Furthermore, the Commission considered that “governments have, in the face of political rights and the right to political participation, the obligation to permit and guarantee: the organization of all political parties and other associations, unless they are constituted to violate human rights; open debate of the principal themes of socioeconomic development; the celebration of general and free elections with all the necessary guarantees so that the results represent the popular will.”⁴⁸⁹

305. For its part, “the right to vote is one of the essential elements for the existence of democracy and one of the ways in which citizens exercise their right to political participation. This right implies that citizens may freely and equally elect who will represent them.”⁴⁹⁰ At the same time, political participation by exercise of the right to be elected presupposes that citizens can run as candidates in conditions of equality and can hold elective public office if they obtain the number of votes needed; notably the American Convention prohibits the suspension of this right even in states of emergency.⁴⁹¹ In this regard, the Commission has repeatedly observed that the lack of free elections in Cuba, according to the internationally accepted standards, violates the right to political participation enshrined in Article XX of the American Declaration of the Rights and Duties of Man.

306. The Commission has established that the right to freedom of expression and information is one of the main mechanisms of society for exercising democratic control over the persons entrusted with matters of public interest.⁴⁹² The link between freedom of expression and democracy is so important that, as the Inter-American Commission has explained, the very objective of Article 13 of the American Convention is to strengthen the functioning of pluralist and deliberative democratic systems by protecting and fostering the free circulation of information, ideas, and expressions of all sorts.⁴⁹³ Full recognition of

⁴⁸⁸ IACHR, Ten years of activities 1971-1981, General Secretariat of the Organization of American States, Washington D.C., 1982, p. 334.

⁴⁸⁹ IACHR, Ten years of activities 1971-1981, General Secretariat of the Organization of American States, Washington D.C., 1982, p. 335.

⁴⁹⁰ IACHR, *Annual Report* 1990-1991, p. 557; IACHR, *Second Report on the Situation of Human Rights in Peru*, 2000, Chapter IV, Political Rights, A.1. See also in I/A Court H.R., *Case of Castañeda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184.

⁴⁹¹ Article 27: Suspension of Guarantees, of the American Convention on Human Rights, establishes at section 2: “The foregoing provision does not authorize any suspension of the following articles: ... and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.” See also, I/A Court H.R., *Case of Castañeda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184 and I/A Court H.R. *The Word “Laws” in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 34; and *Case of Yatama v. Nicaragua*. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 23, 2005. Series C No. 127, para. 191.

⁴⁹² IACHR, Report No. 111/06, Case 12,450, Merits, Eduardo Kimel, Argentina, of October 26, 2006; IACHR, *Third Report on the Situation of Human Rights in Paraguay*, para. 35.

⁴⁹³ IACHR, *Annual Report* 2008, Volume III, Chapter III, para. 8. IACHR, in reference to the arguments before the Inter-American Court of Human Rights in the *Ivcher Bronstein v. Peru*. Transcribed in the judgment of the I/A Court H.R. of February 6,

freedom of expression is a fundamental guarantee to ensure the rule of law and democratic institutions.⁴⁹⁴ The link between democracy and freedom of expression at this point in history is evident: it is not possible to uphold democratic government without genuine and broad respect for the right to freedom of expression.⁴⁹⁵

307. The State has argued that “Cuba’s democratic system is based on the principle of ‘government of the people, by the people and for the people.’” It adds: “The Cuban people participate in the exercise and active control of Government through its political and civil institutions and in the framework of its laws.”⁴⁹⁶ In addition, it has indicated that the restrictions imposed by law on the enjoyment of some political rights in Cuba have been the minimal ones essential to guarantee the right to self-determination, peace, and life of the whole people, as a response to the growing anti-Cuban aggressiveness of “the Empire”.⁴⁹⁷

308. With respect to freedom of opinion, expression and the press, the Government of Cuba has indicated that Article 53 of the Constitution recognizes this right for all citizens. It adds that the material conditions for its exercise are determined by the high educational and cultural level and by the fact that the press, radio, television, film, and other mass means of communication are socially owned. The State affirms that a wide-ranging debate exists in Cuba as to a broad array of issues that go to the political, economic, social, and cultural life of both Cuba and the world.⁴⁹⁸ With respect to restrictions on freedom of opinion and expression, it has indicated that these rights are limited in respect of few persons, justifying the restrictions in the following terms:

The Cuban people only restrict the “freedom” of opinion and expression of those few who would sell their services as mercenaries to the policy of hostility, aggression and genocidal blockade of the United States government against Cuba. By applying such restrictions, Cuba is acting by virtue of not just its national legislation, but also the numerous international human rights instruments and successive resolutions passed by the United Nations General Assembly which have demanded respect for the free determination of peoples and the cease of the economic, commercial and financial blockade being applied by the government of the United States against Cuba.⁴⁹⁹

309. The Commission considers that one of the main criteria for drawing up this report is the lack of free elections in Cuba in keeping with internationally accepted standards, which -as stated- violates the right to political participation enshrined in Article XX of the American Declaration of the Rights and Duties of Man, which provides:

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

310. Article 3 of the Inter-American Democratic Charter defines the elements of democratic government as follows:

...continuation

2001, Series C No. 74. IACHR, para. 143(d); and the arguments before the Inter-American Court of Human Rights in the case of “The Last Temptation of Christ” (Olmedo Bustos *et al.* v. Chile). Transcribed in the judgment of February 5, 2001, Series C No. 73, para. 61(b).

⁴⁹⁴ IACHR, Third Report on the Situation of Human Rights in Paraguay, 2001, Chapter VI, B.3.

⁴⁹⁵ IACHR, Application to the I/A Court H.R. against the Republic of Paraguay – Case 12,032, Ricardo Canese, para. 31.

⁴⁹⁶ National report presented by the State of Cuba; UN, Human Rights Council, Working Group on Universal Periodic Review, Fourth session. Geneva, February 2 to 13, 2009, A/HRC/WG.6/4/CUB/1; November 4, 2008, para. 8.

⁴⁹⁷ In Chapter 9, “White Book 2007,” published at the official website of the Ministry of Foreign Affairs of Cuba.

⁴⁹⁸ National report submitted by the State of Cuba, UN, Human Rights Council, Working Group on the Universal Periodic Review, Fourth session, Geneva, February 2 to 13, 2009, A/HRC/WG.6/4/CUB/1; November 4, 2008, paras. 44 and 45.

⁴⁹⁹ See in Chapter 9, “White Book 2007,” published on the official website of the Ministry of Foreign Affairs of Cuba, *op. cit.*

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.

311. The American Declaration and the Inter-American Democratic Charter reflect a broad conception of representative democracy which, as such, rests on the sovereignty of the people and in which the functions by which power is exercised are performed by persons chosen in free elections representative of the popular will. In the view of the Commission, such aspects are not present in Cuban elections, which are characterized precisely by the lack of plurality and independence and the absence of a framework of free access to various sources of information. In light of the international standards indicated, the Commission reiterates that the lack of free and fair elections, based on universal suffrage and secret ballot as the expression of popular sovereignty⁵⁰⁰, violates the right of the Cuban people to political participation.

⁵⁰⁰ Article 3 of the Inter-American Democratic Charter establishes as one of the essential elements of representative democracy holding periodic, free, and fair elections based on universal suffrage and secret ballot as an expression of the sovereignty of the people; and the plural regime of political parties and political organizations.

- **Political Repression**

312. In the course of 2010, the Commission continued to receive information about the adoption by the Government of a tactic of political repression based on systematic arrests for several hours or a few days, threats, acts of repudiation, and other forms of harassment of opposition activists.

313. According to the nongovernmental organization Comisión Cubana de Derechos Humanos y Reconciliación Nacional, for the first time in several years the government locked up a significant number of new political prisoners in just one month: in August eight persons were incarcerated (five from Baracoa, Guantánamo, and three from the city of Havana). In addition, among the documented cases of persons temporarily detained for political motives, so far this year the Comisión Cubana de Derechos Humanos y Reconciliación Nacional has the following on record: January: 117, February: 235, March: 83, April: 162, May: 120, June: 104, July: 125, August: 184, September: 90 and October: 310. According to that organization, political repression in the month of October increased notably in comparison with all previous months of 2010.

314. In addition, on July 20, 2010, the IACHR granted precautionary measures on behalf of Reina Luisa Tamayo Danger⁵⁰¹, the mother of Orlando Zapata Tamayo, one of the victims in Case 12,476, adopted by the IACHR on October 21, 2006⁵⁰², who died of starvation after 85 days on a hunger strike.⁵⁰³ The request for precautionary measures alleged that she was suffering constant threats and harassment for her involvement in various public protests since her son's death. In addition, the request indicated that she had been the victim of acts of violence, in which she was alleged to have been beaten and one of her arms fractured. According to the testimony of Reina Luisa Tamayo Danger, received at the Secretariat, on March 17, 2010, she was the victim of blows, along with her daughter and other members of the Damas de Blanco (Ladies in White), as they were leaving the church in Santa Bárbara (district of Parra). She alleges that the authorities beat her and kicked her while shouting "*negra mierda*" ("black bitch").⁵⁰⁴

315. Notwithstanding the precautionary measures granted, the IACHR received information that indicates that on October 31, 2010, 39 persons of a group of 46 activists and relatives of Orlando Zapata Tamayo, including Reina Luisa Tamayo Danger, were said to have been detained when headed to the grave of Orlando Zapata Tamayo, located in the Banes Cemetery. This group of persons was said to have participated in the Sunday mass at the church known as Iglesia de la Caridad in Banes and were staging a march through the streets of that city towards the cemetery when 29 of them were allegedly stoned by covert agents of the State Security agency (Seguridad del Estado) and then arrested.⁵⁰⁵

316. According to the testimony of Martha Díaz Rondón⁵⁰⁶:

A lieutenant colonel and three others brought us in a small white bus. They let us out here, and each one to their home, Naoky, Gertrudis, Daniel Mesa Cantillo, Ramón Reyes Oramas, Juan Oriol Verdecia (my husband) and myself, Martha Díaz Rondón. We were brutally beaten, they beat all of

⁵⁰¹ The Inter-American Commission asked the Cuban State to adopt the measures necessary to guarantee the life and physical integrity of Reina Luisa Tamayo Danger, to coordinate the measures to be adopted with her, and to report on the actions adopted to investigate the facts that gave rise to the adoption of precautionary measures.

⁵⁰² In this case, the IACHR recommended to the State of Cuba that it order the immediate and unconditional release of all the victims, setting aside their convictions for having been based on laws that impose illegitimate restrictions on their human rights. The report also recommended adopting the measures necessary to bring its laws, procedures, and practices into line with international human rights provisions, to make reparation to the victims and their next-of-kin for the material and non-material injury suffered because of the violations of the American Declaration established in the report, and to adopt the measures necessary to prevent the repetition of similar acts.

⁵⁰³ IACHR, Press Release 22/10, February 26, 2010 – IACHR condemns death of Orlando Zapata in Cuba.

⁵⁰⁴ Audio presented by the Directorio Democrático Cubano, July 1, 2010, recorded by Diario La Habana.

⁵⁰⁵ <http://lacomunidad.elpais.com/nicolasaguila/2010/11/1/represion-brutal-contra-reina-luisa-tamayo-y-activistas>

⁵⁰⁶ Testimony obtained from the website of the Ladies in White, http://www.damasdeblanco.org/index.php?option=com_content&view=article&id=538%3Atestimonio-de-martha-diaz-rondon-detenido-el-31-de-octubre-de-2010-en-banes-holquin-junto-con-reina-tamayo&catid=13%3Aarchivo-derechos-humanos&Itemid=5.

us brutally, they put us on the busses beating us, that was the case of each of us who was there, even Reina. That is, if they beat Reina, what can we expect?

They humiliated us, they stripped me, they forced me to remove my panties and do squats in front of the guards. The guards saw us, for they had the doors open, they did that here in Banes to Gertrudis Ojeda Suárez, Dulce María, Bárbara Portal Prado, another girl, and Maritza Cardoso Romero de Moa, that was humiliation. They stripped us and the guards themselves were seeing us. We said: "Hey close the doors, they're looking at us," but there they were, agents of the Police and State Security, who were looking on purpose, when they were searching us and then doing squats. They were women who take care of prisons, large mulatto women, who were administering the blows.

They hit Gertrudis on the chin, and it's swollen; they grabbed us and they subdued us, the men and the women came at us, that was a big deal, what they did to us, and they humiliated us. Nonetheless, at the facility called *Instrucción* they did the same thing, they stripped me, they made me take off my blouse and everything and do squats, and lower my pants, they treated us poorly, poorly.

They gave us a letter of warning that we could be subject to the crime of dangerousness or the Gag Law 88 if we continued supporting Reina Luisa Tamayo Danger. We answered that we were going to continue, then they told us that we were warned, that we had a warning letter that we could go to jail.

They put a cushion on our abdomen to capture our odor, they took our fingerprints, all ten fingers, they measured us, they weighed us, and they took photographs of us.

From Banes they took us to Pedernales, in the municipality of Holguín.

317. According to the information received, Martha Díaz Rondón was allegedly detained at the Banes Cemetery on October 31 at approximately 10 a.m. and released on November 1, 2010, at 9 p.m. In addition, Reina Luisa Tamayo Danger was said to have been released on October 31 after having been harshly beaten about the mouth, neck, and arms. Marlon Martorell, an activist who was allegedly in the group, indicated to the media that at the moment when Reina Luisa Tamayo was arrested, they gagged her inside the police car with a handkerchief doused in gasoline to keep her from shouting.⁵⁰⁷

318. In addition, as reported in the media, three young Cuban human rights activists were allegedly detained on August 16 and incarcerated for 20 days accused by the authorities of the offense of "public disorder" after leading a protest on the steps at the Universidad de La Habana that consisted of unfurling a sheet with slogans emblazoned on it such as "Abajo la dictadura" ("Down with the dictatorship"), "Abajo el hambre" ("Down with hunger"), and "Viva los derechos humanos" ("Long live human rights").⁵⁰⁸

319. In addition, Néstor Rodríguez Lobaina, his brother Rolando, Enyor Díaz Allen, Roberto González Pelegrín, and Francisco Manzanet were allegedly detained on August 12, 2010, at the home of Néstor Rodríguez, where they had met and hung signs and placards protesting the detention of two other members of the group who were released without charges on August 16. They were told that they were going to be accused of "public disorder."⁵⁰⁹ Nonetheless, no charges were brought against any of the five, and they were said to have been released on September 3. According to Amnesty International, the state authorities had warned them that the police would continue investigating their case. The articles that were confiscated from them when they were detained – including books, portable computers, and cell phones – reportedly had not been returned to them.

320. The Executive Secretariat received information this year regarding an alleged rape perpetrated in a prison. José Ángel Luque Álvarez was said to have been the victim of rape in 2008, at

⁵⁰⁷ See statements by Reina Luisa Tamayo Danger, available on the Internet: <http://www.youtube.com/watch?v=SDw-Hm-73TQ>

⁵⁰⁸ EFE news agency, Consejo de Relatores de Derechos Humanos en Cuba, September 6, 2010.

⁵⁰⁹ Amnesty International, AU: 186/10 Index: AMR 25/014/2010 Cuba Date: September 8, 2010.

the Ariza I prison in the province of Cienfuegos.⁵¹⁰ Luque Álvarez was said to have been convicted of the crime of contempt (*desacato*) to more than three years in prison for having said “Abajo Fidel” (“Down with Fidel”). In the prison he was allegedly forced to strip, handcuffed to a cross, and then raped by an official. Afterwards, according to his statement, he was left naked for three days, bleeding, even though he is asthmatic. Despite having served his sentence, the authorities denied his release on several occasions, without explanation. On August 9, 2010, in the prison, he wrote a plea on a sign calling for his conditional release, for which he has qualified for more than a year. According to the information provided, for that reason the prison warden sent him to a punishment cell, and threatened to increase his confinement an additional year-and-a-half for becoming involved in counterrevolutionary activities. From that time on, he reportedly declared a hunger strike. According to the information received, after 47 days on hunger strike and accepting negotiations with the State Security agency, he was transferred to the Ariza 2 camp under a less severe prison regime, but without providing him the needed medications.

321. The IACHR received information that indicates that William Rodríguez Paredes, delegate of the Movimiento 24 de febrero, was detained on September 10 in the municipality of San José de Las Lejas, province of La Habana, by agents of the political police.⁵¹¹ He was allegedly transferred, in handcuffs, to the San José police station, where he was stripped for a body search, according to the authorities, to look for enemy propaganda. Rodríguez said that he was questioned for seven hours and was threatened that he would be subjected to the Law on Social Dangerousness if he continued engaging in opposition activities⁵¹².

322. The information received allows one to conclude that the Cuban Government continues using the concept of “dangerousness” (*“peligrosidad”*) as well as the “special proclivity of a person to commit crimes” contained in the Criminal Code as a tool of political persecution and repression.⁵¹³ The ambiguity of those terms is a very grave matter insofar as it criminalizes any political ideology that constitutes lack of support for the regime.

2. Guarantees of Due Process and Judicial Independence

323. In the course of 2010 the Commission continued receiving worrisome information related to the structural lack of independence and impartiality of the courts; and the absence of judicial guarantees and due process in the prosecution of persons sentenced to death, and of persons considered to be political-ideological dissidents, an especially serious situation due to the use of summary procedures.

324. The case-law of the inter-American system has consistently held that all organs that exercise materially judicial functions have the duty to reach fair decisions based on full respect for due process guarantees. The American Declaration establishes that every person has the right to turn to the courts⁵¹⁴, to protection from arbitrary arrest⁵¹⁵, and to due process.⁵¹⁶ These rights are part of what has

⁵¹⁰ Blog of Diana Virgen García, http://www.daniavirgengarcia.com/2010_09_01_archive.html. Article in Diario El Mundo, <http://www.elmundo.es/america/2010/09/27/cuba/1285540195.html>.

⁵¹¹ Diario Cubanet, “Detienen a opositor,” September 17, 2010.

⁵¹² The Cuban State justifies the detention of opponents to the regime, human rights activists, trade unionists, and independent journalists through Article 72 of the Criminal Code, which defines “dangerousness” as “the special proclivity of a person to commit crimes, shown by the conduct observed in manifest contradiction to the norms of socialist morality.” Article 74 of the same Code complements this provision by indicating that “the dangerous state is noted when the subject displays one of the following indicia of dangerousness: (a) habitual drunkenness and alcoholism; (b) drug addiction; (c) antisocial conduct.” Similarly, that article notes that “one who habitually breaks the rules of social co-existence through acts of violence or other provocative acts violates the rights of all others, or who by his or her conduct in general breaks the rules of coexistence or disturbs the order of the community or lives, as a social parasite, from the work of others, or exploits or practices socially reprehensible vices to be dangerous due to antisocial conduct.” Article 75 of the Criminal Code also indicates that “one who, without being encompassed in any of the dangerous states referred to in Article 73, by his or her links or relationships with persons potentially dangerous to society, all other persons, and the social, economic, and political order of the Communist State, may have a proclivity to criminal conduct, shall be subject to a warning by the competent police authority, as a preventive measures to keep him or her from engaging in socially dangerous or criminal activities.”

⁵¹³ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

⁵¹⁴ American Declaration, Article XVIII.

been called the body of due process guarantees, and constitute the minimum guarantees recognized for all human beings in respect of any type of judicial proceeding.

325. In addition, the American Declaration indicates that every human being has the right to liberty⁵¹⁷, and no one may be deprived of it except in those cases and in keeping with those procedures established by pre-existing laws.⁵¹⁸ According to the American Declaration, every individual who has been deprived of his or her liberty has the right for a judge to verify, without delay, the legality of the measure, and to be tried without unwarranted delay, or otherwise to be released.⁵¹⁹ In addition, every person accused of a crime has the right to be heard impartially and in public, to be tried by courts previously established in accordance with pre-existing laws, and not to be subject to cruel, infamous, or unusual punishment.⁵²⁰

326. The right to trial by a court with jurisdiction that is independent, impartial, and previously established by law has been interpreted by the Inter-American Commission and the Inter-American Court so as to entail certain conditions and standards that must be satisfied by the courts in charge of judging any criminal accusation or determining the civil, fiscal, labor, or other rights or obligations of persons.⁵²¹

327. This right to a fair trial, based on the fundamental concepts of independence and impartiality of justice, and the principles of criminal law recognized by international law – presumption of innocence, the principle of *non bis in idem*, and the principles of *nullum crimen sine lege* and *nulla poena sine lege*, as well as the precept that no one may be convicted for a crime other than on the basis of individual criminal liability, are widely considered as general principles of international law essential for the proper administration of justice and the protection of fundamental human rights.⁵²² The requirement of independence, in turn, requires that the courts be autonomous from other branches of government, be free of influences, threats, or interference of any origin or for any reason, and have other characteristics necessary for ensuring the appropriate and independent performance⁵²³ of judicial functions, including the stability of a position and adequate professional training.⁵²⁴ The impartiality of the courts⁵²⁵ should be

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⁵¹⁵ American Declaration, Article XXV.

⁵¹⁶ American Declaration, Article XXVI.

⁵¹⁷ American Declaration, Article I.

⁵¹⁸ American Declaration, Article XXV.

⁵¹⁹ American Declaration, Article XXV.

⁵²⁰ American Declaration, Article XXVI.

⁵²¹ IACHR, Report on Terrorism and Human Rights, 2002, para. 228.

⁵²² Report of the Special Rapporteur on the Independence of Judges and Lawyers, submitted in keeping with Resolution 1994/41 of the Commission on Human Rights. Commission on Human Rights, 51st Session, February 6, 1995, E/CN.4/1995/39, para. 34. IACHR, Report on Terrorism and Human Rights, 2002, para. 229.

⁵²³ Similarly, the Court indicated that the impartiality of the court implies that its members not have any direct interest, a position taken, a preference for any of the parties, and that they are not involved in the dispute. I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 146.

⁵²⁴ IACHR, *Report on the Situation of Human Rights in Chile*, 1985, Chapter VIII, para. 139; *Report on the Situation of Human Rights in Haiti*, 1995, Chapter V, paras. 276-280; *Report on the Situation of Human Rights in Ecuador*, 1997, April 24, 1997, Chapter III; *Report on the Situation of Human Rights in Mexico*, 1998, Chapter V, paras. 393-398. *Report on Terrorism and Human Rights*, 2002, para. 229.

⁵²⁵ The Inter-American Court has indicated that the right to be judged by an impartial and independent judge or court is a fundamental guarantee of due process. In other words, one must guarantee that the judge or court, in the performance of its function as trier, has the utmost objectivity to confront the trial. In addition, the independence of the judicial branch vis-à-vis the other branches of government is essential for the exercise of the judicial function. I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 145; *Case of Herrera Ulloa*, para. 171.

"one of the principal purposes of the separation of public powers is to guarantee the independence of judges. Such autonomous exercise must be guaranteed by the State both in its institutional aspect, that is, regarding the Judiciary as a system, as well as in connection with its individual aspect, that is to say, concerning the person of the specific judge. The purpose of such protection lies in preventing the Judicial System in general and its members in particular, from finding themselves subjected to possible undue limitations in the exercise of their functions, by bodies alien to the Judiciary or even by those judges with review or

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evaluated from a subjective and objective perspective to ensure that there is no real prejudice on the part of the judge or the court, as well as sufficient guarantees to avoid any legitimate doubt in this regard. These requirements, in turn, demand that the judge or court not harbor any real bias in a particular case and that the judge or court not be reasonably perceived as inclined by such a bias.⁵²⁶

328. With respect to the guarantees of independence and impartiality, one should note that Article 121 of the Constitution of Cuba establishes:

The courts constitute a system of state bodies which are set up with functional independence from all other systems and they are subordinated only to the National Assembly of People's Power and the Council of State.

329. Accordingly, the Commission observes that the subordination of the courts to the Council of State, presided over by the head of state, represents direct dependence of the judicial branch on the directives of the executive branch. In the view of the Commission, this dependency on the executive branch does not offer an independent judicial branch capable of providing guarantees for the enjoyment of human rights.

330. According to the information received in 2010, the Cuban courts had persisted in using summary procedures without proper guarantees, such as, for example, the trial and conviction in 2010 of Diana Virgen García, an independent journalist who was allegedly arrested by the police at her home on April 20, 2010. According to the information, the police alleged that she was arrested due to a brawl with her 23-year-old daughter that had occurred two weeks earlier.⁵²⁷ After holding her incommunicado for 48 hours, she was allegedly subjected to a summary procedure and in less than 72 hours convicted and sentenced to one year and three months of deprivation of liberty for the crime of "arbitrary exercise of the right and threats," without defense counsel or the minimal legal guarantees. According to the information, generally the police avoid cases of family brawls motivated by housing problems, and when they intervene, the sanctions consist of fines. In the weeks prior to her arrest, she had allegedly been threatened for marching on several occasions through the streets of Havana in support of the Ladies in White. On appeal, and with an attorney, the Provincial Court of Havana, on May 14, 2010, ordered her release with a fine of 300 pesos.

331. The Commission considers the repeated use of summary trials in Cuba, without observing due process guarantees, including the minimum guarantees necessary for the accused to exercise his or her right to an adequate legal defense, to be an extremely serious matter. On this last point, the IACHR has previously received information regarding the ineffectiveness of public defenders, particularly when the State keeps them from communicating freely and previously with their clients.⁵²⁸

332. The Commission has repeatedly recommended that the State of Cuba adopt the necessary measures for bringing its laws, procedures, and practices into line with international human rights provisions. In particular, the Commission has recommended that it reform its criminal legislation so as to ensure the right of justice and the right to due process, and to initiate a process of reforming its Constitution with a view to ensuring the independence of the judicial branch.

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appellate functions." I/A Court H.R., Case of *Apitz Barbera et al.* ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 55.

Likewise, public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge's freedom of action. I/A Court H.R., Case of *Apitz Barbera et al.* ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131.

⁵²⁶ IACHR, Case 11,139, Report No. 57/96, William Andrews (United States), *Annual Report of the IACHR 1997*, paras. 159-161. See, by way of analogy, European Court of Human Rights, *Findlay v. United Kingdom*, February 25, 1997, *Reports 1997-I*, p. 281, para. 73. IACHR, Report on Terrorism and Human Rights, 2002, para. 229.

⁵²⁷ Blog of Diana Virgen García, http://www.daniavirgengarcia.com/2010_05_01_archive.html.

⁵²⁸ See Report on the Merits No. 67/06, approved October 21, 2006.

333. In Report on the Merits 67/06⁵²⁹, in Case 12,476 (Oscar Elías Biscet *et al.*) – regarding the political dissidents who were detained and prosecuted using very summary procedures in the so-called “Black Spring” of 2003, based on the application of Article 91⁵³⁰ of the Cuban Criminal Code, as well as Law 88 on Protection of the National Independence and Economy of Cuba – the IACHR recommended that the Cuban State:

2. Adopt the measures necessary to adapt its laws, procedures and practices to international human rights law. In particular, the Commission is recommending to the Cuban State that it repeal Law No. 88 and Article 91 of its Criminal Code, and that it initiate a process to amend its Constitution to ensure the independence of the judicial branch of government and the right to participate in government.

334. In addition, in Report on the Merits 68/06 on Case 12,477⁵³¹ (Lorenzo Enrique Copello Castillo *et al.*), regarding three persons who were executed by firing squad after a very summary procedure, in violation of the right to defense, impartiality, and judicial independence, the IACHR recommended to the Cuban State:

1. Take the necessary steps to adapt its laws, procedures and practices to international human rights legislation. In particular, the Commission has recommended that Cuba’s criminal legislation be amended in order to ensure the right to justice and the right to a fair trial, and to initiate a process to reform its Constitution to ensure the independence of the judiciary.

335. Articles 479 and 480 of the Law on Criminal Procedure provide for the possibility of applying a summary procedure. The same law also establishes that in the event of prosecution by a summary procedure, the court may, insofar as it considers it necessary, reduce the terms for the preliminary proceedings, the oral trial, and the appeals.

Summary Procedure

Article 479: If called for by exceptional circumstances, the Prosecutor General of the Republic may call upon the President of the People’s Supreme Court to decide if crimes that come under the jurisdiction of any of the courts of justice may be tried through a summary proceeding, except for those that come under the jurisdiction of the People’s Municipal Courts.

Article 480: In the summary procedure, if deemed necessary by the competent court, the periods for processing prior proceedings, the oral hearings and appeals may be reduced.

336. In this respect, the Commission observes that the decision to apply an exceptional procedure is up to those who impart justice in the specific case; in addition, the decision to set the terms for all the steps in the trial, including the preliminary ones, those that correspond to the oral trial, and the terms of the appeals, is up to the trier.⁵³²

337. The Commission has observed that in Cuba political dissidents and those who have attempted to flee the island have been prosecuted through summary trials. Indeed, the death penalty has been applied as a result of such trials, which violate the minimum standards of due process.⁵³³

⁵²⁹ The Cuban State and the petitioners’ representatives were given notice of Report on the Merits No. 67/06, approved October 21, 2006, on November 1, 2006. See in IACHR, Press Release 40/06, “IACHR announces two reports on human rights violations in Cuba,” of November 1, 2006.

⁵³⁰ Article 91 of the Criminal Code of Cuba: One who, in the interest of a foreign state, performs an act for the purpose of causing detriment to the independence of the Cuban State or the integrity of its territory shall be subject to a sanction of deprivation of liberty of 10 to 20 years or death.

⁵³¹ IACHR, Report on the Merits No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006.

⁵³² IACHR, Report on the Merits No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006, para. 87-92.

⁵³³ IACHR, Report on the Merits No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006, paras. 87-92.

338. In this context of lack of independence, arbitrariness, and summary procedures, another special concern of the IACHR is that the death penalty is a sanction for a significant number of crimes. In effect, the Criminal Code of Cuba establishes the death penalty 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 youth; and against property rights. Under the title on crimes against state security, the crimes for which the death penalty applies 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; helping the enemy; espionage; rebellion⁵³⁴; sedition; usurpation of political or military command; sabotage; terrorism; hostile acts against a foreign state; genocide; piracy; mercenary activity; crime of apartheid⁵³⁵; and, other acts against the state. In addition, the death penalty is a possible punishment for following forms of criminal conduct: unlawful production, sale, demand, trafficking, distribution, and possession of drugs, narcotics, psychotropic substances, and other substances with similar effects⁵³⁶; murder⁵³⁷; rape⁵³⁸; pederasty with violence⁵³⁹; corruption of minors⁵⁴⁰; robbery with violence or intimidation of persons.⁵⁴¹

339. The Commission considers that the application of the death penalty requires the existence of an independent judicial branch in which the judges exercise a high level of scrutiny and in which the guarantees of due process are observed. In this respect, the Inter-American Court has held that

capital punishment is not per se incompatible with or prohibited by the American Convention. However, the Convention has set a number of strict limitations to the imposition of capital punishment.⁵⁴² First, imposition of the death penalty must be limited to the most serious common crimes not related to political offenses.⁵⁴³ Second, the sentence must be individualized in

⁵³⁴ Article 98: 1. Anyone who takes up arms to obtain any of the following objectives by force, shall be deprived of his/her freedom for ten to twenty years or sentenced to death: (a) wholly or partially, even if temporarily, prevent the higher organs of State and Government from exercising their functions; (b) change the economic, political and social regime of the socialist State; (c) wholly or partially change the Constitution or the form of government established thereby.

2. The same punishment shall be applied to anyone who takes any action aimed at promoting an armed uprising, if it materializes; otherwise the punishment is deprivation of freedom for four to ten years.

⁵³⁵ Article 120: 1. Anyone who, in order to set up and maintain domination by one racial group over another, and in accordance with extermination, segregation or racial discrimination policies, does any of the following, shall be deprived of his/her freedom for between ten and twenty years or sentenced to **death**: (a) denies the members of this group the right to life and freedom by murder; serious attempts against the physical or psychic integrity, freedom or dignity; torture or penalties or cruel, inhumane or denigrating treatment; arbitrary detention and illegal imprisonment; (b) imposes legislative or other measures on the group, aimed at preventing them from taking part in the political, social, economic and cultural life of the country and deliberately creating conditions to hamper its proper development, denying its members the rights and fundamental freedoms; (c) divides the population according to racial criteria, creating reserves and ghettos, forbidding marriages between different racial groups and expropriating their property; (ch) exploits the work of the members of the group, especially subjecting them to forced labor.

1. 2. If the deed consists of persecuting or in any way harassing the organizations and people who oppose apartheid, or fight against it, the sanction is deprivation of freedom for between ten and twenty years.

2. 3. Anyone committing any of the acts envisaged in the former sub-paragraphs, is responsible therefor, regardless of the country in which the guilty parties act or reside, and such responsibility extends, whatever the motive, to all individuals, members of the organizations and institutions and representatives of the State.

⁵³⁶ Cuban Criminal Code, Article 190.

⁵³⁷ Cuban Criminal Code, Article 263.

⁵³⁸ Cuban Criminal Code, Article 298.

⁵³⁹ Cuban Criminal Code, Article 299.

⁵⁴⁰ Cuban Criminal Code, Article 310.

⁵⁴¹ Cuban Criminal Code, Article 327.

⁵⁴² *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*. Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, paras. 60-66.

⁵⁴³ I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94, para. 106; *Case of Raxcacó Reyes, supra* note 37, para. 68. See also *Restrictions on the Death Penalty (Articles 4(2) and 4(4) American Convention on Human Rights)*, para. 55.

conformity with the characteristics of the crime, as well as the participation and degree of culpability of the accused.⁵⁴⁴ Finally, the imposition of this sanction is subject to certain procedural guarantees, and compliance with them must be strictly observed and reviewed.⁵⁴⁵

340. According to the information that the IACHR has, the last time that the death penalty was applied in Cuba was in 2003, when Messrs. Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García, and Jorge Luis Martínez Isaac were executed.⁵⁴⁶ Nonetheless, that judgment continues to be imposed as a result of summary proceedings. As indicated in Chapter IV of its 2008 Annual Report, the IACHR values the decision of the Council of State adopted on April 28, 2008 to commute the death sentence of those who had been sentenced to such a grave and irreparable sanction to life imprisonment or 30 years incarceration. The IACHR hopes that the commutation is extended to all those who have been sentenced to capital punishment, including those convicted of the committing terrorist offenses.

341. The IACHR reiterates its observation that maintaining the death penalty as a sanction for a significant number of forms of criminal conduct described by broad or vague language⁵⁴⁷, together with criminal procedures that lack sufficient due process guarantees, as they are carried out in summary form, without trustworthy defense counsel, and with juries of dubious independence and impartiality, are violative of the international human rights instruments and case law. This may lead to the application of disproportionate sanctions and to enormous discretion that may eliminate any possibility of effective defense of the individual vis-à-vis the authorities.⁵⁴⁸ For example, Article 91 of the Criminal Code provides for sentences of 10 to 20 years in prison, or the death penalty, for “whoever, in the interest of a foreign State, commits an act intended to cause damage to the independence of the Cuban State or the integrity of its territory.”

342. In addition, Article 72 of the Criminal Code provides that “special inclination on the part of a person to commit crimes, as demonstrated by behavior that is clearly contrary to the standards of socialist morality is considered dangerous.” The definition of “dangerous state” is established at Article 73(1), which provides that a “dangerous state is present when an individual displays some of the following signs of dangerousness: (a) habitual drunkenness and dipsomania; (b) drug addiction; (c) antisocial behavior.” Article 73(2) provides: “an individual who habitually breaks the rules of social coexistence by acts of violence, or by other provocative acts, violates the rights of others or by his general behavior breaks the rules of coexistence or disrupts the order of the community or lives, as a social parasite, off the work of others or exploits or practices socially reprehensible vices, is considered to be in a dangerous state on account of his or her antisocial behavior.”

⁵⁴⁴ I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 42, paras. 103, 106, and 108; and *Case of Raxcacó Reyes*, *supra* note 37, para. 81. See also *Restrictions on the Death Penalty (Articles 4(2) and 4(4) American Convention on Human Rights)*, para. 55.

⁵⁴⁵ I/A Court H.R., *Case of Boyce et al. v. Barbados*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169. See also I/A Court H.R., *Case of Fermín Ramírez*, *supra* note 37, para. 79. See also *Restrictions on the Death Penalty (Articles 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 7, para. 55, and *El The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 135.

⁵⁴⁶ IACHR, Report on the Merits No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006.

⁵⁴⁷ As the Inter-American Court has observed, “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.” See, for example, I/A Court H.R., *Case of Castillo Petruzzi et al.*, Judgment of May 30, 1999, Series C. No. 52, para. 121.

⁵⁴⁸ According to the State of Cuba, the application of the death penalty is exceptional and only for committing the most serious crimes. The Cuban Criminal Code establishes as follows:

Article 29.1. The death penalty is an exceptional punishment and shall only be applied by the court to persons who have committed the most serious of crimes for which it was established.

2. The death penalty is not applicable to minors under the age of 20, or to women who were pregnant when they committed the crime or are pregnant when sentenced to death.

3. Execution by shooting is the method used for capital punishment.

343. For its part, Article 75(1) of the Criminal Code provides that “an individual who, without being in any of the dangerous states listed in Article 73, by his links or relationships with persons potentially dangerous to society, other persons and the social, economic and political order of the socialist State, could become prone to crime, will be warned by the competent police authority with a view to preventing him from carrying out socially dangerous or criminal activities.” The IACHR has noted in previous reports that the Cuban Government uses the concepts of “dangerousness” as well as “special proclivity of a person to commit crimes” to detain opponents of the regime.⁵⁴⁹

344. If a person engages in one of the types of dangerousness cited above, so-called *security measures* can be applied to him or her, which may be post-delinquency or pre-delinquency (*post o predelictivas*). In the case of pre-delinquency security measures, Article 78 provides that the National Revolutionary Police can impose therapeutic, re-educational, or surveillance measures on a person declared to be in a dangerous state. One of the therapeutic measures entails, according to Article 79, admission to an assistance, psychiatric, or detoxification center.⁵⁵⁰ Re-educational measures are applied to antisocial individuals and consist of admission to a specialized work or study center and turning the person over to a work collective to keep tabs on and orient the person’s conduct. Such measures are for one to four years.

345. These provisions of the Cuban Criminal Code are supplemented by Decree No. 128, issued in 1991. That decree establishes that the declaration of pre-delinquency dangerous state should be decided summarily. In effect, according to that decree, the Revolutionary National Police opens a case that shows the conduct of the “dangerous person” and presents it to the local prosecutor, who decides in two days whether to present the case to the Municipal Court. If the Municipal Court considers the file complete, it shall set a date for the hearing in which the parties will appear. Twenty-four hours after the hearing is held, the Municipal Court must hand down its judgment.

346. The Inter-American Commission on Human Rights considers that the criminal law should sanction criminal acts or possibly their frustrated attempt, but never attitudes or presumptions of such acts.⁵⁵¹ *Dangerousness (peligrosidad)* is a subjective concept on the part of the person who makes the assessment, and its vagueness is a factor of juridical insecurity for the population, since it creates the conditions for the authorities to commit arbitrary acts. The Commission considers it extremely serious that these provisions – in themselves incompatible with the principles established in the American Declaration – are applied by means of a summary procedure to persons who have not committed any criminal offense but who as per the discretion of the Cuban authorities are considered *dangerous* to society, and therefore deserving of severe security measures in which they are deprived of liberty.⁵⁵² In these cases, the State intervenes in the lives of citizens without limitations to maintain *social peace* and violates, without hesitation, the right to individual liberty.

347. The Commission reiterates that the lack of an independent administration of justice in Cuba, together with the lack of guarantees of due process, as well as the use of summary trials and the ambiguity and/or breadth of some criminal law provisions in the legislation affect the fundamental rights of persons.

348. In summary, the Commission calls on the Government of Cuba to bring its procedural rules into line with the international standards on due process so that those persons who come before or are brought before the courts for the determination of their rights and responsibilities may have minimal legal guarantees to mount their defense. The Commission considers that the existing legal framework does not comply with Cuba’s international obligations in this respect. The full observance of the judicial guarantees enshrined in the American Declaration is based on an independent and autonomous judicial branch and on the enforcement of provisions that are clear and specific and do not allow for the discretionary abuse of authority.

⁵⁴⁹ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

⁵⁵⁰ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

⁵⁵¹ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

⁵⁵² IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

3. Deprivation of Liberty of Political Dissidents⁵⁵³

349. In 2006, the Commission notified the parties and published, in its Annual Report, Report on the Merits 67/06⁵⁵⁴, in Case 12,476 (Oscar Elías Biscet *et al.*) regarding the political dissidents who were detained and prosecuted by highly summary procedures in the so-called “Black Spring” of 2003, based on the application of Article 91⁵⁵⁵ of the Cuban Criminal Code, as well as Law 88 on Protection of the National Independence and Economy of Cuba, for acts related to the exercise of fundamental freedoms such as the freedom of thought, conscience, opinion, and expression, as well as the right to peaceful assembly and free association. The sentences ranged from six months to 28 years in prison.

350. In Report 67/06, the IACHR concluded that the Cuban State violated several articles of the American Declaration, including Articles I, II, IV, VI, XX, XXI, XXII, XXV, and XXVI, to the detriment of the victims in the case; Article V in relation to eight of the victims; the violation of Article X to the detriment of 14 victims, and the violation of Article XVIII to the detriment of 73 victims. In addition, the Commission concluded that the State had not violated Articles IX, XI, or XVII of the American Declaration to the detriment of the victims.⁵⁵⁶

⁵⁵³ The Government of Cuba denies that the victims of Case 12,476 are dissidents. In the report entitled “White Book 2007,” published at the official website of the Ministry of Foreign Affairs of Cuba, it states: “This slanderous campaign —still going on today with the cynical, complicit and active help of several client governments of the Empire — has resorted to sophisticated disinformation techniques developed by the Nazi-Fascists services, unjustifiably and repeatedly depicting the justly convicted mercenaries by giving the false epithets of ‘dissidents,’ ‘peaceful political opponents,’ ‘human rights defenders,’ ‘independent journalists, librarians or unionists.’ The idea is to make people believe that the mercenaries were ‘arbitrarily and unjustly’ convicted simply for ‘peacefully exercising the right to freedom of speech, opinion and association.’” In “White Book 2007,” *op. cit.*

⁵⁵⁴ Notice of Report on the Merits No. 67/06 was given to the Cuban State and the petitioners’ representatives on November 1, 2006. See in IACHR, Press Release No. 40/06, “IACHR announces two reports on human rights violations in Cuba,” of November 1, 2006.

⁵⁵⁵ Article 91 of the Criminal Code of Cuba: “Whoever, in the interest of a foreign State, commits an act with the intent to cause damage to the independence of the Cuban State or the integrity of its territory, shall receive a sentence of between ten and twenty years or a death sentence.”

⁵⁵⁶ See complete report at: <http://www.cidh.org>

351. Moreover, the IACHR recommended to the State of Cuba:

1. Order the immediate and unconditional release of the victims in this case, overturning their convictions inasmuch as they were based on laws that impose unlawful restrictions on their human rights.
2. Adopt any measures necessary to adapt its laws, procedures and practices to international human rights law. In particular, the Commission is recommending to the Cuban State that it repeal Law No. 88 and Article 91 of its Criminal Code, and that it initiate a process to amend its Constitution to ensure the independence of the judicial branch of government and the right to participate in government.
3. Redress the victims and their next of kin for the pecuniary and non-pecuniary damages suffered as a result of the violations of the American Declaration herein established.
4. Adopt the measures necessary to prevent a recurrence of similar acts, in keeping with the State's duty to respect and ensure human rights.⁵⁵⁷

352. Regarding the second, third and fourth recommendation of the Commission, the Cuban State, to date, has failed to comply. Regarding the first recommendation, this year Orlando Zapata Tamayo, one of the victims of Case 12,476 who had been sentenced to three years of prison, died of starvation after 85 days on hunger strike to protest what he described as continued beatings by the guards and other abuses in prison. Information received by the IACHR indicates that Mr. Zapata Tamayo had been subjected to torture and inhuman treatment at the Kilo 8 prison. Mr. Zapata Tamayo was sentenced in Cuba to other penalties entailing imprisonment because of his dissident opinions. According to press reports, he was sentenced to 36 years in prison. In a press release of February 26, 2010, the IACHR lamented and condemned the death of this Cuban dissident.⁵⁵⁸

353. The day after Orlando Zapata's death, on February 24, 2010, Guillermo Fariñas, a journalist and human rights defender, began a hunger strike in Cuba to protest Zapata's death and to demand the release of 25 political prisoners who were ill. The situation of Guillermo Fariñas was also the subject of a pronouncement by the IACHR, in press release 33/10 of March 19, 2010. Fariñas maintained his protest for 135 days until the Cuban Government announced, in the first week of July 2010, the release of 52 political prisoners.

354. In effect, according to the information received, thanks to the mediation of the Catholic Church in Havana, on July 7, 2010, the Government of Cuba, through its president, Raúl Castro, informed the representative of the Catholic Church in Cuba, Cardinal Jaime Ortega, and the then-foreign minister of Spain, Miguel Ángel Moratinos, that it would release 52 political prisoners to their families within three to four months. These persons were said to belong to the group of 75 opponents and independent journalists arrested in 2003, in the so-called "Black Spring," which was the subject of Case 12,476. By press release 69/10 of July 13, 2010, the IACHR expressed its positive view of the decision by the Government of Cuba.

355. While the initial commitment of the Cuban Government was to release those prisoners of the group of 75 who remained in the prisons, it subsequently announced its decision to remove other political prisoners from prison to be transferred to Spain. The IACHR received information on Ciro Pérez Santana, sentenced to 20 years and in prison since 1994; Arturo Suárez Ramos, serving a 30-year sentence, of which he has served 22 years; and Rolando Jiménez Posada, sentenced to 12 years in prison on April 25, 2003.⁵⁵⁹ Also released were Ramón Fidel Basulto and Joel Torres, who were serving sentences of 30 years and 10 years respectively, in both cases accused of "piracy" for the crime of

⁵⁵⁷ See complete report at: <http://www.cidh.org>

⁵⁵⁸ Press Release 22/10, of February 26, 2010. Available on the Internet: <http://www.cidh.oas.org/Comunicados/Spanish/2010/22-10sp.htm>.

⁵⁵⁹ Article in *Diario Europea Press*, of October 21, 2010. Available on Internet: <http://www.europapress.es/latam/cuba/noticia-cuba-llegaran-manana-espana-primeros-presos-liberados-no-forman-parte-grupo-75-20101021182044.html>.

stealing a launch for the purpose of illegally leaving the country. Also released was Adrián Álvarez, the political prisoner who has spent the most time in a Cuban prison; he entered prison in 1985, accused of acts against state security and espionage, and was sentenced to 30 years.⁵⁶⁰

356. It should be noted that as of the date of the preparation of this report, 51 dissidents had been released, 40 of them victims in Case 12.476 ("Group of 75").

357. The Cuban Government also stated that it would grant "out-of-prison leave" ("*licencia extrapenal*") to those prisoners of conscience who refuse to leave their country after their release.⁵⁶¹ This allows them to stay in Cuba free, though they will continue to be subject to the case brought against them. This would be the case of Arnaldo Ramos Lauzerique, who was said to have been released recently after being granted such out-of-prison leave.

358. According to the group "Ladies in White," the Government of Cuba is bringing psychological pressure to bear on those political dissidents who do not accept release and immediate transfer to Spain.⁵⁶² Two political dissidents, Ángel Juan Moya Acosta and Héctor Maseda Gutiérrez, victims in Case 12,476, have told the Cuban press that being released with a possible out-of-prison leave for them is "one more hoax by the Cuban regime, which I do not accept. That was not what Fariñas demanded in his hunger strike. Nor have the Ladies in White struggled for more than seven years for out-of-prison leave; that is nothing more than lack of respect."⁵⁶³

359. In this respect, in the recommendations put to the Government of Cuba in its Report on the Merits No. 67/06, the IACHR refer to the immediate and unconditional release of the victims and nullify their convictions. Accordingly, the granting of out-of-prison leave to the victims of Case 12,476 who do not wish to leave Cuba does not constitute full implementation of the IACHR's recommendations, because it keeps the convictions established in trials that did not meet the minimum standards of due process.

360. In keeping with the American Declaration of the Rights and Duties of Man, every individual has the right to humane treatment when deprived of liberty.⁵⁶⁴ The Commission has referred in several of its reports to the issue of conditions of detention in Cuba.⁵⁶⁵ The Commission considers that the responsibility of the state as regards the integrity of the persons under its custody is not limited to the negative obligation to refrain from torturing or mistreating such persons. As prison is a place where the state has total control over the prisoners' lives, its obligations to them include, among others, the measures of security and control necessary for preserving the life and personal integrity of persons deprived of liberty.

361. Nonetheless, the Commission continued receiving information on conditions of deprivation of liberty of political dissidents in Cuba and particularly on the denigrating treatment used by the prison authorities against persons considered political opponents. The Commission has previously expressed its concern over the large number of political prisoners – particularly the victims in Case 12,476 who have now been released – who are said to be suffering from chronic diseases including visual, renal, cardiac, and pulmonary ailments, many of which are said to have arisen from or to have been aggravated by their detention, without appropriate medical care, including elderly persons.

⁵⁶⁰ Diario El País, article of November 19, 2010. Available on Internet: http://www.elpais.com/articulo/internacional/Llega/Espana/preso/politico/tiempo/ha/pasado/carcel/cubana/elpeuint/20101119elpeuint_12/Tes.

⁵⁶¹ Article in Diario El País, "Cuba deja quedarse a los ex presos que no quieren exiliarse," September 23, 2010.

⁵⁶² Article in Diario De Cuba, September 20, 2010, "Damas de Blanco denuncian presión psicológica."

⁵⁶³ Cubanet, September 29, 2010.

⁵⁶⁴ American Declaration, Article XXV.

⁵⁶⁵ IACHR, *Annual Report 1995*, Chapter V, para. 71; IACHR, *Annual Report 1994*, Chapter IV, p. 168; *Annual Report 2004*, Chapter IV, para. 59-66; *Annual Report 2005*, Chapter IV, paras. 76-81. *Annual Report 2006*, Chapter IV, paras. 65-70.

362. In statements to the Spanish press after his release, José Luis García Paneque stated: “They imprisoned us with the objective of destroying us morally, but they have not accomplished it. It was distressing and very harsh, but I have not lost my spirit.”⁵⁶⁶ According to the interview, for the seven years and four months he was incarcerated, he went through nine prisons. During the first two years he was in solitary confinement, which in his view entails “the most cruel and subhuman treatment that can be inflicted on a person.” He was only allowed to make one phone call a month, while family visits were limited to just two hours every three months. Conjugal visits took place once every five months.

363. On October 28, 2010, during the 140th regular period of sessions of the IACHR, a public hearing was held on the “Situation of the human rights of independent trade union leaders in Cuba,” requested by the Grupo Internacional para la Responsabilidad Social Corporativa en Cuba (GIRSCC: International Group for Corporate Social Responsibility in Cuba). At the hearing, the IACHR received information on the subhuman conditions suffered by persons deprived of liberty in Cuba, through the testimony of six unionists, Nelson Molinet Espino, Héctor Valle Fernández, Miguel Galván Gutiérrez, Víctor Rolando Arroyo, Horacio Piña Borrego, and Alfredo Felipe Fuentes, all victims in Case 12,476, who were detained during the so-called “Black Spring” in 2003, and released this year by the Government of Cuba, to be transferred to Spain. Following is a transcription of part of their testimony to the IACHR:

Nelson Molinet Espino

“We lived in a cell that was three meters by two meters, I had to relieve myself in a latrine, wash myself, I had to sleep on the floor for seven months, due to the heat there was no ventilation.”

“Sometimes they were moved to cells that could accommodate 40 persons, and there were 120.”

Héctor Raúl Valle

“Being there [in prison], in Villa Marita, I was tortured psychologically, the water I drank, I drank from a toilet, where I relieved myself. There we lived in that little room, four persons, we practically didn’t fit; the heat was unbearable.... They pressured me to condemn the U.S. government, to show the world that I served the U.S. government, but that wasn’t the case.... I didn’t sign any document, and that’s why in the trial they alleged that I didn’t cooperate.”

“There I lived with frogs, scorpions, mice, and other insects. The heat was unbearable. When I ate and drank water it was as though I’d bathed. The suffering was great.”

“On occasion of each conjugal visit my wife had to strip, they were harsh moments for her..., until I got them not to do it anymore.”

“[In prison] Many of us entered without any disease, and we came out with many diseases. In my case, I suffer from high blood pressure, erosive arthritis, scarring ulcer, cervical arthrosis, reduction of the spaces, melasma, loss of vision.... Not just the political prisoners, but the common prisoners were affected by practically the same problems.”

“At times there were no drugs, there were no doctors to serve us, not even a nurse to take my pressure. It was very tough....”

Víctor Rolando Arroyo Carmona

“[Upon arriving in Guantánamo] they transferred them to punishment cells, walled in and in solitary confinement.... There a very difficult situation began, because the second, third day of being in those cells we were visited by a general ..., he and I had a verbal confrontation, in addition to other officers. I was immediately taken away, to even more rigorous cells. They kept me in those cells for almost three months, and they had me sleep on a board, nothing else.... They are cells in deplorable hygienic conditions, almost all reeking of excrement, feces, from that cell and others. The rats, any type of animal. The cold and the heat; and the food and water were limited.”

“Yet a situation of harassment and hostility directed at my family came such that ... we decided to go on a hunger strike, and for me it lasted 24 days.... At the time I decided to begin the hunger

⁵⁶⁶ Statements to Diario ABC of Spain.

strike I was hit by an officer, the chief of internal order ... it wasn't the first time I'd been the target of aggression by prison officials."

"The officers who are in the prisons, even some workers from the Ministry of Interior, grow rich at the cost of the prisoners' labor, since part of their salaries often goes missing, is lost. They use prisoners for the officers' private work.... At Guantánamo there was a carpenter ... and he sustained a serious injury in the hand while making furniture for the prison warden and some officers, nonetheless, this man did not receive medical assistance, and he did not receive pay for the days of work missed.... This was reported, but no one can pursue the legal channels, it's not known, and if it is known nothing is done."

"In these prisons I had to put up with physical and psychological assaults, the psychological was losing my correspondence, not allowing me to make phone calls to my family, situations with health or medical and physical care, the aggressiveness, the beatings by the guards, it wasn't one, it was several."

Horacio Julio Piña Borrego

"I was taken to a prison more than 700 kilometers from my home, I was confined there to an isolation cell, 1.30 wide and 2.77 long. That included a toilet and a shower. My corridor was 56 cm. I was there for one year and one month."

"From there I was transferred to a cell, which was a laughable space, that is, for 24 prisoners it was 4 meters wide by 6 meters long. A collective toilet with no privacy. Sometimes we had to sleep on the floor, because the temperature was more than 40 degrees, because the ambient temperature, plus the body temperature, plus that from the whole day, we felt at night...."

"The medical situation ... we were always told we had differentiated treatment, by which I mean it was really bad, I can just imagine what it was like for the common prisoners."

"In Pinar del Rio I witnessed several deaths.... Manuel Sotolongo [common prisoner], at 6 in the afternoon began to feel a pain in the chest, which ran down his arm, at 10 pm he once again said he was feeling this pain and it had worsened. A little after 12 the prisoners knocked on the door for them to come and attend to him. They removed him a little after 1, a male nurse attended to him, gave him an aspirin, and sent him back to the cell. At 3 the same thing happened again, and they said his pressure was fine, this nurse (not a professional), brought him back again. At 5:45 ... he fell out of bed and it was a stroke, he fell from the bed and the prisoners picked him up and went running to the first aid station. As he was an obese prisoner they couldn't get him on a stretcher, and they put him on the floor. From my cell ... we saw how the man died at 6:13 and at 6:15 the physician came who was going to attend to him."

"I had just one ailment when I entered prison, which was emotive hypertension, which is now chronic. I have an ulcer provoked by the doctors, because I had a cervical problem which worsened due to the conditions, and they were giving me Piroxicam but without telling me it had to be with food, [plus when I got out] I had a hernia."

Alfredo Felipe Fuentes

"We met the lawyer five minutes before the trial, some with no time. In other words, after being held in incommunicado detention for one month, and without any possibility of accessing documents to prepare the defense's case; whereas the prosecutor's office had like a month or more to prepare its case."

"After the trial ... they locked us up in cells that I would describe as torture cells. I'm talking about the Guamaján prison in the province of Villa Clara.... There, for example, we were in a cell that is 1.40 meters wide by 2 meters long, plus a toilet area, a rustic toilet area, without any windows of any kind, the cells walled in, for one year."

364. The Commission reiterates to the State that it should observe the United Nations Standard Minimum Rules for the Treatment of Prisoners⁵⁶⁷ and the Principles and Best Practices on the

⁵⁶⁷ The Inter-American Commission has indicated repeatedly that the Standard Minimum Rules for the Treatment of Prisoners may be understood as adequate references to the minimum international standards for the humane treatment of

Continued...

Protection of Persons Deprived of Liberty in the Americas of the Inter-American Commission on Human Rights.⁵⁶⁸

365. The Commission also reiterates to the Cuban State the recommendation to immediately and unconditionally release all the victims of Case 12,476.

4. Restrictions on the right of residence and movement

366. The American Declaration of the Rights and Duties of Man stipulates: "Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will."⁵⁶⁹ While the American Declaration does not explicitly establish the right of every person to return to his or her country, the Commission considers that it is implicitly recognized in that instrument. Accordingly, the IACHR has held that "The right of every person to live in his own country, to leave and return when he deems fit..." is a basic right that "is recognized in every international instrument that protects human rights."⁵⁷⁰ In effect, the Universal Declaration of Human Rights, at Article 13(2), stipulates: "Everyone has the right to leave any country, including his own, and to return to his country."

367. The IACHR has previously indicated that according to the above-cited texts, there is a relationship between the right of residence and movement and the right to nationality. The right to nationality is recognized by the American Declaration at its Article XIX and the Commission has indicated it is essential that it be respected at all times, condemning those situations in which the right to nationality is violated as a result of the actions by governments against their political adversaries.⁵⁷¹

368. In addition, the IACHR considers that as regards the right to residence and movement, its exercise can in no way give rise to the deprivation of nationality, and that this sanction, if imposed on those grounds, would be illegitimate; hence in this case the loss of nationality could be brandished by any government to keep a person from returning, in any capacity, to his or her country of origin.⁵⁷²

369. The Commission observes that in Cuba the right to residence and movement does not enjoy constitutional protection, which is incompatible with the guarantees of the regional system.⁵⁷³ Moreover, the IACHR notes that Article 216(1) of Cuba's Criminal Code provides that one who leaves the national territory or performs acts aimed at leaving the territory without complying with legal formalities may be deprived of liberty for one to three years, or subjected to a fine of 300 to 1,000 quotas.⁵⁷⁴

370. The IACHR observes that by Law No. 989 of December 5, 1961, it was ordered that all assets, rights, equity holdings, and securities of those persons who leave Cuban territory definitively be

...continuation

prisoners, including the basic standards with respect to accommodations, hygiene, medical treatment, and physical exercise. See IACHR, Report No. 27/01, Case 12,183, Jamaica, para. 133; Report No. 47/01, Case No. 12,028, Grenada, para. 127; Report No. 48/01, Case 12,067, Bahamas, para. 195; Report No. 38/00, Case No. 11,743, Grenada, para. 136.

⁵⁶⁸ IACHR, Resolution 1/08, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

⁵⁶⁹ Article VIII of the American Declaration of the Rights and Duties of Man.

⁵⁷⁰ IACHR, *Diez Años de Actividades 1971-1981*, General Secretariat of the Organization of American States, Washington, D.C., 1982, p. 327.

⁵⁷¹ IACHR, *Diez Años de Actividades 1971-1981*, General Secretariat of the Organization of American States, Washington, D.C., 1982, p. 330.

⁵⁷² IACHR, *Annual Report 1983*, Chapter VIII, Right to Residence and Movement.

⁵⁷³ IACHR, *Annual Report 1983*, Chapter VIII, Right of Residence and Movement.

⁵⁷⁴ Article 216 of the Criminal Code of Cuba, Chapter XI, Second Section. Subsection 2 of the same article indicates: "f in order to carry out the act referred to in the previous section one uses violence or intimidation of persons or force in respect of things, the sanction is the deprivation of liberty for three to eight years." Subsection 3 establishes: "The offenses provided for in the foregoing sections are sanctioned independent of whether they are committed in order to carry it out, or on occasion of carrying it out."

nationalized by confiscation. In addition, by joint resolution of August 22, 1995⁵⁷⁵ it was ordered that in those cases in which occupants with a right to the dwelling remained in it, the inventory would be taken with the emigrants' assets, mindful of the sworn statement and such assets that have heritage value for the State. Accordingly, the movables, personal effects, electrical appliances, household and personal objects and goods that do not have heritage value shall be offered without any payment to the occupant or occupants recognized to have the right to acquire the property rights to the real property. The law also indicates that if the assets are part of the community property and the spouse who did not emigrate is not assigned housing for failure to meet the requirement of time of living together, he or she shall be offered the option of buying them for the value of the emigrant's share with a discount of 75% of their value. In addition, if the inventory includes assets that have heritage value and the non-emigrant spouse proves that they were acquired during the marriage, he or she will also be offered the option of purchase for the value of the emigrant's share with no discount whatsoever.⁵⁷⁶

371. The citizens of Cuba require official permission to leave and enter the country. With respect to entering the national territory, citizens must have their passport authorized. This consists of having a permit to enter Cuba, which, after authorization by the immigration authorities, enables the holder of the passport to travel to the country so long as the passport is current. As of June 1, 2004, permanent citizens abroad who are in the category of émigrés can travel to the country with their authorized Cuban passport without needing an entry permit. Nonetheless, to authorize the passport, one must deliver it to the consular office and expressly request the authorization. The IACHR was informed that there is no express time for granting the authorization, which results in long waiting periods for obtaining it. Those Cuban citizens who left Cuba before January 1, 1971, and wish to travel to Cuba with the passport of the country where they reside must apply for a permit to enter Cuba.

372. According to the regulation of the immigration law, the current Cuban passport is valid for two years, and can be extended for two more years on two successive occasions.⁵⁷⁷ The Commission notes that the fee to apply for a passport is quite high, considering the average income in Cuba: It is approximately US\$ 50, plus the payment for exiting the country, which comes to US\$ 150, in addition to other costs depending on the reason for leaving.⁵⁷⁸ For those Cubans who wish to obtain their passport abroad the figures range from US\$ 230 to US\$ 350.

373. In addition, if a person who has had Cuban citizenship seeks to enter the country as the bearer of a foreign passport, he or she must present, when applying for the respective visa, documentary proof that the competent authority has ordered that he or she has lost his or her Cuban citizenship. Without meeting that requirement the visa will not be issued nor will the person be admitted to Cuba as a foreigner. According to the information received, in practice it is very difficult to secure documentary evidence on the loss of Cuban citizenship, which leads, in practice, to these persons not being able to enter the country.

374. According to the immigration police, those persons who want to and qualify for being able to file an application for definitive return to Cuba may only be women over 60 years of age, men over 65 years of age, and persons under 16 years of age⁵⁷⁹, severely restricting this possibility for citizens of other ages who wish to return to the country.

375. With respect to internal migration, the IACHR received information that indicates that the government has been adopting more drastic measures against the movement of citizens within Cuba,

⁵⁷⁵ Joint Resolution INV-MININT-MINJUS of August 22, 1995 "On the execution of investigative steps to implement Law 989 of December 5, 1961."

⁵⁷⁶ Resolution No. 328, 1998, Regulation on the confiscation of assets, National Housing Institute, Circular No. 2/98.

⁵⁷⁷ Decree No. 26 of July 31, 1976, Article 23.

⁵⁷⁸ If the motive of the trip is the visa lottery, family reunification, or marriage with a foreigner, one must pay US\$ 400 for the medical exam; if the motive is visit, one must pay US\$ 150 for a letter of invitation; if the motive of travel is marriage to a Cuban residing abroad, one must pay US\$ 550 to legalize the marriage. Figures provided by Juan Antonio Blanco, in a public hearing before the IACHR, 137th period of sessions, November 6, 2009. Source: Cuba Net.

⁵⁷⁹ Ministry of Foreign Affairs of the Republic of Cuba, Cuban Interests Section in Washington, Application for Definitive Return (PE-4).

through the more forceful enforcement of Decree 217 of April 22, 1997, which regulates internal migration to Havana.⁵⁸⁰ According to the decree, persons from elsewhere who wish to reside in the city of Havana must file a request with the president of the Council of the Municipal Administration corresponding to the place where the home is located, who shall decide whether the applicant meets the requirements. Article 8 of that decree establishes that a person who violates the internal migration regulations, for example by being domiciled in, residing in, or living with another permanently in the city of Havana without having been recognized to have the right to do so shall be subject to a fine of 300 pesos and the obligation to return immediately to the place of origin.⁵⁸¹

376. As stated in Annual Report 2009, while the IACHR recognizes that internal migration in Cuba is part of an international pattern of persons seeking better living conditions, the IACHR received information that indicates that the restrictions on internal migration mainly harm Cubans who are Afrodescendants and in poverty, who live in rural areas. As a result, some discrimination results between the white population that lives mostly in the cities, and the Afro-Cuban population, which seeks to migrate to the western provinces in search of better job opportunities.⁵⁸²

377. The decree contains a special provision that authorizes the agencies of the central administration of the State to issue the provisions necessary to reduce to the essential minimum temporary or definitive stays in the city of Havana of persons from elsewhere based on the activities or tasks associated with those agencies and their offices, and other entities subordinate to them. In addition, the Ministries of Labor and Social Security and Education shall exercise control over the provisions of the decree in the cases of workers and students, respectively, who move from other parts of Cuba to the city of Havana.

378. In addition, the Ministry of Interior and the Council of the Provincial Administration of the City of Havana, as well as all other corresponding agencies of the central administration of the State, are authorized to issue, in the framework of their respective legal powers, any complementary provisions they deem necessary for giving effect to and carrying out the decree.

5. Restrictions on the Freedom of Expression

379. In 2010, Cuba released 17 journalists who had been detained in 2003; the Inter-American Commission on Human Rights considered this a positive development. Even so, conditions persisted in Cuba that allow one to state that the conditions necessary for the exercise of the freedom of expression do not exist in Cuba.

380. The following paragraphs indicate some relevant facts related to the exercise of the freedom of expression in Cuba.

- Gains

381. Up until November, Cuba had released, on condition that they travel to Spain, 17 journalists who were part of a group of prisoners arrested in 2003, during a massive detention of political dissidents and independent journalists. The IACHR encouraged the Cuban State to continue the process so as to release all the political prisoners. It also reiterated that Cuba should set aside the convictions of those persons, bring its procedural rules into line with international standards of due process, make the necessary reforms in keeping with its international human rights obligations, and implement a process of democratic normalization. The journalists released are: Léster Luis González Pentón, Omar Ruíz

⁵⁸⁰ Decree 217 of April 22, 1997, Internal Migration Regulations for the City of Havana and infractions thereof. This situation was also documented by the organization Human Rights Watch, <http://www.hrw.org/en/world-report/2009/cuba>.

⁵⁸¹ In addition, those who are from other territories of the country, and are domiciled, reside in, or live together permanently in the city of Havana, without the corresponding registration in the office of the identify card, are subject to a payment of 200 pesos and the obligation to return immediately to the place of origin. Those who remain domiciled in the city of Havana after the term set for registration or the permit from the respective office of the Identification Card authorizing him or her to be temporarily or transitorily there has lapsed, are subject to a payment of 200 pesos and the obligation to return immediately to the place of origin.

⁵⁸² IACHR, Annual Report 2009, Chapter IV, Situation on Human Rights in Cuba, p. 294.

Hernández, Julio César Gálvez Rodríguez, José Luis García Paneque, Pablo Pacheco Ávila, Ricardo González Alfonso, Omar Rodríguez Saludes, Normando Hernández González, Mijail Bázaga Lugo, Alfredo Pulido López, José Ubaldo Izquierdo Hernández, Fabio Prieto Llorente, Juan Carlos Herrera Acosta, Juan Adolfo Fernández Saínz, Víctor Rolando Arroyo Carmona, Miguel Galván Gutiérrez, and Alfredo Felipe Fuentes. According to the information received, of the group of journalists detained in the 2003 roundup, Pedro Argüelles Morán,⁵⁸³ Héctor Maseda Gutiérrez, and Iván Hernández Carrillo are still awaiting release.

- **Acts of aggression, political harassment, or detentions for exercising the right of freedom of expression**

382. In 2010 the State maintained an attitude of intolerance towards the exercise of independent journalism and peaceful opposition demonstrations. The IACHR received information on two detentions of *Hablemos Press* correspondent Calixto Román Martínez Arias, from April 23 to May 13 and from May 5 to June 5. According to the information received, on the first occasion he had been arrested while covering a ceremony commemorating the death of dissident Orlando Zapata Tamayo. In the second incident, Martínez was detained when covering a demonstration of political opposition figures in Havana.⁵⁸⁴

383. In addition, the IACHR was informed that journalists from the Information Center of the Consejo de Relatores de Derechos Humanos de Cuba⁵⁸⁵, Juan Carlos González Leiva, Tania Maceda Guerra, and Sara Marta Fonseca Quevedo, had been held in Havana for five hours, on April 8, 2010, in order to keep them from attending a meeting. Police agents returned to harass and detain González and Maceda for several hours on August 1.⁵⁸⁶

384. On June 2, the director of the *Agencia de Prensa Libre Avileña*, José Manuel Caraballo Bravo, who was taking photographs in a peaceful protest, and reporter Raúl Arias Márquez, were said to have been arrested for several hours in Havana. According to the information received, police agents beat Arias on detaining him and then questioned the journalists and confiscated their camera, recorder, and telephone.⁵⁸⁷

385. The IACHR also received information regarding several detentions, in 2010, of independent journalist and human rights activist Julio Beltrán Iglesias, on May 4, May 18, and September 30 by state security agents.⁵⁸⁸

⁵⁸³ Committee for the Protection of Journalists, October 12, 2010. [Cuba libera decimoséptimo periodista arrestado en redada de 2003](#); IACHR. July 13, 2010. Press Release No. 69/10. IACHR Welcomes Release of Prisoners in Cuba.

⁵⁸⁴ On that occasion, also arrested were independent journalist Carlos Serpa Maceira and six protesters, who were released shortly thereafter. Martínez remained in prison, and was said to have been deported to the province of Camaguey on June 5. Reporters without Borders, June 2, 2010. [Periodista detenido de nuevo. 10 días después de haber sido puesto en libertad](#); Periodistas en Español. June 11, 2010. [El periodista Moisés Leonardo Rodríguez recibe un "acta de advertencia" de las autoridades de Cuba](#).

⁵⁸⁵ The Consejo de Relatores de Derechos Humanos is a free, democratic, and plural forum that was constituted in May 2007 for the promotion and defense of human rights.

⁵⁸⁶ Cubanet. April 13. [Arrestan a periodistas independientes del Consejo de Relatores](#). Available at: http://www.cubanet.org/CNews/y2010/abril2010/13_N_2.html; World Organisation Against Torture. April 16. [La OMCT reitera su llamado a liberar a todos los presos de conciencia](#). Available at: <http://www.omct.org/es/urgent-campaigns/urgent-interventions/cuba/2010/04/d20649/>; International Federation for Human Rights. August 6, 2010. [Hostigamiento judicial, agresión y amenazas contra varios miembros del Consejo de Relatores de Derechos Humanos](#). Available at: <http://www.fidh.org/Hostigamiento-judicial-agresion-y-amenazas-contra>.

⁵⁸⁷ Misceláneas de Cuba. June 22, 2010. Detenido y despojado de sus instrumentos de trabajo José Manuel Caraballo Bravo, director de la agencia de prensa avileña. Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=28441>; The Miami Herald. June 10, 2010. Two Independent Journalists Arrested Covering Anti-Government Protest. Available at: <http://www.miamiherald.com/2010/06/24/1698289/two-independent-journalists-arrested.html>.

⁵⁸⁸ Cubanet, May 7, 2010. Independent Journalist Duped and Arrested. http://www.cubanet.org/news_english_Jan_Dec_2010.html; Misceláneas de Cuba. May 20, 2009. Detenido arbitrariamente el periodista independiente Julio Beltrán Iglesias. Available at: http://www.cubanet.org/news_english_Jan_Dec_2010.html; Misceláneas de Cuba. October 8, 2010. Víctima de un secuestro el periodista independiente Julio Beltrán Iglesias. Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=30182>.

386. In addition, the IACHR received information according to which on January 29 police agents arrested journalist Juan Carlos Reyes Ocaña, of the agency *Holguín Press*, accused of “contempt,” “disobedience,” and “unlawful economic activity,” and held him for 24 hours. He was also said to have been arrested and threatened by the Police on December 4, 2009.⁵⁸⁹

387. The IACHR was also informed that journalist Oscar Sánchez Madán was released on April 11 after serving a three-year prison sentence. According to the information received, Sánchez was convicted in April 2007 of “pre-delictive social dangerousness.”⁵⁹⁰

388. Article IV of the American Declaration indicates that every person has the right to freedom of investigation, opinion, expression, and dissemination of thought, by any medium. The IACHR reiterates that principle 1 of the Declaration of Principles on Freedom of Expression says that: “Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.”

389. The IACHR also recalls principle 9 of the Declaration of Principles on Freedom of Expression, according to which: “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.” The IACHR understands that the detention and subsequent restrictions directed at the reporters are clear forms of restricting journalistic endeavor, and, therefore, the exercise of the freedom of expression.

- **Restrictions on the use of the Internet**

390. In 2009, the IACHR noted the restrictions and difficulties Cubans face when it comes to accessing the Internet. In 2010, the use of the Internet continues to be far from the reach of most of the population, due to its high cost, the low connection speeds⁵⁹¹, and the restrictive rules that limit or obstruct efforts to get on line.

391. In 2010, resolution 179/2008 continued to be part of the Cuban legal order; it establishes a “Regulation for providers of Internet services to the public, which are offered in the Internet areas, which are situated in hotels, post offices, or other institutions of the country and where national and international Internet and email services are provided to natural persons.”⁵⁹² Among the provisions striking to the IACHR is the following obligation for providers: “to adopt the measures necessary to impede access to sites whose contents are contrary to the social interest, morality, and good customs; as well as the use of applications that affect the integrity or security of the State.” The same provision establishes, among other points, the following: “Providers shall abide by the provisions emanating from the Organs of Defense of the country in exceptional situations, as well as the performance of tasks that cannot be put off for

⁵⁸⁹ Reporters without Borders. February 1, 2010. Un periodista disidente arrestado en Holguín. Available at: http://es.rsf.org/cuba-un-periodista-disidente-arrestado-01-02-2010_36263.html; Cubanet. February 2. Arrestado en Cuba el periodista Juancarlos Reyes Ocaña. Available at: <http://www.periodistas-es.org/reporteros/arrestado-en-cuba-el-periodista-juan-carlos-reyes-ocana>; Inter-American Press Association. December 6, 2009. Amenazan con dispararle a periodista. Available at: <http://www.sipiapa.com/cuba/espanol/noticia120809b.htm>.

⁵⁹⁰ Reporters without Borders. April 16, 2010. Tras la liberación de Oscar Sánchez Madán, veinticuatro periodistas siguen esperando a recobrar su libertad.

Available at: http://www.ifex.org/cuba/2010/04/16/sanchez_madan_released/es/.

⁵⁹¹ In Cuba there are two webs, one domestic, with limited access to information resources, and the other international. The average cost of one hour of connection to the domestic web network is approximately US\$ 1.63 and to the international web US\$ 5.48, in an economy in which the average monthly salary is about US\$ 20. In January, the government was said to have announced an improvement in the satellite connections, which would allow for a 10% increase in the connection capacity. Reporters without Borders. 2010. Internet Enemies. Available at: http://en.rsf.org/internet-enemie-cuba_36678.html.

⁵⁹² Ministry of Information and Communications. Resolution No. No 179/2008. Available at: <http://www.mic.gov.cu/sitiomic/legislacion/R%20179-%202008%20Reclam%20Proveedores%20Serv%20Acceso%20Internet%20al%20Publico.pdf>.

ensuring the defense and security of the State.” When a provider fails to abide by the regulation, he or she may be sanctioned by temporary or definitive invalidation of the services and contracts he or she has signed with the provider of public services for data transmission and Internet access, according to Article 21 of that resolution.

392. In 2010, resolution 55/2009 continued in force; it came into force in June 2009; it is the basis of the same regulation mentioned in the previous paragraph for the so-called Internet Service Providers for Storage, Hosting, and Applications.⁵⁹³ According to this resolution, the regulation includes those Cuban juridical persons who have received an operating license as a Public Services Provider for Access to Internet, which includes those who rent a physical space to a client who brings his or her own computer; those who provide the service of hosting sites, applications, and information; and those who grant applications services to third persons.

393. In this respect, the IACHR reiterates that the Internet “is an instrument with the capacity to fortify the democratic system, assist the economic development of the region’s countries, and strengthen full enjoyment of freedom of expression. The technology of the Internet is without precedent in the history of communications and it allows rapid access of and transmission to a universal network of multiple and varied information. Maximizing the population’s active participation through the use of the Internet furthers the political, social, cultural, and economic development of nations by strengthening democratic societies. In turn, the Internet has the potential to be an ally in the promotion and dissemination of human rights and democratic ideas and a major tool in the actions of human rights organizations, because of its speed and breadth which allow it to immediately transmit and receive information on situations affecting fundamental rights in different regions.”⁵⁹⁴

394. The IACHR was also informed of different acts of police or judicial harassment of persons who have issued critical opinions or information on the Internet. The IACHR learned of the detention of writer and independent journalist Luis Felipe Rojas, who was arrested on August 16, 2010, after having published on his blog *Cruzar las Alamedas* a report in which he denounced arbitrary detentions and other human rights violations in Cuba.⁵⁹⁵ The IACHR also received information according to which journalism student Darío Alejandro Paulino Escobar had been suspended for two years from the School of Social Communication of the Universidad de La Habana for having criticized, in a Facebook group, acts of repudiation against opponents.⁵⁹⁶ On April 17, police agents kept bloggers Yoanis Sánchez and Eugenio Leal from giving a lecture on the use of the Internet in a home in the locality of Punta Brava.⁵⁹⁷

395. Along the same lines, on April 24, state security agents were said to have detained, at his house in Holguín, the director of the digital daily publication *Candonga* and activist for Internet access Yosvani Anzardo Hernández for directing an independent publication. According to the information received, the authorities held Anzardo for six hours to question him. He had already been detained without charges in September 2009 for almost two weeks.⁵⁹⁸

⁵⁹³ Ministry of Information and Communications. Resolution 55/2009. Available at: <http://www.mic.gov.cu/sitiomic/legislacion/R%2055-09%20Proveedores%20Serv%20Publicos%20Aloj%20Hosped%20y%20Aplic.pdf>.

⁵⁹⁴ IACHR. Annual Report 1999: Annual Report of the Special Rapporteur for Freedom of Expression 1999, Chapter II. Assessment of the Situation of Freedom of Expression in the Hemisphere; D. The Internet and Freedom of Expression.

⁵⁹⁵ According to the information received, Rojas was released after being held 12 hours at a police station. Rojas was also said to have been arbitrarily detained on December 25 and 27, 2009, and on February 7, 2010. Amnesty International. June 2010. *Restricciones a la libertad de expresión en Cuba*. P. 21; ABC. August 16, 2010. [El bloguero Luis Felipe Rojas, detenido tras un "informe del horror" en Cuba](#).

⁵⁹⁶ Reporters without Borders. 2010. *Internet Enemies*; Penúltimos Días. February 6, 2010. [El estudiante de periodismo Darío Alejandro Paulino Escobar recurre su expulsión de la Universidad de La Habana por opinar en Facebook](#).

⁵⁹⁷ Misceláneas de Cuba. April 20, 2010. Agentes del régimen cubano abortan conferencia sobre Internet. Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=27294>; Generación Y. April 19, 2010. Encuentro Blogger en Punta Brava. Available at: <http://www.youtube.com/watch?v=jZrJ0jjnNw>.

⁵⁹⁸ Amnesty International. June 2010. *Restricciones a la libertad de expresión en Cuba*. P 21. Available at: <http://www.amnesty.org/en/library/asset/AMR25/005/2010/en/b795ecee-89b4-4583-aa2b-f9c58b722e3e/amr250052010es.pdf>; Misceláneas de Cuba. April 25, 2010. *Detienen al periodista independiente Yosvani Anzardo Hernández*. Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=27370>.

396. The IACHR recalls that Principle 2 of the Declaration of Principles on Freedom of Expression of the IACHR indicates that: “Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”

397. In addition, the IACHR recalls that according to Principle 13 of the same declaration: “Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

- **Criminalization of protest**

398. The IACHR was also informed of various acts aimed at criminalizing actions of persons who, by different means, sought to exercise their right to freedom of expression. According to the information received, on May 24 seven activists from a lesbian and gay group were arrested in Havana for distributing copies of the Universal Declaration of Human Rights and four others had been deported to other provinces.⁵⁹⁹ On August 16, police and state security agents are said to have arrested five opposition members from the steps of the Universidad de La Habana who were demonstrating there to read a communiqué in which they called for respect for human rights, shouted anti-government slogans, and displayed placards. Two women arrested were said to have been held for 24 hours, and three others for 10 days.⁶⁰⁰ In addition, the IACHR was informed of the detention said to have been suffered by at least six members of the opposition who displayed placards and shouted anti-government slogans on the steps of the National Capitol building in Havana on May 12.⁶⁰¹ In addition, on May 8 police agents are said to have prevented a group of opponents from demonstrating silently, in a sit-down protest, in the municipality of Regla, in Havana. Several members of the group were detained.⁶⁰²

399. The IACHR recalls that Principle 1 establishes: “Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.”

400. In addition, Principle 2 of the above-cited Declaration of Principles notes: “Every person has the right to seek, receive and impart information and opinions freely under terms set forth in [Article IV of the American Declaration of the Rights and Duties of Man]. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”

6. Human Rights Defenders

401. The IACHR has received information on acts of harassment and threats to persons who participate in protest demonstrations and peaceful marches. The Human Rights Defenders Unit has information on acts of harassment allegedly perpetrated against members of the Consejo de Relatores de

⁵⁹⁹ Misceláneas de Cuba. May 26, 2010. Arrestan a activistas por repartir ejemplares de la Declaración Universal de los Derechos Humanos. Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=28010>; Cuba Verdad. May 27, 2010. Detienen a lesbianas por repartir la Declaración Universal de los Derechos Humanos. Available at: <http://cubadata.blogspot.com/2010/05/detienen-lesbianas-por-repartir-la.html>.

⁶⁰⁰ El Mundo. October 8, 2010. [Los jóvenes que gritaron “abajo Fidel” en la Universidad de La Habana no callan](http://www.miscelaneasdecuba.net/web/article.asp?artID=29748); Misceláneas de Cuba. September 10, 2010. [Liberados miembros del CID manifestantes en la escalinata universitaria](http://www.miscelaneasdecuba.net/web/article.asp?artID=29748). Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=29748>. Noticias 41. August 18, 2010. [Protesta en la Universidad de La Habana](http://www.youtube.com/watch?v=-0I77NdmqUk). Available at: <http://www.youtube.com/watch?v=-0I77NdmqUk>.

⁶⁰¹ Misceláneas de Cuba. May 18, 2010. [Detienen a activistas que se disponían a hacer manifestación frente al capitolio habanero](http://www.cubanet.net). Cubanet. May 21. [Protesta de opositores pacíficos en el Capitolio](http://www.cubanet.net).

⁶⁰² Misceláneas de Cuba. May 11, 2010. [Protesta por acoso de la policía política es recibida con más represión](http://www.cubanet.net); Cuba, Democracia y Vida. May 13, 2010. [Amenazados y detenidos opositores en Regla](http://www.cubanet.net).

Derechos Humanos in the course of 2010. On January 11, 2010, an officer of the State Security agency went to the domicile of the Consejo de Relatores de Derechos Humanos to issue a summons to the owner of the property, Sergio Díaz Larrastegui, to appear before the political police and the Chief of the Police Unit in Havana, under threat of making use of force if he did not appear; he was summonsed, according to the sources of this information, to intimidate him to get him to evict the members of the Consejo de Relatores de los Derechos Humanos. This occurred in the context of acts of harassment against the Consejo de Relatores de Derechos Humanos in November 2008 and January 2009, aimed at having them evicted from their offices. According to available information⁶⁰³, the Consejo de Relatores de Derechos Humanos is subject to surveillance and their correspondence is intercepted.

402. The IACHR has learned of acts of repression against the social protest activities of the members of the Alianza Democrática Oriental (ADO) and the Movimiento Solidario Expresión Libre (MOSEL) during a demonstration in favor of the rights of persons detained, motivated by the hunger strike maintained by Mr. Zapata Tamayo. According to the information available, on May 3, 2010, a public march by those organizations was answered by the State with the violent detention of numerous protesters in a political police operation, directed by the first secretary of the province of Camagüey.⁶⁰⁴

403. In addition, repression continued against the Ladies in White.⁶⁰⁵ According to information received, on April 12, 2010, nine Ladies in White were kept from carrying out their traditional walk along Quinta Avenida of the Havana neighborhood of Miramar.⁶⁰⁶ According to a statement to a national press outlet, Ladies in White members Alejandrina García de la Riva and Berta Soler were allegedly surrounded by persons convened by the government who pushed them and shouted slogans, insults, and obscene words at them for more than two hours. According to the information received, the authorities this year imposed on the mothers, wives, and family members of political prisoners the requirement of requesting, with 72 hours lead time, authorization for their usual Sunday marches; notice of the requirement was not given in writing.

404. Also, the IACHR has information on the use of forms of repression against the family members of human rights defenders. According to the information received, Roberto Arsenio López Sánchez, a former physical education teacher, member of the Colegio de Pedagogos Independiente de Cuba, and Enrique Piñero Azahares, of the Consejo de Relatores, denounced that their daughters had not been accepted in the respective public schools when the school year began, allegedly in retaliation for their fathers' activities as members of human rights organizations.⁶⁰⁷

405. The IACHR states its concern over the difficult situation organizations in Cuba face when it comes to informing the international community of the human rights situation in Cuban territory due, among other things, to possible reprisals.

406. In that regard, the IACHR reiterates the need to adopt the measures required to ensure that the various organs of the State are not used to harass those who are dedicated to the work of defending and promoting human rights, especially those named in the "Report on the Situation of Human Rights Defenders in the Americas."

V. POSITIVE ASPECTS AND AREAS OF GENERAL PROGRESS

407. The IACHR places positive value on the international opening expressed by the Government of Cuba since 2008. The IACHR recognizes, in particular, the release of political dissidents this year and calls on the Government of Cuba to release all political dissidents unconditionally.

⁶⁰³ <http://www.fidh.org/Cuba-Nuevo-hostigamiento-contra-el-Consejo-de>

⁶⁰⁴ <http://www.fidh.org/Carta-abierta-a-las-autoridades-Actos-de>.

⁶⁰⁵ See IACHR, Annual Report 2009. Available at: <http://www.cidh.oas.org/annualrep/2009eng/TOC.htm>.

⁶⁰⁶ Represión a las Damas de Blanco, at Cubanito Web, <http://cubanitoweb.wordpress.com/2010/04/19/represion-a-las-damas-de-blanco/>.

⁶⁰⁷ Information obtained from the website of the Consejo de Relatores de Derechos Humanos of September 14, 2010.

408. In addition, the IACHR considers in a positive light that the United Nations Children's Fund (UNICEF), in its report for 2009, indicated that there are no problems of severe child malnutrition in Cuba. With that, Cuba has become the only country in Latin America to achieve that goal.⁶⁰⁸

409. In addition, the Commission reiterates its recognition of the important gains in Cuba in relation to the millennium development goals established by the United Nations.⁶⁰⁹ The IACHR values in particular the gains made in relation to maternal health, especially that 100% of births were handled by qualified personnel.⁶¹⁰

410. Further, the Commission values the decision of the People's Supreme Court to replace the death penalty sentence that hung against Raul Ernesto Cruz Leon for 30 years in prison⁶¹¹.

VI. CONCLUSIONS

411. Taking into consideration what is indicated above, the Commission once again states that the restrictions on political rights, freedom of expression, and dissemination of thought, the lack of elections, the lack of an independent judicial branch, and the restrictions on the freedom of movement and residence constitute a permanent situation of violation, in Cuba, of the fundamental rights of its citizens, and it urges the State to undertake the necessary reforms in keeping with its international human rights obligations.

412. The Commission urges the Cuban State to bring its procedural laws into line with the international standards of due process, so that persons before the courts for the determination of their rights and responsibilities may have minimum legal guarantees of the right to defense. In particular, nullify convictions against the victims of Case 12.476.

413. In addition, the Commission urges the Cuban State to adopt the legislative and other measures necessary for ensuring that the death penalty not be imposed in violation of the principles of due process and a fair trial before a competent, independent, and impartial court previously established by law.

414. Moreover, the Commission reiterates to the Cuban State the recommendation to order the immediate and unconditional release of all the victims of Case 12,476, setting aside their convictions for having been based on laws that impose illegitimate restrictions on their human rights. The IACHR also urges the Cuban Government to allow the released dissidents to reside in Cuba if they so desire.

⁶⁰⁸ Interview with Juan José Ortiz, representative of the United Nations Children's Fund. Available on Internet: http://www.bbc.co.uk/mundo/cultura_sociedad/2010/01/100126_1823_unicef_cuba_gz.shtml.

⁶⁰⁹ In this regard, the Cuban State has indicated that: "Cuba has fulfilled, prior to the set date, a large part of the established goals for the MDGs, in spite of the consequences coming from the application of the policy of economic, trade and financial blockade imposed by the United States of America, constituting the principal obstacle for better development of the country and for the improved living standards of its population. The country is working energetically to arrive at 2015 with the remaining goals fulfilled, and with the indicators already fulfilled several years ago much improved.

The results attained by Cuba not only show the determination of the Cuban government to continue encouraging the achievement of better standards of living and well-being for its population, in particular in areas such as the fight against poverty and hunger, the reversion of environmental deterioration, improvement of education and health, promotion of gender equality and international cooperation, but also the political will to channel the limited resources at the country's disposal towards those areas having the greatest economic and social impact.

The triumph of the Cuban Revolution permitted economic and social policies to be established that favoured coordinated and consistent work at the national level to look after the principal needs and priorities of the country. The indicators of this Report demonstrate the results of these policies, ratifying their suitability and relevance. Even though we are wholesomely proud of these results, Cuba will continue to work to improve its indicators in the fulfilment of the MDGs, aware of the fact that this implies an improvement of the standards and quality of life of its population". See at "Fulfillment of the Millennium Development Goals, Cuba 2010".

⁶¹⁰ United Nations Population Fund, State of World Population 2010, Available on the Internet: at http://www.unfpa.org/swp/2010/web/es/pdf/ES_SOWP10_DemSocialEcon.pdf.

⁶¹¹ GRAMMA, December 4, 2010 "Decide Tribunal Supremo Popular sustituir pena de muerte por 30 años de privación de libertad al terrorista salvadoreño Cruz León."

415. Further, the Commission urges the Cuban Government to eliminate the figures of the "dangerousness" and "special proclivity of a person to commit crimes" contained in the Criminal Code.

416. Finally, the Commission urges the Cuban Government to adopt the measures necessary to prevent and eradicate the various forms of harassment of those who exercise the right of association for humanitarian and trade union purposes, and against those dedicated to the defense and promotion of human rights.

DISSENTING VOTE

In line with the position that I have kept in regards to the Republic of Cuba, I have expressed that the Commission lacks material and territorial competence with respect to the Republic of Cuba, by virtue of its exclusion from the Organization of American States. Hence, I do not share the decision of most of my colleagues on the admission and processing of cases and the issuing of reports and other activities derived from the application of the Convention. Commissioner Luz Patricia Mejía Guerrero.