

ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2011

CHAPTER IV

CUBA

I. INTRODUCTION

147. The Inter-American Commission on Human Rights has been particularly attentive to the human rights situation in Cuba and, in exercise of its competence, has observed and evaluated the human rights situation there, which it has documented in special reports,²⁶⁴ in Chapter IV of the Annual Report,²⁶⁵ and through its case system.²⁶⁶ On a number of occasions it has asked the Cuban State to take precautionary measures with a view to protecting the life and personal security of its citizens.²⁶⁷

148. 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).²⁶⁸ On June 3, 2009, during its XXXIX session held in Honduras, the General Assembly of the Organization of American States (OAS) resolved that Resolution VI adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs, would cease to have effect, and 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."

149. The IACtHR has held that even for the time of its exclusion, the Cuban State "is juridically answerable to the Inter-American Commission in matters that concern human rights" since "the Cuban State is party to the first international instruments established in the American hemisphere to protect human rights" and because Resolution VI of the Eighth Meeting of Consultation "excluded the present Government of Cuba, not the State, from participation in the inter-American system."²⁶⁹

150. Using the criteria that the IACtHR developed in 1997 to identify States whose human rights practices merit special attention, the Commission has concluded that the human rights situation in Cuba falls under criteria one and five, in that the political rights recognized in the American Declaration of the Rights and Duties of Man are not respected, and structural problems persist that seriously affect the enjoyment and exercise of the fundamental rights recognized in the American Declaration.

²⁶⁴ IACtHR, Special Reports from the following years: 1962; 1963; 1967; 1970; 1976; 1979; 1983. At www.iachr.org

²⁶⁵ IACtHR, Chapter IV of the Annual Report for the following years: 1990-1991; 1991; 1992-1993; 1993; 1994; 1996; 1997; 1998; 1999; 2000; 2001; 2002; 2003; 2004; 2005; 2006; 2007, 2008, 2009 and 2010. at www.iachr.org

²⁶⁶ See: IACtHR, Merits Report No. 47/96, Case 11,436, Victims of the Tugboat "13 de marzo," October 16, 1996; IACtHR, Merits Report No. 86/99, Case 11,589, Armando Alejandre Jr., Carlos Costa, Mario de la Peña, and Pablo Morales, September 29, 1999; IACtHR, Admissibility Report No. 56/04, <http://www.cidh.org/annualrep/2004eng/Cuba.12127eng.htm>, Vladimiro Roca Antúnez *et al.*, October 14, 2004; IACtHR, Admissibility Report No. 57/04, <http://www.cidh.org/annualrep/2004eng/Cuba.771.03eng.htm>, Oscar Elías Biscet *et al.*, October 14, 2004; IACtHR, Admissibility Report No. 58/04, <http://www.cidh.org/annualrep/2004eng/Cuba.844.03eng.htm>, Lorenzo Enrique Copello Castillo *et al.*, October 14, 2004; IACtHR, Merits Report No. 67/06, <http://www.cidh.org/annualrep/2006eng/CUBA.12476eng.htm>, Oscar Elías Biscet *et al.*, October 21, 2006; IACtHR, Merits Report No. 68/06, <http://www.cidh.org/annualrep/2006eng/CUBA.12477eng.htm>, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006. At: www.iachr.org.

²⁶⁷ When it is notified of an IACtHR decision, the Cuban State either does not respond or sends a note to the effect that the Inter-American Commission on Human Rights does not have competence -and the Organization of American States does not have the moral authority- to examine issues related to Cuba.

²⁶⁸ The complete text of Resolution VI can be found in the "Eighth Meeting of Consultation of the Ministers of Foreign Affairs to serve as Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance, Punta del Este, Uruguay, January 22 to 31, 1962, Meeting Documents," Organization of American States, OEA/Ser.F/II.8, doc. 68, pages 17-19.

²⁶⁹ IACtHR, *Annual Report 2002*, Chapter IV, Cuba, paragraphs 3-7. See also IACtHR, *Annual Report 2001*, Chapter IV, Cuba, paragraphs 3-7. IACtHR, *Seventh Report on the Situation of Human Rights in Cuba*, 1983, paragraphs 16-46.

151. The restrictions on political rights, on the right to freedom of association, freedom of expression, freedom of thought, the lack of elections, the lack of an independent judicial branch and restrictions on freedom of movement have, over the decades, become permanent fixtures in systematic violations of the human rights of the Cuban people. In 2011, the information available suggests that the general human rights situation has not changed. The same human rights violations mentioned above persist, as do severe repression of women, restrictions on human rights defenders, and laws and practices that violate the rights of children and adolescents.

152. On November 22, 2011, the Commission sent this report to the State of Cuba and asked for its observations. The State did not respond.

II. ECONOMIC SANCTIONS

153. The economic and trade embargo imposed against Cuba in 1961 is still in effect. The IACHR's position is still that economic sanctions have an impact on the Cuban people's human rights, and therefore urges that the embargo be lifted.²⁷⁰ Nevertheless, the economic embargo imposed on Cuba does not relieve it of its international obligations and is no excuse for the violations of the American Declaration described in this report.

III. HUMAN RIGHTS SITUATION IN CUBA

A. The State's respect for and guarantee of the rights to life, to humane treatment and to personal liberty

- The death penalty

154. The Commission observes with concern that Cuban law makes the death penalty the punishment for a significant number of crimes, especially crimes against the security of the State. The language of the law is broad and vague, and the death penalty can be applied even in the most summary proceeding²⁷¹ that does not afford the minimum guarantees necessary for the accused to be able to exercise his right to an adequate legal defense.²⁷²

155. As was explained in Chapter IV of the 2008 Annual Report, the IACHR welcomes the fact that on April 28, 2008 the Council of State decided to commute the death penalty of those sentenced to that grave and irreparable punishment, and sentenced them to life or 30 years in prison instead. However, three people sentenced to death for supposed terrorist crimes would appear not to have had their sentences commuted.

156. The Commission is mindful of the State's comment to the effect that:

²⁷⁰ On October 25, 2011, the United Nations approved, for the twentieth consecutive year, a resolution in which it demanded that the United States lift the economic blockade and trade embargo that it has had in place against Cuba since 1962. UN, Resolution "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba." At: <http://www.un.org/en/ga/66/resolutions.shtml>

²⁷¹ Articles 479 and 480 of the Criminal Procedure Law establish the especially expedited summary proceeding:

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

Article 480. In especially expedited summary proceedings, the procedures that this law establishes for preliminary proceedings, oral trial and appeals may be reduced to the extent that the court with jurisdiction deems necessary. Title X, Especially Expedited Summary Proceeding. Articles 479 and 480. Available [in Spanish] at: <http://www.gacetaoficial.cu>. [Translation ours].

²⁷² IACHR, Annual Report 2008, Chapter IV, Cuba, paragraph 177.

Even if it is included in the national legislation, the application of this sanction has a very exceptional nature in Cuba. It is only applied by the authorized tribunal, in extremely serious cases, for a reduced number of crimes for which this sanction is established, and it is nuanced by a wide range of requisites and guarantees that must be complied with. Life-term sentences are prescribed for some crimes with the aim of using this as an alternative for the death penalty.

[...]

Philosophically speaking, Cuba is against application of the death penalty. We are in favour of eliminating it when suitable conditions exist.

We have been forced, in the legitimate defence of our national security, to establish and to apply severe laws against terrorist activities and crimes designed to destroy the Cuban state or the lives of its citizens, always adhering to the strictest legality and with respect for the most ample guarantees.”²⁷³

157. The IACRH hopes that the commutation is extended to include all those sentenced to the death penalty.

158. Having said this, the Commission observes that under Cuban law, a significant number of crimes carry the death penalty, especially crimes against the security of the State. The language of the law is broad and vague.

159. Capital punishment is the penalty for crimes against the security of the State; against peace and international law; against public health; against life and bodily integrity; against the normal conduct of sexual relations; against the normal development of childhood and adolescence; and against property rights. The crimes against the security of the State that carry the death penalty are the following: acts committed against the independence and territorial integrity of the State; those aimed at promoting war or armed action against the State; the provision of armed services against the homeland; providing aid and comfort to the enemy; espionage; insurrection;²⁷⁴ sedition; usurpation of political or military control; sabotage; terrorism; hostile acts against a foreign State; genocide; piracy; enrolling in the service of a foreign military force; apartheid²⁷⁵ and other acts against the security of the State. Other capital offenses include: the unlawful production, sale, use, trafficking, distribution and possession of drugs, narcotics, psychotropic substances and others having similar effects;²⁷⁶ murder;²⁷⁷ rape;²⁷⁸ violent

²⁷³ United Nations, (2009) Universal Periodic Review, Report of the Working Group on the Universal Periodic Review of Cuba, Additions, Responses provided by Cuba on the recommendations listed under paragraph 131 of the report of the Working Group on the Universal Periodic Review of Cuba. At:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CU/A_HRC_11_22_Add1_CUB_E.pdf

²⁷⁴ Article 98: 1. Anyone who takes up arms to achieve any of the following ends shall be sentenced to prison for a period of ten to twenty years or to the death penalty: a) to prevent the higher organs of the State and of Government from discharging their functions, either entirely or partially and even if temporarily; b) to change the economic, political and social order of the socialist State; c) to change, in whole or in part, the Constitution or the form of government it establishes.

2. Any person who commits an act intended to encourage others to take up arms shall face the same punishment if he or she accomplishes his or her ends; if not, the penalty shall be imprisonment for four to ten years.

²⁷⁵ Article 120: 1. The penalty shall be imprisonment for ten to twenty years or death for anyone who, in order to establish or maintain one racial group's domination over another and acting in accordance with policies for racial extermination, segregation or discrimination: a) denies members of that group the right to life and the right to liberty through murder, egregious attacks on their physical or mental security or dignity; torture or cruel, inhuman or degrading treatment or punishment; arbitrary detention and unlawful imprisonment; b) imposes on that group legislative or other measures intended to prevent it from participating in the country's political, social, economic, or cultural life and deliberately creates conditions that thwart the group's full development by denying its members their fundamental rights and freedoms; c) divides the population along racial lines by creating reservations and ghettos, prohibiting marriage between members of different racial groups and expropriating their property; d) exploits the labor of the group's members, especially by subjecting them to forced labor.

1. 2. If a person in any way persecutes or harasses organizations and persons who are opposed to apartheid or who struggle against it, he or she shall face imprisonment for ten to twenty years.

2. 3. Responsibility for the acts provided for in the preceding paragraphs shall be irrespective of the country in which the culpable parties act or reside and applies, irrespective of motive, to private citizens, members of organizations and institutions and representatives of the State. [Translation ours]

²⁷⁶ Cuban Criminal Code, Article 190.

pederasty;²⁷⁹ corruption of minors;²⁸⁰ robbery committed with violence or intimidation.²⁸¹ The death penalty is also the punishment for a significant number of offenses criminalized in broad or vague language that include expressions like “dangerous state.”²⁸²

160. Furthermore, as previously noted, in Cuba the death penalty can be ordered even in especially expedited summary proceedings. The Commission has written that “[a]lthough Article XVIII of the American Declaration refers to the simple and brief procedure whereby the courts will protect persons from acts of authority that violate any fundamental rights, the requirement of simplicity and brevity cannot be applied to a trial that does not allow the accused to defend themselves with all the guarantees of due process of law, and even more so in cases where the penalty that could be applied is irreversible by nature, that is, death.”²⁸³

161. According to the information available to the Commission, the last time the death penalty was used in Cuba was in 2003, when Messrs. Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García and Jorge Luis Martínez Isaac²⁸⁴ were executed. However, the death penalty continues to be applied in the especially expedited summary trials. The Commission believes that if capital punishment is an option, then the judicial branch must be an independent one, where judges exercise a high degree of scrutiny and respect the guarantees of due process. Here, the Inter-American Court has written 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.²⁸⁵ First, the imposition of the death penalty must be limited to the most serious common crimes not related to political offenses.²⁸⁶ Second, the sentence must be individualized in conformity with the characteristics of the crime, as well as the participation and degree of culpability of the accused.²⁸⁷ Finally, the imposition of this sanction is subject to certain procedural guarantees, and compliance with them must be strictly observed and reviewed.²⁸⁸

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²⁷⁷ Cuban Criminal Code, Article 263.

²⁷⁸ Cuban Criminal Code, Article 298.

²⁷⁹ Cuban Criminal Code, Article 299.

²⁸⁰ Cuban Criminal Code, Article 310.

²⁸¹ Cuban Criminal Code, Article 327.

²⁸² As the Inter-American Court has observed, “[a]mbiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty.” See, for example, I/A Court H.R., *Case of Castillo Petrucci et al.* Judgment of May 30, 1999. Series C No. 52, paragraph 121.

²⁸³ IACtHR, Merits Report No. 68/06, <http://www.IACtHR.org/annualrep/2006eng/CUBA.12477eng.htm>, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006, paragraph 96.

²⁸⁴ IACtHR, Merits Report No. 68/06, <http://www.IACtHR.org/annualrep/2006eng/CUBA.12477eng.htm>, Lorenzo Enrique Copello Castillo *et al.* October 21, 2006.

²⁸⁵ Cf. *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.

²⁸⁶ Cf. *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, paragraph 106, and *Case of Raxcacó Reyes, Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 133, paragraph 68. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 22, paragraph 55.

²⁸⁷ Cf. *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 23, paragraphs 103, 106 and 108, and *Case of Raxcacó Reyes*, *supra* note 23, paragraph 81. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 22, paragraph 55.

²⁸⁸ Cf. *Case of Fermín Ramírez, Merits, Reparations and Costs*. Judgment of June 20, 2005. Series C No. 126, paragraph 79. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 22,

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162. The IACHR observes that the gradual trend in the hemisphere is toward abolition of the death penalty²⁸⁹ and, in that respect, welcomes the statement made by the Cuban State to the effect that:

Even if the death penalty [sic] prescribed in the national legislation, Cuba understands and respects the arguments of the international movement that proposes its elimination or a moratorium. For that reason, our country has not rejected initiatives in the United Nations having this aim.²⁹⁰

- **Rights to personal security and liberty**

163. The American Declaration provides that every human person has the right to liberty²⁹¹ and no person may be deprived of this liberty except in the cases and according to the procedures established by pre-existing law.²⁹² Under the American Declaration, every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released.²⁹³ It also provides that every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.²⁹⁴

164. On the matter of the right to personal liberty, the IACHR has observed with concern²⁹⁵ that in Cuba, an offense criminalized under Article 72 of the Cuban Criminal Code, called "dangerous state", defined as "the special proclivity of a person to commit crimes," is still on the books and is still being enforced. Article 72 of that text provides that:

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

165. The definition of "dangerous state" appears in Article 73, paragraph 1 of the Criminal Code, which provides that a subject who exhibits any of the following indicia shall be deemed dangerous: (a) habitual drunkenness or dipsomania; (b) drug addiction; and (c) antisocial conduct. Article 73, paragraph 2, provides that:

anyone who habitually breaks the rules of social coexistence through acts of violence, or by other provocative acts, violates the rights of others, or who by his or her general conduct violates the rules of social co-existence or disturbs the order of the community, or lives as a social parasite from the work of others, or exploits or practices socially reproachable vices, is considered to be socially dangerous by virtue of such anti-social conduct.

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paragraph 55, and *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*.
Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, paragraph 135.

²⁸⁹ "Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights", Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989. At: <http://www2.ohchr.org/english/law/ccpr-death.htm>

²⁹⁰ United Nations, (2009) Universal Periodic Review, Report of the Working Group on the Universal Periodic Review of Cuba, Additions, Responses provided by Cuba on the recommendations listed under paragraph 131 of the report of the Working Group on the Universal Periodic Review of Cuba. At: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CU/A_HRC_11_22_Add1_CUB_E.pdf

²⁹¹ American Declaration, Article I.

²⁹² American Declaration, Article XXV.

²⁹³ American Declaration, Article XXV.

²⁹⁴ American Declaration, Article XXVI.

²⁹⁵ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

166. For its part, Article 75(1) of the Criminal Code provides that “anyone who, although not covered by any of the dangerous states described in Article 73, has ties or relations to persons who are potentially dangerous to society, to other persons, and to the social, economic and political order of the social State and may therefore be inclined to commit crimes, shall be warned by the competent police authority.”

167. If a person is deemed dangerous because he or she engages in any of the behaviors mentioned above, security measures can be applied either before or after the criminal conduct. Article 78 of the Criminal Code provides that therapeutic or re-educational measures can be applied in the case of a person declared to be in a dangerous state, or the National Revolutionary Police may keep that person under surveillance. Under Article 79, one of the therapeutic measures is internment in care facilities, psychiatric institutions, or detoxification centers.²⁹⁶ The re-educational measures are applied in the case of supposedly anti-social persons and consist of internment in specialized work or study facilities; the person may also be ordered sent to a labor collective where his or her conduct will be supervised and rehabilitated. These security measures last a minimum of one year and a maximum of four.

168. The provisions of the Cuban Criminal Code are supplemented by Decree No. 128, issued in 1991, which provides that a declaration of pre-criminal dangerous state must be decided through a summary proceeding. In that decree, the National Revolutionary Police are to put together a criminal case file containing evidence of the “dangerous” conduct and present it to the Municipal Prosecutor who, within the space of two days, shall decide whether the case will go to the Municipal Court. If that court finds that the case file is complete, it shall set a date for a hearing where the parties are to appear. The court is to deliver its decision within the twenty-four hours following the hearing.

169. The Commission believes that the function of criminal law is to punish crimes or attempts to commit crime, but never the predilection to commit crime or a presumption of the commission of a crime.²⁹⁷ The Commission is troubled by the fact that “dangerousness” or “dangerous state” is a criminal offense since it is, in fact, a subjective assessment on the part of whoever qualifies it as such; imprecision here jeopardizes the public’s legal certainty, as the law creates conditions conducive to abuses of authority. The Commission finds it extremely serious that these provisions –which are themselves incompatible with the principles established in the American Declaration- are applied via a summary proceeding, to persons who have not even committed a crime but who, in the judgment of the Cuban authorities, are considered *dangerous* to society and, therefore, deserving of severe measures that deny them their liberty.²⁹⁸ In such cases, on the pretext of preserving *social peace*, the State has virtually complete discretion to interfere in the lives of the Cuban citizenry and heedlessly violate the right to personal liberty.

170. The violations of the personal liberty of Cuban political dissidents will be examined in the next section.

B. Respect for and guarantee of political rights

171. Political rights are of fundamental importance and closely related to a set of other rights that make the practice of democracy possible. Under the Inter-American Democratic Charter, signed in Lima, Peru on September 11, 2001, representative democracy is recognized and required within the Organization of American States as indispensable for the stability, peace, and development of the region. The existence of free elections, independent and effective branches of government, and full respect for freedom of expression are among the essentials of democracy and cannot be examined separately.

²⁹⁶ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

²⁹⁷ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999

²⁹⁸ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

From this standpoint, human rights cannot be fully guaranteed unless the right of persons to form and participate in political groups is respected.

172. The right to vote is one of the elements essential for the existence of democracy and one of the ways in which citizens freely express their will and exercise their right to political participation. This right means that citizens can directly decide and freely elect, under conditions of equality, those persons who will represent them in decisions taken on public affairs.²⁹⁹ Political participation through the exercise of the right to be elected presupposes that citizens can stand as candidates under conditions of equality and can hold elective office. The American Convention provides that even in emergency situations, this right cannot be suspended.³⁰⁰

173. One of the main reasons for including Cuba in Chapter IV of the Annual Report is that it does not have free elections held in accordance with internationally accepted standards. This is a violation of the right to political participation recognized in Article XX of the American Declaration of the Rights and Duties of Man. That article reads as follows:

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.

174. Article 3 of the Inter-American Democratic Charter defines the distinctive features of a democratic system of government as follows:

[e]ssential 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.

175. The State has asserted that "Cuba's democratic system is based on the principle of 'government of the people, by the people and for the people,'" adding that "[t]he Cuban people participate in the exercise and active control of Government through its political and civil institutions and in the framework of its laws."³⁰¹ It has also claimed that the restrictions that the law imposes on the exercise of certain political rights in Cuba are the minimum necessary to ensure protection of the right to self-determination, peace and the right to life of all people, in response to the increasingly anti-Cuban aggressiveness on the part of the Empire.³⁰²

176. The Declaration and the Inter-American Charter reflect a widely held view that under representative democracy, the people are sovereign and the offices through which authority is exercised are held by persons freely elected to represent the will of the people.

²⁹⁹ IACtHR, Annual Report, 1990-1991, p. 557; IACtHR, *Second Report on the Situation of Human Rights in Peru*, 2000, Chapter IV, Political Rights, A.1; see also I/A Court H.R., *Case of Castañeda Gutman v. Mexico*, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008, Series C No. 184.

³⁰⁰ Article 27 of the American Convention, which is titled "Suspension of Guarantees", provides the following in subparagraph 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, paragraph 34; and *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs, Judgment of June 23, 2005. Series C No. 127, paragraph 191.

³⁰¹ National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1. Cuba, UN, Human Rights Council, Working Group on the Universal Periodic Review, Fourth Session, Geneva, February 2-13, 2009, of November 4, 2008, paragraph 8.

³⁰² In Chapter 9 of the "Libro Blanco del 2007", published [in Spanish] at the official website of the Ministry of Foreign Affairs of Cuba.

177. In the Commission's view, those elements are not present in Cuban elections, inasmuch as such basic features as the pluralistic system of political parties and independence are lacking, as is free access to a variety of sources of information. Based on the international standards mentioned earlier, the Commission emphasizes that the lack of free and fair elections, based on secret balloting and universal suffrage as an expression of the sovereignty of the people,³⁰³ is a violation of the Cuban people's right to political participation.

- Situation of Political Dissidents and Political Repression

178. According to information obtained, thanks to the good offices of the Catholic Church in Havana, between July 2010 and March 2011 the Cuban government, in the person of its president, Raúl Castro, released persons who had been in prison since 2003, when a group of members of the opposition and independent journalists (the so-called group of 75) was arrested, tried and sentenced to harsh penalties, in what was called the "Black Spring." That situation was the subject of the IACHR's Case 12,476.³⁰⁴ The majority of those released were sent to Spain. In press release 69/10 of July 13, 2010, the IACHR welcomed the decision taken by the Cuban Government.

179. While the Cuban Government's original commitment was to release the remaining prisoners of the Group of 75, it then announced its willingness to release other political prisoners and exile them to Spain. The Government also said that it would grant *licencia extrapenal* (conditional release amounting to house arrest) to those prisoners of conscience who refused to leave their country upon their release.³⁰⁵ They could thus remain free on the island, although the case against them would go on. Twelve of the victims who refused to leave the island as a condition for their release from prison, remained at liberty provisionally; however the laws that allowed their arrest are still in force.

180. The IACHR received information concerning Oscar Elías Biscet, a recently released dissident who remains in Cuba. He has allegedly been ordered to make an appearance between the first and fifth of each month to sign a document, in the presence of the examining judge and the sector chief. Oscar Elías Biscet said that he allegedly had to sign the control form the first time in order for them to give him identification papers. He also said that he was the only person remaining in Cuba who was subject to that order.³⁰⁶

181. The IACHR must again make the point that convictions delivered against political dissidents must be overturned inasmuch as they are based on laws that impose unlawful restrictions on their human rights.³⁰⁷ Likewise, the so called "*licencias extrapenales*" to those who have been released and opt to remain in Cuba does not constitute compliance with the recommendations the Commission made in its report on the merits.³⁰⁸

182. Moreover, from the information received it would appear that during 2011, the Government allegedly continued what the IACHR had labeled a tactic of political repression in the form of systematic arrests for several hours or even several days, threats and other forms of harassment against opposition activists.

³⁰³ Article 3 of the Inter-American Democratic Charter lists as one of the essential elements of representative democracy the holding of 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.

³⁰⁴ IACHR, Merits Report No. 67/06, Case 12.476 , Oscar Elías Biscet *et al.*, October 21, 2006.

³⁰⁵ Article in the newspaper *El País*, *Cuba deja quedarse a los ex presos que no quieran exiliarse* [Cuba allows former prisoners who do not want to go into exile to remain], September 23, 2010.

³⁰⁶ The newspaper *Diario de Cuba*, *Biscet se niega a aceptar una imposición policial que le obliga a reportarse cada mes* [Biscet refuses the police order requiring him to report every month], July 7, 2011, Available [in Spanish] at: <http://www.ddcuba.com/derechos-humanos/5691-biscet-se-niega-aceptar-una-imposicion-policial-que-le-obliga-reportarse-cada->

³⁰⁷ IACHR, Merits Report No. 67/06, Case 12.476 , Oscar Elías Biscet *et al.*, October 21, 2006.

³⁰⁸ IACHR, Merits Report No. 67/06, Case 12.476 , Oscar Elías Biscet *et al.*, October 21, 2006.

183. According to the Cuban National Human Rights and Reconciliation Commission, the level of “low intensity” political repression remained high in 2011. According to that organization, in 2011, the figures on the number of persons taken into temporary custody on allegedly political grounds were as follows: January, 268; February, 390; March, 264; April, 244; May, 349; June, 212; July, 251; August, 243; and September, 563.³⁰⁹ According to that organization, these figures are the highest in all Latin America and the Caribbean for this type of repression. It also observes that the figure for the month of September was the highest that Cuba had seen in the last 30 years.³¹⁰

184. It points out that in recent months state agents used physical violence on members of the opposition, men and women alike. The IACHR points to the May 5, 2011 beating of Juan Wilfredo Soto García. A dissident and former political prisoner, Mr. Soto García, age 46, had allegedly been beaten and detained by Cuban State Security forces as he and other people were participating in an anti-government demonstration. According to the information supplied, two days later, on May 7, 2011, Mr. Soto García died as a result of the beatings he received, although a proper investigation has not shed light on the cause.

185. The IACHR also received information concerning Damaris Moya, a member of the *Coalición Central Opositora* [Central Opposition Coalition], who was hospitalized on June 26 from a beating allegedly inflicted by a number of military personnel. Activist Guillermo Cobas reported from El Caney that a dozen members of the opposition had allegedly been “beaten violently and received a public censure by the political police, State Security and members of the Communist Party.”³¹¹ He also said that dissidents Reiner Arocha Téllez and René Hierrezuelo Arafé had allegedly been “beaten and dragged across the floor” as they were meeting in Mr. Hierrezuelo Arafé’s house.

186. The IACHR received information to the effect that on January 19, 2011, Mrs. Marta Fonseca’s house was allegedly raided to remove some anti-government posters that had been drawn on the façade of the home. The activist, along with her son and husband, were allegedly brutally beaten and arrested.³¹² According to the information available, although Sara Fonseca already had a bandage on her back from previous beatings sustained during the marches of the *Damas de Blanco* [Ladies in White], she was beaten again.³¹³

187. The IACHR was also told of a number of temporary arrests and acts of violence against Marta Díaz Rondón, a member of the Rosa Parks Women’s Civil Rights Movement [Movimiento

³⁰⁹ Comisión Cubana de Derechos Humanos y Reconciliación Nacional [Cuban National Human Rights and Reconciliation Commission]. Available [in Spanish] at: <http://www.cubasindical.org/docs/cccdrnseptiembre11.pdf>.

³¹⁰ Comisión Cubana de Derechos Humanos y Reconciliación Nacional [Cuban National Human Rights and Reconciliation Commission]. Available [in Spanish] at: <http://www.cubasindical.org/docs/cccdrnseptiembre11.pdf>.

³¹¹ Cubaencuentro, *Denuncian actos de repudio y agresión a opositores en Santiago de Cuba* [Acts of censure against members of opposition in Santiago de Cuba denounced], August 14, 2011. Available [in Spanish] at: <http://www.cubaencuentro.com/cuba/noticias/denuncian-actos-de-repudio-y-agresion-a-opositores-en-santiago-de-cuba-266953>.

³¹² Assembly of the Cuban Resistance. Special Report. Cuba: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

³¹³ IACHR, Precautionary Measures granted by the IACHR during 2011. PM 370-11, Sara Marta Fonseca Quevedo, Cuba. On December 6, 2011, the IACHR granted precautionary measures for Sara Marta Fonseca Quevedo in Cuba. The request seeking precautionary measures alleges that Sara Marta Fonseca Quevedo, Executive Secretary of the Pro Human Rights Party in Cuba and a delegate of the Rosa Parks Feminist Civil Rights Movement in Havana, was harassed when she sought medical treatment at state-run health care institutions, presumably because of her political position and because she is an advocate for human rights. The request also states that Sara Marta Fonseca Quevedo was detained four times in 2011, often by violent means. The parties requesting the precautionary measures state that Sara Marta Fonseca Quevedo was in custody from September 24 to October 24, 2011 and that because of the violence allegedly used on her during her detention, a pre-existing back condition was aggravated, leaving her unable to stand up on her own. The Commission therefore asked the Cuban Government to take the necessary measures to ensure the life and physical integrity of Sara Marta Fonseca Quevedo and to guarantee that she would not be harassed by staff of state-run hospitals; that in concert with the beneficiary and her representative it arrange the measures it will take, and that it report on the measures undertaken to investigate the facts that necessitated adoption of precautionary measures.

Femenino por los Derechos Civiles Rosa Parks] and the Eastern Democratic Alliance [Alianza Democrática Oriental] (on May 9, 2011, May 24, 2011, and May 26, 2011), as she was on her way to participate in meetings or peaceful marches.³¹⁴

188. The Inter-American Commission also received a report to the effect that in Santiago de Cuba on June 21, the political police had allegedly conducted an operation to clamp down on dissidents who were attempting to express their solidarity with Alba García, mother of Jorge Cervantes, who had been on a hunger strike for 24 days in the Saturnino Lora provincial hospital. The operation reportedly involved stationing a number of officers to fence off access to the hospital and demand to see identification papers before letting people gain access to the hospital. A number of people were allegedly temporarily detained. Their names were on a list.³¹⁵

189. The IACHR was informed that the regime's new strategy for suppressing political opposition was to exile the principal leaders of the opposition. To achieve that end, it would fabricate criminal cases. Faced with the possibility of prison, the leaders of the opposition would have to choose what was represented as voluntary exile. This was the case of Néstor Rodríguez Lobaina, founder of the Cuban Pro-Democracy Youth Movement [Movimiento Cubano de Jóvenes por la Democracia], for whom the Commission granted precautionary measures on January 24, 2011.³¹⁶ According to the petition seeking precautionary measures, on December 9, 2010 Néstor Rodríguez Lobaina was out walking with his 10-year-old daughter, Diana Rodríguez Castillo, when he was intercepted by agents of the political police. According to the request, the agents reportedly hit him with pepper spray and put him in a patrol car, leaving the girl by herself, 15 blocks from home. The request adds that after being detained for 72 hours at the Department for State Security Operations in the city of Guantánamo, he was apparently transferred on December 12 to the Guantánamo Provincial Prison and that his family did not receive any information about his state of health or about any treatment he may or may not have been receiving for burns he allegedly suffered as a result of the pepper spray having hit him at close range. The Inter-American Commission was later informed that Mr. Rodríguez Lobaina had allegedly accepted the Government's offer to be exiled to Spain, rather than face 12 years in prison for crimes he said he did not commit. He was reportedly taken directly from the prison where he had been held since December 9, 2010, to the airport with his closest next of kin. Mr. Rodríguez Lobaina reportedly arrived in Spain on April 8, 2011. The Inter-American Commission was also told that a suggestion had also been made to Rolando Rodríguez Lobaina, brother of Néstor Rodríguez Lobaina, Rogelio Tabío and Ricardo Galván Casal that they, too, should leave the country, but they declined.³¹⁷

190. The IACHR received information on the forms of repression being practiced in Cuba, among them the threats made against members of political parties. The IACHR was told that Elpidio Rodríguez Casas, a member of the Cuban Independent Democratic Party [Partido Cubano Independiente y Democrática] (CID), had allegedly been threatened by State Security agents to get him to resign from

³¹⁴ Assembly of the Cuban Resistance. Special Report. Cuba: Increased Repression against Human Rights Defenders and violent assault on Women Human Rights Defenders, August 2011.

³¹⁵ Payolibre, *Detenciones y golpizas en torno a la huelga de Cervantes* [Detentions and beatings associated with Cervantes' hunger strike], June 23, 2011. Available [in Spanish] at: <http://www.payolibre.com/noticias/noticias2.php?id=7822>

³¹⁶ Precautionary measure 13/11 for Néstor Rodríguez Lobaina and family, Cuba. On January 24, 2011, the IACHR granted precautionary measures for Néstor Rodríguez Lobaina and his family in Cuba. The petition seeking precautionary measures alleges that on December 9, 2010, Néstor Rodríguez Lobaina was out walking with his 10-year-old daughter, Diana Rodríguez Castillo, when he was intercepted by agents of the political police. According to the request, the agents reportedly hit him with pepper spray and put him in a patrol car, leaving the girl by herself, 15 blocks away from home. The request adds that after being detained for 72 hours at the Department for State Security Operations in the city of Guantánamo, he was apparently transferred on December 12 to the Guantánamo Provincial Prison and that his family had not received any information about his state of health or about any treatment he may or may not have received for burns he allegedly suffered as a result of the pepper spray having hit him at close range. The Inter-American Commission asked the State of Cuba to adopt any measures necessary to preserve and guarantee the life and physical integrity of Néstor Rodríguez Lobaina and his family, and to allow him access to a doctor he trusted or an international organization for treatment and monitoring of his health. See at: <http://www.cidh.oas.org/medidas/2011.eng.htm>

³¹⁷ Pedazosdelaisla, *Néstor Rodríguez Lobaina sobre su Destierro* [Néstor Rodríguez Lobaina on His Exile], April 11, 2011. Available [in Spanish] at: <http://pedazosdelaisla.wordpress.com/2011/04/11/nestor-rodriguez-lobaina-sobre-su-destierro/>

the board of directors of the party; they threatened that if he did not, he would lose his housing and the Law on Pre-Criminal Danger would be enforced against him.³¹⁸

C. The State's observance and guarantee of exercise of freedom of expression

191. The IACHR learned of a hunger strike being staged by journalists Pedro Argüelles Morán and Albert Santiago Du Bouchet Hernández, both members of the "Group of 75" dissidents detained in 2003 and the subject of IACHR Case 12,476 (Oscar Elías Biscet *et al.*). Argüelles Morán had allegedly gone on a hunger strike to protest the pressure being exerted by the authorities to get him to leave the country if they released him. He went off his hunger strike when the authorities promised that he and ten other dissidents being held could remain in Cuba once released. For his part, Du Bouchet Hernández' hunger strike had allegedly lasted 23 days, and was to honor the first anniversary of the death of dissident Orlando Zapata and to call attention to his own imprisonment and that of other political prisoners.³¹⁹

192. The Office of the Special Rapporteur for Freedom of Expression received information to the effect that temporary arbitrary detentions were still being made and could last hours or even a few days. The victims were persons identified as opponents of the regime and the idea was to prevent them from participating in political activities or to respond to demonstrations or the circulation of messages critical of the Government. According to the information received, another common practice is to stage acts of censure in front of the homes of political dissidents, as a way to harass them and prevent them from going out in public. These events, during which government slogans are yelled and patriotic anthems and revolutionary music are played full blast, tend to be accompanied by arrests and attacks on the members of the opposition. According to the reports received, Cuban dissident organizations reported between 2,668 and 2,784 arrests between January and September 2011, averaging at least 333 detentions a month in the first eight months of 2011. However, the dissident organizations reportedly saw a sizeable increase in arrests in September, with between 486 and 563 persons taken into custody. According to reports received, 80 persons were allegedly either convicted or tried on political grounds; 63 of these were reported to be in prison.³²⁰ The increase in arrests prompted a public communiqué from the British Embassy in Cuba, in which the diplomatic mission called upon the State to allow peaceful protests and expressed concern over the short-term detentions of political and human rights activists, and the aggressive treatment against opposition organizations like the *Damas de Blanco* [Ladies in White].³²¹

193. According to information the Commission received, at least a dozen journalists who collaborated with the independent news agency *Hablemos* Press had reportedly been taken into temporary custody or attacked in the days before and during the Sixth Congress of the Cuban Communist Party, held in Havana April 16 – 19, 2011. On April 15, the *Hablemos* Press correspondent in Guantánamo, Enyor Díaz Allen, had allegedly been attacked by two persons who started by yelling pro-government slogans at him and then fractured one of his arms and inflicted a head injury on him. He was

³¹⁸ Cuba Independiente y Democrática, *O te retirás del CID o te quitamos tu casa* [Either you pull out of CID or we take your home], August 16, 2011. Available [in Spanish] at: <http://cubacid.blogspot.com/2011/08/o-te-retirás-del-cid-o-te-quitamos-tu.html>

³¹⁹ Reporters Without Borders. February 4, 2011. *Jailed Journalists on Hunger Strike*; Committee to Protect Journalists (CPJ). February 9, 2011. *Press Cuba to keep promise to free journalists*; Agence France Presse (AFP). February 10, 2011. *Un preso político cubano levanta su huelga de hambre de ocho días*. [One Cuban political prisoner ends eight-day hunger strike]

³²⁰ Comisión Cubana de Derechos Humanos y Reconciliación Nacional [Cuban National Human Rights and Reconciliation Commission]. October 3, 2011. *Algunos actos de represión política registrados en Cuba durante septiembre de 2011* [Some acts of political repression recorded in Cuba in September 2011]; Centro de Información Hablemos Press. October 3, 2011. *Informe mensual de violaciones de los derechos humanos*. [Monthly report on human rights violations]; EFE News Service. October 4, 2010. *Septiembre malo para la disidencia*. [A Bad September for the dissident movement]; Inter-American Press Association (IAPA). September 29, 2011. *IAPA condemns increased harassment in Cuba*; Reuters. October 3, 2011. *Grupo disidente Cuba reporta histórica cifra detenciones mensuales*. [Cuban dissident group reports historic figure on monthly arrests]

³²¹ Embassy of Great Britain in Cuba. September 29, 2011. *Recent reports of short term detentions in Cuba. British Ambassador Dianna Melrose Comments on the Situation*.

later allegedly detained by the Police, treated in a hospital and then jailed for four days.³²² Raúl Arias Márquez and Elier Muir Ávila, correspondents in the provinces of Morón and Ciego de Ávila, were detained in Márquez' home on April 5 and 6 by Police and State Security agents. They had reportedly been warned that they would be jailed if they continued to practice their journalistic activities.³²³ On March 31, State Security agents allegedly arrested the Hablemos Press correspondent Idalberto Acuña Carabeo at his home in Havana when he refused to turn over photographs he had taken just hours earlier at a protest at the *Central de Trabajadores de Cuba* (CTC).³²⁴ On April 16, a group of police and State Security agents had allegedly kept the Hablemos Press correspondent in Mayabeque province, Luis Roberto Arcia Rodríguez, trapped inside his home for 12 hours to prevent him from going to Havana to cover the Communist Party Congress.³²⁵ Something similar happened on April 16, when the home of the Hablemos Press correspondent in Melena del Sur, Sandra Guerra Pérez, was surrounded for two days by some 20 police and State Security agents to prevent her from travelling to Havana.³²⁶ On April 15, two State Security agents showed up at the offices of Hablemos Press in Havana, to warn journalists Robert de Jesús Guerra Pérez, Magaly Norvis Otero Suárez, Ignacio Estrada Cepero and José Alberto Álvarez not to go outside while the Communist Party Congress was in session or they would be jailed.³²⁷

194. According to the information received, journalist and political dissident Guillermo Fariñas has reportedly been held in custody for hours on several different occasions since December 2010. In December, the State refused to give Fariñas authorization to travel to Strasbourg, France, to receive the Sakharov Prize, which the European Parliament awards each year for freedom of conscience.³²⁸ On January 27, Fariñas was allegedly arrested twice within 24 hours, along with other dissidents, accused of making a "public scandal" for their participation in anti-government protests.³²⁹ On February 23, Fariñas was detained yet again, together with another 46 activists in Santa Clara, who were attempting to mark the first anniversary of the death of another dissident, Orlando Zapata. Fariñas was released 27 hours later. In addition to being detained, some 200 Government sympathizers had allegedly surrounded the women of the opposition group known as "Damas de Blanco" [Ladies in White] to hurl insults and slogans in support of the government. On April 6, Fariñas was arrested yet again, along with a dozen activists from the *Foro Antitotalitario* and the Santa Clara Central Coalition, after showing up at a prison to protest the arrest of various members of the opposition who had been detained just moments earlier. The authorities kept Fariñas under house arrest and took away his passport.³³⁰ Fariñas and another 26

³²² Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#); Reporters Without Borders. July 1, 2011. [Authorities Step Up Harassment of Independent News Centre](#).

³²³ Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#); Reporters Without Borders. July 1, 2011. [Authorities Step Up Harassment of Independent News Centre](#).

³²⁴ *Misceláneas de Cuba*. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#) [Report on repression against correspondents of Hablemos Press]; Committee to Protect Journalists (CPJ)/IFEX, April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

³²⁵ *Misceláneas de Cuba*. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#). [Report on repression against correspondents of Hablemos Press]; Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

³²⁶ *Misceláneas de Cuba*. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#). [Report on repression against correspondents of Hablemos Press]; Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

³²⁷ *Misceláneas de Cuba*. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#). [Report on repression against correspondents of Hablemos Press]; Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

³²⁸ *Europa Press*. December 14, 2010. [Guillermo Fariñas no logra el permiso para salir de Cuba](#). [Guillermo Fariñas not given permission to leave Cuba]; *El Mundo*. December 13, 2010. [Fariñas responsabiliza a Fidel y no a Raúl por no dejarle recoger el premio Sakharov](#). [Fariñas blames Fidel, not Raúl for not allowing him to go to receive his Sakharov Prize]

³²⁹ Inter-American Press Association (IAPA). January 28, 2011. [IAPA calls for end to repression in Cuba](#); Agence France Presse (AFP). January 28, 2011. [Cuba: Guillermo Fariñas liberado tras segundo arresto en 24 horas](#). [Cuba: Guillermo Fariñas released after second arrest in 24 hours]

³³⁰ *La Voz de Galicia*. April 7, 2011. [El opositor cubano Fariñas, en arresto domiciliario tras otra detención](#). [Cuban dissident Fariñas under house arrest after being detained again]; EFE News Service. April 7, 2011. [Disidente cubano Guillermo Fariñas, de nuevo preso](#). [Cuban dissident Fariñas jailed again]

dissidents were reportedly detained on September 15 in Santa Clara, as they were preparing for a demonstration. Fariñas and the others were released some hours later.³³¹

195. On November 1 2011, Guillermo Fariñas was detained again when he tried to access the provincial hospital “Arnaldo Milian Castro” to know about the health situation of Alcides Rivera, a dissident who was hospitalized by a hunger strike he initiated a month ago. A group of security men impeded his way to the hospital. He was beaten, handcuffed and was transferred in a police car to the police unit. He was released on November 3, 2011.

196. As the detentions increased and the harassment of political and human rights activists was heating up, various leaders of dissident groups were allegedly arrested. According to the information received by the Office of the Special Rapporteur, on September 9, former political prisoners Ángel Moya Acosta, José Daniel Ferrer and Raúl Vinajera were reportedly detained again in Palma de Soriano, in eastern Cuba.³³² On September 15, opposition leaders and former political prisoners Librado Linares García and, again, Ángel Moya Acosta, were detained, as was the leader of the Central Opposition Coalition, Idania Yáñez Contreras. The arrests were allegedly made as the activists were preparing for the march called “Boitel and Zapata Live,” which would go through a number of Cuban cities.³³³ On September 27, leaders of the Red Cubana de Comunicadores Comunitarios [Cuban Network of Community Journalists], Martha Beatriz Roque and Arnaldo Ramos Lauzarique were detained, as was Berta Soler, one of the founders of the Damas de Blanco [Ladies in White] and wife of former political prisoner Ángel Moya Acosta. The three were detained as they were on their way to a police station to intercede for a number of persons previously arrested; they were reportedly beaten as they were being transported in police vehicles.³³⁴

197. The IACHR received information concerning detentions, acts of aggression and harassment against the Damas de Blanco, an organization made up of women related to political prisoners. According to the report received, on September 9, at least 22 women from the Damas de Blanco were allegedly detained for several hours in Havana and Santiago, while they were participating in a celebration marking the feast of Our Lady of Charity, also known as Our Lady of Cobre.³³⁵ On September 24, several dozen Ladies in White met at a member’s home to organize a peaceful march and attend mass at the Church of La Merced, in Havana. However, between 200 and 300 people had gathered outside the house to yell pro-government slogans and prevent the group of women from leaving the house. When the members of the Ladies in White attempted to get the peaceful march underway, there was reportedly a struggle with the pro-government demonstrators; a number of the women were beaten.³³⁶ On October 22, 11 Ladies in White were allegedly detained and beaten in Palma Soriano, as

³³¹ Europa Press. September 19, 2011. [Arrestan a unos 150 opositores cubanos en los últimos días](#). [Some 150 members of Cuban opposition arrested in recent days]; EFE News Service. September 16, 2011. [Más de 20 opositores fueron detenidos en Cuba](#). [More than 20 members of Cuban opposition arrested in Cuba]

³³² EFE News Service. September 9. [Esposas de dos expresos del grupo de los 75 denuncian detención](#). [Wives of two former prisoners of Group of 75 denounce arrest]; Net for Cuba. September 12, 2011. [Two exprisoners of conscience remain arbitrarily arrested](#).

³³³ Diario de Las Américas. March 17, 2011. [Marcha por la Libertad cobra fuerza en Cuba](#). [March for Freedom Gains Momentum in Cuba]; ABC. October 5, 2011. [Ofensiva de los Castro con 600 encarcelados en un mes](#). [Castro brothers' offensive with 600 persons arrested in one month]; Tellus Folio. September 19, 2011. [La missione de la Dame in Bianco: Lottare per la libertà del popolo cubano](#); La revolución de los gladiolos. September 10, 2011. [Idania Yáñez Contreras, presidenta de la Coalición Central Opositora](#).

³³⁴ Inter-American Press Association (IAPA). September 29, 2011. [IAPA Condemns Increased Harassment in Cuba](#); El Nuevo Herald. September 28, 2011. [Brutal agresión a líderes de la disidencia cubana](#). [Leaders of Cuban dissident movement face brutal aggression]

³³⁵ Milenio. September 9, 2011. [Liberados opositores cubanos tras ser detenidos temporalmente en procesión](#). [Leaders of Cuban opposition released after being detained temporarily in march]; La Verdad.Es. September 19, 2011. [26 disidentes detenidos en Santiago y La Habana](#). [26 dissidents detained in Santiago and Havana]

³³⁶ Agence France Presse (AFP). September 24, 2011. [Seguidores del Gobierno cubano acosan e impiden a Damas de Blanco ir a misa](#). [Supporters of Cuban Government harass Ladies in White and prevent them from attending mass]; EFE News Service. September 24, 2011. [Oficialistas acosan a Damas de Blanco y les impiden ir a misa por día Merced](#). [Government supporters harass Ladies in White and prevent them from attending mass on the feast of Our Lady of Mercy]

they were attempting to attend mass at the cathedral in Santiago. According to the information received, the activists were released some hours later.³³⁷

198. The information received states that on April 7, Spanish journalist Carlos Hernando, collaborator with the *Intereconomía* press group and the creator of a documentary on Guillermo Fariñas was allegedly detained and expelled from the country by Cuban authorities, who accused him of "counter-revolutionary activity".³³⁸ In the first week of September, Cuban authorities reportedly took away the press credentials of Mauricio Vicent, who for 20 years had been the Spanish newspaper *El País* correspondent in Cuba. Without his press credentials, he cannot practice journalism in Cuba. The International Press Center, part of the Ministry of Foreign Affairs, had allegedly justified the decision by pointing to Vicent's coverage, which it claimed conveyed "a biased and negative image" of Cuban reality.³³⁹

199. In 2011, the Internet was well out of reach of the majority of the population, owing to the high cost of internet service, the slow connection speeds, and restrictions that limit or obstruct the connection.³⁴⁰ The situation reported in the 2010 report has not changed in any significant way.³⁴¹

200. In February 2011, the government announced that Cuba would be connecting to a submarine fiber optic cable installed in cooperation with Venezuela, which would increase internet data transmission speed by 3,000 times, and would increase the percentage of persons with access to the net, whereas just 3% of the population has access at the present time; it would also lower the cost of international calls. However, thus far there are no reports that the fiber optic cable has been made accessible to the general public; the high rates and usage and connection restrictions reported in previous years still persist.³⁴²

201. Resolution 179/2008 reportedly was still in effect in the Cuban legal system in 2011. That resolution establishes a set of "Regulations for public internet service providers that offer internet services in hotels, post offices and other entities in the country, and where internet search engines and national and international e-mail services are offered to natural persons."³⁴³ One provision that called the IACHR's attention was the following requirement for providers: "take the measures necessary to block access to sites whose content is inimical to social and moral interests and good conduct; as well as the use of applications that affect the integrity or security of the State." That same provision states, *inter alia*, that: "providers shall observe the orders issued by the institutions charged with the country's defense in the event of emergency situations, and perform the immediate functions necessary to secure the defense and security of the State." Under Article 21 of that resolution, when a service provider fails to comply with

³³⁷ Cubaencuentro. October 2, 2010. [Detienen y golpean a mujeres en Palma Soriano](#) [Women detained and beaten in Palma Soriano]; Radio Martí. No date. [Entrevista al ex preso político José Daniel Ferrer García](#). [Interview with former political prisoner José Daniel Ferrer García]

³³⁸ El Mundo. April 8, 2011. [Carlos Hernando: "Se me ha pasado pero han sido momentos muy difíciles"](#). [Carlos Hernando: It happened, but there were some very difficult moments]; Intereconomía. April 7, 2011. [Carlos Hernando detenido por "contrarrevolucionario"](#). [Carlos Hernando detained as counterrevolutionary]

³³⁹ El País. September 5, 2011. [Apoyo de FAPE y Reporteros sin Fronteras al corresponsal de El País en Cuba](#). [FAPE and Reporters Without Borders Come to Defense of El País correspondent in Cuba]; Knight Center for Journalism in the Americas. September 5, 2011. [Unhappy with "negative" coverage, Cuba revokes press credentials of foreign correspondent](#).

³⁴⁰ There are two webs in Cuba: one domestic, with limited access to information resources, and the other international. The average hourly cost of connecting to the domestic network is close to US\$1.63, while the average hourly cost of connection to the international network is US\$5.48, in an economy where the average monthly salary is US\$20. In January the government reportedly announced an improvement in satellite connections that would increase connectivity by 10%. Reporters Without Borders. 2010. [Internet Enemies](#); Cf. Inter-American Press Association (IAPA). April 2011. [Country reports: Cuba](#).

³⁴¹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc.5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 186 et seq.

³⁴² BBC News. February 9, 2011. [Cuba welcomes new Internet cable link with Venezuela](#); Generación Y. August 30, 2011. [¡Dame Cable!](#) [Give Me Cable!].

³⁴³ Ministry of Information Technology and Communications. [Resolución No 179/2008](#); Ministry of Information Technology and Communications. [Resolución 55/2009](#).

these regulations, it may have its license and any contracts signed temporarily or permanently suspended.

202. Resolution 55/2009, which took effect in June 2009, remained in effect in 2011. That resolution established the same regulations referenced in the preceding paragraph, but this time for the so-called Internet Service Providers for Storage, Hosting, and Applications.³⁴⁴ According to this resolution, the regulations include those Cuban legal persons who have received an operating license as a Public Service Provider for Internet Access, including those that rent physical space so that the client can place its own computer there; those who provide the site-hosting service, applications, and information; and those who provide applications services to third parties.

203. Here, the IACHR must reiterate 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.”³⁴⁵

D. The State’s observance and guarantee of the rights of assembly and freedom of association

204. Under the American Declaration, every person has the right to work,³⁴⁶ the right to assemble peaceably,³⁴⁷ and the right to associate with others to promote, exercise and protect his legitimate interests.³⁴⁸ On the matter of freedom of association, the Commission again expresses its concern over the fact that there is only one officially recognized labor confederation mentioned in Cuban law, a matter that the International Labour Organisation has been watching closely. Like the International Labour Organisation, the Commission believes that trade union pluralism must remain possible in all cases and that the law must not institutionalize a *de facto* monopoly by referring to a specific trade union confederation.³⁴⁹ The Commission observes that one of the guiding principles of the Constitution of the ILO, of which Cuba is a signatory, includes “recognition of the principle of freedom of association” as essential for “universal and lasting peace.”

205. Concerning the rights of assembly, the IACHR was informed that on July 24, 2011, Vivian Peña Hernández, activist from Palma Soriano, was at home with other women and activists when State Security had allegedly organized a mob outside her house. They had reportedly attacked prisoner of conscience José Daniel Ferrer García when the women began to yell anti-government slogans. Vivian Peña Hernández was allegedly beaten by two men in civilian dress, who pinned her against a wall and pummeled her. By-passers reportedly intervened in an attempt to protect the activists, saying that this was an abuse. The political police had thrown eggs at them. According to the information received, Peña Hernández has two little girls, one of who is disabled; regime authorities had reportedly visited her to tell

³⁴⁴ Ministry of Information Technology and Communications. [Resolución 55/2009](#).

³⁴⁵ 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.

³⁴⁶ American Declaration, Article XIV.

³⁴⁷ *Id.*, Article XXI.

³⁴⁸ *Id.*, Article XXII.

³⁴⁹ International Labour Conference, 97th Session 2008. Report of the Committee of Experts on the Application of Conventions and Recommendations. General Report and observations concerning particular countries. Cuba: pp. 105-107. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf.

her that the assistance she was receiving to help with her little girl's disabilities would be withdrawn because of her opposition activities.³⁵⁰

E. The State's observance and guarantee of the exercise of freedom of movement and residence

206. The American Declaration of the Rights and Duties of Man provides that "Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will."³⁵¹ The Commission considers that although the American Declaration does not explicitly recognize every person's right to return to his or her country, that right is implicitly recognized in the Declaration. The IACMR has held that "[t]he right of every person to live in his own country, to leave and return when he deems convenient [...]" is an elementary right that "is recognized in every international instrument that protects human rights."³⁵² In effect, Article 13(2) of the Universal Declaration of Human Rights provides that "Anyone has the right to leave any country, including his own, and to return to it."

207. The IACMR has observed that according to the texts cited above, the right of residence and movement is related to the right of nationality. The latter is recognized in Article XIX of the American Declaration, and the Commission has underscored that its observance is an imperative and has condemned situations in which the right to nationality is violated as a result of the government's action against its political adversaries.³⁵³

208. The Commission believes that exercise of the right to freedom of residence and movement can under no circumstances lead to the loss of nationality, and were such a penalty imposed for exercising that right, it would be unlawful; hence, no government can threaten loss of nationality to prevent a person from returning to his native country, regardless of status.³⁵⁴

209. Since 1983, the Commission has commented on the fact that the Cuban Constitution does not protect the right of residence and movement. That situation remains unchanged. Cuban citizens have to request special authorization to leave and enter the country. The authorities do not have a deadline by which they answer applications for authorization, a fact corroborated by the Guidelines of the Economic and Social Policy of the Party of the Revolution, approved at this year's VI Communist Party Congress. The Guidelines provide for the possibility of "studying a policy that makes it easier for Cuban residents to travel abroad as tourists."³⁵⁵ As a rule, applicants have to wait a long time to receive that authorization, if they get it. There are also certain legal formalities that must be observed in order to leave the national territory; failure to comply with those formalities is a punishable offense.

210. The IACMR received information concerning Mr. Oswaldo Payá Acevedo, son of opposition leader Oswaldo Payá Sardiñas, president of the Christian Liberation Movement. Authorities would not allow Mr. Payá Acevedo to travel to Madrid to visit relatives and attend the World Youth Day. Although he was given the necessary permits, including a Spanish visa, immigration officials allegedly advised him that "he would not be permitted to travel; they had no explanations and he could make his

³⁵⁰ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders , August 2011 .

³⁵¹ Article VIII of the American Declaration of the Rights and Duties of Man.

³⁵² IACMR. *Ten Years of Activities 1971-1981*, Secretariat General of the Organization of American States, Washington, D.C., 1982, page 325.

³⁵³ IACMR. *Ten Years of Activities 1971-1981*, Secretariat General of the Organization of American States, Washington, D.C., 1982, page 325.

³⁵⁴ IACMR, *Annual Report* 1983, Chapter VIII, Right of Residence and Movement.

³⁵⁵ Government of Cuba, *Guidelines of the Economic and Social Policy of the Party of the Revolution*, approved April 18, 2011. Available [in Spanish] at: <http://www.cubadebate.cu/wp-content/uploads/2011/05/folleto-lineamientos-vi-cong.pdf>.

own inquiries with the Office of the Provincial Immigration Director.” When he did inquire, he was allegedly told “the status remains unchanged, you cannot travel.”³⁵⁶

F. Guarantees of legal due process and effective access to justice

211. 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 courts³⁵⁷, to protection from arbitrary arrest³⁵⁸, and to due process.³⁵⁹ These rights are part of what has 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.

212. The right to trial by a competent, independent and impartial tribunal previously established by law has been interpreted by the Commission and the Inter-American Court as entailing certain conditions and standards that must be satisfied by tribunals charged with judging the substantiation of any accusation of a criminal nature or with the determination of a person’s rights and obligations of a civil, fiscal, labor or other nature.³⁶⁰

213. Independence also means that tribunals must be separate from other branches of government, free from influence, threats or interference of any kind or for any reason, and have other characteristics essential to ensure proper and independent performance³⁶¹ of judicial functions, including tenure on the bench and proper professional training.³⁶² The impartiality of the courts³⁶³ must be evaluated from both a subjective and objective perspective, to ensure the absence of actual prejudice on

³⁵⁶ *Diario de Cuba, El régimen impide viajar a España a un hijo de Payá* [Regime refuses to allow Payá’s son to travel to Spain]. August 15, 2011. Available [in Spanish] at: <http://www.ddcuba.com/derechos-humanos/6427-el-regimen-impide-viajar-espana-un-hijo-de-paya>.

³⁵⁷ American Declaration, Article XVIII.

³⁵⁸ American Declaration, Article XXV.

³⁵⁹ American Declaration, Article XXVI.

³⁶⁰ IACtHR, Report on Terrorism and Human Rights, 2002, paragraph 228.

³⁶¹ Similarly, the Court has written that the impartiality of a court implies that its members have no direct interest in, a pre-established viewpoint on, or a preference for one of the parties, and that they are not involved in the controversy. I/A Court H.R. Case of *Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 146.

³⁶² IACtHR, *Report on the Situation of Human Rights in Chile*, 1985, Chapter VIII, paragraph 139; *Report on the situation of Human Rights in Haiti*, 1995, Chapter V, paragraphs 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, paragraphs 393-398. *Report on Terrorism and Human Rights*, 2002, paragraph 229.

³⁶³ The Inter-American Court has observed that the right to be tried by an impartial judge or court is a fundamental guarantee of due process. In other words, it must be ensured that the judge or court hearing a case does so based on the utmost objectivity. Furthermore, the independence of the Judiciary from the other State powers is essential for the exercise of judicial functions. I/A Court H.R. Case of *Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 145; Case of *Herrera Ulloa*, paragraph 171.

“[O]ne 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 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, paragraph 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, paragraph 131.

the part of a judge or tribunal as well as sufficient assurances to exclude any legitimate doubt in this respect. These requirements in turn require that a judge or tribunal not harbor any actual bias in a particular case, and that the judge or tribunal not reasonably be perceived as being tainted with any bias.³⁶⁴

214. As for the guarantee of an independent and impartial court, Article 121 of the Constitution of Cuba provides that:

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

215. The Commission observes that the subordination of the courts to the Council of State, presided over by the head of state, means that the judicial branch is directly answerable to the executive branch. In the Commission's view, this subordination to the executive branch does not represent an independent judicial branch capable of providing guarantees for the enjoyment of human rights.

216. In the section of Chapter IV on Cuba in the IACHR's 2010 annual report, the IACHR again observed that to continue to allow criminal proceedings that do not offer the necessary guarantees of due process, as they are carried out in summary form, without trustworthy defense counsel, and with juries of dubious independence and impartiality, was in violation of international human rights instruments. Such criminal proceedings could lead to disproportionate sentences and give court authorities enormous latitude that may have the effect of eliminating any possibility the individual might have of defending himself or herself from the authorities.³⁶⁵ This situation remains unchanged.

217. According to Human Rights Watch, a nongovernmental organization, on May 31, 2011 Luis Enrique Labrador, 33, David Piloto, 40, Walfrido Rodríguez, 42, and Yordani Martínez, 23, were reportedly convicted in Havana of contempt and public disorder. Martínez was reportedly sentenced to three years in prison, while the other three were sentenced to five years, for having circulated pamphlets critical of Raúl and Fidel Castro³⁶⁶. According to Human Rights Watch, family members said that state security agents had visited their homes the day before the trial, warning relatives that if they "created a scene" and called attention to the hearing, the detainees would be left in pretrial detention indefinitely. One man's mother said that in April, she was fired from her job as a courier on the grounds that she was "the mother of a counterrevolutionary."³⁶⁷ The families also told Human Rights Watch that Martínez and Piloto went on a hunger strike in May in Valle Grande prison to demand they be put on trial. In response, they later told their families, they were handcuffed and beaten by a prison official.³⁶⁸

³⁶⁴ IACHR, Case 11.139, Report No. 57/96, William Andrews (United States), *Annual Report of the IACHR 1997*, paragraphs 159-161. See, analogously, European Court of Human Rights, *Findlay v. United Kingdom*, February 25, 1997, *Reports 1997-I*, p. 281, paragraph 73. IACHR, Report on Terrorism and Human Rights, 2002, paragraph 229.

³⁶⁵ According to the State of Cuba, the death penalty is reserved for exceptional cases and only for the commission of the most serious crimes. The Cuban Criminal Code reads 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 used in cases involving minors under the age of 20 or women who were pregnant when they committed the crime or are pregnant when sentenced to death.

3. Execution is by firing squad.

³⁶⁶ Human Rights Watch. Cuba: Stop Imprisoning Peaceful Dissidents, 1 June 2011. Available at: <http://www.hrw.org/news/2011/06/01/cuba-stop-imprisoning-peaceful-dissidents>

³⁶⁷ Human Rights Watch. Cuba: Stop Imprisoning Peaceful Dissidents, 1 June 2011. Available at: <http://www.hrw.org/news/2011/06/01/cuba-stop-imprisoning-peaceful-dissidents>

³⁶⁸ Human Rights Watch. Cuba: Stop Imprisoning Peaceful Dissidents, 1 June 2011. Available at: <http://www.hrw.org/news/2011/06/01/cuba-stop-imprisoning-peaceful-dissidents>

218. Human Rights Watch also documented the fact that on May 24, 2011, brothers Marcos Maikel Lima Cruz, 33, and Antonio Michel Lima Cruz, 28, both members of a human rights group in Holguín called *Pedro Luis Boitel* - were convicted and sentenced to three and two years in prison, respectively, in a closed, summary trial, for “insulting national symbols” and causing “public disorder” for events that the two claimed never happened.³⁶⁹

219. In its reports on Cuba, the IACtHR has repeatedly pointed to the lack of Independence and impartiality of the courts and the lack of judicial guarantees and due process in the prosecution of persons regarded as ideological political dissidents, a problem that is particularly acute when especially expedited summary proceedings are used.

220. As previously observed, articles 479 and 480 of the Law on Criminal Procedure provide for the possibility of applying a summary proceeding. The same law also establishes that in the event of prosecution via an especially expedited summary proceeding, the court may, insofar as it considers it necessary, reduce the terms for the preliminary proceedings, the oral trial, and the appeals.

Summary Proceedings

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

Article 480. In especially expedited summary proceedings, the procedures that this law establishes for preliminary proceedings, oral trial and appeals may be reduced to the extent that the court with jurisdiction deems necessary.

221. The repeated use of the especially expedited summary proceedings in Cuba, in which the guarantees of due process are not observed, including the minimum guarantees necessary for the accused to exercise his right to adequate defense counsel, is an extremely serious matter. The Commission has in the past been told of the lack of efficacy of the public defenders, particularly when those attorneys are not permitted beforehand to confer freely with their clients.³⁷⁰

222. Time and time again, the Commission has recommended that the Cuban State take the measures necessary to adapt its laws, procedures and practices to international human rights standards. The Commission has particularly recommended that Cuba's criminal laws be amended with a view to ensuring the right to a fair trial and due process. It has also recommended that Cuba undertake a process of amending its Constitution to ensure the independence of its judicial branch of government.

223. The decision to use an exceptional proceeding is left to the discretion of those who administer justice in a particular case; it is also up to the judge to decide how long a court case will last, which includes the preliminaries, the oral arguments and the time periods for appeals.³⁷¹

224. The Commission has observed that political dissidents have been prosecuted using these especially expedited proceedings, as have those who have attempted to escape from Cuba; at the end of these expedited summary trials, in which the minimum guarantees of due process are ignored, the sentences imposed have included the death penalty.³⁷² In Merits Report 67/06³⁷³ on Case 12.476 (Oscar

³⁶⁹ Human Rights Watch. Cuba: Stop Imprisoning Peaceful Dissidents, 1 June 2011. Available at: <http://www.hrw.org/news/2011/06/01/cuba-stop-imprisoning-peaceful-dissidents>

³⁷⁰ IACtHR, Merits Report No. 67/06, Case 12.476, Oscar Elías Biscet *et al.*, October 21, 2006.

³⁷¹ IACtHR, Merits Report No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006, paragraphs 87-92, available at: <http://www.IACtHR.org/annualrep/2006eng/CUBA.12477eng.htm>,

³⁷² IACtHR, Merits Report No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006, paragraphs 87-92, available at: <http://www.IACtHR.org/annualrep/2006eng/CUBA.12477eng.htm>.

Elías Biscet *et al.*), which concerned the political dissidents detained and prosecuted in these especially expedited summary trials during the so-called “Black Spring” of 2003, in application of Article 91³⁷⁴ of the Cuban Criminal Code and Law 88 on Protection of the National Independence and Economy of Cuba, the IACtHR recommended that the Cuban State:

2. Adopt the necessary measures to adapt its laws, procedures and practices to international human rights legislation. In particular, the Commission recommends that the State of Cuba repeal Law No. 88 and Article 91 of the Criminal Code as well as to initiate a process to reform its Constitution in order to ensure the independence of the judiciary and the right to participate in government.

225. In addition, in Merits Report 68/06 on Case 12,477³⁷⁵ (Lorenzo Enrique Copello Castillo *et al.*), regarding three persons who were executed by firing squad after a very summary trial in which the right of defense and the guarantee of the impartiality and independence of the court were violated, the IACtHR 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.

226. The Commission reiterates that the lack of an independent judiciary in Cuba, combined with the absence of the guarantees of due process and the use of summary trials and the ambiguity and/or broad language of certain criminal-law provisions, affect the individual's fundamental rights.

227. Summarizing, the Commission calls upon the Government of Cuba to adapt its procedural laws to international standards on due process, so that persons who turn to the courts for a determination of their rights and responsibilities have the minimum legal guarantees necessary to exercise their means of defense. The Commission considers that the current framework of laws in Cuba does not comply with its international obligations in this area. Full observance of the judicial guarantees recognized in the American Declaration rests on an independent and autonomous judicial branch of government and on the application of clear, unambiguous provisions that leave no room for discretionary abuses of authority.

IV. ANALYSIS OF THE SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

228. As for the economic, social, and cultural rights, and specifically where education is concerned, while falling behind in school is a recurring phenomenon in the region, Cuba is one of the four countries³⁷⁶ where at least 90% of the children at the age where they enter elementary school have done so.

229. According to the United Nations Development Programme (UNDP), the literacy rate among adults over the age of 15 in Cuba for the 2005-2008 period was 99.8%; some 68.8% of its

...continuation

³⁷³ On November 1, 2006, the Cuban State and the representatives of the petitioners were notified of Merits Report No. 67/06, approved October 21, 2006. See in IACtHR, Press Release 40/06, “IACtHR announces two reports on human rights violations in Cuba,” November 1, 2006.

³⁷⁴ 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.”

³⁷⁵ IACtHR, Report on the Merits No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006, available at: <http://www.IACtHR.org/annualrep/2006eng/CUBA.12477eng.htm>

³⁷⁶ Guyana, Cuba, Barbados and Argentina.

population over the age of 25 had completed their secondary education. As for the efficiency of the education system, the drop-out rate at all levels is 4.4%.³⁷⁷

230. The health statistics indicate that healthy life expectancy in Cuba is 69, on a scale where the margins of variation between the maximum and minimum ages go from 75 to 32 years, respectively.³⁷⁸

231. The Commission again recognizes the significant strides that Cuba has made towards accomplishing the United Nations millennium development goals.³⁷⁹ The IACMR particularly welcomes the progress made where maternal health is concerned, especially the fact that 100% of births were attended by qualified personnel.³⁸⁰

232. As for dietary needs, the Cuban people have an equitable rationing system that supplies 50% of the public's nutritional requirements at subsidized prices. There are also special diets for vulnerable groups with special needs (children, pregnant women, nursing mothers with high nutritional requirements, and the sick suffering from different pathologies).

233. In its 2009 report, the United Nations Children's Fund (UNICEF) 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.³⁸¹

234. Reports from a number of United Nations agencies observed that the overall volume of food available for consumption had recovered somewhat, but was still short of what it needed to be. The composition of the diets was not balanced, which manifests itself in the form problems with weight and anemia in certain population groups.³⁸²

235. The Commission observes that in 2011, the Cuban economic system began to open up to private investment. The VI Congress of the Cuban Communist Party approved a plan of economic reforms that President Raúl Castro proposed to "modernize the Cuban economic model with a view to ensuring the continuation and irreversibility of Socialism."³⁸³ A resolution approved on the Guidelines of the Economic and Social Policy of the Party of the Revolution stated that the party's economic policy "will adhere to the principle that only socialism is capable of conquering problems and preserving the gains that the Revolution has made and that planning will be the hallmark of the economic model's modernization and will factor in market trends." The resolution provides that "in addition to the socialist state enterprise that is the core of the national economy, the model will also recognize and promote

³⁷⁷ Human Development Report 2010 – 20th Anniversary Edition, The Real Wealth of Nations: Pathways to human development. UNDP.

³⁷⁸ Estimates of 'healthy life expectancy' (HALE) at birth is the average number of years that a person can expect to live in "full health" by taking into account years lived in less than full health due to disease and/or injury. It thus factors in fatal and nonfatal health results and disabilities.

³⁷⁹ Cuba, Fulfillment of Millennium Development Goals, 2010. Available online at: <http://www.cubaminrex.cu/Multilaterales/Articulos/Politicos/2010/Millennium%20Development%20Goals%20-%20Cuba.pdf>

³⁸⁰ United Nations Population Fund, State of the World Population 2010, Available online at: http://www.unfpa.org/swp/2010/web/en/pdf/EN_SOWP10.pdf

³⁸¹ Interview with Juan José Ortiz, representative of the United Nations Children's Fund. Available online at: http://www.bbc.co.uk/mundo/cultura_sociedad/2010/01/100126_1823_unicef_cuba_gz.shtml.

³⁸² Report "United Nations Development Assistance Framework for Cuba, 2008-2012," of the United Nations Country Team in Cuba, composed of the FAO, PAHO/WHO, UNEP, UNDP, UNESCO, UNFPA and UNICEF.

Available [in Spanish] at: http://www.onu.org.cu/es/mostrarocm.asp?filename=MANUD.pdf&doc=_docs_intra

³⁸³ Guidelines of the Economic and Social Policy approved by the Party of the Revolution, VI Congress of the Cuban Communist Party, April 18, 2011. Available [in Spanish] at: <http://www.cubadebate.cu/wp-content/uploads/2011/05/folleto-lineamientos-vi-cong.pdf>.

foreign investment, cooperatives, small-scale farmers, property holders, tenants, the self-employed and other forms that can help improve performance.”³⁸⁴

236. The Commission notes that one of the measures approved was homes sales between natural persons and the “easing of other forms of conveying property (barter, gift and others).”³⁸⁵ Under the current system, natural persons used an official form of exchange in which no transfer of money was involved.³⁸⁶ According to the government newspaper GRANMA, under the law a person still cannot own more than one housing unit in the category of permanent residence and another in areas of leisure.³⁸⁷

237. Similarly, natural persons may acquire more than one vehicle, and the date of manufacture is not a factor. Thus, the existing regulation that only vehicles made prior to 1959 could be sold or gifted was eliminated.³⁸⁸ Also eliminated was the restriction whereby natural persons who received authorization to purchase a vehicle and were owners of another vehicle had to transfer ownership of the other vehicle to the State or take it out of commission.³⁸⁹

238. In the conclusions of the Congress, President Raúl Castro had the following to say about the introduction of the economic reforms:

The modernization of the economic model is not a miracle that will work its magic overnight, as some are inclined to think; full deployment of the model will be a gradual process over a five-year period, as there are many details to be addressed, and planning and coordination are required both at the legal level and in the careful training of all those that will play a role in its implementation in practice.

Dissemination of each measure we adopt will take considerable work, as we will have to keep our ears and feet to the ground to conquer the obstacles we encounter and act quickly to correct any mistakes we might make in applying the model.

A. Situation of specific groups

1. Women

239. The IACtHR received information on complaints that would seem to suggest that the violent repression in Cuba is meted out with particular cruelty in the case of women.

³⁸⁴ Guidelines of the Economic and Social Policy approved by the Party of the Revolution, VI Congress of the Cuban Communist Party, April 18, 2011. Available [in Spanish] at: <http://www.cubadebate.cu/wp-content/uploads/2011/05/folleto-lineamientos-vi-cong.pdf>

³⁸⁵ Guidelines of the Economic and Social Policy approved by the Party of the Revolution, VI Congress of the Cuban Communist Party, April 18, 2011. Available [in Spanish] at: <http://www.cubadebate.cu/wp-content/uploads/2011/05/folleto-lineamientos-vi-cong.pdf>

³⁸⁶ Diario GRANMA, Política para flexibilizar los trámites relacionados con la vivienda [Policy to ease housing procedures], July 1, 2011. Available [in Spanish] at: <http://www.granma.cu/espanol/cuba/1julio-politica.html>; BBC, Cuba reveals more details of private property laws. Available at: <http://www.bbc.co.uk/news/world-latin-america-13998167>

³⁸⁷ Diario GRANMA, Política para flexibilizar los trámites relacionados con la vivienda [Policy to ease housing procedures], July 1, 2011. Available [in Spanish] at: <http://www.granma.cu/espanol/cuba/1julio-politica.html>. Diario GRANMA, Nuevas Normas para la Transmisión de la Propiedad de la vivienda, eliminar prohibiciones y flexibilizar trámites, November 5, 2011. Available [in Spanish] at: <http://www.granma.cu/espanol/cuba/5nov-Eliminar%20prohibiciones.html>.

³⁸⁸ Diario GRANMA, Política para flexibilizar los trámites de transmission de la propiedad de los vehículos de motor entre personas naturales [Policy to ease procedures for transferring ownership of motor vehicles between natural persons]. Available [in Spanish] at: <http://www.granma.cu/espanol/cuba/1julio-carros.html>

³⁸⁹ Diario GRANMA, Política para flexibilizar los trámites de transmission de la propiedad de los vehículos de motor entre personas naturales [Policy to ease procedures for transferring ownership of motor vehicles between natural persons]. Available [in Spanish] at: <http://www.granma.cu/espanol/cuba/1julio-carros.html>.

240. The IACtHR received information on repeated physical assaults and verbal abuse against Cuba's Ladies in White. It learned of a number of episodes that happened on the way to church, after attending mass, or when they were getting ready for one of their routine Sunday marches. Women in the group were allegedly beaten by women in uniform and the police, using stones and sticks. They were also temporarily detained and threatened with dogs.³⁹⁰

241. The information the Inter-American Commission has received indicates that on at least four different occasions in 2011, the Ladies in White were the targets of physical aggression and presumably arbitrary detentions. Specifically, 1) on September 27, a number of the Ladies in White were reportedly detained as they were on their way to the home of Marta Beatriz Roque to stage a protest in front of Section 21, in Marianao, Havana. The following were among the activists detained: Belkis Cantillo, Tania Montoya and Aymé Garcés. It was also reported that other Ladies in White who had opposed the earlier detentions were attacked by State Security agents;³⁹¹ 2) on August 7, 2011, the Ladies in White were allegedly physically and verbally assaulted by women in uniform and male police officers in civilian dress, armed with sticks and other objects, as the Ladies in White were about to begin their traditional Sunday demonstration to demand that their family members, held as political prisoners in Cuba, be released;³⁹² 3) on July 24, 2011, after a visit to the church of El Cobre, close to 16 women members of the Ladies in White were reportedly beaten and stoned; one was injured by a person wielding scissors;³⁹³ 4) on July 31, 2011, another group of women in the Ladies in White were allegedly attacked outside the church in Palma Soriano.³⁹⁴

242. The IACtHR also received information to the effect that on July 17, 2011, as they were conducting a peaceful march, 16 women members of the Ladies in White were leaving the National Shrine of Our Lady of Charity in El Cobre when they were violently attacked and beaten by male police officers in civilian dress, headed by a lieutenant colonel from State Security. According to the information, Tania Montoya Vázquez allegedly lost consciousness from a heavy blow to the head; as she was recovering from the blow, a man and several women reportedly grabbed her by the hair, pulling her head back; they ripped her clothing to shreds, so much so that she was left with only her brassier. Adriana Pécora was beaten on the back and her blouse was torn. According to the testimony of María Elena Matos Creagh, another participant, someone hit her in the back with a stone, then slapped her and beat her with a parasol. In her statement she said the following: "those who hit us were agents of State Security in civilian dress and persons they brought with them to attack us." Doraissa Correoso was grabbed by the feet. Belkis Cantillo Ramírez, a Lady in White, was allegedly cut with scissors or some other bladed object, inflicting a deep cut in the arm.³⁹⁵

³⁹⁰ World Organization Against Torture, *Cuba: Nuevos Actos represivos contra las Damas de Blanco* [Cuba: New acts of repression against Ladies in White], August 12, 2011. Available [in Spanish] at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/cuba/2011/08/d21375/>; Cubaencuentro, *La Policía Reprime a las Damas de Blanco* [Police Repression of Ladies in White], Available [in Spanish] at: <http://www.cubaencuentro.com/cuba/noticias/la-policia-reprime-a-las-damas-de-blanco-en-santiago-de-cuba-266950>.

³⁹¹ Directorio Democrático Cubano, **Whereabouts of opposition leader Yris Pérez Aguilera and other detained activists unknown**, September 28, 2011. Available at: http://www.directorio.org/pressreleases/note.php?note_id=3061; Cubaencuentro, *Propinan "gran golpiza" a disidentes* [Cuban dissidents given a serious beating], September 28, 2011. Available [in Spanish] at: <http://www.cubaencuentro.com/cuba/noticias/propinan-gran-golpiza-a-disidentes-268672>

³⁹² World Organisation Against Torture. *Cuba: Nuevos Actos represivos contra las Damas de Blanco* [Cuba: New acts of repression against Ladies in White], August 12, 2011. Text of article available [in Spanish] at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/cuba/2011/08/d21375/>

³⁹³ World Organisation Against Torture. *Cuba: Nuevos Actos represivos contra las Damas de Blanco* [Cuba: New acts of repression against Ladies in White], August 12, 2011. Text of article available [in Spanish] at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/cuba/2011/08/d21375/>

³⁹⁴ World Organisation Against Torture. *Cuba: Nuevos Actos represivos contra las Damas de Blanco* [Cuba: New acts of repression against Ladies in White], August 12, 2011. Text of article available [in Spanish] at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/cuba/2011/08/d21375/>

³⁹⁵ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

243. They were then reportedly taken to the police units. Montoya, Pécora and Correoso were allegedly taken to a hospital and released from there. Adriana Núñez Pascual had allegedly sustained a burn on the shoulder when they tried to grab a backpack she was carrying. While she was on the ground, they kicked her on the underside of her breast, where the ribs are located, and caused an inflammation in the area. One officer had grabbed her by the hair and dragged her to the patrol car, while other men grabbed her and beat her through the door on the other side of the car. They ripped off her pullover and brassier, leaving her upper body completely nude. They then cut the pullover to pieces with scissors or some other sharp object.³⁹⁶ According to the testimony of Adriana Núñez³⁹⁷:

They hurled stones at us, which is what caused us to fall. These were not little pebbles but large rocks. When I fell, I grabbed her because they were stepping on her head; when I turned my back to the people, that's when they ripped my pullover to pieces; they scratched me; it was a man who kicked me in the breast; he couldn't care less that I was a woman. He treated me like I was a man.³⁹⁸

244. The IACHR also received information concerning Annis Sarrión Romero, a member of the Ladies in White Support Group, who was allegedly shot by a member of the Rapid Response Brigades in Moa, in the province of Holguín.³⁹⁹

245. The Commission was also informed that on July 14, 2011, Leydis Coca Quesada, a human rights defender and member of the Cuban Pro-Democracy Youth Movement in Havana, was reportedly inquiring about the whereabouts of detained independent journalist Alberto Alvarez Bravo, together with her 9-year-old daughter, in front of the "10 de octubre" police unit. The report alleges that the two were surrounded by State Security officers and that twelve female security officers had attempted to take the little girl from her. The girl clung to her mother, and an officer yanked her by the hair and beat her. The child had to be taken to the pediatric hospital as a result of the beating.⁴⁰⁰

246. On August 4, 2011, on the stairs leading up to the Cuban National Capitol Building in Havana, human rights defenders Tania Maldonado, Mercedes García Álvarez, and Odalys González Naya were reportedly arrested as they were staging a peaceful demonstration demanding respect for human rights. They were reportedly beaten and dragged to the patrol cars. Inside the cars, officers had allegedly split open Mercedes Garcia's lip when they hit her in the mouth. According to the information received, once at the Havana Vieja municipal police unit the women were forced to undress completely and to kneel down and bend over. Tania Maldonado was having her period, which didn't matter to the authorities, who forced her to do exactly the same as the other two activists. When the body search was finished, they were allegedly questioned for several hours and threatened with prosecution and jail in the Occidente Women's Prison, known as the *Manto Negro* [Black Cloak or Black Veil].⁴⁰¹

2. Human rights defenders

³⁹⁶ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

³⁹⁷ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

³⁹⁸ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

³⁹⁹ Damas de Blanco, *Agreden a opositora en Moa* [Member of opposition attacked in Moa]. Available [in Spanish] at: http://damasdeblanco.org/index.php?option=com_content&view=article&id=948%3Aagreden-a-opositora-en-moa&catid=13%3Aarchivo-derechos-humanos&Itemid=8

⁴⁰⁰ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

⁴⁰¹ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

247. In 2011, information was received concerning physical assaults, threats, harassment and repeated detentions of human rights defenders, particularly in the repression of the public protest demonstrations staged to support the rights of persons deprived of their liberty for political reasons. Information was also received concerning the considerable obstacles that leaders encounter in defending labor rights through an independent trade union movement.

248. As observed in the previous section on the situation of women, the IACtHR has received information on the repeated physical and verbal assaults against the Ladies in White in Cuba, all reportedly taking place in a climate of hostility toward and repudiation of that group's activities. Information was received concerning some students from the "Celia Sánchez" school in Holguín, who were allegedly encouraged to oppose the Ladies in White movement and any opposition to the government. According to the information received, a number of students who refused to participate in the attacks were threatened with expulsion if they refused to do what was required of them.⁴⁰²

249. The IACtHR notes that the Ambassador of Great Britain in Cuba recently expressed concern "about increased reports of political and human rights activists being detained for short periods. The high number of detentions in Santa Clara and Eastern Cuba are a cause of particular concern, as is the aggressive treatment of the Damas de Blanco, and we urge the Cuban authorities to allow peaceful activists to go about their work free from arrest or the fear of it. President Raúl Castro has emphasised the need to tolerate different views and we hope this will translate into reality."⁴⁰³

250. In addition to the attacks on the Ladies in White, reports have been received of physical attacks on other persons who have participated in the demonstrations to demand, *inter alia*, the release of political prisoners. In a number of arrests made of demonstrators, women have been brutally treated. The Commission has learned that women who participated in the public protest demonstrations and were arrested for it, were dragged by the hair, immobilized using chokeholds and beaten in the face and on the body.⁴⁰⁴

251. The Commission received information on, *inter alia*, the following public protest demonstrations in which various activists were allegedly detained and brutalized by State Security agents: the September 24, 2011 march in the Río Verde Division, Municipality of Boyeros, and the September 25, 2011 march of demonstrators outside the Santa Clara courthouse, who wanted to be present for the trial of Dailin Hernández Caballero and Pedro Antonio Blanco Fleitas. Exercising its authorities under Article 18 of its Statute, on October 12, 2011 the IACtHR requested information from the Cuban State concerning these incidents, but has yet to receive a reply.

252. As for the detentions made in the Río Verde Division of the municipality of Boyeros at around 6:00 p.m. on September 24, 2011, as activists from a large group of demonstrators were reportedly getting ready to "beat the pots and pans" to signal a nationwide protest, the police reportedly detained and beat a number of people who were participating in the demonstration. They included the following: Sara Marta Fonseca, her husband Julio Ignacio León Pérez (both members of the Pro-Human Rights Party), Jorge Luis García Pérez "Antúnez", Hermógenes Inocencio Guerrero Gómez, Ramsés Miranda Camejo and Eriberto Liranza Romero. According to the information available, a number of people were also detained on September 26, 2011, as they were heading to State Security Section 21 to inquire about the persons detained in the Río Verde march. Among those detained on September 26

⁴⁰² Alianza Democrática Oriental, *Informe parcial sobre las violaciones de los Derechos Humanos en las provincias orientales de Cuba* [Partial report on human rights violations in Cuba's eastern provinces], July 15, 2011, Available [in spanish] at: <http://palenquecubano.wordpress.com/2011/07/15/informe-parcial-sobre-las-violaciones-de-los-derechos-humanos-en-las-provincias-orientales-de-cuba-primer-periodo-del-ano-2011/>

⁴⁰³ Recent reports of short term detentions in Cuba. British Ambassador Dianna Melrose Comments on the Situation. September 29, 2011. Available at: <http://ukincuba.fco.gov.uk/en/news/?view=News&id=663052182>

⁴⁰⁴ Testimony of Yris Tamara Pérez Aguilera, October 4, 2011. Available [in Spanish] at: http://www.directorio.org/comunicadosdeprensa/note.php?note_id=3066. See also precautionary measures PM 187/11 Ydania Yanes Contreras, Cuba. Available [in Spanish] at: <http://www.IACtHR.oas.org/medidas/2011.sp.htm>

were Yris Tamara Pérez Aguilera; Donaida Pérez Paseiro; Yaimara Reyes Mesa; Mariblanca Ávila Espósito and Julio León Fonseca (son of Sara Fonseca and Julio León Fonseca).⁴⁰⁵ According to what the IACHR was told, during her detention at Cuarta del Cerro, Sara Marta Fonseca Quevedo was allegedly beaten by a security agent, which left her temporarily immobilized, unable to move on her own.⁴⁰⁶

253. The information the Inter-American Commission received indicates that because of the pressure and insistence brought to bear by a number of organizations in Cuba, some of those detained were reportedly released on September 29, 2011, on the condition that they not demonstrate in support of those still being held. Because they persisted in their demands that the Río Verde detainees be released, those released on September 29 were arrested again.⁴⁰⁷ According to the information available, Yris Pérez Aguilera, Yaimara Reyes Mesa and Donaida Pérez Paseiro were eventually released on October 2, 2011⁴⁰⁸ while Sara Marta Fonseca and Julio León Pérez were released on October 8, 2011.⁴⁰⁹ It is extremely serious that the condition for the demonstrators regaining their personal liberty be that they not exercise their right to freedom of expression and assembly.

254. One of those detained in the Río Verde events was Yris Pérez Aguilera who, in 2011, was the victim of a number of physical assaults and harassment by agents of the State. It was reported that on May 25, 2011, she was allegedly beaten on the head, thrown to the pavement and, while down, kicked by a State Security officer and then held in punishment cells at the Placetas and Santa Clara police units. Although on July 6, 2011 the IACHR granted precautionary measures to protect her life and personal integrity,⁴¹⁰ while Yris Pérez Aguilera was under arrest for the events at Río Verde the State Security forces continued to physically attack her. According to her testimony, at the time of her arrest she was dragged by the hair for more than ten meters, while another officers pressed his knee into her stomach; they stuffed a towel into her mouth, gagging her to the point of asphyxiation.⁴¹¹

255. The IACHR also received information about the October 24, 2011 re-arrest of Sara Marta Fonseca, who had also been arrested at the Río Verde events and who, along with other activists, was

⁴⁰⁵ Asopazco, *Sara Marta Fonseca, detenida* [Sara Marta Fonseca detained], Septmber 26, 2011. Available [in Spanish] at: <http://asopazco.net/2011/09/26/sara-marta-fonseca-detenida/>; Directorio Democrático Cubano, **Whereabouts of opposition leader Yris Pérez Aguilera and other detained activists unknown**, September 28, 2011. Available at: http://www.directorio.org/pressreleases/note.php?note_id=3061

⁴⁰⁶ Asopazco, *Sara Marta Fonseca, detenida* [Sara Marta Fonseca detained], Septmber 26, 2011. Available [in Spanish] at: <http://asopazco.net/2011/09/26/sara-marta-fonseca-detenida/>; Directorio Democrático Cubano, **Whereabouts of opposition leader Yris Pérez Aguilera and other detained activists unknown**, September 28, 2011. Available at: http://www.directorio.org/pressreleases/note.php?note_id=3061

⁴⁰⁷ *Testimony of Yris Tamara Pérez Aguilera*, October 4, 2011. Available [in Spanish] at: http://www.directorio.org/comunicadosdeprensa/note.php?note_id=3066

⁴⁰⁸ *Front Line Defenders, Cuba: Release of incommunicado detainees and continuing crackdown on human rights defenders during peaceful demonstrations*, October 2, 2011. Available at: <http://www.frontlinedefenders.org/node/15944>

⁴⁰⁹ *Diario de Cuba, Liberados los disidentes Sara Marta Fonseca y Julio León Pérez* [Dissidents Sara Marta Fonseca and Julio León Pérez released], October 8, 2011. Available [in Spanish] at: <http://www.ddcuba.com/derechos-humanos/7375-liberados-los-disidentes-sara-marta-fonseca-y-julio-leon-perez>

⁴¹⁰ *Precautionary measure 218/11 for Yris Tamara Pérez Aguilera*, Cuba. On July 6, 2011, the IACHR granted precautionary measures for Yris Tamara Pérez Aguilera, in Cuba. The request for precautionary measures alleges that Yris Tamara Pérez Aguilera, reportedly a leader of the Rosa Parks Feminist Movement and a political dissident, was a victim of physical attacks, acts of harassment, and threats by agents of the State. It alleges specifically that as a result of a new attack she suffered on May 25, 2011, she is suffering from cervical trauma, memory loss, and headaches, and has not been provided with the medical treatment she needs. The Inter-American Commission asked the State of Cuba to adopt any necessary measures to guarantee the life and physical integrity of Yris Tamara Pérez Aguilera; to reach agreement with the beneficiary and her representatives on the measures to be adopted; and to inform the Commission about the actions taken to investigate the facts that led to the adoption of precautionary measures. See at: <http://www.cidh.oas.org/medidas/2011.eng.htm>

⁴¹¹ *Testimony of Yris Tamara Pérez Aguilera*, October 4, 2011. Available [in Spanish] at: http://www.directorio.org/comunicadosdeprensa/note.php?note_id=3066

arrested yet again.⁴¹² The re-arrest happened on the occasion of the so-called “Day of Resistance”, as demonstrators were on their way to another public protest in Martin Luther King Park, to honor the memory of Laura Pollán, founder of the Ladies in White who died on October 14, 2011.⁴¹³ According to the information the Commission received, Sara Marta Fonseca and other activists were released after being held for five hours.⁴¹⁴

256. As for the demonstrators arrested on September 25, 2011 outside the Santa Clara courthouse, according to the information the IACHR received, these activists were on their way to the trial of Dailin Hernández Caballero and Pedro Antonio Blanco Fleitas. According to reports, around 20 persons were allegedly detained, put in patrol cars and taken to the provincial investigative police unit to prevent them from attending the oral arguments. The Commission also learned that upon conclusion of the trial, demonstrators who had demanded the release of the detainees were also arrested.⁴¹⁵

257. In addition to the reports of human rights defenders being attacked and detained in those demonstrations, the IACHR has also received information concerning human rights defenders who have been the victim of physical assaults, threats and harassment. The Commission learned of the situation of Idania Yanes Contreras who, on April 8, 2011, had reportedly been stopped by a dozen police officers from the National Specialized Brigade. According to the information received, Mrs. Yanes Contreras had been put in a truck and then put in a chokehold to immobilize her; during the 30-kilometer trip to the Cifuentes police station, the police had hit her in the face and pummeled her body, causing bruising on both arms and the leg. The police had taken Mrs. Yanes Contreras to the “polyclinic” and although she told the staff there about her medical conditions, all they did was administer oxygen. According to what the Commission was told, after nine hours under detention, they took her home. On July 8, 2011, the IACHR granted precautionary measures to protect her life and personal security.⁴¹⁶

258. The IACHR also received information concerning the following human rights defenders: Leydis Coca Quesada, Sonia Garro Alfonso, Ivón Mayesa Galano, Rosario Morales la Rosa, Mercedes Fresneda, Yaquelin Borges and Niurka Luke Alvarez, who had allegedly been detained after conducting a public event in defense of human rights. While in custody, the women were beaten by State Security officers. According to the testimony of Niurka Luke Alvarez, while detained she suffered an epileptic seizure, although she had informed the authorities of her condition beforehand. The military denied her any medical treatment, and beat her saying that it would cure her of her epilepsy.⁴¹⁷

⁴¹² Among the other activists detained on their way to Martin Luther King Park were Roberto Ramón Ramírez, arrested at “G” and 25 del Vedado streets, and Jorge Luis García Pérez, arrested on the Paseo Martí de Placetas. Cf. *Directorio Democrático Cubano, Jornada de Resistencia por Laura Pollán marcada por la represión y actividades en las Calles de Cuba* [Day of Resistance to Honor the Memory of Laura Pollán marked by repression and activity on the streets of Cuba], October 24, 2011. Available [in Spanish] at: http://www.directorio.org/comunicadosdeprensa/note.php?note_id=3071

⁴¹³ According to the available information, public protests were held in various places in Cuba, such as Havana, Placetas, Cienfuegos, Holguín, Bayamo and Guantánamo to honor the memory of Laura Pollán. Cf. *Directorio Democrático Cubano, Jornada de Resistencia por Laura Pollán marcada por la represión y actividades en las Calles de Cuba* [Day of Resistance to Honor the Memory of Laura Pollán marked by repression and activity on the streets of Cuba], October 24, 2011. Available [in Spanish] at: http://www.directorio.org/comunicadosdeprensa/note.php?note_id=3071; *El Mundo,es, Muere Laura Pollán, Líder de las Damas de Blanco* [Laura Pollán dead, leader of the Damas de Blanco], October 14, 2011. Available [in Spanish] at: <http://www.elmundo.es/america/2011/10/14/cuba/1318608194.html>.

⁴¹⁴ Cubanet, *detenidos durante cinco horas Sara Martha Fonseca y otros opositores* [Sara Marta Fonseca and other government opponents detained for five hours], October 26, 2011. Available [in Spanish] at: <http://www.cubanet.org/noticias/detenidos-durante-cinco-horas-sara-martha-fonseca-y-otros-opositores/>;

⁴¹⁵ Cuba Derechos Humanos, *Arrestan a disidentes en Santa Clara* [Dissidents arrested in Santa Clara], September 29, 2011. Available [in Spanish] at: <http://dhcuba.impela.net/2011/09/arrestan-a-disidentes-en-santa-clara/>.

⁴¹⁶ IACHR, *Precautionary Measures granted by the IACHR during 2011, PM 187/11*, Idania Yanes Contreras and family, Cuba, July 8, 2011.

⁴¹⁷ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

259. In 2011, the IACHR continued to receive information on various arrests of Yordis García Fournier, a member of the Cuban Pro-Democracy Youth Movement and the beneficiary of precautionary measures granted by the IACHR back in 2008.⁴¹⁸ According to the information available, he had allegedly been detained and attacked in February,⁴¹⁹ May,⁴²⁰ and September,⁴²¹ presumably in retaliation for his activities in support of the rights of persons detained for political reasons.

260. Information was also received to the effect that an agent of State Security and a lieutenant colonel from the Ministry of the Interior had allegedly entered the offices of the Center for Human Rights Rapporteurs of Cuba (CRDHC). According to the information available, the government representatives were inside the organization's offices for around 40 minutes, during which time they had physically assaulted and threatened members of the CRDHC.⁴²²

261. In 2011, the Commission learned about the situation of Father José Conrado Rodríguez, pastor of the church of Santa Teresita in Santiago de Cuba, who had long since been warned of acts of censure against persons who attended religious services, and how they were kept inside their homes to prevent them from attending mass on Sundays. This conduct was allegedly encouraged and tolerated by the revolutionary national police and members of the Ministry of the Interior.⁴²³

262. The IACHR has closely monitored the situation of independent trade union leaders in Cuba.⁴²⁴ In 2011 specifically during the hearing on the Situation of Labor Union Rights in the Americas,⁴²⁵ the IACHR received information on serious regulatory restrictions on the exercise of labor union rights and defense of labor rights. It was told that the right to strike is still not recognized under Cuban law, which means that exercise of that right is still prohibited in practice. The law in Cuba still does not recognize the possibility of forming independent labor unions, as all workers must belong to the *Central de Trabajadores de Cuba*, the only government-recognized union. It has a monopoly on representation of workers vis-à-vis government.

⁴¹⁸ PM 320/08 Yordis García Fournier. Available at: <http://www.cidh.oas.org/medidas/2008.eng.htm>

⁴¹⁹ According to the information available, between February 21 and 22, 2011, García Fournier and other activists were allegedly detained and threatened by State Security Forces. Cf. Directorio Democrático Cubano, *Resistencia y represión en Cuba preceden aniversario de la muerte de Orlando Zapata Tamayo* [Resistance and repression in Cuba precede the anniversary of the death of Orlando Zapata Tamayo], February 22, 2011. Available [in Spanish] at: http://www.directorio.org/comunicadosdeprensa/note.php?note_id=2932

⁴²⁰ According to the information available, on May 9, 2011, he was allegedly arrested and beaten for holding a march in support of prisoner Andy Frometa Cuenca after a 25-day hunger strike in the Guantanamo provisional prison, along with Alfredo Noa Estopiñan. CIHPRESS, *Informe mensual de violaciones a derechos humanos- Mayo de 2011* [Monthly Report on Human Rights Violations-May 2011]. Available [in Spanish] at: <http://www.cihpress.com/2011/06/informe-mensual-de-violaciones-de-los.html>

⁴²¹ The IACHR learned that State Security officers allegedly arrested and beat him on September 29, as he was going down Paseo y Calixto García street in Guantanmo. CIHPRESS, *Informe Mensual de Violaciones de Derechos Humanos- Septiembre de 2011* [Monthly Report on Human Rights Violations-September 2011]. Available [in Spanish] at: <http://www.cihpress.com/2011/10/informe-mensual-de-violaciones-de-los.html>

⁴²² World Organization Against Torture, Cuba: Threats against members of the Cuban Council of Human Rights Rapporteurs, January 27, 2011. Article available [in Spanish] at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/cuba/2011/01/d21055/>

⁴²³ *Cuba Democracia y Vida: El sacerdote católico, Padre, José Conrado Rodríguez, denuncia violaciones de los derechos humanos en Santiago de Cuba* [Catholic priest Father José Conrado Rodríguez denounces human rights violations in Santiago de Cuba], August 11, 2011. Available [in Spanish] at: <http://www.cubademocraciayvida.org/web/article.asp?artID=14538>

⁴²⁴ The IACHR was apprised of the situation of trade union leaders in Cuba at the following sessions: 128th session, Hearing on the "Situation of the union members deprived of liberty in Cuba"; 133rd session, Hearing on the "Situation of imprisoned union members in Cuba"; 137th session, Hearing on the "Situation of Independent Union Leaders in Cuba"; and 140th session, Hearing on the "Human Rights Situation of Independent Union Leaders in Cuba".

⁴²⁵ IACHR, *Hearing on Situation of Labor Union Rights in the Americas*, 143rd Session, October 28, 2011. Available at: http://www.oas.org/en/media_center/videos.asp?sCodigo=11-0245&videotype=&sCollectionDetVideo=9

263. In practice, the ban on independent unions leads to a policy of harassment and to criminalization of trade union leaders who choose to defend workers rights from outside the official union, and are therefore branded as opponents of the regime.⁴²⁶ Information was received on the danger under which the Cuban National Confederation of Independent Workers (CONIC), the Cuban Confederation of Independent Labor (CTIC) and the Cuban Unified Workers' Council (CUTC) operate.⁴²⁷

264. Union leaders are repeatedly detained and held under *de facto* and *de jure* house arrest, particularly the Afro-descendant union leaders, who are routinely subjected to arrests and attacks that are all the worse because they are both Afro-descendant and union leaders. Specifically, the Commission learned of the situation of Iván Hernández Carrillo, currently head of CONIC and one of those arrested in the events of the "Black Spring" in 2003, who was at last released in February 2011.⁴²⁸ Nevertheless, according to what the Commission has learned, in October 2011 he was arrested five times, presumably as a reprisal for his independent union activities.⁴²⁹

3. Afro-descendants

265. Apart from what has already been reported, the IACHR also received information from the Committee on the Elimination of Racial Discrimination. In its observations on Cuba, it comments that "[w]hile the Committee notes the State party's opinion that 'racial prejudices have little place in today's Cuba' and are 'expressed mostly in the most intimate areas of life, usually in the relations between couples', it remains concerned by the prevalence of deeply rooted negative racial stereotypes and prejudices and by their sexist dimension."⁴³⁰ The Committee also commented that while noting the State party's efforts to increase representation of the black and mestizo population in public service positions, the Committee was aware of the difficulty of identifying policies that might successfully rectify the situation of groups that historically have been excluded as a result of the combined effects of racial discrimination and economic deprivation.⁴³¹

266. The IACHR received information indicating that Donaida Pérez Paseiro, a human rights defender, had allegedly been detained, together with other women, as they were participating in a peaceful march in the city of Gibara. She was grabbed by the hair, dragged across the pavement, and put in a patrol car as they called her a "filthy nigger" and yelled other insults and obscenities.⁴³²

4. Immigrants

⁴²⁶ IACHR, *Hearing on Situation of Labor Union Rights in the Americas*, 143rd Session, October 28, 2011. Available at: http://www.oas.org/en/media_center/videos.asp?sCodigo=11-0245&videotype=&sCollectionDetVideo=9; IACHR, *Human Rights Situation of Independent Union Leaders in Cuba*, 140th session, October 28, 2010. See also, ITUC, *Annual Report 2010 CSI, Annual survey of violations of trade union rights, Cuba*. Available at: <http://survey10.ituc-csi.org/Cuba.html?lang=en>

⁴²⁷ IACHR, *Hearing on Situation of Labor Union Rights in the Americas*, 143rd Session, October 28, 2011. Available at: http://www.oas.org/en/media_center/videos.asp?sCodigo=11-0245&videotype=&sCollectionDetVideo=9

⁴²⁸ *El Imparcial, Cuba libera al preso de conciencia Iván Hernández Carrillo* [Cuba releases prisoner of conscience Iván Hernández Carrillo], February 21, 2011, available [in Spanish] at: <http://www.elimparcial.es/america/cuba-libera-al-preso-de-conciencia-ivan-hernandez-carrillo-79241.html>; *República.com, Cuba libera al disidente político Iván Hernández Carrillo del Grupo de los 75* [Cuba releases political dissident Iván Hernández Carrillo of the Group of 75], February 19, 2011, available [in Spanish] at: http://www.republica.com/2011/02/19/cuba-liberara-a-siete-disidentes-uno-de-elllos-del-grupo-de-los-75_298231/print

⁴²⁹ IACHR, *Hearing on Situation of Labor Union Rights in the Americas*, 143rd Session, October 28, 2011. Available at: http://www.oas.org/en/media_center/videos.asp?sCodigo=11-0245&videotype=&sCollectionDetVideo=9

⁴³⁰ United Nations, Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention. Concluding observations of the Committee on Racial Discrimination, Cuba*, CERD/C/CUB/CO/14-18, March 10, 2011, paragraph 14. Available at: <http://www2.ohchr.org/english/bodies/cerd/cerds78.htm>.

⁴³¹ United Nations, Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention. Concluding observations of the Committee on Racial Discrimination, Cuba*, CERD/C/CUB/CO/14-18, March 10, 2011, paragraph 15.

⁴³² Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011

267. On the question of the immigration of foreigners to Cuba, the United Nations Committee on the Elimination of Racial Discrimination, in its recent observations on Cuba, expressed concern at the lack of an enabling legal framework for the local integration of persons present in Cuban territory who require international protection, such as refugees, asylum-seekers and stateless persons.⁴³³ It also expressed concern at the explanation provided by the State party in relation to the application of article 215 of the Criminal Code, which establishes that illegal entry into Cuban territory is a criminal offence and that border control personnel "shall return all persons who attempt to enter the country without satisfying immigration requirements."⁴³⁴ The Committee on the Elimination of Racial Discrimination was concerned that the State had not provided any additional information on the mechanisms in place to ensure that decisions concerning the return or expulsion of foreigners at Cuban borders conform to the standards and principles established in international human rights law, in particular the principle of non-discrimination.

5. Children and adolescents

268. As for children, in its final observations issued in August 2011 the United Nations Committee on the Rights of the Child expressed concern that although the age of majority is 18 under the Convention on the Rights of the Child, in Cuba one attains one's majority at age 16; hence, the minimum age at which a girl can marry and be held answerable for crimes is 16.

269. The Committee therefore expressed concern that crimes involving corruption of minors (the use of children in prostitution and pornography) and the sale of children, which are crimes under the Cuban Criminal Code, would not protect adolescents ages 16 to 18. On the contrary, rather than provide them with the reintegration, rehabilitation and recovery services to which they are entitled by virtue of their special status as children, the State informed the Committee that adolescents over the age of 16 who engage in antisocial behavior and practice prostitution may face "re-educational security measures (...), including confinement in a rehabilitation centre" because they pose a "manifest threat to society."⁴³⁵

270. The United Nations Committee on the Rights of the Child was concerned about children born abroad to Cuban parents and who are not covered under any of the circumstances that Article 29 of the Cuban Constitution stipulates for citizenship to convey.⁴³⁶ These children run the risk of becoming stateless persons.⁴³⁷ The Committee was also concerned over the longstanding travel restrictions for

⁴³³ United Nations, Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention. Concluding observations of the Committee on Racial Discrimination, Cuba, CERD/C/CUB/CO/14-18, March 10, 2011. Available at: <http://www2.ohchr.org/english/bodies/cerd/cerds78.htm>.

⁴³⁴ United Nations, Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention. Concluding observations of the Committee on Racial Discrimination, Cuba, CERD/C/CUB/CO/14-18, March 10, 2011, paragraph 20.

⁴³⁵ Committee on the Rights of the Child, Reply of Cuba to the list of issues concerning additional and updated information (CRC/C/CUB/Q/2) related to the second periodic report of Cuba (CRC/C/CUB/2), CRC/C/CUB/Q/2/Add. 1, April 27, 2011, paragraph 139.

⁴³⁶ Article 29. Cuban citizens by birth are:

- a) those born within Cuban national territory, with the exception of the children of foreign persons at the service of their governments or international organizations. In the case of the children of foreign residents in the country temporarily, the law stipulates the requisites and formalities;
- b) those born abroad, at least one of whose parents is Cuban and on an official mission;
- c) those born abroad, at least one of whose parents is Cuban, who have complied with the formalities prescribed by law;
- d) those born outside national territory, at least one of whose parents is Cuban and who lists their Cuban citizenship provided they apply for citizenship according to the procedures prescribed by law;
- e) foreigners who, by virtue of their exceptional merits earned in the struggle for Cuba's liberation, were deemed Cuban citizens by birth.

⁴³⁷ Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: Cuba, CRC/C/CUB/CO/2, August 3, 2011, paragraph 30.

Cuban nationals, which have resulted in involuntary separation within many Cuban families, thereby imposing restrictions on the right of children to live with their parents.⁴³⁸

271. As for corporal punishment, the IACtHR has maintained that in accordance with the established doctrine as it applies to children, States are obliged to "adopt all positive measures required to ensure [the] protection of children against mistreatment [corporal punishment and other forms of violence], whether in their relations with public authorities or in relations among individuals or with non-governmental entities" in order to ensure them the full exercise and enjoyment of their rights.⁴³⁹ Cuba would be one of the countries of the region where corporal punishment is still practiced, which is contrary to what the Commission has held. Indeed, the Secretariat received information from the Committee on the Rights of the Child indicating that in Cuba, corporal punishment is not a prohibited practice wherever children and adolescents are. In fact, under the Family Code, parents and guardians may still employ corporal punishment as "adequate and moderate" punishment for children under their care and authority; corporal punishment is also used as a disciplinary measure in schools and other social institutions.⁴⁴⁰

6. Lesbians, gays, and transsexual, bisexual and intersexual persons ("LGTBI")

272. In a newspaper interview given in late 2010, former President Fidel Castro publicly acknowledged the discrimination against lesbians and gays, particularly the mistreatment and violations to which they were subjected in the sixties and seventies, when many were detained and sent to "re-education" camps and homosexuality was labeled as counterrevolutionary.⁴⁴¹

V. CONCLUSIONS

273. Based on the foregoing, the Commission must again point out that the restrictions on political rights, on freedom of expression and thought, the lack of elections, the lack of an independent judicial branch, and the restrictions on the right of residence and movement, together constitute a permanent situation of violation of fundamental rights of Cuban citizens. The Commission urges the State to introduce the necessary reforms in keeping with its international obligations in respect of human rights.

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

275. The Commission urges the Cuban State to adopt the legislative and other measures necessary to ensure that the death penalty will not be imposed in violation of the rights to due process and a fair trial by a competent, independent, and impartial court previously established by law.

276. The Commission is also urging the Cuban State to eliminate the crimes of "dangerous state" and "special proclivity of a person to commit crimes" contained in the Criminal Code.

277. The Commission is urging the Cuban State to take the measures necessary to prevent and eradicate the various forms of harassment practiced against those who exercise their rights of

⁴³⁸ Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: *Cuba*, CRC/C/CUB/CO/2, August 3, 2011, paragraph 41.

⁴³⁹ IACtHR, Report on Corporal Punishment and Human Rights of Children and Adolescents, 2009, paragraph 31. Available at: <http://www.cidh.oas.org/Ninez/CastigoCorporal2009/CastigoCorporal.TOC.htm>

⁴⁴⁰ Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: *Cuba*, CRC/C/CUB/CO/2, August 3, 2011, paragraphs 36 to 38.

⁴⁴¹ *Diario La Jornada*, August 31, 2010, *entrevista de Fidel Castro* [interview with Fidel Castro], available [in Spanish] at the following link [consulted on October 29, 2011]: <http://www.jornada.unam.mx/2010/08/31/index.php?section=mundo&article=026e1mun>

association and of assembly for humanitarian and organized labor purposes and against those are dedicated to defending and promoting human rights.