

Freedom of Expression in Cuba



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SPECIAL REPORT ON THE SITUATION OF FREEDOM OF EXPRESSION IN CUBA

Office of the Special Rapporteur for Freedom of
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Rights

Edison Lanza
Special Rapporteur for Freedom of Expression

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**SPECIAL REPORT ON THE SITUATION OF
FREEDOM OF EXPRESSION IN CUBA**

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INTRODUCTION

INTRODUCTION

A. Background and purpose of the report

1. For more than half a century, Cuba has been a State governed by a single party that obstructs all avenues of political dissent. The State severely restricts the rights to freedom of expression, association, assembly, freedom of movement, and due process. For decades the Cuban State has organized the institutional machinery to silence voices outside the regime, and to repress independent journalists, as well as artists or citizens who try to organize themselves to articulate their demands; in all that time the State has maintained a monopoly over the media. As the Inter-American Commission on Human Rights (hereinafter, “IACHR”) and the Office of the Special Rapporteur for Freedom of Expression (hereinafter, “Office of the Special Rapporteur”) have noted, open debate on ideas and on central aspects of national life has been suppressed.
2. As the Inter-American Commission has pointed out, this is presented in a context of serious disregard for the essential elements of representative democracy and its institutions. Historically, the IACHR has been critical of the absence of conditions that would allow genuine political participation by sectors with diverse lines of thought in Cuba; in particular, the holding of elections lacking plurality and independence, with insurmountable obstacles that prevent free access to multiple sources of information. The voice of opposition to the government, in its attempts to express itself and participate in the conduct of the country’s affairs, ends up being suppressed in the presence of a single party, the prohibition against association for political purposes, and arbitrary restrictions on freedom of expression and the right of assembly, among other fundamental rights.¹
3. For decades, Cuba has remained among the countries in the hemisphere with the worst conditions and least favorable environment for the exercise of the right to freedom of expression.² Reporters Without Borders places it 172nd out of 180 countries included in the 2018 world ranking, a study based on the degree of freedom enjoyed by journalists. Year after year it continues to be the worst rated country in the American region.³ According to the Committee to Protect Journalists (hereinafter

¹ IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 25.

² IACHR. [Annual Report 2008. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 83; IACHR. [Annual Report 2007](#). OEA/Ser.L/V/II.130. Doc. 22 rev. 1. December 29, 2007. Paras. 130-133; IACHR. [Annual Report 2005. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006. Para. 60; IACHR. [Annual Report 2004. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005. Paras. 64-65; IACHR. [Annual Report 2001](#). OEA/Ser. /L/V/II.114. Doc. 5 rev. April 16, 2002. Paras. 18-19; IACHR. [Annual Report 2001. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser. /L/V/II.114. Doc. 5 rev. April 16, 2002. Paras. 92-103; IACHR. [Annual Report 1999. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.106. Doc. 3. April 13, 2000. Pp. 44-45.

³ This report measures the situation of press freedom, based on an assessment of pluralism, the independence of the media, the quality of the legal framework, and the safety of journalists in these countries. [Reporters Without Borders. [RSF Index 2018: Mixed performance in Latin America](#)]. In recent years, Cuba has fluctuated between 169th

“CPJ”), Cuba is one of the 10 countries in the world with the most censorship and the only one in the hemisphere on this list.⁴ Practicing journalism in Cuba was not even close to a situation comparable to any other country in the region. This is due to the serious risks faced by journalists and other population groups seeking to express opinions, the lack of access to public and official government information, the fear of the population and of those who may potentially be journalists’ sources of information, among other multiple obstacles. Nevertheless, this model based on stifling the press and the free exchange of information and ideas on matters of public interest is apparently being emulated by other regimes, as demonstrated by the recent cases of Nicaragua and Venezuela.

4. El The control of freedom of expression and political freedoms has been ongoing for almost five decades, but there have been some emblematic episodes of repression such as the one that occurred in March 2003, when people identified as “counterrevolutionaries” for their thinking were arrested en masse. On March 18, 2003, agents of the State Security force arrested dissidents. More than 80 people were arrested, and agents confiscated computers, typewriters, books, faxes, and personal documents. Seventy-five people were convicted and sentenced to up to 28 years in prison with an average sentence of more than 18 years.⁵ The arrests, prosecutions, and convictions were one of the harshest repressive campaigns in the Cuban regime in decades, known as Black Spring. The acts committed in this context were addressed in the IACHR’s recently published report on the merits in the *Case of Vladimiro Roca Antúnez, et al.*⁶
5. In recent years, the IACHR and its Office of the Special Rapporteur have continued to receive troubling information about illegitimate restrictions on freedom of expression in Cuba. Of particular concern is the continuing rise in selective and deliberate persecution of independent media and organizations that disseminate information and opinions on matters of public interest outside the control of the State. The acts and threats by authorities and public officials to intimidate anyone expressing critical ideas about the country’s politics and institutions, such as activists, artists, journalists, human rights defenders, and intellectuals, among others, are also very serious.
6. All this is taking place under a legal framework that, far from protecting the exercise of freedom of expression, provides the State with the legal tools to repress it, especially through criminal law. State control of the media and over access to digital media also persists because of the limited connectivity of the Cuban population and

and 173rd out of 180 countries worldwide. [RWB. [Informe Anual 2017. América. Cuba](#)] [Annual Report 2017. Americas. Cuba] [in Spanish].

⁴ CPJ. [10 Most Censored Countries](#). No date.

⁵ See *inter alia* IACHR. *Hearing on the Situation of Freedom of Expression in Cuba*. 119th Session. March 2, 2004; IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet, et al. (Cuba). October 21, 2006.

⁶ The IACHR declared the international responsibility of the Cuban State for the violation of the rights to freedom of expression and association of Vladimiro Roca Antúnez, René Gómez Manzano, Martha Beatriz Roque Cabello and Félix Bonne Carcassés, who were arbitrarily deprived of their liberty and sentenced to harsh prison terms on charges of sedition for the mere dissemination of political opinions. IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al., Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018.

the blocking of critical media on the Internet. This restricts the information, cultural expressions, and debate of ideas that Cubans are able to access through the press, radio, television, and the Internet. All these are illegitimate restrictions and infringements on freedom of expression that the Office of the Special Rapporteur has observed for several decades, especially in its annual reports.

7. The change in the country's leadership following the appointment of Raúl Castro in 2006 had consequences in terms of a certain degree of economic liberalization, and an apparent opening up of spaces for discussion within the framework of a political transition of the regime. Systematic violations of human rights and fundamental freedoms continued, although the intensity of the repression varied according to the political situation.
8. On December 17, 2014, the Governments of Cuba and the United States announced talks aimed at agreeing on bilateral measures, which included the reestablishment of diplomatic relations, which had been suspended since 1961. The IACHR welcomed this announcement at the time as a sign of strengthening relations between two member states of the Organization of American States (hereinafter, "OAS" or "Organization"), in the hope that such measures would be beneficial to the people of both countries. The Inter-American Commission welcomed the decision in a press release, and called for the dialogue to be followed by "increased respect for human rights and fundamental freedoms in Cuba," as well as "more measures to open up the country to international presence, including by human rights monitoring bodies, with a view to concrete advances in the protection of its inhabitants."⁷
9. However, two years after the process began, there has been no significant response to the demands for freedom in the areas of culture, the press, and in political debate and participation. At present, the intolerance of the Cuban authorities toward any form of criticism or opposition continues to be the main limitation on the enjoyment of the rights to freedom of expression and association in Cuba. The *de facto* change of government of the Presidency of the Council of State and Ministers from Raúl Castro to Miguel Díaz-Canel in 2018 had also created expectations of positive steps in the area of human rights. So far, however, the new government has generally shown itself to be a continuation of the former regime in terms of repressing the exercise of freedom of expression in Cuba. Of grave concern is the fact that, shortly after taking office, Díaz-Canel announced that he would maintain a position against press freedom and the legalization of independent media in the country.⁸
10. Most troubling is the fact that, even in recent times, there has been an increase in repression and intolerance in order to discourage journalism that does not toe the official line, the work of human rights defenders, and criticism voiced by dissidents, as discussed in detail below. For years, repression in Cuba was characterized by maintaining a veneer of legality, which included prosecution indictments, the appointment of public defenders, judicial proceedings, and/or final convictions. Although some of these practices continue, there are variations that seem to be aimed at leaving neither legal traces nor documentation that can be used as evidence of the

⁷ IACHR. [IACHR Welcomes Announcement to Reestablish Relations between the United States and Cuba](#). Press Release of December 18, 2014.

⁸ Miguel Díaz-Canel. Tenth Congress of the Cuban Journalists' Union. In: [Díaz-Canel descarta la libertad de prensa en Cuba](#) [Díaz-Canel Rules out Press Freedom in Cuba]. July 16, 2018.

abuses suffered.⁹ During the 169th Session of the IACHR, several journalists in attendance, and others through previously recorded statements, reported what they called a repression of “attrition” that avoids prosecution. These forms of repression are said to include arrests and humiliating interrogations, particularly of women journalists; detentions of up to 72 hours without a warrant or judicial communication; pressures on their families and those around them; confiscation of equipment and theft of materials from journalists; as well as travel bans to keep journalists and activists from leaving the country.¹⁰

11. The current model reportedly follows a rationale that is separate from the legal structures, based on State Security or para-State structures that may be more subtle but equally serious in light of international law.¹¹ In addition to the traditional tools used to repress independent journalism, forms of repression have been reported such as threats to bring criminal action based on the criminal offense of “impersonation of a public official and acting without legal capacity” against those who practice journalism in non-state media and, more recently, the imposition of “aptitude tests” for admission to the journalism program at the State University.¹²
12. In this context, the Office of the Special Rapporteur also takes note of the constitutional reform process currently underway in Cuba.¹³ The information available indicates that, at the end of July 2018, the “Draft Constitution of the Republic of Cuba” (hereinafter, “Draft Constitution”) was published and subjected to popular consultation between August and November of the same year. According to the information available, the one-party political system and centralized economy is generally maintained, so the restrictions on the political rights of Cubans remain in force. In addition, the text of the draft amended Constitution expressly includes the obligation “to guarantee the enjoyment and exercise by the individual of the inalienable, indivisible and interdependent enjoyment and exercise of human rights, in accordance with the principle of progressivity and without discrimination.”¹⁴ In addition, the introduction to the draft announces the intention to establish all “rights

⁹ IACHR. Office of the Special Rapporteur. Working meeting with journalists. 168th Session. June 2018; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

¹⁰ IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018.

¹¹ Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

¹² IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018.

¹³ According to the available information, on June 2, 2018, the National Assembly agreed to initiate this process and created a Commission responsible for drawing up the draft, which was reportedly chaired by Army General Raúl Castro Ruz and made up of 33 representatives. This Commission introduced a new draft Constitution to the VII Plenary of the Central Committee of the Party and to the Council of State. Subsequently, it was submitted to the National Assembly of People’s Power for its adoption, which took place on July 21 and 22, 2018. Granma. [Preparan proceso de consulta del Proyecto de Constitución](#) [Consultation process for the Draft Constitution prepared]. July 30, 2018.

¹⁴ Article 39 of the draft Constitution states that: The Cuban State shall guarantee the enjoyment and exercise by the individual of the inalienable, indivisible and interdependent enjoyment and exercise of human rights, in accordance with the principle of progressivity and without discrimination. Their respect and guarantee are obligatory for everyone. [Proyecto de Constitución de la República de Cuba](#) [Draft Constitution of the Republic of Cuba].

in keeping with the relevant international instruments to which Cuba is a party.”¹⁵ These include freedom of thought, conscience, and expression, as well as the right to a defense, due process, popular participation, and access to the courts.¹⁶ However, the draft also contains provisions that are incompatible with Cuba’s human rights obligations, which will be examined accordingly in the present report.

13. The Office of the Special Rapporteur considers that Cuba’s development and openness is closely linked to the indispensable return to democracy and respect for human rights. In that regard, respect for human rights, freedom of expression, and respect for political rights, together with the holding of free elections based on secret and universal suffrage are essential elements of democracy. Freedom of expression accompanies the person as one of the most precious freedoms because it allows each individual to think about the world from his or her own perspective and choose his or her own lifestyle, as well as to build pluralistic societies. For this reason, since the beginning of the current administration, the Office of the Special Rapporteur has given priority attention to the situation in Cuba. To that end, this report analyzes the situation of freedom of expression in Cuba in the light of the standards of the inter-American system and, on that basis, offers recommendations to the State that will enable it to contribute to the effective exercise of this right in the country.

B. International legal framework

14. Cuba ratified the OAS Charter on July 16, 1952, and has been a member of the Organization ever since. In accordance with the OAS Charter, all States Parties undertake to respect the individual human rights set forth in the American Declaration of the Rights and Duties of Man (hereinafter, “Declaration” or “American Declaration”). In accordance with Article 20(a) of its Statute, the Commission must pay special attention to the task of observing the human rights recognized in Articles I, II, III, IV, XVIII, XXV, and XXVI of the Declaration when exercising its jurisdiction over States that are not parties to the American Convention.¹⁷ In this regard, Cuba must observe the American Declaration despite not having ratified the American Convention on Human Rights (hereinafter, “Convention” or “American Convention”).
15. The Office of the Special Rapporteur recalls, as the IACHR has expressed on repeated occasions,¹⁸ that the American Declaration is a source of international legal obligation for all member States of the OAS, including Cuba. Article IV of the Declaration states that: “Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.” Article XXII establishes that: “Every person has the right to associate with others to promote,

¹⁵ [Proyecto de Constitución de la República de Cuba](#) [Draft Constitution of the Republic of Cuba]. Introduction to the analysis of the Draft.

¹⁶ [Proyecto de Constitución de la República de Cuba](#) [Draft Constitution of the Republic of Cuba]. Title IV: Rights, duties, and guarantees.

¹⁷ IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet, et al. (Cuba). Para. 36.

¹⁸ IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet, et al. (Cuba). October 21, 2006. Paras. 40-44; Report No. 68/06. Case 12.477. Merits. Lorenzo Enrique Copello Castillo, et al. Cuba. October 21, 2006. Paras. 49 & 52; IACHR: Merits Report No. 47/96. Case 11.436. Victims of the tugboat “13 de Marzo” (Cuba). October 16, 1996; Merits Report No. 86/99. Case 11.589. Armando Alejandro Jr., Carlos Costa, Mario de la Peña & Pablo Morales. September 29, 1999; IACHR. Annual Report 2016. Chapter IV.b (Situation of Human Rights in Cuba). Para. 12.

exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.”

16. The IACHR has repeatedly recognized that the freedom to express ideas and disseminate information of all kinds, regardless of borders, is a fundamental and inalienable right, inherent to all persons. It is “one of the individual rights that most clearly reflects the virtue that marks—and characterizes—human beings: the unique and precious capacity to think about the world from our own perspective and communicate with one another in order to construct, through a deliberative process, not only the model of life that each one has a right to adopt, but the model of society in which we want to live.”¹⁹
17. It is also a prerequisite for the very existence of a democratic society. The very objective of this right is to strengthen the functioning of pluralistic and deliberative democratic systems by protecting and promoting the free flow of information, ideas, and expressions.²⁰
18. The IACHR has stated that “when Article IV of the Declaration proclaims that ‘every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas’ by any means, it is indicating that the expression and dissemination of ideas is indivisible, so that a restriction of the possibility to impart thoughts represents directly, and to the same degree, a restriction of the right to express oneself freely.”²¹ Indeed, according to the doctrine and jurisprudence of the inter-American system, freedom of expression has an individual dimension and a social dimension, which must be fully guaranteed simultaneously in order to give effect to the right to freedom of expression.²² Freedom of expression requires that no one be arbitrarily hindered or prevented from expressing his or her own thought and disseminating information of all kinds; but it also entails a collective right to receive any information and to hear the expression of other people’s thoughts.²³
19. The recognition and protection of freedom of expression in the inter-American system is complemented by that established within the framework of the United

¹⁹ IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. December 30, 2009. Para. 7.

²⁰ IACHR. Report No. 103/13. Case 12.816. Merits. Adán Guillermo López Lone, et al. Honduras. November 5, 2013. Para. 210; IACHR. Report No. 27/15. Case 12.795. Merits. Alfredo Lagos del Campo. Peru. July 21, 2015. Para. 75; IACHR. Arguments before the Inter-American Court in the case of Ivcher Bronstein v. Peru. Transcribed in: I/A Court H.R. *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Para. 143. d); IACHR. Arguments before the Inter-American Court in the case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Transcribed in: I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*. Merits, Reparations, and Costs. Judgment of February 5, 2001. Para. 61. b).

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

²² I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*. Merits, Reparations, and Costs. Judgment of February 5, 2001. Para. 67; *Case of Granier et al. (Radio Caracas Television) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Para. 135.

²³ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Para. 30; *Case of Granier et al. (Radio Caracas Television) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Para. 136.

Nations (hereinafter, “UN”).²⁴ Specifically, Article 19 of the Universal Declaration of Human Rights (hereinafter, “Universal Declaration”) provides that, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

20. The IACHR notes that Cuba has ratified several human rights treaties adopted by the UN.²⁵ It also notes that the Cuban State signed the International Covenant on Civil and Political Rights on February 28, 2008, although to date it has not ratified this universal treaty that recognizes, *inter alia*, the right to freedom of expression.
21. Given the close relationship between these rights and democracy, reference should be made to the Inter-American Democratic Charter and, in particular, to Article 4, which states the following: “Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.” In addition, the Declaration of Principles on Freedom of Expression of the IACHR (hereinafter, “Declaration of Principles”) emphasizes that freedom of expression is “an indispensable requirement for the very existence of a democratic society” (Principle 1).
22. This body of norms, together with the decisions of the bodies of the inter-American system, establish clear principles in relation to the standards for the effective protection of freedom of expression, which will be considered by the Office of the Special Rapporteur in the analysis of this report.

C. Methodology and structure of the Report

23. The present analysis is the product of continuous monitoring of the human rights situation in Cuba, especially with regard to freedom of expression in its various dimensions, carried out by the Office of the Special Rapporteur through its annual reports. The information available also comes from public hearings held by the IACHR, the petitions of alleged victims processed in the petition and case system, the mechanism of precautionary measures, and the information submitted by civil society organizations and information from various public sources were taken into account. The Office of the Special Rapporteur for Freedom of Expression of the IACHR also sent the Cuban authorities a letter describing specific situations involving the criminalization and persecution of journalists and activists, as well as a questionnaire sent jointly with the United Nations Rapporteur on Freedom of Opinion and Expression on various situations reported concerning cases of censorship, violence

²⁴ Cuba signed the United Nations Charter on June 26, 1945 and ratified it on October 15 of the same year, being one of the founding States of that organization.

²⁵ In particular, it is a State party to the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and its two optional protocols, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Rights of Persons with Disabilities. See United Nations. [Multilateral Treaties Deposited with the Secretary-General](#). Chapter IV.

against journalists, arbitrary arrests, and the functioning of the Internet in Cuba; to date, the Cuban State has not replied to the questionnaire.²⁶

24. This report contains six main sections. In Chapter I, the Office of the Special Rapporteur discusses the regulatory framework that is at the root of the human rights violations discussed in this report, as well as a brief analysis of the aspects of the constitutional reform introduced by the regime itself for debate in Cuba that refer to the right to freedom of expression. In the second chapter, it addresses free and independent journalism in Cuba, referring in particular to the public media, the impossibility of establishing private media, and the practices of persecution against independent journalists. Since journalists are not the only ones who have suffered persecution for expressing their ideas in Cuba, the third chapter analyzes the criminalization of criticism and politically motivated discrimination against different sectors of the population, such as human rights defenders, artists, political dissidents, and others. The following chapter discusses social protests and demonstrations. The sixth section refers to limitations on the right to freedom of expression on the Internet and addresses obstacles in the regulation of the use of networks and communication on the web, connectivity problems and universal access, content blocking and censorship, and surveillance. Finally, based on the analysis of these issues, the Office of the Special Rapporteur presents its conclusions and recommendations to the Cuban State.
25. Finally, the IACHR approved this report on December 31, 2018. The report was updated in March 2019 to include the changes that the new Constitution approved in February 2019 introduced with respect to the right to freedom of expression and to the right of access to information. These new texts were included as footnotes of the respective articles.

²⁶ Letter sent pursuant to the special mandates of the UN Rapporteur on Freedom of Opinion and Expression, David Kaye, and the IACHR Special Rapporteur for Freedom of Expression, Edison Lanza, in accordance with UN Human Rights Council Resolution 25/2 and Article 18 of the IACHR Statute. October 1, 2018.

CHAPTER I

REGULATORY FRAMEWORK

I. REGULATORY FRAMEWORK

26. Cuba has a legal system that is extremely restrictive of freedom of expression. The Constitution's regulation of the exercise of this right subordinates it to the protection of certain purposes and interests, in a manner incompatible with international instruments. Among other things, the Constitution provides for the preservation and strengthening of the socialist State, sole state or social ownership of the media, and the interests of the working people; as well as criminal laws that include various forms of contempt of public authority [*desacato*] or subversion intended to protect the State, the socialist order, and so on. The Cuban legal system has a restrictive and instrumental view of freedom of expression with regard to the activities of journalists and the media.
27. The existing legal structure in the country is used as the basis for persecuting and criminalizing those who express opinions or disseminate information that is critical or dissents from the official position. The main legal tools used by the Cuban State to repress independent journalism have been in force for several years, but new classifications of offenses have been added to the repressive model. The Office of the Special Rapporteur refers below to its main concerns about the Constitution, punitive provisions related to freedom of expression, and provisions concerning access to information. The Office of the Special Rapporteur refers to this part of the Draft Constitution in a subsection within this chapter (II.A.iv).

A. 1976 Constitution of the Republic of Cuba

28. For purposes of the exercise of the right to freedom of expression in Cuba, **Article 53** of the 1976 Constitution of the Republic is particularly relevant. That provision provides, to the letter, as follows:

Citizens have freedom of speech and of the press in keeping with the objectives of socialist society. Material conditions for the exercise of that right are provided by the fact that the press, radio, television, movies and other mass media are State or social property and can never be private property. This ensures that they are used at the exclusive service of the working people and in the interest of society. The law regulates the exercise of these freedoms.²⁷

29. This article provides the State with the key constitutional basis for the repression of freedom of expression in Cuba. Since its 1983 country report, the IACHR has expressed its concern about this provision inasmuch as it "subordinates the exercise of the freedom of expression 'to the objectives of socialist society,'" because "it is the exercise of rights which must adapt to the purposes of the State."²⁸ It noted that "Regulations in the law on the exercise of the right to freedom of expression obey two fundamental determinants: on the one hand, the preservation and strengthening of

²⁷ [Constitution](#) of the Republic of Cuba. 1976. Article 53.

²⁸ IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Para. 7.

the socialist State; on the other, the need to suppress any possible criticism of the group in power.”²⁹

30. In particular, the Office of the Special Rapporteur views three aspects of this provision with special concern due to their incompatibility with freedom of expression: (i) prior censorship of the exercise of freedom of speech and of the press by subjecting it to the aims of socialist society, (ii) state ownership of the media along with an express prohibition of the operation of private media, and (iii) the potential criminalization of the exercise of freedom of expression.

- i. **Prior censorship of freedom of expression by subjecting it to the aims of a socialist society**

31. Article 53 distances Cuba from international standards in this area, according to which the recognition of freedom of expression may not be subject to any condition, much less when such condition limits the possibility of an open, plural, and democratic debate on political issues. However, in Cuba freedom of expression and of the press is only protected and respected by the authorities if it serves the purposes of socialism as expressly provided for in the Constitution, in accordance with the interpretations of that concept made at all times by the respective bodies. By establishing that such freedoms must be consistent with the aims of socialist society, the Cuban State is authorized to exercise control over the information that reaches the public.
32. The Office of the Special Rapporteur recalls that under Article IV of the American Declaration, freedom of expression must be exercised without prior censorship and restrictions on the flow of information can only be established as subsequent liabilities. Additionally, as stated in Principle 5 of the Declaration of Principles “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”
33. The legal system that allows for the control of freedom of expression in Cuba is related to **Article 5 of the Constitution**, which calls the communist party the highest leading force in society and the State.³⁰ The Central Committee of the Cuban Communist Party (hereinafter, “PCC”)—by equating itself with the State and the Nation—, the Cuban Government and its governing body, grant themselves the right to consider any peaceful action or initiative that seeks to foster communication among citizens, as well as any opinion that disagrees with its policies, to be an affront to the country’s independence.³¹

²⁹ IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Para. 9.

³⁰ Constitution of the Republic of Cuba. Art. 5.- The Communist Party of Cuba, Martian and Marxist-Leninist, the organized vanguard of the Cuban nation, is the highest leading force of society and the State, organizing and guiding the common efforts aimed at the highest goals of the construction of socialism and advancement toward communist society-.

³¹ IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147th Session. March 11, 2013.

34. It is also linked to **Article 16** of the Constitution, insofar as that article provides, as a general principle, that “The State organizes, directs and controls the national economic activity according to a plan that guarantees the programmed development of the country, with the aim of strengthening the socialist system; satisfying the material and cultural needs of the society and its citizens with constant improvement; and promoting the development of the human being and his dignity, [and] the country’s progress and security.” This provision supports the economic control and planning of virtually all sectors of the country, making it impossible for activities, including media activities, to be subject to economic and market dynamics. This article also proscribes activities that are essential for the development of a media system, particularly the marketing and purchasing of advertising space.
35. In its 1998 annual report on Cuba, the Inter-American Commission pointed out that the exercise of fundamental freedoms, such as freedom of expression, cannot be conditioned on the political ideas of a party or the absolute control of state power. The Commission said that “the Cuban political system continues to give an exclusive and exclusionary preponderant role to the Communist Party, which in fact is a force superior to the state itself, impeding healthy ideological and political pluralism, which is one of the bases of any democratic form of government. Consequently, the most important state organs are controlled by members of the Communist Party.”³²
36. The Office of the Special Rapporteur reiterates that such a constitutional formula establishes arbitrary limits to the exercise of the rights and freedoms to which citizens are entitled. According to this formula, they are the ones who must adapt this exercise to the purposes pursued by the State. However, the democratic approach is the opposite: it is the State that should limit its action vis-à-vis the freedoms inherent to the individual rather than the individual adapting the exercise of those freedoms to particular state objectives.³³

ii. State or social ownership of the media

37. A second aspect of concern is the State monopoly on the media, precisely for the purpose of preserving the instrumental role referred to above, which is explicitly enshrined in Article 53. The function of communicating and contributing to the formation of public opinion is concentrated almost exclusively in the hands of the State. Any activity in this sphere that takes place outside the limits of the State monopoly is considered to be outside the law, and may be subject to punishment and repression by the authorities.
38. In addition to the fact that the Constitution prohibits private ownership of the press, all media are presumably controlled by the one-party communist State, which has been a matter of frequent concern to the Office of the Special Rapporteur and the IACHR.³⁴ Added to the absence of plural and independent media, essential in any

³² IACHR. Annual Report 1998. Chapter IV. Cuba. OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1999. Para. 68.

³³ IACHR. Annual Report 1998. Chapter IV. Cuba. OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1999. Para. 69.

³⁴ IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 453; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 309; IACHR. [Annual](#)

democratic society, the editorial policy of the official media is controlled by the Communist Party of Cuba and is based on the selection of topics conveyed from a single perspective, which is biased in favor of the current regime.³⁵

39. A provision of this kind closes the door to the demands arising from the need for media diversity and pluralism to protect the right to freedom of expression. As the Office of the Special Rapporteur has stated, The establishment of a State conglomerate as the only vehicle for the dissemination of information, ideas, and opinions violates freedom of expression, which is reinforced by the prohibition against associating to establish different types of media, whether commercial or non-profit. As this report discusses in depth, this has real consequences for the way journalism is practiced in Cuba, because a restriction on the ability of journalists and the media to circulate news, ideas, and opinions also affects the public's right to receive information, make its own political choices, and develop fully (III).

iii. Potential criminalization of the exercise of freedom of expression

40. The open reference made in the last sentence of Article 53 also gives the legislature the discretionary power to determine the exercise of freedom of expression in a concrete manner, within the broad margins allowed by the Constitution. This authorization is set forth in repressive terms in **Article 62** of the Constitution, which provides that:

None of the freedoms to which citizens are entitled may be exercised against those established in the Constitution and the laws, nor against the existence and aims of the socialist state, nor against the decision of the Cuban people to build socialism and communism. **Violations of this principle are punishable** (emphasis added).

41. Thus, the constitutional framework itself favors the establishment of criminal penalties for noncompliance with freedom of speech and of the press under the openly restrictive terms established in Article 53. The limits or interests used to legitimize such restrictions and penalties are incompatible with the applicable international standards, as noted above. These are limits aimed at preserving the status quo of the socialist regime by avoiding any form of debate, criticism, or questioning that is inherent and necessary in any democratic society. Particularly noteworthy is the set of punitive provisions relating to defamation or the mere criticism of State authorities and institutions, which are blatantly incompatible with freedom of expression, as discussed later in this report. (II.B and IV.C).

[Report 2003. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.118, Doc. 70 rev. 2. December 29, 2003. Para. 41.

³⁵ IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147th Session. March 11, 2013.

iv. Constitutional reform³⁶

42. The Office of the Special Rapporteur notes that, in the draft Constitution presented for popular consultation, there are two provisions directly referring to freedom of speech and of the press: Articles 59 and 60. Likewise, article 56³⁷ recognizes the right of access to information. The first of these provides as follows:

ARTICLE 59³⁸. The State recognizes, respects and guarantees freedom of thought, conscience and expression.

Conscientious objection may not be invoked for the purpose of evading law enforcement or preventing another from fulfilling it or exercising his or her rights.

43. The Office of the Special Rapporteur takes note that the draft establishes the general obligation of the State to recognize, respect, and guarantee freedom of thought, conscience, and expression, while the 1976 Constitution contains no similar provision. However, in order for such rights to be enforceable in Cuba, they must be made compatible with other constitutional provisions that prevent political pluralism and non-State ownership of the media. The reform also does not establish any legal actions to guarantee or protect the exercise of fundamental freedoms. This is without prejudice to the need to enact an appropriate regulatory framework that does not contain arbitrary restrictions on the exercise of those freedoms, but rather serves as the framework for correcting the ongoing practice of persecuting journalists.

44. In this regard, it is troubling that the draft constitutional reform known so far would retain the main restrictions of the current legal system with regard to freedom of expression, which render the exercise of the right illusory and make it a recognition that could be merely rhetorical. This is related to Article 60 of the Draft Constitution, which would replace Article 53 of the Constitution of 1976. This provision establishes:

ARTICLE 60³⁹. Citizens are entitled to freedom of the press. This right is exercised in accordance with the law.

³⁶ The IACHR in a press release dated March 4, 2019, reported that the reform process was concluded with the referendum held on February 24, 2019. On this occasion, the Commission expressed its concern, among others, regarding the possibility that the referendum may not have complied with the conditions necessary for free, secret, reliable, independent elections that safeguard the principles of universality and plurality. IACHR. March 4, 2019. [Press Release No. 058-19. IACHR Concerned about Cuba's New Constitution and its Implementation.](#)

³⁷ In the new Constitution approved on February 24, 2019, it becomes Article 53. The Article was approved with some modifications in the body of the text:

"All persons have the right to request and receive truthful, adequate, and timely information from the State, and to access the one generated in the organs of the State and entities, in accordance with established regulations."

³⁸ In the new Constitution approved on February 24, 2019, it becomes Article 54. The Article was approved with a small modification in the body of the text:

"The State recognizes, respects and guarantees people freedom of thought, conscience and expression.

Conscientious objection may not be invoked for the purpose of evading law enforcement or preventing another from fulfilling it or exercising his or her rights".

³⁹ In the new Constitution approved on February 24, 2019, it becomes Article 55. The Article was approved with some modifications in the body of the text:

"People are granted freedom of the press. This right is exercised in accordance with the law and the purposes of society.

The fundamental means of social communication, in any of its forms, are the socialist property of all the people, which ensures that they are used in the service of society as a whole. The State establishes the principles of organization and operation for all media.

45. According to this wording, although freedom of the press would no longer be subject to the “objectives of socialist society,” it seems to maintain the obstacles to media other than State media. As the provision expressly states, the media “are the socialist property of all the people.” This is even more troubling considering that the aforementioned Article 5 designating the PCC as the highest leading force also remains.
46. The Office of the Special Rapporteur recalls that the IACHR’s Declaration of Principles on Freedom of Expression establishes that, “Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information.” Furthermore, “The State should not have monopoly control over the media and should promote plurality of the media,” as also stated in General Comment 34 of the United Nations Human Rights Committee, cited in various decisions by the Commission and the Inter-American Court of Human Rights.⁴⁰
47. With regard to the economic system, the Office of the Special Rapporteur notes that the Draft Constitution, while maintaining as essential principles the socialist ownership of all people over essential media and planning, does acknowledge the role of the market and new forms of non-State ownership, including private ownership.⁴¹ Along these lines, one of the areas in which private ownership should be allowed as a matter of priority is the media, given that the possibility of establishing and operating media outlets is closely linked to the enjoyment of a wide range of freedoms.
48. Maintaining the State monopoly over the media is also contradictory to an aspect that seems central to this process of constitutional reform: the affirmation of Cuba as a democratic State governed by the rule of law.⁴² In other words, we cannot speak of the existence of a democratic system without full respect for freedom of expression

The fundamental means of social communication, in any of its manifestations and forms, are the socialist property of all the people or of the political, social and mass organizations; and cannot be subject to another type of property. The State establishes the principles of organization and operation for all media.”

⁴⁰ UN. Human Rights Committee. General Comment No. 34: Article 19: Freedoms of opinion and expression. CCPR/C/GC/34. 12 September 2011. Para. 40; I/A Court H.R. Case of Granier et al. (Radio Caracas Television) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C No. 293. Para. 143; IACHR. Office of the Special Rapporteur for Freedom of Expression. [Silenced Zones: Highly Dangerous Areas for the Exercise of Freedom of Expression](#). OEA/Ser.L/V/II. CIDH/RELE/INF.16/17. March 15, 2017. Para. 153; IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF.17/17. March 15, 2017.

⁴¹ [Proyecto de Constitución de la República de Cuba](#) [Draft Constitution of the Republic of Cuba].

⁴² Different provisions refer to the democratic character of the Cuban State; in particular Article 96 of the draft states: The bodies of the State are composed, and conduct their activities, based on the principles of socialist democracy, which are expressed in the following rules: (...) g) the freedom of discussion, the exercise of criticism and self-criticism, and the subordination of the minority to the majority in all collegial State bodies. [Proyecto de Constitución de la República de Cuba](#) [Draft Constitution of the Republic of Cuba].

and the possibility for citizens to exchange information, ideas, and opinions from a variety of sources.

49. Nor is there adequate regulation to meet the requirements of freedom of expression in relation to audiovisual communication, both from the point of view of access to resources to establish media outlets (granting, renewal, and revocation of licenses to operate radio and television frequencies), and in terms of the essential guarantees for the media to be virtually open to all without discrimination, which—as the Inter-American Court has pointed out—is an inherent requirement for the functioning of the media.⁴³
50. In addition, the bill succinctly recognizes that “All persons have the right to receive truthful, adequate, and timely information from the State, in accordance with established regulations,”⁴⁴ which could constitute a partial recognition of the right of access to public information, although it does so without reference to the obligation to provide an appropriate enforcement mechanism that individuals can avail themselves of in the event that the State refuses to provide information (see section C). In relation to the Internet, and without prejudice to the various oversight mechanisms to which reference will be made (VI.A), the law in question does not contain rules on ensuring an accessible, open, and neutral Internet.

B. Legal provisions that punish legitimate speech

51. The Office of the Special Rapporteur observes with concern the existence of a legal framework that represses and punishes the exercise of freedom of expression in Cuba. There are various provisions that have a considerable impact on this right, mainly but not exclusively in (i) the 1987 Criminal Code, (ii) Law No. 88 of 1999 for the Protection of National Independence, and (iii) Law No. 80 of 1996, for the Reaffirmation of Cuban Dignity and Sovereignty.
52. The Inter-American Commission and the Office of the Special Rapporteur have for decades expressed their concern about criminal concepts in the 1987 Criminal Code,⁴⁵ applied to the exercise of freedom of expression.⁴⁶ The information available through monitoring indicates that the criminal offenses most frequently used against journalists, political dissidents, human rights defenders, and others who exercise freedom of expression include the following:⁴⁷

⁴³ I/A Court H.R. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Para. 34.

⁴⁴ In the new Constitution approved on February 24, 2019, the Article was approved with some modifications in the body of the text: Article 53: “All persons have the right to request and receive truthful, adequate, and timely information from the State, and to access the one generated in the organs of the State and entities, in accordance with established regulations.”

⁴⁵ Criminal Code. Law of December 29, 1987. Published in the Official Gazette of the Republic of Cuba. Special edition. No. 3. December 30, 1987.

⁴⁶ IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Paras. 9-11.

⁴⁷ See *inter alia* IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 455; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Paras. 357, 358; IACHR. [Annual Report 2002](#). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Para. 24; IACHR. [Annual Report 2000. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.111. Doc. 20 rev. April 16, 2001.

Title of the Criminal Code	Chapter	Offense
Title I: Crimes against the security of the State	Chapter I : Crimes against the external security of the State	Acts against the independence or territorial integrity of the State (Article 91)
		Espionage (Article 97)
	Chapter II : Crimes against the domestic security of the State	Enemy propaganda (Article 103)
		Dissemination of false news against international peace (Article 115)
Title II: Crimes against the public administration	Chapter II : Violence, affronts, and disobedience against authority, public servants and their agents	Attack against a public authority (Article 142)
		Resistance (Article 143)
		Contempt of public authority (Article 144)
		Disobedience (Article 147)
	Chapter III: Fraudulent exercise of public functions	Impersonation of a public official (Article 148)
Title IV: Crimes against public order		Acting without legal capacity (Article 149)
	Public disorder (Articles 200 and 201)	
	Incitement to commit a crime (Article 202)	
	Insulting national symbols (Article 203)	
	Defamation of institutions and organizations and of heroes and martyrs (Article 204)	

53. The Office of the Special Rapporteur also notes that Articles 318, 319, and 320 of the Criminal Code provide for the system of penalties applicable to defamation, slander, and insult, respectively.

TITLE XII: CRIMES AGAINST HONOR

Offense	Article	Criminal conduct	Penalty
Contempt of public authority	318	In the presence of third parties, attributing dishonorable behavior, an act, or a characteristic to another, which may damage his or her social reputation, demean him or her in the public opinion, or subject him or her to the risk of losing the trust required for the performance of his or her position, profession, or social function.	Deprivation of liberty for a period of 3 months to 1 year, or a fine of 130 units [cuotas], or both
Slander	319	Knowingly disclosing false information that leads to the discrediting of a person	Deprivation of liberty for a period of 6 months to 2 years or a fine of 200 to 500 units [cuotas]
Insult	320	Intentionally insulting another person's honor, verbally or in writing, by means of drawings, gestures, or acts	Deprivation of liberty for a period 3 months to 1 year, or a fine of 130 units [cuotas]

54. In addition, on the basis of the constitutional provisions currently in force, Law 88 for the Protection of National Independence—known as the “Gag Law”—was enacted in February 1999.⁴⁸ The objective of this law is purportedly to combat any form of “aggression,” including ideological aggression, that occurs within the framework of the tensions between Cuba and the United States. That is why the provision contains a number of restrictions with a direct and notable impact in the area of free expression.

Para. 66; IACHR. [Annual Report 1998. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1999. Pp. 34, 39.

⁴⁸ National Assembly of People's Power of the Republic of Cuba. [Ley No. 88 de 1999 de Protección de la Independencia Nacional y la Economía de Cuba](#) [Law 88 for 1999 for the Protection of the National Independence and Economy of Cuba]. March 15, 1999.

55. Specifically, under Article 6.1, any person who “accumulates, reproduces, or disseminates subversive material of the Government of the United States of America, its agencies, offices, representatives, officials, or of any foreign entity, to support the objectives of the Helms-Burton Act, the embargo, and the economic war against our people, aimed at disrupting internal order, destabilizing the country, and destroying the Socialist State and the independence of Cuba, may be punished with a term of imprisonment of up to six years.” Article 6.2 provides for a penalty of up to six years in cases of concurrent aggravating conduct, such as a profit motive or the presence of various persons. If the disclosure of the content “causes serious harm to the national economy,” the penalty may be up to fifteen years.
56. Article 7.1 punishes with up to eight years of imprisonment any person who collaborates with foreign media for the purpose of “achieving the objectives of the Helms-Burton Act, the embargo, and the economic war against our people, aimed at disrupting the internal order, destabilizing the country, and destroying the Socialist State and the independence of Cuba.” Finally, the application of Article 9.1 may result in up to twenty years of imprisonment for any person who performs any act “aimed at impeding or harming the economic relations of the Cuban State, or of national or foreign industrial, commercial, financial, or other entities, whether state-owned or private,” especially if this results in retaliation by the U.S. government.
57. This law provides legal mechanisms to punish those who express themselves in international media.⁴⁹ The Office of the Special Rapporteur recalls that these rules were used by the Cuban State during the Black Spring of 2003, during which 75 dissidents were arrested and sent to prison; more than 25 independent journalists were arrested and sentenced to prison terms of up to 20 years under this law, which remains in force.⁵⁰
58. The aforementioned provisions are related to Law No. 80 of 1996 for the Reaffirmation of Cuban Dignity and Sovereignty.⁵¹ Said law makes it unlawful to disseminate any material “aimed at impeding or harming the economic relations of the Cuban State, or of national or foreign industrial, commercial, financial, or other entities, whether state-owned or private.” These provisions are the basis for the above-cited Law No. 88 of 1999.
59. With regard to such provisions, the Office of the Special Rapporteur recalls that criminal law is the most restrictive and severe means of establishing responsibility for unlawful conduct, particularly when custodial sentences are imposed. Therefore, the use of the criminal justice system must adhere to the principle of minimum intervention, given the *ultima ratio* nature of criminal law. In a democratic society, the punitive power of the State can only be exercised to the extent strictly necessary to protect fundamental legal interests from the most serious attacks that harm or endanger them. The opposite leads to the abusive and unnecessary exercise of the punitive power of the State.

⁴⁹ IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147th Session. March 11, 2013.

⁵⁰ IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147th Session. March 11, 2013.

⁵¹ National Assembly of People’s Power of the Republic of Cuba. [Ley 80 de 1996 de Reafirmación de la Dignidad y la Soberanía Cubanas](#) [Law No. 80 of 1996 for the Reaffirmation of Cuban Dignity and Sovereignty]. December 24, 1996.

60. When restrictions on the exercise of the right to freedom of expression are imposed through criminal law, the enforcement of these conditions receives stricter scrutiny.⁵² The regulations in question are contrary to inter-American standards insofar as they criminalize conduct protected by the right to freedom of expression, are incompatible with the principle of legality, and do not pursue a legitimate aim; nor do they meet the requirements of necessity and proportionality of the restrictive measure in relation to the exercise of this right (IV.C).
61. The disproportionate penalties applied to these offenses warrant special condemnation. In effect, they allow for the imposition of measures of disqualification and deprivation of liberty that inhibit and intimidate those who seek to express their opinions in public and through any medium. The foregoing considerations produce a regulatory framework incompatible with the right to free expression, which represses opinions outside the official discourse.⁵³

C. Provisions on the right of access to information

62. Cuba lacks laws and regulations that guarantee citizens the right of access to public information, an essential tool to enable citizens to participate in decisions concerning them, monitor the exercise of government functions, and protect other fundamental rights. On the contrary, the rule in authoritarian states is secrecy: in that regard, Decree Law No. 199 of 1999 establishes a System for the Security and Protection of Official Information that imposes severe restrictions on the ability of journalists and citizens in general to access information produced or held by the State.⁵⁴ The Decree Law and the “Regulations on the Security and Protection of Official Information” of the Ministry of the Interior of December 26, 2000, are the legal basis for the protection of official information and establish, among other aspects, the competent authority in this area (Ministry of the Interior) and the procedures for handling official information, including its classification and declassification. Classified government information is also protected under criminal law, as provided for in the Criminal Code.⁵⁵ In addition, most government ministries and agencies lack press offices, do not issue newsletters, and only hold press conferences on their own initiative and on topics of their choice.⁵⁶

⁵² IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 114.

⁵³ The Office of the Special Rapporteur notes that various actors have repeatedly expressed their rejection of this legal framework. See *inter alia* IAPA. [Report to the Midyear Meeting 2018](#); IAPA. [Report to the 73rd General Assembly 2017](#); IAPA. [Report to the Midyear Meeting 2016](#); AI. [“Your Mind is in Prison”: Cuba’s Web of Control over Free Expression and Its Chilling Effect on Everyday Life](#). 2017. Pp. 12-17; AI. [Cuba: Human Rights at a Glance](#). 2015.

⁵⁴ Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 10; CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016; Alianza Regional por la libre Expresión e Información. *Acceso a la Información y la Libertad de Expresión en Cuba – Primer Reporte*. 2018. Available for consultation at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁵⁵ This refers, in particular, to (i) Article 95, on the disclosure of political, military, economic, scientific, technical or any other kind of secrets concerning State security; (ii) Articles 129 and 130, both of which relate to the disclosure of information constituting administrative secrets, production secrets, or service secrets; and (iii) Article 169, aimed at officials or employees who, for malicious purposes or in violation of the relevant laws, destroy, alter, conceal, change, damage, or by any other means render useless state documents included within the legal category of classified documents.

⁵⁶ Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 10.

63. The Office of the Special Rapporteur notes that the Draft Constitution presented for public consultation recognizes that “All persons have the right to receive truthful, adequate, and timely information from the State, in accordance with established regulations.”⁵⁷ The provision appears to reflect progress, given that the 1976 Constitution does not recognize the right of access to information; however, the wording does not fully address the scope and content of the right of access to information, which not only includes the right to “receive” government information, but also the right to seek and investigate. According to Article IV of the American Declaration of the Rights and Duties of Man, “Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.”
64. At the same time, it emphasizes the importance that the legislation enacted for its exercise be fully in line with the State's obligations in this area. The right of access to information, like freedom of expression, has a dual character, in that it protects those who actively exercise it and those who receive such information through the media and/or official sources.⁵⁸ It also includes a positive obligation for the State to provide citizens with access to information in its possession and a correlative right of individuals to access information held by the State.
65. Individuals, for their part, have the right to request documentation and information held in public archives, generated or processed by the State, both to exercise their political rights and to exercise oversight of the State and its administration, promoting accountability and transparency.⁵⁹ Only through access to information can citizens participate in governance without discrimination and under equal conditions. Access to information is also a means for the effective exercise of other rights, including economic, social, cultural, and civil and political rights.⁶⁰
66. At the regional level, there is a broad consensus among OAS member States on the importance of access to public information and the need for its protection, as evidenced by the passage of access to information laws in 25 countries in the hemisphere. Many of these laws are in line with the Model Inter-American Law on Access to Information, which provides a set of principles and guidelines for the

⁵⁷ [Proyecto de Constitución de la República de Cuba](#) [Draft Constitution of the Republic of Cuba]. Art. 56. The Office of the Special Rapporteur notes that in the new Constitution approved on February 24, 2019, it becomes article 53. The article was approved with some modifications in the body of the text:

“All persons have the right to request and receive truthful, adequate, and timely information from the State, and to access the one generated in the organs of the State and entities, in accordance with established regulations.”

⁵⁸ IACHR. Office of the Special Rapporteur for Freedom of Expression. Lima Principles. November 16, 2000. Principle No. 1; IACHR. Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III. OEA/Ser.L/V/II. Doc. 69. December 30, 2011.

⁵⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. The Inter-American Legal Framework regarding the Right to Access to Information. Second Edition. OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011. Para. 5.

⁶⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. The Inter-American Legal Framework regarding the Right to Access to Information. Second Edition. OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011. Para. 5; OAS. General Assembly. Access to Public Information: Strengthening Democracy. Resolution AG/RES. 2121 (XXXV-O/05). June 7, 2005.

design and implementation of access laws in the region.⁶¹ The inter-American instruments recognize the right of every person to have access to all information in the possession, custody, or control of any public authority, under the principle of maximum disclosure. States must also comply in good faith with the disclosure of information from public institutions in such a way that the information is complete, timely, accessible, and subject to a clear and precise system of exceptions.⁶² Individuals should also be able to file an appeal, both at the administrative and judicial levels, to challenge any denials.

⁶¹ OAS. Permanent Council of the Organization of American States. Committee on Juridical and Political Affairs. Model Inter-American Law on Access to Information. OEA/Ser.G, CP/CAJP-2840/10 Corr.1. April 29, 2010.

⁶² OAS. Permanent Council of the Organization of American States. Committee on Juridical and Political Affairs. Model Inter-American Law on Access to Information. OEA/Ser.G, CP/CAJP-2840/10 Corr.1. April 29, 2010.

CHAPTER II

FREE AND INDEPENDENT
JOURNALISM IN CUBA

II. FREE AND INDEPENDENT JOURNALISM IN CUBA

67. As previously mentioned, **Article 53 of the Cuban Constitution of 1976**⁶³ is of special concern because it explicitly prohibits the existence of private media. The Office of the Special Rapporteur has documented that, based on this regulatory framework, public media are used to uphold the official discourse and delegitimize independent journalism (III.A), while the establishment and operation of private media is not allowed (III.B). In addition, according to the information reported, the authorities carry out the systematic repression and persecution of journalists through the different practices discussed in this chapter (III.C).
68. The regulations and practices aimed at eliminating criticism in Cuba have meant that, for decades, the media have not been able to perform the role they must play in a plural, open, and democratic system, allowing for the flow and dissemination of ideas to facilitate the free formation of public opinion. Nor has the media system been able to freely carry out another of its main functions, that of subjecting public authorities and leaders to criticism and scrutiny.

A. Public media

69. The current situation of the media in Cuba was preceded by the changes and tightening of restrictions on press freedom—over and above those already existing in 1959—implemented when the so-called Cuban revolution came to power. After the initial years of tensions and disagreements with the new government, the remaining opposition or dissident media either ceased to exist as a result of the restrictions and the exile of their owners and publishers, or they underwent changes in their management and orientation to conform to the socialist discourse. New media linked to the official policy were established, particularly in the 1960s.⁶⁴
70. The Union of Cuban Journalists (UPEC)—the sole, and official journalists’ union—was created in 1963, assuming a position of loyalty to the revolution.⁶⁵ At that time there was no nationalization of the pre-existing media, but rather a process of transformation of the media and of journalism as a whole promoted by the authorities. In 1976, Article 53 of the Constitution expressly established that “the press, radio, television, movies and other mass media are State or social property.”

⁶³ Replaced by article 55 of the new Constitution approved on February 24, 2019. According to this article:

“People are granted freedom of the press. This right is exercised in accordance with the law and the purposes of society. The fundamental means of social communication, in any of its manifestations and forms, are the socialist property of all the people or of the political, social and mass organizations; and cannot be subject to another type of property. The State establishes the principles of organization and operation for all media.”

⁶⁴ In the field of the written press, the emergence of the newspaper *Granma* in 1965 stands out.

⁶⁵ See Article 2 of the Bylaws of the UPEC, which establishes that: “The UPEC is a trade organization recognized in Article 7 of the Constitution of the Republic, which states: ‘The Cuban socialist State recognizes and encourages the mass and social organizations that have emerged in the historic process of our people’s struggles, which gather in their core different sectors of the population, representing their specific interests and incorporating them into the tasks of construction, consolidation, and defense of the socialist society.’”

From 1989 on, the print media in Cuba shrank drastically after the fall of the Union of Soviet Socialist Republics (USSR), the main supplier of paper and printing components. With this, only the media most directly controlled by the government were left standing.⁶⁶ The shrinking of the print media brought the traditional electronic media—radio and television—to the forefront of communication. Law No. 1030 of May 24, 1962⁶⁷ created the Cuban Institute of Broadcasting; that law was amended in 1976 by Law No. 1323 establishing the Cuban Institute of Radio and Television (ICRT), formally affiliated with the Ministry of Culture to this day.

71. According to the ICRT, its mission is “to meet the informational, educational, cultural, and entertainment needs of the population through daily radio and television programming that reflects the political, ideological, social, ethical, and aesthetic values of our nation.”⁶⁸ This Institute groups all radio stations and television channels together under its control.⁶⁹ It reportedly has around a hundred radio stations with essentially local coverage, as well as five national television channels. Its activity is supported by the existence of so-called “telecenters,” local television stations with limited resources. This picture is completed by the Cuban News Agency and the presence of some international conglomerates such as *Prensa Latina* and Cuba’s participation in the *Tele Sur* project, financed and controlled by the government of Venezuela. The few non-State media outlets belong to the churches and the episcopal conference, but they have a very limited range.⁷⁰
72. The editorial policy of the official media depends on the Cuban Communist Party (PCC). Indeed, through the ICRT, which operates according to the guidelines of the Central Committee of the PCC, the government strictly supervises content and the organization of content.⁷¹ The legal basis for controlling freedom of expression stems from the previously cited **Article 5 of the Constitution of 1976**, which calls the PCC the highest leading force in society and the State⁷² and presumes a shared and single understanding of the political agenda, while at the same time aiming to eliminate sectors that may oppose it, leaving no room for the objectivity and search for truth

⁶⁶ Moragues González, Nicolás José. [La revolución de los medios de comunicación en Cuba](#) [The Media Revolution in Cuba]. In: *Temps de Comunicar*. 2012.

⁶⁷ [Página web del Instituto Cubano de Radio y Televisión](#) [Website of the Cuban Institute of Radio and Television].

⁶⁸ [Página web del Instituto Cubano de Radio y Televisión](#) [Website of the Cuban Institute of Radio and Television].

⁶⁹ IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 435; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 441; IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 227, 259; IACHR. [Annual Report 1999. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.106. Doc. 3. April 13, 2000. P. 44.

⁷⁰ IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147th Session. March 11, 2013.

⁷¹ In this regard, an independent journalist who worked for official media stated anonymously that media directors are required to go to the Party’s Ideological Committee where they are given orders as to what should be discussed by the press and how it should be done. IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147th Session. March 11, 2013; Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 11.

⁷² IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147th Session. March 11, 2013.

that are the core function of information.⁷³ In this system, “[...] under no circumstances can [...] criticism go beyond the limits set by the requirements of ideological adherence.”⁷⁴ This understanding of journalism and the media remains in effect to this day, as shown by recent statements by the current President of the Council of State and Ministers.⁷⁵

73. In addition, the UPEC, a trade organization that brings together the only journalists authorized to practice the profession, has a Code of Ethics that regulates the practice of journalism. Among other things, it establishes that “journalists have the duty to defend and promote the content of the [UPEC] Bylaws, and other governing documents.”⁷⁶ For their part, these bylaws expressly establish that the organization “endorses the articles of the Constitution of the Republic of Cuba, especially the contents of Article 5, which recognizes the [PCC] as the highest leading force of our society and the State [...]”.⁷⁷ Added to this is the information recently received about the tests for access to the journalism program consisting of determining the aspiring journalist's ideological fidelity to the regime.⁷⁸
74. The communication policy is based on selectivity in terms of the topics addressed, which are conveyed from a single perspective, with a constant bias;⁷⁹ nor is space allowed for criticism of government policies.⁸⁰ For instance, statements taken recently by the Committee to Protect Journalists (CPJ) indicate that the news editor and presenter of the main radio station in Cienfuegos, José Jasán Nieves, was reminded by his superiors that his role was to build consensus around government policies and not criticize them. The journalist asserted that he was demoted and his salary was reduced when he reported information that was inconvenient to the Party.⁸¹ The IAPA also condemned the firing of several journalists who, while working for public media, supported or maintained ties to the independent or foreign press.⁸² Amnesty International (hereinafter “AI”), for its part, also reported that the state engages in the discriminatory dismissal from the public sector of anyone

⁷³ IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Paras. 21-23.

⁷⁴ IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Para. 26.

⁷⁵ In July 2018, Díaz-Canel pointed out that the Media Policy adopted by the new administration establishes “communication as a strategic resource of the leadership of the State and the Government,” and defines the public nature of broadcasting and communication services, recognizing only two types of mass media ownership: state and social. President of the Council of State and Ministers Miguel Díaz-Canel. X Congress of the UPEC. In: [Díaz-Canel descarta la libertad de prensa en Cuba](#) [Díaz-Canel Rules out Press Freedom in Cuba]. July 16, 2018.

⁷⁶ Journalist’s Code of Ethics. Article 1.

⁷⁷ Bylaws of the Union of Cuban Journalists. Article 4.

⁷⁸ IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018; Regional Alliance for Free Expression and Information. Situation of Access to Information and Freedom of Expression in Cuba. First Report. P. 7.

⁷⁹ IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147th Session. March 11, 2013.

⁸⁰ CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. Pp. 16 & 20.

⁸¹ CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.20.

⁸² IAPA. [Report to the Midyear Meeting 2018](#); IAPA. [Report to the 69th General Assembly 2013](#).

expressing critical ideas of the government.⁸³ The Office of the Special Rapporteur has documented several such situations in its annual reports.⁸⁴

75. Thus, for decades, the State-controlled media in Cuba have been used to uphold the official discourse and delegitimize independent journalism. This control is a serious obstacle to access by the majority of citizens to plural sources of information (III.B). The control of the media, in turn, leads to the implementation of a number of mechanisms designed to repress those who seek to express ideas and opinions or simply to distribute information outside these official channels (III.C).
76. As the Office of the Special Rapporteur has indicated, the establishment of a state conglomerate as the sole framework for the dissemination of information, ideas, and opinions undermines freedom of expression by precluding the diversity and plurality of voices needed in a democratic society.⁸⁵ It is clear that the concentration of ownership of the media leads to the homogenization of the content they produce or disseminate. The Office of the Special Rapporteur reiterates that the State must take legislative and other measures to put an end to the aforementioned media monopoly and allow for pluralism and diversity in this area.⁸⁶ It notes with concern that the Cuban State systematically prevents “freedom of the press which allows political disagreement, and which is fundamental to a democratic system of government.”⁸⁷

B. Impossibility of establishing private media

77. In Cuba people are not free to associate for the purpose of establishing media outlets—whether private, community, or public—as they are in most of the region; nor, more generally, to engage in citizen activities for the public dissemination of thoughts, information, and opinions, barring the exceptional cases of authorized foreign media, the practice of journalism on the margins of the laws currently in force, or radio stations linked to the Catholic Church. The rest of the media landscape is characterized by a state monopoly of the media system.

⁸³ AI. [Report: Cuba 2017/2018](#); AI. [“Your Mind is in Prison”: Cuba’s Web of Control over Free Expression and Its Chilling Effect on Everyday Life](#). 2017. Pp. 18-22, 27; AI. [Six facts about censorship in Cuba](#). 2016. P. 28.

⁸⁴ In particular, it was reported that in June 2016 the Ministry of Culture of Cuba (Minicult) punished Yanelys Núñez Leyva by firing her from her job at *Revolución y Cultura* magazine, an official organ of Minicult, for offering an interview to *CubaNet* about her artistic project and for using the office’s Internet connection to consult web pages that were “irrelevant” to her work as a cultural promotor. It was also reported that journalist José Ramírez Pantoja of *Radio Holguín* was dismissed from his job on July 11, 2016 after having transcribed in his personal blog the words of the deputy director of the official newspaper Granma, who had reportedly warned about possible protests in Cuba if power cuts resumed due to an energy supply shortage. On September 29 of that year, the National Ethics Commission of the UPEC reportedly upheld the dismissal. IACHR. Annual Report 2016. Chapter IV.b (Situation of human rights in Cuba). Paras. 66-97.

⁸⁵ IACHR. Office of the Special Rapporteur. [Freedom of Expression Standards for Free and Inclusive Broadcasting](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 3/09. December 30, 2009. Para. 116.

⁸⁶ IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 39; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Section 11 (Cuba). Para. 54.

⁸⁷ IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Para. 28.

78. In order to perform their work, foreign media must register with the International Press Center, a ministerial agency, which allows them to connect to the Internet.⁸⁸ However, Ministry of Foreign Affairs Resolution No. 182 of 2006 authorizes the International Press Center to suspend or permanently revoke accreditation “when the holder carries out actions that are improper or unrelated to his or her profile and the content of his or her work, as well as when he or she is deemed to have breached journalistic ethics and/or failed to conform to objectivity in his or her work.”⁸⁹ According to the information available, aside from the traditional news services such as *Reuters*, *CNN* and *The Associated Press*, very few foreign media outlets have received a license, such as *OnCuba* and the website of the Miami-based *Progreso Semanal*, media originally established in Miami that were able to register as foreign media after the restoration of diplomatic relations with the United States.⁹⁰ However, in order to keep from having to leave the island, they must constantly decide whether to push the limits or retreat, and remain in the government’s good graces.⁹¹
79. The circulation of independent print newspapers and magazines continues to be illegal and the distribution of written media is made difficult by the seizure of material.⁹² Under Resolution No. 81 of 1997 of the Ministry of Culture, any serial publication intended to be circulated, printed, or disseminated in Cuba must be approved by the National Registry of Serial Publications.⁹³ According to these regulations, “state, business, political, mass, social, religious, fraternal, or other non-governmental entities” and “joint ventures or Cuban entities associated with a foreign company” are authorized to apply for such registration, which clearly excludes private media.⁹⁴ In addition, the independent printing of publications is regarded as

⁸⁸ CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.21.

⁸⁹ Ministry of Foreign Affairs. Resolution No. 182/2006, art. 46. Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 10.

⁹⁰ CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). September 28, 2016. P.21.

⁹¹ For instance, it was reported that *OnCuba* was nearly shut down in 2016 when hard-line government leaders complained about the coverage and tried to convince officials to shut it down. The result is self-censorship, José Jasán Nieves, the website's associate editor, told CPJ. Many *OnCuba* articles are subdued pieces that avoid controversy. CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.23.

⁹² IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 435; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 441; IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 227, 259; IACHR. [Annual Report 1999. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.106. Doc. 3. April 13, 2000. P. 44.

⁹³ According to this Resolution, a serial publication is understood to be “any publication printed on paper or electronic medium that is intended to be published indefinitely [...], regardless of its name (newspaper, magazine, bulletin, or other), its periodicity and other characteristics.” Ministry of Culture. [Resolución No. 81 que regula el Registro Nacional de Publicaciones Seriadas](#) [Resolution No. 81 regulating the National Registry of Serial Publications]. October 3, 1997. Regulations governing the National Register of Serial Publications. Art. 2.c.

⁹⁴ Ministry of Culture. [Resolución No. 81 que regula el Registro Nacional de Publicaciones Seriadas](#) [Resolution No. 81 regulating the National Registry of Serial Publications]. October 3, 1997. Regulations governing the National Register of Serial Publications. Art. 11.

the criminal offense of “clandestine printing” under article 241 of the Criminal Code.⁹⁵

80. Even in this scenario, a growing number of journalists have launched digital media outside official discourse and state control. Although these Cuban media are produced on the island, in most cases they are read abroad, as is the case of *14ymedio*, *Periodismo de Barrio*, and *Diario de Cuba*. An increasing number of journalists are beginning to take this option, and they have formed an alternative public sphere for the debate and discussion of matters of public and community interest, not just political ones.
81. These new media have found an essential space on the Internet to disseminate their work, as well as to promote the exchange of information and opinions. As the Office of the Special Rapporteur has recognized, the digital environment offers a unique tool for unlocking its enormous potential across broad sectors of the population.⁹⁶ Nevertheless, the inadequate deployment of infrastructures that enable network connection, as well as the control exercised over it by the authorities, mean that these new voices face serious obstacles to the exercise of freedom of expression.
82. It is also important to note that journalism is understood by the State as an activity that is unrelated to any economic or business dynamics, which means that the search for autonomous sources of financing not tied to the State is beyond the reach of new media. Advertising as a source of revenue is non-existent (with some exceptions related to tourist establishments or foreign companies), and a paid subscription model does not cover basic costs.⁹⁷ The media, and specifically Cuban journalists, also suffer in particular from the shortages affecting all sectors of the country, such as low salaries, lack of material resources and—especially at small radio and television stations—an inadequate electrical power supply. It is troubling to note that the government of the new president seems to be providing continuity in this regard.⁹⁸

⁹⁵ “Article 241.- Anyone who produces, disseminates, or circulates publications without indicating the printing press or the place of printing or without complying with the rules established for the identification of the author or its origin, or reproduces, stores, or transports such publications, is subject to a term of imprisonment of three to nine months or a fine of up to two hundred and seventy units [*cuotas*], or both.” National Assembly of People’s Power of the Republic of Cuba. [Criminal Code](#).

⁹⁶ IACHR. Office of the Special Rapporteur. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13 December 31, 2013; IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017.

⁹⁷ CIMA–NED. [Cuba's Parallel Worlds: Digital Media Crosses the Divide](#). August 30, 2016.

⁹⁸ According to reports, President of the Council of State and Ministers Díaz-Canel stated that “[...] the practice of journalism today demands that official journalists have ‘very high ideals in order to reject, in the midst of great economic sacrifices, the relatively ‘generous’ payment offers that the lucrative anti-Cuba campaign industry, opportunistically and cynically, makes available to those who can be bought or who naively believe in the false libertarian discourse of market apologists.” President of the Council of State and Ministers Miguel Díaz-Canel. Tenth Congress of the Cuban Journalists’ Union (UPEC). In: [Díaz-Canel descarta la libertad de prensa en Cuba](#) [Díaz-Canel Rules out Press Freedom in Cuba]. July 16, 2018.

C. Persecution of independent journalists

83. Independent journalists do not enjoy lawful status under the existing legal framework in Cuba because they do not belong to the UPEC, they do not publish in official media, or they take a critical stance toward the government. At present, journalism in Cuba faces multiple forms of intimidation, harassment, and repression.⁹⁹ Based on this, the Office of the Special Rapporteur is emphatic in pointing out that the repression of independent journalists in Cuba is a systematic and long-standing practice.¹⁰⁰
84. At the same time, the Office of the Special Rapporteur wishes to underscore the determination and extraordinary courage of those journalists who, despite the difficulties and risks they face, continue in their work. Over the years and throughout the preparation of this report, dozens of statements have been received from journalists who wish to develop independent journalism in Cuba, but the State has clamped down on them time and again, even in matters that go beyond the political sphere, such as cultural, local, or social journalism. For them, a first option is to work in the foreign media or in Cuba-focused media located abroad, which is sometimes tolerated, but in many other cases forces them to conceal their identity or write under a pseudonym to avoid retaliation. A second option would be to work for local media outside state control, which is tantamount to assuming the risk described in the following section. In any case, the government seems to have changed the strategy of criminally prosecuting journalists who do not toe the official line; however, multiple forms of harassment and intimidation by the authorities have been reported, through ongoing repressive acts against independent journalists, media workers, artists, and others.¹⁰¹
85. In this section, the Office of the Special Rapporteur discusses the most recent practices of persecution against journalists in Cuba. It mentions some cases that illustrate the main trends that have been observed, prioritizing those events that have reportedly occurred more recently, but are not the only ones. In particular, the forms of repression against journalists that the Office of the Special Rapporteur has been aware of include (i) the requirement of affiliation to practice journalism; (ii) threats, subpoenas, and interrogations meant to intimidate; (iii) unlawful and/or

⁹⁹ See *inter alia* IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 422-457; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 427-441; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 305-352; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 307; IACHR. [Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Paras. 164-174.

¹⁰⁰ Other institutions and organizations such as the Inter American Press Association (IAPA), AI, RWB and Freedom House (FH) have also referred to the persecution of journalists in Cuba. IAPA. [Report to the Midyear Meeting 2018](#); IAPA. [Report to the 72nd General Assembly](#); IAPA. [Report to the Midyear Meeting 2016](#); AI. [Cuba: Human Rights at a Glance](#), 2015; RWB. [Annual Report 2016. Americas. Cuba](#) [in Spanish]; RWB. [Annual Report 2015. Americas. Cuba](#) [in Spanish]; FH. [Freedom of the Press 2017: Cuba](#); FH. [Freedom of the Press 2016: Cuba](#); FH. [Freedom of the Press 2015: Cuba](#).

¹⁰¹ International Institute on Race, Equality and Human Rights (IIRIDH). *Diario de Cuba, Palenque Visión, and La Hora de Cuba*. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018.; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

arbitrary detentions; searches and seizures of journalistic equipment or other assets; (iv) dismissals and loss of authorizations to practice a profession or carry out economic activities; (v) pressures and threats to families, social environment, and defamatory practices; and (vi) barriers to departure from the country and other arbitrary restrictions on freedom of movement. The misuse of criminal law and criminalization that seriously affects journalism in Cuba is addressed in section IV.C.

i. Requirement of affiliation to practice journalism

86. The Office of the Special Rapporteur observes that the professional practice of journalism in Cuba is linked to legal restrictions on the attainment of the status of journalist. Article 2 of the UPEC Regulations on Admittance, Readmittance, Transfer, and Removal establishes that those who obtain, among other requirements, a certificate of journalistic practice from the director of the media outlet for which they work will be recognized as such within the framework of the official trade union.¹⁰² Given the constitutional design (II.A), it should be noted that the official media are the only media.

87. Thus, the requirements for accessing the sole, official UPEC trade union and being recognized as a journalist by the state authorities are tantamount to a system of compulsory, prior membership. On this point, it bears recalling that Principle 6 of the IACHR's Declaration of Principles on Freedom of Expression establishes that "Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression." Similarly, the Inter-American Court established in Advisory Opinion OC-5/85, of November 13, 1985 that the imposition of such limits constitutes an arbitrary restriction on freedom of expression and therefore violates the right of every person, regardless of his or her professional consideration and activity, to seek and disseminate information and ideas by any means of his or her choice.¹⁰³ As the Inter-American Court has held:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. Within this context, journalism is the primary and principal manifestation of freedom of expression of thought. For that reason, because it is linked with freedom of expression, which is an inherent right of each individual, journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional [association].¹⁰⁴

88. This requirement is even more serious in a context such as that of Cuba, where the UPEC is subject to the guidelines of the PCC. The Code of Ethics of the journalists'

¹⁰² Regulations on Admittance, Readmittance, Transfer, and Removal. Article 2. "Any person who wishes to join the UPEC must complete a membership application that includes: [...] d) A certificate of journalistic practice issued by the director of the media outlet. [...]" UPEC. [Reglamento de ingresos, reingresos traslados y bajas](#) [Regulations on Admittance, Readmittance, Transfer, and Removal]. January 11, 2014.

¹⁰³ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Para. 74.

¹⁰⁴ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Paras. 70-71.

association provides that “the journalist shall refrain from disclosing, in whole or in part, any document or work material expressly classified as confidential according to the State Secret laws in force in Cuba.”¹⁰⁵ Similarly, although the Code of Ethics requires journalists to preserve the anonymity of their sources, the Criminal Procedure Act does not release them from the obligation to report crimes and testify as witnesses.¹⁰⁶

89. It is of particular concern to note that this Office has received information from various journalists who, practicing their profession in spite of these restrictions, have reportedly been indicted on charges of “impersonation of a public official” or “acting without legal capacity.”¹⁰⁷ This is reportedly because they have worked as journalists without belonging to an official media organization and without UPEC recognition. Prosecution, or the threat of prosecution, for the offenses of “impersonation of a public official” and “acting without legal capacity” is blatantly incompatible with freedom of expression and freedom of the press, which, on the contrary, demand guarantees for their full enjoyment.

Offense	Article	Criminal conduct	Penalty
Title II: Crimes against the public administration			
Chapter III: Fraudulent exercise of public functions			
Impersonation of a public official	148.1	a) To perform, without the lawful RIGHT, acts typical of a public servant or authority, claiming official status; b) Improperly performing acts typical of members of the Revolutionary Armed Forces, the Ministry of the Interior, or any other armed body of the Republic.	Deprivation of liberty for a period of 1 to 3 years or a fine of 300 to 1000 units [<i>cuotas</i>]
Acting without legal capacity	149	Performing acts typical of a profession one is not properly qualified to practice, for profit or any other malicious purpose, or resulting in harm or injury to another.	Deprivation of liberty for a period of 3 months to 1 year or a fine of 100 a 300 units [<i>cuotas</i>], or both

90. Recently reported cases include that of three journalists from the magazine *La Hora de Cuba*—Henry Constantín, Sol García Basulto, and Iris Mariño—who were allegedly prosecuted on charges of “acting without legal capacity.” Although these cases were reportedly shelved, that measure is provisional and therefore they remain under threat.¹⁰⁸ Similarly, *Diario de Cuba* journalists Manuel Alejandro León, Adriana Zamora, Eliécer Palma Pupo, and Ernesto Carralero were also reportedly threatened with jail time on charges of “acting without legal capacity.”¹⁰⁹

¹⁰⁵ Journalist’s Code of Ethics. Article 17.

¹⁰⁶ Law of Criminal Procedure of 1977.

¹⁰⁷ IACHR. Office of the Special Rapporteur. Working meeting with journalists. 168th Session. June 2018.

¹⁰⁸ *Diario de Cuba*. [Activistas y periodistas independientes denuncian a la CIDH prácticas represivas que esquivan la 'huella legal'](#) [Activists and independent journalists complain to IACHR of repressive practices that avoid leaving a “legal trace”]. May 9, 2018; *Diario de Cuba*. [Liberado el periodista de DDC Manuel Alejandro León](#) [DDC journalist Manuel Alejandro León released]. June 24, 2017; IIRIDH, *Diario de Cuba*, Palenque Visión, and *La Hora de Cuba*. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018.

¹⁰⁹ According to the statement of Ernesto Carralero Burgos, after being summonsed by state security agents, he was accused of impersonating a public official “because they were not journalists recognized by the Cuban government, so they had no right to be writing on a platform or to be commenting on Cuban reality in any media.” Statement of *Diario de Cuba* journalist Ernesto Carralero Burgos. Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*; [La Seguridad del Estado libera bajo 'amenazas' al colaborador de DDC Eliécer Palma Pupo](#) [State Security releases DDC collaborator Eliécer Palma Pupo under “threats”]. January 30, 2018.

ii. Threats, summonses, and interrogations for intimidating purposes

91. The Office of the Special Rapporteur has learned that independent journalists are frequently subject to interrogations designed to intimidate them. According to available information, independent journalists have been directly threatened by state agents with deprivation of liberty or other retaliation for the practice of journalism.¹¹⁰ According to one statement received, “the more critical [the media], the harsher they [security agents] were going to be in their treatment.”¹¹¹
92. For instance, on January 15, 2018, Luz Escobar, a journalist who worked for the digital newspaper *14yMedio*, was reportedly threatened by two State security officers—one of whom was identified as Lieutenant Amed—with prosecution for a common crime if she continued her journalistic work with the publication. During a police “interview,” she was also reportedly threatened with being barred from leaving the country, having her neighbors informed that she was a “counterrevolutionary,” and having pressure put on her family. According to publicly available information, the police also allegedly asked her to cooperate with them to “influence the editorial line of *14yMedio*.”¹¹²
93. The procedures used for summoning journalists are irregular¹¹³ and, with some frequency, State Security reportedly use non-police facilities to interrogate them. This was reported by Ileana Álvarez, Adriana Zamora, and Ernesto Carralero, who were summonsed to the Department of Immigration where they found that political police officers were waiting for them.¹¹⁴ According to statements from Carralero, upon arrival at the Department of Immigration, he was received by two officers who introduced themselves as the Lieutenant of State Security who handles *Diario de Cuba*, in charge of “monitoring that specific platform,” and the Chief of the State Security Digital Platforms Monitoring Section. The Office of the Special Rapporteur notes with concern that, according to this statement, there are allegedly State Security agents specifically devoted to intimidating journalists in connection with their work.
94. Another practice concerns the interrogation and harassment of female journalists by male officers.¹¹⁵ Iris Mariño, for example, indicated that she had been subject to 22

¹¹⁰ IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018.

¹¹¹ Statement of *Diario de Cuba* journalist Ernesto Carralero Burgos. Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

¹¹² 14yMedio. [“Te vamos a estar vigilando”](#) [“We’re going to be watching you”]. January 16, 2018; 14yMedio. [Carta a una periodista amenazada](#) [Letter to a threatened journalist]. January 17, 2018; IAPA. [SIP condena amenazas del gobierno contra periodista cubana Luz Escobar](#) [IAPA Condemns Government Threats Against Cuban Journalist Luz Escobar]; CubaNet. January 25, 2018. [Dos periodistas y una mentira](#) [Two journalists and a lie].

¹¹³ According to the statement of Ernesto Carralero Burgos, they reportedly summonsed him to be interviewed the next day at the Department of Immigration. He indicated that the summons was served by plainclothes policemen and not delivered directly, but rather through the chair of his building’s revolution defense committee. Statement of *Diario de Cuba* journalist Ernesto Carralero Burgos. Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

¹¹⁴ Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

¹¹⁵ IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*, 169th Session. October 1, 2018.

instances of harassment involving detentions and interrogations in which no female officer had been present. One such instance, she said, occurred on May 1, 2018, when she was allegedly arrested while attempting to take a picture in the street. She stated that she was taken to a police unit in Camagüey, where four male officers—two of them identified as Maikel and Michel—interrogated and harassed her for more than three hours.¹¹⁶ Ms. Mariño maintained that “the whole time I was in custody, I was being questioned. I figured that at some point some woman was going to come in, because they made reference to the fact that I am a woman, that I am a mother, they were even being a little flirtatious [...] But it never happened. There were four men opposite me. One would come in and another would leave [...]”¹¹⁷

95. The information available also indicates that, in February 2018, State Security agents reportedly threatened Adriana Zamora, a journalist with *Diario de Cuba*, saying they would cause her to miscarry. According to reports, during a police interview, she was told “to think of her other son.”¹¹⁸ According to her husband, journalist Ernesto Carralero, who was present, she was told that “she was at a sensitive time in her life because of her pregnancy, [and that] any disturbance or upset on account of your work is going to be your responsibility because we’re telling you now that you can’t keep working on this.”¹¹⁹ According to Mr. Carralero, they said that “anything can happen in the delivery room, you get the wrong medication and there you stay.”¹²⁰ This threat, made by a police official, is of great concern—especially considering that the health system in Cuba is under the control of the State.
96. Added to these situations are humiliating procedures and searches, such as those allegedly undergone by journalists Maykel González Vivero of *Diario de Cuba* and Carlos Alejandro Rodríguez of *Periodismo de Barrio* in September 2017, when they were trying to report on the experience of residents of Isabela de Sagua (Villa Clara) affected by cyclones shortly before Hurricane Irma. According to information provided by González Vivero to the media, “The police handcuffed us and put us in the car, they drove us to a Border Guard post. The handcuffs were very uncomfortable. We have marks on our wrists. We were assaulted, especially Carlos Alejandro, who was dragged and placed in a chair. [...] Instead of driving us directly to the Sagua La Grande unit, they held us for a couple of hours outside the town

¹¹⁶ IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018.

¹¹⁷ Diario de Cuba. [Una periodista independiente es detenida en Camagüey al intentar hacer una foto del Primero de Mayo](#) [Independent journalist arrested in Camagüey for attempting to take May Day photo]. May 1, 2018; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba; IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*, 169th Session. October 1, 2018.

¹¹⁸ Diario de Cuba. [‘Tu embarazo depende de ti’, amenaza la Seguridad del Estado a la periodista de DDC Adriana Zamora](#) [“Your pregnancy is up to you,” State Security threatens DDC journalist Adriana Zamora]. February 2, 2018; Civicus. [Journalists, human rights defenders and artists persecuted and harassed in Cuba](#). February 16, 2018; Cuba en Miami [La Seguridad del Estado amenaza a una periodista gestante de 11 semanas: “Tu embarazo depende de ti”, le dicen los agentes](#) [State Security threatens 11-week pregnant journalist: “Your pregnancy is up to you,” agents tell her]. February 2, 2018.

¹¹⁹ Statement of *Diario de Cuba* journalist Ernesto Carralero Burgos.

¹²⁰ Statement of *Diario de Cuba* journalist Ernesto Carralero Burgos. Similarly, see: Diario de Cuba. [‘Tu embarazo depende de ti’, amenaza la Seguridad del Estado a la periodista de Diario de Cuba Adriana Zamora](#) [“Your pregnancy is up to you,” State Security threatens DDC journalist Adriana Zamora]. February 2, 2018; IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018.

cemetery,” he said. “It’s an uninhabited place, about three kilometers from the town [...],” he described. “There we were subjected to a lot of humiliating procedures. I don’t understand what it contributed to the alleged investigation to take convict photos of us, shirtless, we were stripped naked, our genitals were checked,” he reported. “A supposed police expert took pictures of us while they were taking off my underwear, right at that moment.”¹²¹

iii. Unlawful and/or arbitrary detentions

97. The Office of the Special Rapporteur has also received information on the use of arbitrary arrest as a method of intimidation or retaliation against journalists. Although prolonged imprisonment has reportedly become infrequent since the wave of repression in 2003, it is still a systematic practice to carry out arrests without a warrant or legal basis, and to keep journalists in custody for hours or days in order to intimidate them and create a chilling effect on the exercise of freedom of expression. Those detained are reportedly not given any record or documentation to evidence the deprivation of their personal liberty.¹²²
98. There have also been reports of short term detentions carried out with the apparent aim of preventing travel or blocking the coverage of social protests; the detention of critical journalists on arbitrary charges related to common crimes; and the mistreatment of dissident journalists without a clear statement of the charges, or with complete uncertainty about the progress of the respective hypothetical legal actions or proceedings.¹²³ The Office of the Special Rapporteur notes that the repressive methods currently used against people who speak out are intended to leave no legal trace.¹²⁴ According to the statement of a journalist threatened during a

¹²¹ Diario de Cuba. [Maykel González Vivero: 'Fuimos víctimas de un montón de procedimientos humillantes'](#) [Maykel González Vivero: “We were subjected to a lot of humiliating procedures”]. September 7, 2017; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

¹²² In the same vein, CPJ and RWB have on several occasions condemned the practice of short-term detention as a method of harassing independent journalists. CPJ. [Independent Cuban journalist detained, accused of fomenting enemy propaganda](#). 2017; CPJ. [Cuban blogger jailed for five days after trying to cover protest](#). 2016. CPJ. [CPJ welcomes release of Juliet Michelena Díaz in Cuba](#). 2014; RWB. [Annual Report 2014. Americas. Cuba](#) [in Spanish]. Pp. 77-78.

¹²³ IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 9-34; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Paras. 9-45; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. OEA/Ser.L/V/II. Doc 48/15. December 31, 2015. Paras. 6-21.

¹²⁴ Diario de Cuba. [El OCDH condena la 'escalada represiva contra los periodistas independientes' en Cuba](#) [OCDH Condemns 'Escalating Repression Against Independent Journalists' in Cuba]. June 26, 2017; El Nuevo Herald. [Denuncian aumento de la persecución contra el periodismo independiente en Cuba](#). [Increase in Persecution of Independent Journalism Reported in Cuba]. June 26, 2017; CubaNet. [Interrogatorio del MININT a Henry Constantín se pospone indefinidamente](#) [MININT Interrogation of Henry Constantín Postponed Indefinitely]. July 5, 2017; Press Release of the Centro para la Apertura y el Desarrollo de América Latina [Center for Opening and Development of Latin America] (CADAL). July 27, 2017. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; IAPA. [Cuba](#). October 26, 2017; Diario de Cuba. December 7, 2017. [El ICLEP denuncia 'una ola represiva' contra los periodistas de sus medios comunitarios](#) [ICLEP Condemns “Wave of Repression” against Community Media Journalists]; Neo Club Press. December 7, 2017. [Ola represiva contra periodistas independientes en Cuba](#) [Wave of Repression against Independent Journalists in Cuba]; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 91.

police interrogation, security agents told him: “We do things, but you will never see our hand.”¹²⁵

99. Another practice that has been reported is the arrest and imprisonment of independent journalists on dates close to events related to domestic policy issues, participation in international forums, or human rights, in order to keep them from reporting.¹²⁶ For instance, this year, on the occasion of the May Day celebration in the Plaza de la Revolución, a journalist reported that he was detained for three hours by the political police for investigative purposes and, once the event began, he was released.¹²⁷ Another case was reported in October 2016, when independent journalists were detained for hours and their material seized while trying to cover the aftermath of Hurricane Matthew.¹²⁸ The same year, on the day of President Barack Obama’s arrival in Cuba, independent blogger and activist Lázaro Yuri Valle Roca was reportedly arrested and detained for five days after he attempted to cover a protest by the group *Damas de Blanco* [Ladies in White].¹²⁹
100. Journalists who were reportedly detained in 2018 include Roberto de Jesús Quiñones, who publishes on the website *Cubamet*;¹³⁰ Manuel Alejandro León Velázquez, a journalist with *Diario de Cuba* and member of the audiovisual media agency *Palenque Visión*;¹³¹ Eider Frómata Allen,¹³² and *Diario de Cuba* journalist Osmel Ramírez.¹³³

¹²⁵ Statement of journalist Ernesto Carralero Burgos of *Diario de Cuba*. Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

¹²⁶ IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 318; IACHR. [Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 173.

¹²⁷ IACHR. Office of the Special Rapporteur. Working meeting with journalists. 168th Session. June 2018.

¹²⁸ Reporters Without Borders. October 21, 2016. [Cuba. Crackdown on media includes ban on Hurricane Matthew coverage](#).

¹²⁹ CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.11.

¹³⁰ CCDHRN. [Detienen al periodista independiente Roberto de Jesús Quiñones](#) [Independent journalist Roberto de Jesús Quiñones arrested]. July 4, 2018; ICLEP. [Detenido abogado y periodista independiente cubano](#) [Cuban lawyer and independent journalist arrested]. July 5, 2018; *Diario de Cuba*. [La Seguridad del Estado amenaza a otro periodista independiente: 'Vas a saber lo que es represión'](#) [State Security threatens another independent journalist: “You’ll find out what repression is”]. July 7, 2018.

¹³¹ *Diario de Cuba*. [El régimen detiene al periodista de DIARIO DE CUBA Manuel Alejandro León Vázquez](#) [Regime Arrests DIARIO DE CUBA Journalist Manuel Alejandro León Vázquez]. July 8, 2018; *CiberCuba*. [¿Cruzada contra los medios independientes? Policía detiene a varios periodistas cubanos esta semana](#) [Crusade against the independent media? Police arrest several Cuban journalists this week]. Undated.

¹³² *Diario de Cuba*. [El régimen detiene al periodista de DIARIO DE CUBA Manuel Alejandro León Vázquez](#) [Regime arrests DIARIO DE CUBA journalist Manuel Alejandro León Vázquez]. July 8, 2018.

¹³³ IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018. On June 19, 2018, he was reportedly arrested by members of State Security. According to statements by his wife, who was at home at the time of his arrest, “They assured him that for every article he writes he will go to prison. This time it will be for 72 hours, according to the State Security agent, but he threatened that the second arrest will result in legal action against him and he will go to prison for a long time.” Ramírez Álvarez was released without charge 72 hours later. *Diario de Cuba*. [Detenido el periodista de Diario de Cuba Osmel Ramírez Álvarez](#) [Cuban newspaper journalist Osmel Ramírez Álvarez arrested]. November 11, 2017; *Diario de Cuba*. [La Seguridad del Estado amenazó con un 'buen escarmiento' al periodista de DDC Osmel Ramírez](#) [State Security threatens to teach DDC journalist Osmel Ramírez a “good lesson”]. November 12, 2017.

101. It is of particular concern to note that, according to available information, the repression against some 15 directors and journalists of the Cuban Institute for Freedom of Expression and the Press (ICLEP) continued in 2018.¹³⁴ They were reportedly arrested, called in for questioning, and interrogated by the political police, just as they had been the previous year. It was reported, for instance, that journalists Yoarielis Centelle and Arodis Pelicié were summonsed by officials from the Technical Investigations Department of San Antonio de los Baños.¹³⁵ On June 25, 2018, ICLEP reported that, in the previous six days, its community media outlets had been subjected to “abuse of power and larceny” by the Political Police, which had confiscated newspaper equipment and raided four homes. It also indicated that ten journalists “have been the targets of numerous attacks, ranging from interrogations, to arbitrary arrests, to physical and psychological assaults.”¹³⁶
102. In particular, it indicated that journalist Martha Liset Sánchez, director of the community newspaper *Cocodrilo Callejero*, was arrested on June 23, 2018.¹³⁷ Previously, on February 7, Liset Sánchez was summonsed to the Political Police unit in Colón, Matanzas, where officers threatened to arrest her for the alleged crime of distributing subversive propaganda if she continued to circulate the newspaper *Cocodrilo Callejero*.¹³⁸ On the same day, her husband Alberto Corzo, who is a journalist and the administrative and monitoring director of ICLEP, was reportedly arrested by the Provincial State Security Unit in Matanzas.¹³⁹ In addition, journalist and ICLEP Director Raúl Velázquez was reportedly detained for one day in February 2018.¹⁴⁰ It was also reported that at least 13 journalists were arbitrarily detained in different parts of Cuba in August 2018 alone.¹⁴¹

¹³⁴ According to ICLEP, this repression “is motivated by the enormous social impact [their] project ‘Luz Cubana’ has in the communities where [they work].” ICLEP. [Nota de prensa: Aumenta represión contra directivos del ICLEP](#) [Press release: Repression against ICLEP directors escalates]. February 7, 2018.

¹³⁵ According to reports, the political police made it known through third parties that “All the journalists who make this newspaper possible will be questioned and prosecuted.” ICLEP. [Ola represiva contra periodistas del ICLEP](#) [Wave of repression against ICLEP journalists]. December 4, 2017; ICLEP. [Bajo acoso medio independiente que distribuye información sin censura en Cuba](#) [Independent media outlet that distributes uncensored information in Cuba under harassment]. December 5, 2017; IACHR. [Annual Report 2017](#), Chapter IV.B. Cuba. Para. 91.

¹³⁶ ICLEP. [Nota de prensa: Aumenta represión contra directivos del ICLEP](#) [Press release: Repression against ICLEP directors escalates]. February 7, 2018.

¹³⁷ ICLEP. [Nota de prensa #4: Cuando pensábamos que terminaba, la ola represiva contra los periodistas del ICLEP se extendió a Matanzas](#) [Press Release #4: Just when we thought it was over, the wave of repression against ICLEP journalists spread to Matanzas], June 25, 2018.

¹³⁸ ICLEP. [Nota de prensa: Aumenta represión contra directivos del ICLEP](#) [Press release: Repression against ICLEP directors escalates], February 7, 2018.

¹³⁹ ICLEP. [Nota de prensa: Aumenta represión contra directivos del ICLEP](#) [Press release: Repression against ICLEP directors escalates]. February 7, 2018; IAPA. [Cuba: Detenciones y amenazas a la orden del día](#) [Cuba: Arrests and threats are the order of the day]. March 2, 2018.

¹⁴⁰ Diario de Cuba. [El ICLEP denuncia la ‘desaparición’ del periodista Raúl Velázquez](#) [ICLEP condemns “disappearance” of journalist Raúl Velázquez]. February 2, 2018; Martí Noticias. [Periodista Raúl Velázquez había sido detenido por la Seguridad del Estado](#) [Journalist Raúl Velázquez had been detained by State Security]. February 7, 2018; IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018.

¹⁴¹ The detained journalists include Mario Echeverría Driggs, of the Dos Mundos agency; Osniel Carmona Breijo, of Cubamedia Press; Adriana Zamora and Ernesto Corralero, and Borís González Arenas, contributors to Diario de Cuba; Henry Constantín and Iris Mariño, of La Hora de Cuba; Dagoberto Valdés, director of the *Convivencia* project and

103. During some of these detentions, the journalists were reportedly held incommunicado and crowded into cells alongside persons detained for common crimes. The statement provided by one of them describes their imprisonment together with “five hardened criminals [...] One was suspected of stabbing a man to death and pouring acid down a woman’s throat [...]”¹⁴² According to the report received, “It was a room made entirely of concrete, six meters long by three meters wide (18m²), for six inmates. There were three double berths, one attached to the other, also made of concrete. And, in a corner, a crusty hole in which to go to the bathroom without privacy.”¹⁴³

iv. Searches and seizures of journalistic equipment or other assets

104. The Office of the Special Rapporteur was also informed of several cases of independent journalists in Cuba whose homes had been raided, and their journalistic equipment confiscated by State agents. The taking of materials and work equipment from independent journalists is reportedly a common practice; those affected are sometimes intercepted in the street, and State agents reportedly carry out “confiscations” during operations in which they raid homes, intimidate the family, and detain the journalist. In the cases reported, the authorities have refused to return the confiscated items to those affected,¹⁴⁴ and the political police have reportedly refused to turn over a copy of the list of confiscated items.¹⁴⁵
105. For example, it was reported that three journalists from *Diario de Cuba* had been subjected to this type of action. During the arrest of Manuel Alejandro León Velázquez in June 2017, the police took his money, two cell phones, a transformer, pens, calendars for *Diario de Cuba*, his press credentials, and his passport. While he was in custody, the political police reportedly took several belongings from his home, including his laptop, camera and several discs containing audiovisual material from civil society; these items were reportedly never returned to him.¹⁴⁶

magazine; Alejandro Hernández Cepero, Roberto Rodríguez Cardona, and Luis Cino Álvarez of CubaNet; Oscar Padilla Suárez, of *Red de Periodistas Comunitarios* [Community Journalists’ Network]; Odalina Guerrero Lara, legal advisor to APLP, and APLP journalist José Antonio Fornaris Ramos. Cubanet. [Denuncian “terrorismo de estado” contra periodistas independientes en Cuba](#) [“State Terrorism” against independent journalists in Cuba denounced]. September 17, 2018.

¹⁴² Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

¹⁴³ Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

¹⁴⁴ IIRIDH, *Diario de Cuba*, Palenque Visión, and La Hora de Cuba. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018.

¹⁴⁵ *Diario de Cuba*. [Activistas y periodistas independientes denuncian a la CIDH prácticas represivas que esquivan la ‘huella legal’](#) [Activists and independent journalists complain to IACHR of repressive practices that avoid leaving a “legal trace”]. May 9, 2018.

¹⁴⁶ *Diario de Cuba*. [Detenido en Guantánamo el periodista de DIARIO DE CUBA Manuel Alejandro León Velázquez](#) [DIARIO DE CUBA journalist Manuel Alejandro León Velázquez arrested in Guantánamo]. June 22, 2017; *Diario de Cuba*. [Liberado el periodista de DDC Manuel Alejandro León](#) [DDC journalist Manuel Alejandro León released]. June 24, 2017; IIRIDH, *Diario de Cuba*, Palenque Visión, and La Hora de Cuba. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. *Diario de Cuba*.

106. When Osmel Ramírez was arrested in June 2018, his house was reportedly searched and, according to his wife, officers removed his computer, telephone, and “anything that might be suspicious because of his writings.”¹⁴⁷ Eliecer Palma Pupo was also reportedly arrested during a search of his home. According to his account, the authorities indicated that they were looking for “all the material to carry out counterrevolution.” He reported that State Security agents took nearly 100 books because they were considered “subversive material,” as well as records, a telephone, photographs, and memory devices.¹⁴⁸
107. On November 30, 2017 the headquarters of the community media outlet *El Majadero de Artemisa*—which has reportedly been subject to harassment and ongoing surveillance by the political police—was raided by the police and its director Roberto Morena was arrested and taken to the National Revolutionary Police Unit (PNR) in Artemisa, where he was accused of printing “illegal newspapers.”¹⁴⁹ According to reports, the political police also made it known through third parties that “all the journalists who make this newspaper possible will be questioned and criminally investigated.”

v. Dismissals and loss of authorizations to practice a profession or carry out economic activities

108. A number of independent journalists were reportedly expelled from their places of work or study.¹⁵⁰ Such is the case of Iris Mariño, who reportedly lost her job as a teacher at an art school in Camagüey, and of Aimara Peña, who was allegedly expelled from the university.¹⁵¹ In this way, independent journalists are not only restricted legally, but also economically. Retaliatory measures such as dismissals have a serious impact on the insecure status and, in some cases, the isolation experienced by journalists. In addition, the materials needed for the practice of their profession, such

¹⁴⁷ Diario de Cuba. [Detenido el periodista de Diario de Cuba Osmel Ramírez Álvarez](#) [Diario de Cuba journalist Osmel Ramírez Álvarez arrested]. November 11, 2017; Diario de Cuba, [La Seguridad del Estado amenazó con un ‘buen escarmiento’ al periodista de DDC Osmel Ramírez](#) [State Security threatens to teach DDC journalist Osmel Ramírez a “good lesson”]. November 12, 2017; IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. *Request for a thematic hearing on freedom of expression in Cuba*. March 9, 2018; IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018.

¹⁴⁸ Diario de Cuba. [El régimen detiene a Eliécer Palma Pupo, colaborador de DIARIO DE CUBA](#) [Regime arrests DIARIO DE CUBA contributor Eliécer Palma Pupo]. January 26, 2018; Martí Noticias. [Confiscan “material subversivo” a periodista y activista de derechos humanos en Cuba](#) [“Subversive material” confiscated from journalist and human rights activist in Cuba]. January 30, 2018; Diario de Cuba. [La Seguridad del Estado libera bajo ‘amenazas’ al colaborador de DDC Eliécer Palma Pupo](#) [State Security releases DDC contributor Eliécer Palma Pupo under “threats”]. January 30, 2018; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

¹⁴⁹ Diario de Cuba. [El ICLEP denuncia ‘una ola represiva’ contra los periodistas de sus medios comunitarios](#) [ICLEP Condemns “Wave of Repression” against Community Media Journalists]. December 7, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 91.

¹⁵⁰ IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018.

¹⁵¹ IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018; Diario de Cuba. [Activistas y periodistas independientes denuncian a la CIDH prácticas represivas que esquivan la ‘huella legal’](#) [Activists and independent journalists complain to IACHR of repressive practices that avoid leaving a “legal trace”]. May 9, 2018; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

as printing materials, the Internet, and laptops and printers, are expensive in Cuba relative to the low wages commonly received by its citizens.¹⁵²

109. Another example is that of Carlos Alberto Pérez, an officially accredited journalist originally employed by *Tino* magazine. The information available indicates that Pérez took advantage of the Internet access afforded by this status to launch the blog *La Chiringa de Cuba*, with the intention of expressing a critical voice. However, according to CPJ, Pérez was fired from the magazine in apparent response to the content of his blog, leading to the loss of his Internet access and the inability to publish the blog for the time being.¹⁵³
110. Similarly, Uruguayan journalist Fernando Ravsberg announced in July 2018 that he would close the *Cartas desde Cuba* [Letters from Cuba] blog, which he had been writing from the island for several years. The information available indicates that the Ministry of Foreign Affairs did not renew his residence permit and authorization to work on the island. According to the International Press Center, which reports to MINREX, the accreditation simply expired, but was not withdrawn. For his part, the journalist believed that it was related to the fact that UPEC officials questioned his “allowing people opposed to the Revolution to criticize it” in his blog. He further reported that, weeks prior to the announcement of its shutdown, the blog page received “thousands of daily attacks, some generated by robots, seeking out our vulnerabilities.” The measure suggests that the regime is unwilling to accept even “moderate” criticism from journalists outside its control.¹⁵⁴ Other foreign journalists have reportedly faced similar situations.¹⁵⁵

vi. Pressures and threats to families, social environment, and defamatory practices

111. State Security also reportedly uses threats, surveillance, and harassment of journalists’ families and associates, including children.¹⁵⁶ The children, spouses, and parents of journalists and activists are said to be the targets of frequent threats.¹⁵⁷
112. One such case took place on April 14, 2018, when 22-year-old university student Francis Rafael Sánchez Álvarez was reportedly detained for two hours at a Ciego de Ávila police unit. According to the information received, the young man is the son of

¹⁵² IAPA. [Report to the 73rd General Assembly 2017](#); IAPA. [Report to the 72nd General Assembly 2016](#).

¹⁵³ CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). September 28, 2016.

¹⁵⁴ DDC. [‘El cerco se ha cerrado’: Fernando Ravsberg anuncia el fin de su blog ‘Cartas desde Cuba’](#) [“The walls have closed in”: Fernando Ravsberg announces the end of his “Letters from Cuba” blog]. July 13, 2018.

¹⁵⁵ One such is that of Mauricio Vicent, who for decades was a correspondent for the Spanish daily *El País* in Havana and whose press credentials were not renewed in 2011. EcoDiario.es. [Cuba veta a Mauricio Vicent, corresponsal de El País y La Ser](#) [Cuba blackballs Mauricio Vicent, correspondent of *El País* and *La Ser*]. September 4, 2011.

¹⁵⁶ Iris Mariño García, for instance, said that a State Security agent has been surveilling her 11-year-old son. She stated that during an interrogation carried out by security agents, “Everyone gave me information about the extensive surveillance around my house. Another one of the agents, identified as Michel, told me what had happened yesterday over an eight-hour period near my house. The people who had come in, the people who had gone out, who I had talked to.” *Diario de Cuba*. [Liberado el periodista de DDC Manuel Alejandro León](#) [DDC journalist Manuel Alejandro León released]. June 24, 2017; IIRIDH, *Diario de Cuba*, *Palenque Visión*, and *La Hora de Cuba*. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018.

¹⁵⁷ IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018.

Ileana Álvarez, director of the magazine *Alas Tensas*, and Francis Sánchez, head of the magazine *Árbol Invertido*, both independent publications. He was fined for allegedly “receiving stolen property” because he was carrying a network cable on his person. Ileana Álvarez stated that counterintelligence officers and members of the Ministry of the Interior had participated in the interrogation of her son, which would indicate that it was related to the journalistic activities of his parents.¹⁵⁸

113. Independent journalist and activist Aimara Peña also reportedly received direct threats against her young son when he was due to undergo eye surgery. According to her statement, her son was to be operated on for strabismus. The doctors prepared for the operation, but it was delayed until the child was three years old. She indicated that she was pressured on account of her journalistic work. “They said to me, ‘your child is going into an operating room; why don’t you think about it more carefully, you don’t know what might happen.’ They tried to sow fear in me as a mother so that I would give up my work.” She also said that her son had to enroll in a “special school,” but that “he has not yet done so because of the same delay process,” and difficulties with enrolling him. She also maintained that her mother had been denied medical attention, allegedly because of her activism and activities as a journalist.¹⁵⁹
114. Family members of independent journalists are also said to be frequently pressured to cooperate with State Security. This is the case, for example, of Margarita Aranda Tejeda, the wife of reporter Manuel Alejandro León Velázquez,¹⁶⁰ as well as Idalia Torres Carballosa, the wife of journalist Osmel Ramírez Álvarez, who was subject to this kind of pressure when he was arrested in November 2017.¹⁶¹
115. It was also reported that State Security has thwarted opportunities for citizen participation by independent journalists in community and political activities. In October 2017, for instance, the political police reportedly occupied a community in Sancti Spíritus in order to keep Aimara Peña González from being elected as a

¹⁵⁸ She added that she and her husband heard one of them say “We can easily implicate you,” “We’re going to do a search on them,” and “We’re going to look for the units.” Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

¹⁵⁹ Statement of Aimara Peña. Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba; Diario de Cuba, [Activistas y periodistas independientes denuncian a la CIDH prácticas represivas que esquivan la 'huella legal'](#) [Activists and independent journalists complain to IACHR of repressive practices that avoid leaving a “legal trace”]. May 9, 2018.

¹⁶⁰ While León Velázquez was in custody in June 2017, she was also threatened with jail. “I was forced to sign a statement. They told me that if I didn’t cooperate with them, they were going to imprison my mother [León Velázquez’s mother-in-law] for supposedly hiding the house’s computer, and me for covering up for my mother. They dictated a statement to me that said that I promise to cooperate, to betray my husband, and to tell them everything he does”, said Aranda Tejeda. Diario de Cuba. [El régimen amenaza con prisión al periodista de DDC Manuel Alejandro León, su esposa y su suegra](#) [Regime threatens DDC journalist Manuel Alejandro León, wife, and mother-in-law with jail]. June 23, 2017.

¹⁶¹ “They warned me that they know about everything I write, everything I talk about, what I send to anyone, and what is uploaded to the web. They said there is a charge against me for being a participant, collaborator, and accomplice of his,” Torres Carballosa said at the time. She added that State Security made her sign a document containing warnings about “the dangers” that could befall her and the journalist. “I have a lot of courage and I won’t let them intimidate me. I’m not going to leave him alone in this, not at all,” she said. Diario de Cuba. [La Seguridad del Estado dice que tiene 'suficientes cargos' para acusar al periodista de DDC Osmel Ramírez](#) [State Security says it has ‘sufficient charges’ to indict DDC journalist Osmel Ramírez.]. November 14, 2017.

representative of the People's Power in her district.¹⁶² Henry Constantin, who was also allegedly prevented from running for representative office in his district, faced a similar situation. In his case, it was reported that his father was also subject to repression.¹⁶³ In January 2018, Osmel Ramírez denounced a “defamatory campaign” against him for his condemnation of the abuses suffered by tobacco producers in his town, Mayarí (Holguín), at the hands of the State-run Cubatabaco, which reportedly paid them a pittance.¹⁶⁴

vii. Barriers to departure and other arbitrary restrictions on freedom of movement

116. Several journalists have reported travel bans that the regime has applied, with increasing frequency, to activists and journalists, in retaliation for their activities or to hinder their training and professional exchanges.¹⁶⁵ Journalists including Carlos Alejandro Rodríguez Martínez, Maily Esteves Pérez Regina Coyula, Joan Manuel Núñez Díaz, Sol García Basulto, Maykel González Vivero, Yoandy Izquierdo, Anderlay Guerra, Raúl Velázquez, Roberto de Jesús Quiñones, Iván Hernández Carrillo, Abel Estrada, Henry Constantín, Augusto Cesar San Martín Albístur, Yusimí Rodríguez López, Ileana Álvarez, and Yaudel Estenoz, among others, have recently been prevented from travelling abroad.¹⁶⁶
117. The information received indicates that bans on travel have been issued verbally, without written documents or a specific reply. They are also reportedly not given prior notice of any exit restrictions, but instead learn of the ban upon arrival at the airport. This is despite the fact that, according to the information available, they have gone to various State authorities prior to the trip to check with the Department of Immigration or the Identity Card Office—where they were not given clear information on the matter.¹⁶⁷ Several sources agree that this measure is applied with

¹⁶² Diario de Cuba. [El régimen 'toma' una comunidad de Sancti Spiritus para impedir la postulación de una candidata independiente](#) [Regime “occupies” Sancti Spiritus community to prevent nomination of independent candidate]. October 5, 2017.

¹⁶³ Diario de Cuba. [Coacción, trampas y miedo: así fue la asamblea en la que un candidato independiente quiso nominarse](#) [Coercion, cheating, and fear: this was the assembly in which an independent candidate sought to be nominated]. November 14, 2017.

¹⁶⁴ Diario de Cuba. June 19, 2018. [72 horas preso por cada artículo publicado en DIARIO DE CUBA](#) [72 hours in jail for each article published in DIARIO DE CUBA]; Diario de Cuba. [El periodista de DDC Osmel Ramírez denuncia una 'campaña difamatoria' en su comunidad](#) [DDC journalist Osmel Ramírez condemns “defamatory campaign” in his community]. January 22, 2018.

¹⁶⁵ IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. *Request for a thematic hearing on freedom of expression in Cuba*. March 9, 2018.

¹⁶⁶ CubaNet. [APLP denuncia amenazas y ofensas a periodista independiente en Santa Clara](#) [APLP condemns threats and insults to independent journalist in Santa Clara]. August 31, 2017; Martí Noticias. [Periodistas denuncian amenazas de la Seguridad del Estado para que dejen de informar](#) [Journalists condemn State Security threats meant to keep them from reporting]. August 30, 2017; CubaNet. [El régimen prohíbe salir del país a periodista de CubaNet](#) [Regime bars CubaNet journalist from leaving country]. November 30, 2017; Revista El Estornudo. [Persona controlada](#) [Person under surveillance]. August 29, 2017; IAPA. [Cuba](#). October 26, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 92; IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. *Request for a thematic hearing on freedom of expression in Cuba*. March 9, 2018; Alas Tensas. [¿Por qué quieren cortarnos las Alas?](#) [Why do they want to clip our wings?]. May 2, 2018; Diario de Cuba. [La revista feminista 'Alas tensas' denuncia 'acoso y ataques sistemáticos'](#) [Feminist magazine *Alas Tensas* condemns “systematic harassment and attacks”]. May 3, 2018.

¹⁶⁷ Diario de Cuba. ['Regulado': cinco meses confinado en Cuba sin trámite judicial](#) [“Regulated”: five months in Cuban custody without judicial process]. March 29, 2018; Diario de Cuba. [El régimen impide viajar al periodista de DDC](#)

some frequency by State Security, through the Ministry of the Interior, under the category of “regulated,” for reasons related to their journalistic work.¹⁶⁸ In some cases, the measure may be imposed by intelligence departments and information may not be available until the person attempts to leave the country.¹⁶⁹

118. The Office of the Special Rapporteur notes that the “Migration Act,” Law No. 1312 of September 20, 1976, is relevant in this regard. This law was amended by Decree Law No. 302, published on October 16, 2012.¹⁷⁰ At the time, the IACHR underscored the amendments to the Migration Act, which removed some restrictions for Cuban nationals to obtain exit permits to travel abroad, considering that this was a positive step that should be followed by additional measures.¹⁷¹
119. The Office of the Special Rapporteur is particularly concerned about Article 25 of Decree Law No. 302, according to which a person may be barred from leaving the country “when deemed advisable for reasons of National Defense and Security” (subsection (d)); when he or she “lacks the authorization established, pursuant to the provisions aimed at preserving a qualified work force for the economic, social, and scientific/technical development of the country, as well as for the security and protection of official information” (subsection (f)), or “when, for other reasons of public interest, it is determined by the competent authorities” (subsection (h), among others).¹⁷² The vagueness and breadth of these terms gives a wide margin of discretion to the authorities, for which reason the Office of the Special Rapporteur urges the Cuban State to fully guarantee the right of its nationals to free movement.¹⁷³
120. In turn, Article 25.f of Decree Law No. 302 would appear to be related to Decree No. 306 of October 11, 2012 “on the treatment of officials, professionals, and athletes who require authorization to travel abroad.” Despite the fact that this treatment supposedly applies only to professionals and athletes engaged in activities that the government considers necessary for the development of the country, the Office of the Special Rapporteur has been informed that State agents have informed journalists

[Jorge Enrique Rodríguez](#) [Regime prevents DDC journalist Jorge Enrique Rodríguez from travelling]. February 19, 2018.

¹⁶⁸ For example, in February 2018, Jorge Enrique Rodríguez was reportedly told at State Security headquarters that the restriction was imposed by State Security to prevent him from traveling to attend the upcoming Summit of the Americas in Lima. IIRIDH, *Diario de Cuba*, *Palenque Visión*, and *La Hora de Cuba*. Request for a thematic hearing on freedom of expression in Cuba. March 9, 2018.

¹⁶⁹ Journalist Augusto César San Martín Albistur—who allegedly recorded his conversation with the official—reported that, according to the official, the “exit ban” is secret and internal to the State, imposed by the intelligence departments, and that no one will be informed that they are subject to such a ban until they attempt to leave the country. “Regulated” treatment, on the other hand, is public, and immigration officials can see a person’s status before they attempt to travel. CubaNet. [Prohíben salir de Cuba a periodista de CubaNet](#) [CubaNet journalist barred from leaving Cuba]. February 18, 2018.

¹⁷⁰ [Decree Law No. 302](#). Amending Law No. 1312. October 16, 2012.

¹⁷¹ IACHR. [IACHR Welcomes Immigration Reforms in Cuba](#). Press Release No. 130/12. November 5, 2012.

¹⁷² [Decree Law No. 302](#). Amending Law No. 1312. October 16, 2012.

¹⁷³ IACHR. [IACHR Welcomes Immigration Reforms in Cuba](#). Press Release No. 130/12. November 5, 2012.

that they are “regulated” under this provision and cannot travel abroad.¹⁷⁴ Some examples of this include Osmel Ramírez Álvarez, in November 2017;¹⁷⁵ Jorge Enrique Rodríguez, in February 2018,¹⁷⁶ and Augusto César San Martín Albistur, also in February 2018.¹⁷⁷ With this arbitrary application of the law, the State is restricting the departure from the country of persons who hold opinions that differ from those of the government.¹⁷⁸

121. Another form of arbitrary restriction of freedom of movement is related to Decree No. 217 of April 22, 1997, referring to “Domestic Migration Regulations for the City of Havana and their violation.” This Decree prevents the free movement of citizens within the country and allows for internal “deportations” of persons who are in Havana to their province of origin. According to statements received, “They detain you, as they did me: they put us on a train, and when the train is full, which may take several days, they take you to your province.”¹⁷⁹
122. In view of the above, the Office of the Special Rapporteur concludes that the persecution of journalists in Cuba remains a constant, based both on rules that are still in force and on arbitrary State practices. The Office of the Special Rapporteur recognizes that, even in the complete absence of a framework that enshrines the right to seek and to impart information independently, and in spite of such repressive rules and practices, Cuban journalists persist in wanting to do their jobs even though it poses a serious risk to their physical and psychological integrity, and to their rights.¹⁸⁰ The constant fear among independent journalists is illustrated by the following statement received in May 2018:

¹⁷⁴ IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. *Request for a thematic hearing on freedom of expression in Cuba*. March 9, 2018.

¹⁷⁵ Diario de Cuba. [‘Regulado’: cinco meses confinado en Cuba sin trámite judicial](#) [“Regulated”: five months in Cuban custody without judicial process], March 29, 2018; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba; Diario de Cuba. [El régimen impide viajar al periodista de DDC Jorge Enrique Rodríguez](#) [Regime prevents DDC journalist Jorge Enrique Rodríguez from travelling]. February 19, 2018.

¹⁷⁶ Diario de Cuba. [El régimen impide viajar al periodista de DDC Jorge Enrique Rodríguez](#) [Regime prevents DDC journalist Jorge Enrique Rodríguez from travelling]. February 19, 2018; Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

¹⁷⁷ CubaNet. [Prohíben salir de Cuba a periodista de CubaNet](#) [CubaNet journalist barred from leaving Cuba]. February 18, 2018; IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. *Request for a thematic hearing on freedom of expression in Cuba*. March 9, 2018; Diario de Cuba. [‘Regulado’: cinco meses confinado en Cuba sin trámite judicial](#) [“Regulated”: five months in Cuban custody without judicial process]. March 29, 2018.

¹⁷⁸ IIRIDH, Diario de Cuba, Palenque Visión, and La Hora de Cuba. *Request for a thematic hearing on freedom of expression in Cuba*. March 9, 2018.

¹⁷⁹ IACHR. [Hearing on the Human Rights Situation of Journalists in Cuba](#). 150th Session. March 25, 2014. In particular, it was reported that in December 2017 the Cuban authorities blocked journalist Manuel Alejandro León Velázquez from leaving the province of Guantánamo, where he resides. According to the available information, when he arrived at a checkpoint by car, the authorities forced him to get out of the vehicle and instructed the driver to keep going. They reportedly led him to a small room and held him there for about 20 minutes. Diario de Cuba. [El régimen detiene al periodista Manuel Alejandro León y le impide salir de su provincial](#) [Regime detains journalist Manuel Alejandro León and prevents him from leaving his province]. December 10, 2017.

¹⁸⁰ CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016.

From the moment you are a dissident, opponent, or a person who thinks differently from the government, who wants another alternative or who simply calls for improvements in this government such as more freedoms for citizens [...], you cease to have all the human rights that the government is supposed to respect [...], rights are violated flagrantly and with impunity, because they leave no trace or physical evidence of this type of action.¹⁸¹

123. The Office of the Special Rapporteur reiterates that Principle 9 of the Declaration of Principles establishes that “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.” Moreover, as established by the UN Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and by this Office, the State “has the duty to ensure that journalists and media workers [...] are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities.”¹⁸²
124. The State must not only refrain from engaging in such conduct; rather, at the same time, it has a positive duty to guarantee the exercise of this right through actions to prevent, protect against, and investigate attacks against journalists and the media. In Cuba, State agents are the main source of threats and attacks against the press, a practice that must be dismantled and punished. As the IACHR has previously pointed out in relation to Cuba, “Acts of violence against journalists have a threefold effect: They violate the right of victims to express and disseminate their ideas, opinions and information; they have a chilling and silencing effect on their peers; and they violate the right of persons and society in general to seek and receive information and ideas of any kind. Its consequences for democracy—which depends on the free, open and dynamic exchange of ideas and information—are particularly serious.”¹⁸³

¹⁸¹ Statement of Aimara Peña. Díaz, Pablo. *Acerca de la libertad de expresión en Cuba: una represión sin huella jurídica* [Freedom of expression in Cuba: Repression without a legal trace]. Diario de Cuba.

¹⁸² UN Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, and the Special Rapporteur for Freedom of Expression of the IACHR. [Joint Declaration on violence against journalists and media workers in the context of protests](#). September 13, 2013.

¹⁸³ IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 287.

CHAPTER III

CRIMINALIZATION OF POLITICAL CRITICISM AND DISCRIMINATION AGAINST DIFFERENT POPULATION GROUPS

III. CRIMINALIZATION OF POLITICAL CRITICISM AND DISCRIMINATION AGAINST DIFFERENT POPULATION GROUPS

125. Journalists have not been the only sector to suffer persecution in Cuba as the Cuban State maintains a practice of harassment against others seeking to express their ideas. Artists, human rights defenders, political dissidents, intellectuals, and opinion leaders face serious attacks, threats, and intimidation.
126. The Office of the Special Rapporteur considers that the following paragraphs illustrate serious structural discrimination on political grounds in the exercise of human rights, since all who think or express themselves differently from the regime cannot exercise their rights free from threats of suffering. This is supported by the regulatory framework, multiple provisions of which are referred to in this report. Although the Draft Constitution does acknowledge the right to equality and nondiscrimination in broader terms, it does not consider equality based on political motives. Indeed, while the Office of the Special Rapporteur applauds the inclusion of prohibited grounds of discrimination, such as gender, gender identity, sexual orientation, ethnicity, and disability,¹⁸⁴ it notes that political opinion is also a prohibited motive that is broadly recognized in human rights instruments,¹⁸⁵ but not protected in the text of the Constitution. A democratic system requires regulatory conditions that allow all people, without discrimination, to exercise their rights in freedom.

A. Attacks, threats, and intimidation

i. Artists

127. For more than three decades, the Commission has affirmed that there is a practice of tight control by government authorities in Cuba that shows “intense intolerance of works of art that might raise questions as to the virtues of the political system or the correctness of the ruling group.”¹⁸⁶ The Commission and the Office of the Special Rapporteur have continued to receive information indicating that ideological differences have been a reason for repressing artistic expression.
128. The Office of the Special Rapporteur notes that such practice is based on existing laws and regulations. Indeed, **Article 39 of the Constitution of 1976**¹⁸⁷ establishes that “In its educational and cultural policy, [the State] adheres to the following principles:

¹⁸⁴ [Proyecto de Constitución de la República de Cuba](#) [Draft Constitution of the Republic of Cuba]. Art. 40.

¹⁸⁵ See *inter alia* Universal Declaration. Art. 2; ICCPR. Art. 2.1; ACHR. Art. 1.

¹⁸⁶ IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Paras. 29-30.

¹⁸⁷ Replaced by article 32 (h) of the new Constitution approved on February 24, 2019. According to this article: “In its educational, scientific and cultural policy it follows the following postulates: [...] h. the freedom of artistic creation is promoted in all its forms of expression, in accordance with the humanistic principles on which the cultural policy of the State and the values of socialist society are base[d].”

[...] d. artistic creation is free as long as its content is not contrary to the Revolution [...].” Regarding this article, the IACHR in 1983 stated that “[...]the provision [on] artistic expression is a demonstration of political intolerance and sets forth the [legal] basis for censorship.” The Office of the Special Rapporteur reiterates that “The condition that the content of artistic endeavor not contradict ‘the Revolution’ imposes the prerequisite of prior analysis of that content and a judgment of its compatibility with the current political process. Therefore, it is a clear violation of the right to freedom of artistic expression.”¹⁸⁸

129. It is troubling to note that the Draft Constitution seems to maintain this same approach by establishing as a tenet of the State’s cultural policy that “artistic creation is free and in its content respects the values of Cuban socialist society [...],” and that the State “promotes culture and various artistic expressions, in accordance with cultural policy and the law,”¹⁸⁹ which, as observed in the following paragraphs, is plainly incompatible with freedom of artistic expression.¹⁹⁰
130. In more specific terms, the Office of the Special Rapporteur observes that the provisions implementing cultural policy dictated by the Ministry of Culture include (i) the Regulations of the National Registry of Fine Art and Applied Art Creators;¹⁹¹ (ii) the Regulations for the system of artistic hiring, marketing, and compensation in music and performing arts events in the national territory;¹⁹² (iii) the Regulations for the system of labor relations of workers in the arts sector;¹⁹³ and (iv) the Regulations of the evaluation system for workers in the arts sector.¹⁹⁴ Penalties for noncompliance with the cultural policy were recently adopted by Decree No. 349 of April 20, 2018 of the Council of Ministers.
131. This policy establishes, in general terms, that Cuban artists must be qualified by the State in order to practice professionally. Only artists registered in the Registry of Fine Art and Applied Art Creators may give presentations, render services in public, or have commercial spaces. They are reportedly required to establish ties with a State institution in order to obtain remuneration for their work, and only institutions authorized by the Ministry of Culture or the ICRT may enter into working or commercial arrangements with artists. They may not enjoy productions and performances, or develop and exhibit their skills in public, without State authorization. State officials reportedly have the authority to decide when a work of art fails to meet ethical, cultural, or other broad criteria. The measures they can apply

¹⁸⁸ IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Para. 13.

¹⁸⁹ As indicated before, in the new Constitution approved on February 2019 it remained as article 32 (h). On the other hand, in article 79 the proposed text was maintained: “All people have the right to participate in the cultural and artistic life of the nation. The State promotes culture and various artistic expressions, in accordance with cultural policy and the law.”

¹⁹⁰ [Proyecto de Constitución de la República de Cuba](#) [Draft Constitution of the Republic of Cuba]. Arts. 95(h); 90.

¹⁹¹ Resolution 63 of August 8, 2011.

¹⁹² Resolution 70 of September 19, 2013.

¹⁹³ Resolution 44 of June 16, 2014.

¹⁹⁴ Resolution 45 of June 16, 2014.

range from fines or the confiscation of property to the immediate suspension of the show or cancellation of the authorization to carry out the activity.

132. Based on these regulations, there is a consistent practice in Cuba of censoring ideological differences that are expressed through art. Acts of harassment have included not allowing certain work, the prohibition against leaving the country, internal deportations, summonses to police centers, searches of their homes, and interrogations.¹⁹⁵ The use of common crimes to intimidate or imprison persons exercising freedom of expression through art has also been documented, including preventing performances by arresting the artists beforehand, or interrupting and violently repressing them.¹⁹⁶
133. The information received shows that numerous artists, such as theater directors,¹⁹⁷ musical groups,¹⁹⁸ writers, and others,¹⁹⁹ continue to experience severe harassment designed to prevent them from expressing their social and political concerns through art. By way of example, in 2018 it was reported that the political police had kept the literary event *Palabras Excluidas* [Excluded Words], scheduled for February 3 at the Dissidence Museum, from taking place. State Security reportedly prevented several writers from reaching the venue, as was the case with the writer Ángel Santiesteban. According to reports, Santiesteban was detained when he left his home to make his way to the literary event.²⁰⁰ The Office of the Special Rapporteur notes that this

¹⁹⁵ IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 421-448; IACHR. [Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 174; IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Para. 34.

¹⁹⁶ IAPA. [Report to the 71st General Assembly of 2015](#); IAPA. [Report to the Midyear Meeting 2015](#); IAPA. [Report to the Midyear Meeting 2014](#); IAPA. [Report to the Midyear Meeting 2013](#).

¹⁹⁷ In December 2017, for example, it became known that the Ministry of the Interior had called theater director Adonis Milás in for questioning after he had decided to join the alternative biennial. They also allegedly pressured members of the Milan-based Persephone Theater group. According to information, the director belonged to the Hermanos Saíz Association, which had recently organized performances of the play *Hamlet Machine* in Santiago de Cuba. This work reportedly went through a jury of the Provincial Council of the Performing Arts of Santiago de Cuba, which approved the event. However, State Security reportedly suspended the second performance, alleging that the play cast doubt on the image of Fidel Castro. Due to alleged pressure from the regime's agents, the actors are reportedly now afraid to work. IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 69.

¹⁹⁸ Similarly, according to members of the punk rock band Porno para Ricardo, they were subject to government harassment and censorship, and could not perform publicly in Cuba, due, among other things, to a repertoire that would challenge the official regime. Puente Democrático. [El punk rock cubano en Buenos Aires](#) [Cuban punk rock in Buenos Aires]. May 3, 2017.

¹⁹⁹ Other artists who have recently been censored include curator Yanelis Núñez, writer and journalist Jorge Enrique Rodríguez, the director of the television project *Lente cubano* Iliana Hernández, and Luis Manuel Otero Alcántara. Diario de Cuba. [#00Biennial: el régimen responde al arte independiente con represión](#) [#00Biennial: Regime responds to independent art with repression]. May 13, 2018; Martí Noticias. [Creadores buscan espacios fuera de la UNEAC y las instituciones oficiales de Cuba](#) [Creators seek spaces outside UNEAC and Cuba's official institutions]. February 27, 2018.

²⁰⁰ Diario de Cuba. [La Seguridad del Estado impide la celebración de un evento literario con escritores censurados](#) [State Security bars literary event with censored writers]. February 4, 2018; Martí Noticias. [Policía política reprime evento literario contra la censura en Cuba](#) [Political police repress literary event against censorship in Cuba]. February 4, 2018.

occurred despite the fact that Santiesteban and his son are beneficiaries of precautionary measures granted by the IACHR in September 2014.²⁰¹

134. In addition, in February 2018, painter Luis Trápaga and activist Lía Villares, artists from the El Círculo Gallery, were reportedly detained for 24 hours and interrogated, the house serving as the gallery was searched, and the police reportedly seized USB flash drives, computers, cell phones, video and photo cameras, and hard drives containing the interviews Villares conducted with various censored artists. This material was going to be used for the documentary that she was making, called *Arte Libre vs. Censura Totalitaria* [Free Art vs. Totalitarian Censorship].²⁰² Added to this are other cases reported in 2017, such as the arrests of artists Tania Burguera and Danilo Maldonado “El Sexto” (*infra* IV.B), and the harassment of members of the punk rock group *Porno para Ricardo*,²⁰³ which show that all forms of critical expression are persecuted.
135. The IACHR emphatically reiterates that it “considers the limitations on freedom of artistic expression imposed by the Government of Cuba, and the pressures and punishments to which artists who do not share the official ideology or who disagree with the political authorities are submitted, reprehensible.”²⁰⁴ In addition to the restriction of freedom of expression, these regulations contain limitations on equal access to decent work for all, regardless of political opinion.²⁰⁵

ii. Human rights defenders

136. As the IACHR has repeatedly noted for several years, Cuba presents a context of serious hostility, persecution, and harassment against human rights defenders.²⁰⁶ Multiple sources have consistently reported that they are arbitrarily deprived of their liberty under certain types of criminal charges—such as contempt of public authority, Attack against a public authority, and public disorder—and are sometimes subjected to assaults, threats, and abuse within detention facilities.²⁰⁷ Other forms of harassment include internal deportations, summonses to police centers, searches of their homes, assaults, bars to leaving or entering the country, impediments to leaving

²⁰¹ IACHR. [Resolution 26/2014](#). PM 206-13. *Matter of Ángel Lázaro Santiesteban Prats concerning Cuba*. September 26, 2014.

²⁰² 14yMedio. [La policía detiene durante 24 horas a los artistas de la galería El Círculo](#) [Police detain artists from El Círculo Gallery for 24 hours]. February 4, 2018.

²⁰³ Similarly, according to members of the punk rock group *Porno para Ricardo*, they have been subject to government harassment and censorship, and cannot perform publicly in Cuba due to, among other things, a repertoire that would challenge the official regime. Puente Democrático. [El punk rock cubano en Buenos Aires](#) [Cuban punk rock in Buenos Aires]. May 3, 2017.

²⁰⁴ IACHR. [Seventh Report on the Situation of Human Rights in Cuba](#). 1983. Chapter V. Para. 36.

²⁰⁵ Cubalex. *La relación entre el Decreto 349 y la política cultural del Estado cubano en 7 puntos* [The relationship between Decree 349 and the cultural policy of the Cuban State in 7 points].

²⁰⁶ Since its 1992-1993 Annual Report, the Commission has expressed concern about the obstacles faced by human rights defenders in demonstrating, and in defending and promoting respect for human rights. IACHR. [Annual Report 1992-1993](#). OEA/Ser.L/V/II.83. Doc. 14. March 12, 1993.

²⁰⁷ IACHR. [Annual Report 2016](#). Chapter IV. Para. 45; IIRIDH, *Request for hearing on human rights violations of Unpacu members*. August 1, 2017.

their homes through the use of official operations, and surveillance of their communications.²⁰⁸

137. The Office of the Special Rapporteur notes that this is related to a regulatory framework that precludes the free exercise of the rights of expression, assembly, and association, recognized in article XXII of the American Declaration. In particular, the Associations Act, Law No. 54 of 1985, authorizes the Ministry of Justice to refuse a request for the formation of an association, *inter alia*, “when the bylaws or internal regulations that will govern it do not clearly express its objectives and activities” (article 8.b), “when its activities could be harmful to the interests of society” (article 8.c), and “when another is registered with identical or similar objectives or denomination” (article 8.d). This regulatory framework is applicable to artistic, cultural, friendship and solidarity, sports, and scientific and technical societies, as well as to others that propose “social interest purposes” (article 2).
138. Such legislation creates serious obstacles for an organization to obtain legal recognition and results in many of them having to operate in a precarious or unlawful legal status.²⁰⁹ This is compounded by threats and even the use of the criminal offense of “unregistered association” (article 208 of the Criminal Code), leading not only to a lack of legal recognition and protection, but also to the criminal prosecution of the activities of various organizations and groups.²¹⁰

Offense	Article	Criminal conduct	Penalty
Unregistered Association	208.1	Belonging as an associate or affiliate to an association not registered in the appropriate registry	Deprivation of liberty for a period of 1 to 3 months or a fine of up to 100 units [cuotas]
	208.2	Serving as the promoter or director of an unregistered association	Deprivation of liberty for a period of 3 months to 1 year or a fine of 100 to 300 units [cuotas]

139. Of particular concern to the Office of the Special Rapporteur is the severe and persistent harassment by the State against the non-governmental organization Cubalex (Legal Information Center). Such acts include warrantless searches by police and security officers, the arbitrary seizure of property, and the cutting of telephone lines. Its members have been frequently detained, subject to arbitrary criminal proceedings, called in for questioning, and even subjected to degrading and inhuman

²⁰⁸ IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 421-452; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 439; IACHR. [Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 163; IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 141; IACHR. [Annual Report 2010](#). OEA/Ser.L/V/II. Doc. 5 corr. 1. March 7, 2011. Para. 404; IACHR. [Annual Report 2006](#). OEA/Ser.L/V/II.127. Doc. 4 rev. 1. March 3, 2007. Para. 73, 75; IACHR. [Annual Report 2005](#). OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006. Paras. 97, 104, 105, 106; IACHR. [Annual Report 2001](#). OEA/Ser.L/V/II.114. Doc. 5 rev. April 16, 2002. Para. 20.

²⁰⁹ Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 5.

²¹⁰ AI. [“Your Mind is in Prison”: Cuba’s Web of Control over Free Expression and Its Chilling Effect on Everyday Life](#). 2017. Pp. 12, 13, 15, 16, 17, 32; AI. [Cuba: Human Rights at a Glance](#). 2015.

treatment such as being forced to remove their clothing for supposed strip searches or being deprived of food while in custody.²¹¹ It was reported that the organization was being prosecuted for operating without authorization since at least September 2016. Due to the intensification of the repression, members of Cubalex reportedly traveled in May and June to the United States as political refugees.²¹² Laritza Diversent, the organization's director, and other members of Cubalex are the beneficiaries of precautionary measures issued by the Commission, which requested in April 2015 that the State take the necessary measures to safeguard their lives and personal integrity and allow them to carry out their work without being subjected to harassment.²¹³ The IACHR and its Office of the Special Rapporteur reiterate their appeal to the Cuban State to cease these actions, and to effectively ensure that the members of this organization can exercise their rights and defend human rights free from undue interference.²¹⁴

140. Similarly, the Office of the Special Rapporteur reiterates its concern over the harassment and acts of pressure and violence against the organization Ladies in White.²¹⁵ In this case too, the aforementioned acts of harassment, arrests, and other actions aimed at humiliating and frightening its members are intended to prevent the exercise of the right of criticism that the organization legitimately seeks to pursue. During 2018, the organization reported that it continued to be subjected to attacks, harassment, and arrests, mainly for contempt of public authority and resistance in

²¹¹ IACHR. [IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression](#). Press Release R149/16. October 13, 2016. According to reports, Julio Iglesias and Julio Ferrer are facing criminal prosecution or are deprived of their liberty. Agencia EFE. [Cubalex asegura que desde EEUU harán visible desprotección de organizaciones](#) [Cubalex promises to bring attention to lack of protection for organizations from the U.S.]. May 7, 2017; 14yMedio. [Laritza Diversent y Cubalex comienzan su vida en el exilio](#) [Laritza Diversent and Cubalex begin life in exile]. May 4, 2017; IACHR, [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 82.

²¹² El Nuevo Herald. [Activistas de Cubalex, el principal grupo legal opositor de Cuba, se marchan al exilio](#) [Activists from Cubalex, Cuba's main opposition legal group, go into exile]. May 4, 2017; Diario de Cuba. [Laritza Diversent: 'Salgo mañana del país y no me dejan regresar'](#) [Laritza Diversent: "I am leaving the country tomorrow and they won't let me return"]. May 4, 2017; Martí Noticias. [Catorce miembros de Cubalex obtienen refugio político en Estados Unidos](#) [Fourteen Cubalex members obtain political asylum in the United States]. May 4, 2017; Agencia EFE. [Cubalex asegura que desde EEUU harán visible desprotección de organizaciones](#) [Cubalex promises to bring attention to lack of protection for organizations from the U.S.]. May 7, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 82.

²¹³ IACHR. [Resolution 13/2015](#). PM 96-15. *Matter of members of Cubalex concerning Cuba*. April 22, 2015; IACHR. [IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression](#). Press Release R149/16. October 13, 2016. Other repressive actions by the Cuban authorities against Cubalex have been the subject of precautionary measures adopted by the IACHR. IACHR. [Resolution 13/2015](#). PM 96-15. *Matter of members of Cubalex concerning Cuba*. April 22, 2015.

²¹⁴ IACHR. [IACHR and the Office of the Special Rapporteur express concern for retaliation actions of the Cuban State against an organization dedicated to defending freedom of expression](#). Press Release R149/16. October 13, 2016.

²¹⁵ IACHR. [Resolution 12/2014](#). PM 264-13. May 12, 2014.

connection with protesting.²¹⁶ Relatives of the movement's members have also reportedly been targeted for repression by State agents.²¹⁷ The Commission has granted several precautionary measures on behalf of members of the organization or persons involved in its work.²¹⁸

141. Additionally, in 2018, members of the *Asociación Pro Libertad de Prensa* [Association for Press Freedom] (APLP)—Odalina Guerrero Lara, Manuel Morejón, Amarilis Cortina Rey, and Miriam Herrera Calvo—were reportedly interrogated by State Security after sending a report on the situation of the right to freedom of expression in Cuba to the UN Human Rights Council for the Universal Periodic Review (UPR). This reportedly occurred following the participation of APLP Director José Antonio Fornaris and Odalina Guerrero Lara in an event in Geneva. In February 2018, four members of APLP were prevented from leaving the country to participate in a journalism workshop.²¹⁹
142. It was also reported that women advocates have been frequent victims over the years of physical assault when exercising their freedom of expression.²²⁰ For example, in October 2017, several women from *Movimiento Dignidad* [the Dignity Movement] were reportedly detained in operations organized by State Security and prevented

²¹⁶ In particular, Marta Sanchez has reportedly been in custody since March 11, on charges of “contempt of public authority” and “resistance” for protesting during the elections in Cuba. [IACHR. Office of the Special Rapporteur. [The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for desacato laws in Cuba](#). Press Release R152/18. July 17, 2018]. At least 24 Ladies in White were reportedly arrested on the eve of May 1 [Diario de Cuba. [A horas del Primero de Mayo, allanamientos y arrestos de activistas de la UNPACU y las Damas de Blanco](#) [Hours before May Day, raids and arrests of UNPACU and Ladies in White activists], April 30, 2018]. In the same month, Micaela Roll Gibert and Aimara Nieto Muñoz were allegedly beaten by the Political Police as they took to the streets in the town of Calabazar with posters calling for the release of political prisoners [Martí Noticias. [“¡Abajo Díaz-Canel!”, gritan Damas de Blanco mientras las golpea la policía \(VIDEO\)](#). [“Down with Díaz-Canel!” Damas de Blanco shout as they are beaten by police (VIDEO)], May 9, 2018] Berta Soler was reportedly violently detained on September 23, 2018 by two security guards, who injured her shoulder and caused a blood vessel to burst in her eye [IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018].

²¹⁷ For example, in June 2018 police reportedly arrested Leticia Ramos Herrería's son, Randy Montes de Oca Ramos, on charges of “disobedience, resistance, and contempt of public authority.” He was reportedly intercepted by police who told him he had to go with them. When he replied that he had to give something to Ramos Herrería first, he was arrested. According to Ramos Herrería, “This is yet another act of retaliation” against her, intended to make her leave the country and Ladies in White. ICLEP. June 5, 2017. [Damas de Blanco denuncian un incremento del acoso a sus hijos](#) [Ladies in White condemn increased harassment of their children]; Diario de Cuba. [Damas de Blanco denuncian un incremento del acoso a sus hijos](#) [Ladies in White condemn increased harassment of their children]. June 5, 2017.

²¹⁸ See IACHR. PM 354-12. *Sonia Garro. Cuba*. November 8, 2012; PM 34-13. *X. Cuba*. February 14, 2013; [Resolution 6/13](#). PM 264-13. *Ladies in White. Cuba*. October 28, 2013; PM 264/13. *Ladies in White. Cuba*. Extension. May 12, 2014.

²¹⁹ According to Amarilis Cortina Rey, the wife of Fornaris and a member of the APLP's board of directors, DSE officials explained that the search was conducted for the purpose of “gathering information on the activities of the APLP.” CubaNet. [Policía registra la sede de la Asociación Pro Libertad de Prensa en Cuba](#) [Police search headquarters of the Association for Press Freedom in Cuba]. May 30, 2018; 14yMedio. [La policía incauta los implementos de trabajo de la APLP tras un registro en su sede](#) [Police seize APLP's work materials after search of its headquarters]. May 30, 2018.

²²⁰ IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 314-315; IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 230-261; AI. [Report: Cuba 2017/2018](#); AI. [“Your Mind is in Prison”: Cuba’s Web of Control over Free Expression and Its Chilling Effect on Everyday Life](#). 2017. P. 11.

from moving freely.²²¹ In this context, it has been necessary for the IACHR to grant a number of precautionary measures on behalf of human rights defenders in order to protect their lives and personal integrity.²²²

143. The freedom to associate with others is a fundamental right, linked to the existence of any democratic society, recognized in Article XXII of the American Declaration. It protects the freedom to associate *inter alia* for ideological and political purposes, without the intervention of authorities that would limit or hinder its exercise, and not exclusively for the purpose of forming a trade union or professional organization.²²³ The protection afforded by this right extends to all activities that are essential to its effective functioning, including the ability to express opinions and disseminate information in furtherance of the aims of the associated group.²²⁴ In this regard, the UN Human Rights Committee has stated that “the existence and operation of associations, including those which peacefully promote ideas not necessarily favorably received by the government or the majority of the population, is a cornerstone of a democratic society.”²²⁵
144. The Commission has recognized the interdependent relationship that exists between the right to freedom of expression and the right to freedom of association, and in particular the instrumental role that the right to freedom of expression plays in the exercise of other rights.²²⁶ The IACHR has been emphatic in affirming that members of associations, particularly those committed to defending human rights, should enjoy full freedom of expression and, in particular, the freedom to be openly critical of government policies and practices.²²⁷

²²¹ For several months, the regime has reportedly prevented them from leaving the town of Palmarito de Cauto, in Santiago de Cuba. The members of the Dignity Movement, led by Belkis Cantillo Ramírez, have reportedly been under “strong pressure” from State Security since the movement became known 10 months ago. [Diario de Cuba. [Detenidas activistas del Movimiento Dignidad que llevan diez meses cercadas en un pueblo](#) [Dignity Movement activists arrested after being confined to village for ten months]. October 22, 2017; Diario de Cuba. [Detenidas una veintena de activistas del Movimiento Dignidad](#) [Twenty Dignity Movement activists arrested]. May 5, 2017; Martí Noticias. [Detienen a opositoras de Movimiento Dignidad en Santiago de Cuba](#) [Dignity Movement opposition activists arrested in Santiago de Cuba]. October 22, 2017; 14yMedio. [Activistas del Movimiento Dignidad denuncian “represión y detenciones arbitrarias”](#) [Dignity Movement activists condemn “repression and arbitrary detentions”]. October 23, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 90]. Through a statement released in October, they condemned the repression and arbitrary arrest of their members, and demanded “the citizens’ right to exercise freedom of movement and communication” [IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 90].

²²² These include the precautionary measures issued on behalf of: Juana Mora Cedeño and Mario José Delgado González, defenders of the rights of LGBTQI people, in July 2016 [IACHR. [Resolution 37/2016](#) [in Spanish] PM 236-16. *Matter of Juana Mora Cedeño et al, regarding Cuba*. July 3, 2016]; Sirley Ávila León, in September 2015 [IACHR. [Resolution 31/2015](#) [in Spanish] PM 428/15. *Matter of Sirley Ávila León regarding Cuba*. September 2, 2015]; Jose Ernesto Morales Estrada, in March 2018; and Iván Hernández Carrillo, in October 2013 [IACHR. [Resolution 5/2013](#). PM 245-13. *Matter of Iván Hernández Carrillo regarding Cuba*. October 28, 2013].

²²³ IACHR. Complaint before the I/A Court H.R. Case of Manuel Cepeda Vargas (Case 12.531). Colombia. November 14, 2008. Para. 93.

²²⁴ IACHR. Report No. 27/15. Case 12.795. Merits. Alfredo Lagos del Campo. Peru. July 21, 2015. Para. 75.

²²⁵ UN Human Rights Committee. Viktor Korneenko, et al. CCPR/C/88/D/1274/2004. 10 November 2006. Para. 7.3.

²²⁶ IACHR. Report No. 27/15. Case 12.795. Merits. Alfredo Lagos del Campo. Peru. July 21, 2015. Para. 75.

²²⁷ In this regard, see: IACHR. [Press Release](#). September 17, 2015. UN and IACHR experts condemn moves to dissolve prominent organization in Ecuador.

145. Thus, and as it emerges from the well-established jurisprudence of the bodies of the inter-American system²²⁸ and the universal human rights system,²²⁹ the right to freedom of expression of the members of an association may not be subject to prior control by the State and may only be subject to subsequent liability, provided that it is not abusive or arbitrary. In order not to be so, they must be provided for in the law, pursue a legitimate aim, and meet the requirements of suitability, necessity, and proportionality.²³⁰ When examining the validity of restrictions imposed, it should be borne in mind that the freedom to express opinions and disseminate information of a political nature is absolutely central to the right protected by Article IV of the American Declaration.²³¹
146. The Office of the Special Rapporteur is particularly concerned to note that women activists have on several occasions been harassed or arrested following their involvement with UN human rights bodies or the IACHR.²³² The IACHR stresses that human rights bodies are responsible for monitoring compliance with the Cuban State's international obligations in this area. However, human rights supervision or monitoring is not accepted as a lawful activity; on the contrary, it can be classified as treason and is stigmatized and illegal.²³³ In the past, the Commission has expressed its concern and repudiation of such acts of retaliation, and reminds Cuba that Rule 63 of its Rules of Procedure provides that States shall "grant the necessary guarantees to all the persons who attend a hearing or who in the course of a hearing provide information, testimony or evidence of any type to the Commission."

iii. Political dissidents

147. The IACHR and the Office of the Special Rapporteur have consistently observed a serious practice of repressing political dissidents on account of their condemnation of the lack of political rights and freedoms or simply for trying to express an opinion and participate in political affairs. The most commonly reported forms of harassment against dissidents include internal deportations, summonses to police centers, searches of their homes or of the offices of political organizations, and being

²²⁸ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985; I/A Court H.R. *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001; I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004; I/A Court H.R. *Case of Kimel v. Argentina*. Merits, Reparations, and Costs. Judgment of May 2, 2008; IACHR, Report on the *Compatibility of "Desacato" Laws with the American Convention on Human Rights*, OEA/Ser L/V/II.88, Doc.9 rev (1995). Pp. 210-223. Annex D; IACHR. Arguments before the Inter-American Court in the case of Herrera Ulloa v. Costa Rica. Transcribed in: I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004; IACHR. Report No. 103/13. Case 12.816. Merits. Adán Guillermo López Lone, et al. Honduras. November 5, 2013; IACHR. Report No. 27/15. Case 12.795. Merits. Alfredo Lagos del Campo. Peru. July 21, 2015.

²²⁹ UN Human Rights Committee. General Comment No. 34: Article 19: Freedoms of opinion and expression. September 12, 2011.

²³⁰ IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet, et al. (Cuba). October 21, 2006.

²³¹ IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Ppara. 100; IACHR. Annual Report 1994. Chapter V. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

²³² This occurred, for example, in relation to Laritza Diversent, Leticia Ramos, and Berta Soler. IACHR. [IACHR Concerned over Treatment of Human Rights Defenders in Cuba](#). Press Release 127/16. September 6, 2016; 14yMedio. [El Gobierno prohíbe a Berta Soler salir de Cuba](#) [Government forbids Berta Soler from leaving Cuba], March 21, 2017. IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 92.

²³³ IACHR. *Hearing on the Situation of Freedom of Expression in Cuba*. 119th Session. March 2, 2004.

prevented from attending meetings of their organizations. There have also been reports of the use of physical assault, vandalism, and acts of repudiation, among others, to harass Cuban dissidents.²³⁴ In Cuba, the law does not recognize the plurality of political parties, and any organization or campaign by candidates outside the PCC is illegal.

148. Methods of harassing political dissidents include expulsion from educational institutions.²³⁵ For instance, in April 2017 journalism student Karla María Pérez González was reportedly expelled from the Central University of Las Villas for belonging to the opposition movement *Somos+*, a Cuban civil society organization that reportedly promotes, among other things, multiparty politics, the independent press, and open elections.²³⁶ In May, Pérez González reported being the victim of a systematic attack by journalists from the official media, pro-government bloggers, and university authorities.²³⁷
149. The systematic use of unjustified restrictions on activists' travel abroad was also reported. In July 2017, for instance, 12 dissidents were reportedly detained at the airport while attempting to travel to civil society meetings in other countries.²³⁸ According to publicly available information, in 2016, four Cuban opposition activists were prevented from traveling to Puerto Rico to attend the Second National Cuban Conference. Among them was Iván Hernández Carrillo, journalist and General Secretary of the Confederation of Independent Workers of Cuba. Mr. Hernandez is a beneficiary of precautionary measures granted by the IACHR. The Commission received information indicating that he is still on parole as a result of the "Black Spring" of March 2003. According to this information, on July 31, 2016, upon his

²³⁴ IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Paras. 421, 434, 437- 439, 443; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 435; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Paras. 324, 326, 346.

²³⁵ AI. ["Your Mind is in Prison": Cuba's Web of Control over Free Expression and Its Chilling Effect on Everyday Life](#). 2017. P. 5.

²³⁶ According to the available information, her classmates decided that she should be expelled, a decision that was ratified by the school's University Student Federation (FEU). In the statement it released, the FEU asserted that she was "a member of an illegal and counterrevolutionary organization, contrary to the principles, objectives, and values of the Cuban Revolution." El País. April 19, 2017. [Una universidad cubana expulsa a una alumna de 18 años por disidente](#) [Cuban university expels 18-year-old student for being a dissident]; BBC Mundo. April 19, 2017. ["Me expulsaron por no comulgar con las ideas comunistas": Karla María Pérez, la estudiante de periodismo a la que echaron de una universidad en Cuba por ser de un grupo disidente](#) ["I was kicked out for not sympathizing with communist ideas": Karla María Pérez, journalism student expelled from Cuban university for being part of a dissident group]; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 68.

²³⁷ Cuba en Miami. [Gobierno de Cuba inicia campaña mediática contra Karla Pérez](#) [Cuban government launches media campaign against Karla Perez]. May 9, 2017; El Nuevo Herald. [La joven expulsada de la universidad en Cuba denuncia una campaña mediática en su contra](#) [Young woman expelled from Cuban university condemns media campaign against her]. May 8, 2017; CubaNet. [Joven expulsada de la universidad denuncia campaña mediática en su contra](#) [Young woman expelled from university condemns media campaign against her]. May 9, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 68.

²³⁸ Civicus & CCDHRN. [Joint Submission to the UN Universal Periodic Review](#). October 5, 2017. P. 8.

return to Havana from an authorized trip abroad, Iván Hernández was violently beaten, arrested, and held at the airport until the following day.²³⁹

150. According to the information received, dissidents have been harassed not only by State Security forces but also by citizens organized in neighborhood watch groups, designated as Committees for the Defense of the Revolution. The function of these organizations is to monitor, report, and punish “antisocial behavior”—that is, opposition activity—through allegedly spontaneous “acts of repudiation.”²⁴⁰
151. The information available indicates that the government reportedly retaliated against those who expressed their intention to run for office in the 2018 elections in Cuba. Limitations on pluralism in the exercise of political rights and freedom of expression in the country were reportedly imposed, both legally and extra-legally, as this Office discussed in its 2017 Annual Report.²⁴¹ Such acts reportedly included intimidation and smear campaigns against candidates from the various platforms seeking to run in the upcoming municipal elections,²⁴² and the government’s thwarting of the nomination of independent candidates.²⁴³ Independent candidates were also arbitrarily detained and questioned, among other acts of intimidation.²⁴⁴
152. The Inter-American Commission has underscored that there is a “direct relationship between the exercise of political rights and the concept of democracy as a form of organization of the State.” In the Inter-American System, the relationship between human rights, political rights, and democracy is embodied in the Inter-American Democratic Charter, which states that: “Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.”

B. Arrests

153. The Office of the Special Rapporteur reiterates the existence in Cuba of a systematic pattern of arbitrary detention and imprisonment for the exercise of the right to freedom of expression in its various manifestations and expressions of opinion.²⁴⁵

²³⁹ IACHR. [IACHR Concerned over Treatment of Human Rights Defenders in Cuba](#). Press Release No. 127/16. September 6, 2016.

²⁴⁰ Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 9.

²⁴¹ IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 107.

²⁴² Cuban Human Rights Observatory [*Observatorio Cubano de Derechos Humanos*] (OCDH). September 1, 2017. [Casi 500 detenciones en agosto en Cuba](#) [Nearly 500 arrests in Cuba in August]; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 109.

²⁴³ IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Paras. 109-110.

²⁴⁴ IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 111.

²⁴⁵ See *inter alia* IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Paras. 421-440; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Paras. 433, 439;

Multiple reports alleged arbitrary short and long-term detentions (from hours to days), and other mass arrests involving the use of violence.²⁴⁶ Arrests are frequently made by individuals wearing civilian clothing, in cars with no license plates, and without a warrant.²⁴⁷ Detainees are not usually informed of the reasons for their detention, and are kept in vehicles or facilities under circumstances of great uncertainty.²⁴⁸

154. In addition to detention under the aforementioned repressive rules—whose ambiguous formulation is inconsistent with the strict requirements of the right to freedom of expression—arbitrary arrests for short periods of time without trial are also used frequently as an intimidation tactic.²⁴⁹ This practice is routinely used not only against journalists (section III.C) but also against artists, political dissidents, human rights defenders, and others who express ideas and opinions in terms critical of the Cuban government and its institutions. According to the Cuban Commission for Human Rights and National Reconciliation [*Comisión Nacional de Derechos Humanos y Reconciliación Nacional*] (CCDHRN), Cuba was said to have a total of 120 individuals recognized as “prisoners for political reasons,” as of May 31, 2018.²⁵⁰ It is worrisome to note that, according to this same organization, there are 21 such persons who have been deprived of their liberty for between 15 and 27 years.²⁵¹
155. In particular, arbitrary arrests are commonly used to repress artists who express ideas critical of the Government.²⁵² For example, Danilo Maldonado “El Sexto” was reportedly arrested in Havana in November 2016 for property damage.²⁵³ This happened after he painted graffiti on a wall of the Habana Libre Hotel and on the

IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Paras. 314-327.

²⁴⁶ Recent OCDH figures indicate that 3,594 arbitrary detentions were reported in the first eight months of 2017. OCDH. June 5, 2017. [2.149 detenciones arbitrarias desde enero en un claro recrudecimiento de técnicas represivas](#) [2,149 arbitrary arrests since January in a clear intensification of repressive techniques]; OCDH. September 1, 2017. [Casi 500 detenciones en agosto en Cuba](#) [Nearly 500 arrests in Cuba in August]; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 80.

²⁴⁷ IACHR. [Hearing on the Human Rights Situation of Journalists in Cuba](#). 150th Session. March 25, 2014; IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147th Session. March 11, 2013.

²⁴⁸ IACHR. [Hearing on the Human Rights Situation of Journalists in Cuba](#). 150th Session. March 25, 2014; IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147th Session. March 11, 2013.

²⁴⁹ IACHR. Office of the Special Rapporteur. Meeting of June 5, 2018.

²⁵⁰ CCDHRN. [Lista parcial de condenados o procesados en Cuba por razones políticas en esta fecha](#) [Partial list of persons convicted or tried in Cuba for political reasons to date], June 11, 2018.

²⁵¹ CCDHRN. [Lista parcial de condenados o procesados en Cuba por razones políticas en esta fecha](#) [Partial list of persons convicted or tried in Cuba for political reasons to date]. June 11, 2018.

²⁵² IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 458; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Paras. 427-443; IACHR. [Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. Para. 167.

²⁵³ The information at hand shows that Maldonado has been detained repeatedly in the past. IACHR. Office of the Special Rapporteur for Freedom of Expression, [The Office of the Special Rapporteur Expresses Concern over the detention in Cuba of artist Danilo Maldonado, known as “El Sexto”](#). Press Release R196/16. December 23, 2016.

façade of two other government buildings in allusion to the death of former President Fidel Castro, which read “He’s gone.”²⁵⁴ Maldonado was reportedly released in January 2017, after nearly two months in detention without any charges being brought against him,²⁵⁵ despite the fact that the offense he was accused of is punishable by a fine, not by deprivation of liberty.²⁵⁶ Another case is that of graffiti artist Yulier Rodríguez, reportedly detained for 48 hours in August 2017 when he was trying to paint a mural in downtown Havana.²⁵⁷ Artist Tania Bruguera was also arrested numerous times, including in December 2014,²⁵⁸ May 2015,²⁵⁹ and July 2015.²⁶⁰ It was also recently reported that in August 2018, Yanelys Nuñez and Luis Manuel Otero Alcántara were arrested on the street five hours before an event to protest Decree 349 (IV.A.i).²⁶¹

156. The Office of the Special Rapporteur reiterates its concern over cases such as those mentioned above, in which measures are imposed to deprive a person of his or her liberty based on the dissemination of ideas through graffiti, which is nothing more than the free expression of a political opinion about events of obvious public relevance like those mentioned earlier. It is a critical opinion that falls within the scope of freedom of thought and that people have the right to express, and the public to receive, pursuant to the right to freedom of opinion guaranteed in article IV of the American Declaration. In this case, the property damage that may have been caused is of lesser importance and can eventually be remedied in other ways that are less harmful to the right to freedom of expression.²⁶²

²⁵⁴ IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 458.

²⁵⁵ El País. [Un disidente cubano es liberado tras pasar dos meses en prisión](#) [Cuban dissident released after two months in prison], January 23, 2017; Agencia EFE. [Las autoridades cubanas liberan a “El Sexto” tras casi dos meses en prisión](#) [Cuban authorities release “El Sexto” after nearly two months in prison]. January 21, 2017.

²⁵⁶ IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Office of the Special Rapporteur Expresses Concern over the detention in Cuba of artist Danilo Maldonado, known as “El Sexto”](#). Press Release R196/16. December 23, 2016.

²⁵⁷ The artist was reportedly released after the authorities made him sign an agreement to erase his paintings, with a warning that he would be punished for property damage. IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 69.

²⁵⁸ She was reportedly arrested because she had invited Cubans to speak at an open microphone in the Plaza de la Revolución to offer their opinions on the reestablishment of relations between Cuba and the United States. Along with the artist, other people who tried to participate in the event were arrested. The authorities confiscated the passport of the artist, who had lived abroad in recent years.

²⁵⁹ She is said to have been arrested by State agents after staging a performance called 100 hours of reading the book “The Origins of Totalitarianism,” held during the Havana Biennial. Hours later she was released.

²⁶⁰ She was reportedly arrested along with Claudio Fuentes, the editor of *Estado de Sats*, dissident Jorge Luis García “Antúnez,” and Berta Soler, a member of the Ladies in White movement, when they attended mass at the Santa Rita Church. Several dozen human rights activists at the scene, including Angel Moya, Egberto Escobedo, blogger Agustín López, *Hablemos* Press reporters, and journalist Serafín Morán, were also arrested by plainclothes police and State Security agents.

²⁶¹ DDC. [San Isidro versus Seguridad del Estado](#) [San Isidro versus State Security]. August 13, 2018.

²⁶² IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Office of the Special Rapporteur Expresses Concern over the detention in Cuba of artist Danilo Maldonado, known as “El Sexto”](#). Press Release R196/16. December 23, 2016.

157. Arbitrary arrests have been used as a method of intimidation and harassment against activists.²⁶³ The Commission learned, for example, of the situation of lawyer José Ernesto Morales Estrada, who according to the information received, had been arbitrarily detained some 90 times between 2014 and 2017.²⁶⁴ Other reported cases include the detention in August 2016 of Laritza Diversent, the Director of Cubalex, for some two hours upon her return from Geneva,²⁶⁵ among other members of that organization.²⁶⁶ Lia Villares, an independent activist, was reportedly held in May 2017 for 3 hours by a police officer.²⁶⁷ It was also reported that dissident photographer Claudio Fuentes was arrested in July 2018 and held for 27 hours incommunicado at the Cotorro police station.²⁶⁸
158. It was also reported that, in May 2017, Daniel Llorente, known as “the dissident with the flag,” was arrested after running through the Plaza de la Revolución with the United States flag.²⁶⁹ Llorente was reportedly accused of resistance and public disorder, held in police custody for a month, and subsequently transferred to the Havana Psychiatric Hospital, where he remains confined. It was reported that Llorente was subjected to electric shocks, radiation, isolation, forced labor, psychotropic drugs, and periodic beatings.²⁷⁰ The Commission has also underscored the arbitrary arrest and detention of women human rights defenders.²⁷¹ In October 2017, for example, operations organized by State Security detained several women from the Dignity Movement.

²⁶³ AI. [“Your Mind is in Prison”: Cuba’s Web of Control over Free Expression and Its Chilling Effect on Everyday Life](#). 2017. P. 11; AI. [Cuba: Human Rights at a Glance](#). 2015.

²⁶⁴ IACHR. Resolution 22/2018. Precautionary Measure No. 954-16. *Matter of José Ernesto Morales Estrada concerning Cuba*. March 18, 2018. Para. 4.

²⁶⁵ IACHR. [IACHR Concerned over Treatment of Human Rights Defenders in Cuba](#). Press Release No. 127/16. September 6, 2016

²⁶⁶ IACHR. [Resolution 13/2015](#). PM 96-15. *Matter of members of Cubalex concerning Cuba*. April 22, 2015; [Resolution 56/2016](#) [in Spanish]. PM 96-15 Extension, *Matter of members of Cubalex concerning Cuba*. November 14, 2016.

²⁶⁷ IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 92.

²⁶⁸ He was reportedly arrested along with his partner, who was released three hours later. In June, the photographer was also reportedly arrested and threatened with imprisonment following a call for “civil disobedience” by a large group of internal and exiled dissidents. Fuentes was a member of the independent project *Estado de Sats* and of the Forum for Rights and Freedoms [*Foro por los Derechos y Libertades*] (ForoDyL). DDC. [El régimen libera al fotógrafo Claudio Fuentes tras más de 24 horas de arresto](#) [Regime releases photographer Claudio Fuentes after more than 24 hours in custody]. July 12, 2018.

²⁶⁹ This was not the first time Daniel Llorente had reportedly staged public actions. CubaNet. [‘Estoy encerrado con candado’, dice desde Mazorra el cubano Daniel Llorente](#) [“I’m locked up with a padlock,” says Cuban Daniel Llorente from Mazorra]. June 6, 2017; Martí Noticias. [Daniel Llorente vuelve a manifestarse con bandera de EEUU, ahora en marcha por el 1 de mayo](#) [Daniel Llorente once again demonstrates with the US flag, now marching for May Day]. May 1, 2017; El País. [Cuba encierra en un psiquiátrico a un opositor](#) [Cuba locks up dissident in psychiatric hospital]. June 27, 2017; ICLEP. June 3, 2017. [Autoridades cubanas quieren tildar de loco al hombre de la bandera](#) [Cuban authorities want to call the man with the flag crazy].

²⁷⁰ DDC. [El poco conocido Gulag del Caribe](#) [The little-known Caribbean Gulag]. August 16, 2018; DDC. [La Fundación Víctimas del Comunismo condena ‘el uso del régimen de la psiquiatría punitiva de estilo soviético’](#) [Victims of Communism Foundation condemns “the use of the Soviet-style punitive psychiatric system”]. October 29, 2017.

²⁷¹ IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 432.

159. In particular, it was reported that the authorities made between 380 and 400 allegedly arbitrary arrests of members of the Patriotic Union of Cuba (UNPACU) between December 2016 and August 2017, most of which involved excessive use of force.²⁷² In 2018, UNPACU denounced that several of its activists had been arrested near the upcoming elections in Cuba.²⁷³ According to UNPACU leader José Daniel Ferrer, by July 2018, 55 members of the organization were in custody, most accused of public disorder, “pre-criminal social dangerousness,” and contempt of public authority.²⁷⁴ Particularly worrisome is the situation of Tomás Núñez, a detained UNPACU member who has reportedly—as of October 1, 2018—been on a life-threatening 48-day hunger strike.²⁷⁵
160. It bears recalling that the arbitrary deprivation of liberty of dissidents and political opponents for expressing ideas, opinions, and information, or for exercising their right to peaceful protest, is a systematic practice that dates back decades, as the IACHR has verified through various mechanisms. Within the framework of the petition and case system, the IACHR has decided numerous cases between 1973 and 2018 that reflect this same pattern.²⁷⁶ In its annual reports, it has also documented the use of arbitrary arrests of political dissidents as a common pattern.²⁷⁷ In these

²⁷² IIRIDH. *Request for hearing on human rights violations of Unpacu members*. August 1, 2017.

²⁷³ In February, the detained activists included Gilberto Hernández Lago, Alexander Verdecia Rodríguez, Carlos Alberto Rojas, Yuri Sollet Soto, and José Antonio López Piña. Verdecia Rodríguez was allegedly arrested on charges of putting up anti-government posters. [Martí Noticias. [UNPACU denuncia alza de represión mientras se acercan elecciones en Cuba](#) [UNPACU condemns crackdown as Cuban elections approach]. February 12, 2018]. In April 2018, Zaqueo Báez Guerrero, Ismael Boris Renhi, Alberto de Caridad Ramírez Baró, Alberto Antonio Ramírez Odio, and Leonardo Ramírez Odio were reportedly arrested. [Diario de Cuba. [A horas del Primero de Mayo, allanamientos y arrestos de activistas de la UNPACU y las Damas de Blanco](#) [Hours before May Day, raids and arrests of UNPACU and Ladies in White activists]. April 30, 2018].

²⁷⁴ Martí Noticias. [Denuncian violencia contra miembros de UNPACU en prisión](#) [Reports of violence against UNPACU members in prison]. July 1, 2018.

²⁷⁵ IACHR. *Hearing on Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018.

²⁷⁶ In 1973 Cases 1604 - Pedro Luis Boitel; 1721 - Eloy Gutiérrez Menoyo, Hubert Matos, Pedro Luis Boitel, César Paez, T. Lamas, A. Gamis, L. Blanco, J. Pujal, J. Valls y O. Figueroa; and 1726 - Oriol Acosta y García et al.; in 1975, Case 1805 – political prisoners in Cuba, Case 1834 - political prisoners in Cuba, and Case 1847 – Pablo Castellanos and political prisoners held in “La Cabaña,” Havana; in 1981, Resolution No. 39/81, Case 2299 - Ángel Cuadra Landrove, Resolution No. 40/81, Case 3347 - Tomás Fernández Travieso, Resolution No. 41/81, Case 3496 - Ernesto Arraigotia, Resolution No. 42/81, Case 3992 - Clara Abrahante, Resolution No. 43/81, Case 3956 - Eleno Oviedo, Resolution No. 44/81, Case 3884 - Alberto Fibia González et al., Resolution No. 45/81, Case 4402 - 114 Political Prisoners, Resolution No. 46/81, Case 4429 - 170 Political Prisoners held in the “Combinado Del Este” Prison, Resolution No. 47/81, Case 4677 - Alemany Pelaez, Jorge, Alonso Guillot, Ramón, Brito García, Juan, Iglesias, Ramírez, Manuel, Lam Rodríguez, Roberto, Piedra Bustarviejo, Antonio, Pinera, Machin, Agustín, Bacallao, Pedro, Bermúdez Esquivel, Mario, Beravides Ballesteros, Eulalio, Burias Acosta, Luis, Chapi Yaniz, Francisco, Estevez De Arcos, Guillermo, Pérez Valdes, Roberto, Rodríguez De Castro, Ricardo, Rodríguez, Edeldo, Samoano, Gustavo C., Arguelles, Ramón, Campbell, Francisco B., Lazo De Cuba, Carlos, Antunez, Telesforo R., Becerra, Rafael, Bergueiro, Armando, Capote Oropesa, Alfredo, Delgado Hernández, Sandalino, Cerdana Valdes, Benigno, Concepción, Julio, Córdoba Aguiar, Julio; and Resolution No. 48/81, Case 7486 - Melvin Lee Bailey, Robert Bennet, Walter Lewis Clark, William Dawson John Fekete, Agustin Householder, Lance Fyfe, Jon Gaynor, Douglas Miklas, Lewis Douglas Moore, William Nelson, Michael Seitler, Mark Schierbaum, Dale Stanhope, Ythomas White; Resolution No. 49/81, Case 7455 - Eduardo Prieto Blanco and Alberto Prieto Blanco. Available at: <http://www.oas.org/en/iachr/decisions/merits.asp>.

²⁷⁷ IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Paras. 434-438; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 439; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015, P. 318-345.

cases the IACHR established that arrests and criminal prosecutions are targeted at dissidents in an attempt to sway their ideas.²⁷⁸

161. The IACHR has insisted that, in light of democratic principles, the exercise of freedom of expression and association cannot constitute a legitimate reason for the deprivation of a person's liberty, and that such deprivation of liberty results in arbitrary detention. The capture, imprisonment, and/or criminal prosecution of a person for the mere act of having expressed opinions that annoy the authorities is expressly prohibited by inter-American standards on freedom of expression.²⁷⁹ The IACHR additionally notes that under Articles I, XXV, and XXVI of the American Declaration, the State must have a legal basis to justify the detention of any person, and to keep that person in custody, whether or not he or she is subject to criminal proceedings. Those provisions require that any arrest, regardless of duration, must be carried out pursuant to a judicial warrant or, in its absence, that the arrest be due to a circumstance of manifest criminal activity or flagrancy. In all cases, detainees are entitled to have the legality of their detention ascertained without delay by a court, as established in Article XXV of the Declaration.
162. In addition, the conditions of detention reported are openly contrary to the relevant international standards.²⁸⁰ The Office of the Special Rapporteur must reiterate its profound concern over the critical conditions of incarceration to which detainees are subjected, in this case for political crimes.²⁸¹ The right of detainees to humane treatment while in the custody of the State is a universally accepted norm of international law. The American Declaration contains several provisions in this regard, including Articles I, XXV, and XXVI.
163. The IACHR has also established that prolonged isolation and prolonged solitary confinement and coercive incommunicado detention, by themselves, are forms of

²⁷⁸ IAPA. [Report to the Midyear Meeting 2014](#).

²⁷⁹ IACHR. Report No. 71/15. Case 12.879. Merits. Vladimir Herzog, et al. Brazil. October 28, 2015. Para. 149; IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 133.

²⁸⁰ In particular, it was reported that "In addition to severe beatings, political prisoners suffer psychological harassment from their jailers and bosses. They are subjected to spoiled foods, untreated diarrhea outbreaks, denial of medications, a staggering lack of hygiene, overcrowding, bandages for poultices in the same dirty jars in which they receive food, mites, bedbugs, mosquitoes, mice, and cockroaches. They are also denied visits, and punished for refusing to do certain 'favors,' such as spying on another inmate or beating him as punishment, or stealing his belongings. They also have bladed weapons planted on them as an excuse to punish them." [DDC. [El poco conocido Gulag del Caribe](#) [The little-known Caribbean Gulag]. August 16, 2018]. According to available information, "It is a routine State Security procedure to keep detained opponents incommunicado and not to provide information even to family members" [DDC. [El régimen libera al fotógrafo Claudio Fuentes tras más de 24 horas de arresto](#) [Regime releases photographer Claudio Fuentes after more than 24 hours in custody]. July 12, 2018]. According to [Archivo Cuba](#), between 2008 and 2017, there were 204 reported deaths in prisons and detention centers. Three of them were political opponents Adrián Sosa, of the Sats State project; Lady in White Ada María López, and UNPACU activist Hamell Mas Hernández [14ymedio. [Persisten las ejecuciones extrajudiciales en la Isla, según Archivo Cuba](#) [Extrajudicial executions persist on the island, according to Archivo Cuba]. August 27, 2018. DDC. [Hay una 'matanza sistemática' en las prisiones de la Isla, denuncia Archivo Cuba](#) [Archivo Cuba condemns "systematic massacre" in the island's prisons]. August 28, 2018].

²⁸¹ IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 135; IACHR. [Annual Report 2006](#). OEA/Ser.L/V/II.127. Doc. 4 rev. 1. March 3, 2007. Paras. 66-70.

cruel and inhuman treatment, harmful to the mental and emotional integrity of the person and to every detainee's right to respect for the inherent dignity of the human being.²⁸² The isolation of persons who have not yet been convicted is particularly problematic, as it imposes punitive and potentially harmful conditions on persons who are innocent until proven guilty. It can also serve to coerce them and force them to self-incriminate or to provide some kind of information.²⁸³

C. Criminal proceedings and convictions

164. In Cuba, criminal law is misused as a mechanism to impose subsequent liability on persons who express opinions, information, or criticism on matters of public interest, or that refer to government authorities or officials. The information received by the IACHR and the Office of the Special Rapporteur through its various mechanisms shows that this practice is widespread and has been in use for several decades.²⁸⁴ Other organizations have also noted that the misuse of the criminal law constitutes a pattern that hinders freedom of expression.²⁸⁵
165. The Office of the Special Rapporteur reiterates its special concern at the recent upsurge in the criminalization of academics, journalists, artists, and activists, through the application of criminal offenses that penalize criticism.²⁸⁶ The cases reported in 2018 include the criminal conviction and imprisonment of Doctor of Biological Sciences Ariel Ruiz Urquiola, for the crime of contempt of public authority.²⁸⁷ According to public information, this conviction is related to the fact that on May 3, 2018, officials from the Ministry of the Interior's Forest Ranger Corps entered the lands that Ruiz Urquiola was reportedly using in Viñales National Park, in order to ask him to demonstrate ownership of his work instruments and show them the legal permits for the activities he was carrying out. The officials reportedly refused to show official identification, so the biologist referred to them as "rural guards," a term that is said to have a negative connotation in Cuba. The same day, Ruiz Urquiola was reportedly arrested and charged with having committed the crime of "contempt of public authority" against the forest rangers. In May 2018, he was reportedly sentenced to a year in prison by the Viñales Municipal Court, in a summary trial, for

²⁸² IACHR. *Report on Terrorism and Human Rights*. OEA/Ser.L/V/II.116. Doc. 5 rev. 1 corr. October 22, 2002. Para. 161; IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al., Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 145.

²⁸³ IACHR. Report on the Use of Pretrial Detention in the Americas. OEA/Ser.L/V/II. Doc. 46/13 December 30, 2013. Para. 280; IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 145.

²⁸⁴ Cases of persons arbitrarily detained or prosecuted for political reasons reportedly totalled 6,424 in 2013 (an average of 536 per month), 8,899 in 2014 (741 per month), 8,616 in 2015 (718 per month), 9,940 in 2016 (827 per month), and 2,859 in the first half of 2017 (476 per month). Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 7.

²⁸⁵ IAPA. [Report to the 73rd General Assembly 2017](#); AI. [Report: Cuba 2017/2018](#); AI. ["Your Mind is in Prison": Cuba's Web of Control over Free Expression and Its Chilling Effect on Everyday Life](#) 2017, P. 11; AI. [Cuba: Human Rights at a Glance](#). 2015.

²⁸⁶ IACHR. Office of the Special Rapporteur. [The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for *desacato* laws in Cuba](#). Press Release R152/18. July 17, 2018.

²⁸⁷ The Office of the Special Rapporteur expressed its serious concern over this criminal conviction in a press release in July 2018. IACHR. Office of the Special Rapporteur. [The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for *desacato* laws in Cuba](#). Press Release R152/18. July 17, 2018.

the crime of contempt of public authority. The conviction was upheld on appeal. On July 3, he was reportedly freed on conditional release [*licencia extrapenal*] for health reasons, after he went on a hunger and thirst strike in protest.²⁸⁸

166. It was also reported that at least five women members of the Ladies in White have either been convicted or currently awaiting trial for public activities: Marta Sánchez Gonzales, sentenced to 5 years; Nieves Caridad Matamoros González, to 1 year and 6 months; Aymara Nieto Muñoz, awaiting trial; Yolanda Santana Ayala, sentenced to 1 year and 4 months; Xiomara de las Mercedes Cruz, sentenced 1 year and 4 months.²⁸⁹ Other cases include the conviction of Eduardo Cardet Concepción, coordinator of the Christian Liberation Movement (MCL), who has been in prison for more than a year.²⁹⁰ The judgment was upheld on appeal and, according to the information available, between 2014 and 2016 Cardet had been detained several times for his activism against the regime.²⁹¹ On February 24, 2018, the IACHR granted precautionary measures on his behalf so that, among other things, the Cuban government would take the necessary measures to guarantee his life and personal integrity.²⁹² This in view of the fact that, being deprived of liberty in a maximum-security prison, he has reportedly been attacked by other prisoners and, despite the injuries sustained, has not received adequate medical treatment.²⁹³ The Office of the Special Rapporteur calls upon the State to immediately cease the violations of Mr. Cardet's human rights and, at the same time, notes with great concern that his sister, Miram Cardet Concepción, was prevented from leaving Cuba when she attempted to travel to attend the 169th session of the IACHR.²⁹⁴

²⁸⁸ El Nuevo Herald. [Científico cubano es condenado a un año de cárcel por "desacato" a las autoridades](#). [Cuban scientist sentenced to one year in prison for "contempt" of authorities]. May 9, 2018; BBC. [Quién es Ariel Ruiz Urquiola, el científico cubano sentenciado a un año de cárcel por criticar a las autoridades](#). [Who is Ariel Ruiz Urquiola, the Cuban scientist sentenced to one year in prison for criticizing the authorities?]. July 6, 2018; AI. June 11, 2018. [Urgent Action - Environmental activist imprisoned](#); The Washington Post. [Ariel Ruiz Urquiola, un hombre libre en una sociedad presa](#) [Ariel Ruiz Urquiola, a free man in an imprisoned society]. July 9, 2018.

²⁸⁹ IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018.

²⁹⁰ In March 2017, Cardet was reportedly sentenced to three years in prison for the crime of "attack against a public authority." He was reportedly arrested on November 30, 2016, five days after Fidel Castro's death, after allegedly criticizing him in an interview during a national mourning period imposed by the Cuban government. IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018; 14yMedio. [Al dice que lo condena a Cardet demuestra poca libertad de expresión](#) [AI Says Cardet's conviction shows little freedom of speech]. March 22, 2017; El Confidencial/EFE. [Opositor cubano Cardet condenado a 3 años de cárcel acusado de una agresión](#) [Cuban oppositionist Cardet sentenced to 3 years in prison on charges of attacking public authority]. March 21, 2017; Martí Noticias. [Acción urgente de AI por Cardet recibe apoyo dentro y fuera de Cuba](#) [Urgent AI action for Cardet receives support within and outside Cuba]. June 10, 2018.

²⁹¹ As an example, in 2016 he was reportedly beaten, detained, and threatened with imprisonment by the police authorities upon his return to Cuba from the United States, where he had attended an MCL event, participating in an initiative to change Cuba's electoral law. Before his arrival, his wife had also been arrested and threatened.

²⁹² IACHR. [Resolution 16/2018](#). MC 39-18. *Eduardo Cardet Concepción. Cuba*. February 24, 2018 [in Spanish].

²⁹³ In July 2018, the Office of the Special Rapporteur expressed its concern over Eduardo Cardet's conviction. IACHR. Office of the Special Rapporteur. [The Office of the Special Rapporteur Expresses Concern over Criminal Convictions for desacato laws in Cuba](#). Press Release R152/18. July 17, 2018.

²⁹⁴ IACHR. Hearing on *Criminalization of social activists and journalists in Cuba*. 169th Session. October 1, 2018.

167. Reports indicate that several members of UNPACU have been subjected to ongoing criminalization.²⁹⁵ In July 2018, Eliecer Góngora Izaguirre was reportedly sentenced to 6 months in jail for refusing to pay a fine of 2000 pesos, imposed against him in April for distributing information about the “*Cuba Decide*” initiative and about UNPACU.²⁹⁶ In addition, Zaqueo Báez, Ismael Boris Reñí, and María Josefa Acón Sardiñas were fined 1500 pesos for distributing discs and printed material in the streets in order to bring information to the Cuban people.²⁹⁷ Ismael Boris Reñí reportedly already served a year in prison between 2016-2017, also for distributing discs and printed materials in the streets.²⁹⁸ On August 18, 2017, the organization’s coordinator, Jorge Cervantes García, was reportedly released on bail after spending three months in detention, accused of ongoing contempt of public authority, impersonation of a public official, and resistance.²⁹⁹ Similarly, on August 23, Sánchez Romero was sentenced to 1 year and six months in prison following a summary trial; Martín Castellano was provisionally detained on charges of attack against a public authority, and Rodríguez Chacón was released.³⁰⁰
168. The tools that have been used thus far to criminalize the free expression of ideas protect a clear political objective.³⁰¹ The offenses to which the State has frequently resorted in order to imprison opponents relate mainly to offenses against the

²⁹⁵ As for the most recent events, it was stated that, in June 2017, four Unpacu activists, two of them members of the Ladies in White, as well as seven members of the Orlando Zapata Tamayo Civic Action Group, were reportedly tried after more than a year awaiting trial. The first four activists were reportedly arrested after participating in a demonstration on April 15, 2016, in Havana’s Parque de la Fraternidad and taken to detention centers. The other seven were reportedly arrested and released on bail after participating in a 2016 demonstration outside the Havana Capitol. In some cases, the Cuban regime was reportedly seeking jail time of up to three years.

Diario de Cuba. [El régimen pide condenas de hasta tres años de cárcel para 11 activistas](#) [Regime calls for up to three years in prison for 11 activists]. June 17, 2017.

²⁹⁶ Martí Noticias. [Distribuyó información sobre Cuba Decide y ahora paga seis meses de cárcel](#) [Six months in jail for distributing information about *Cuba Decide*]. July 5, 2018.

²⁹⁷ Martí Noticias. [Periodismo ciudadano y redes sociales, ¿prohibidos para opositores en Cuba?](#) [Citizen journalism and social networks: forbidden for opponents in Cuba?]. June 18, 2018.

²⁹⁸ Martí Noticias. [Periodismo ciudadano y redes sociales, ¿prohibidos para opositores en Cuba?](#) [Citizen journalism and social networks: forbidden for opponents in Cuba?]. June 18, 2018.

²⁹⁹ Unpacu. August 21, 2017. [Liberan bajo fianza al coordinador de UNPACU en Las Tunas, Jorge Cervantes después de tres meses tras rejas, con 39 días en huelga de hambre](#) [UNPACU coordinator in Las Tunas, Jorge Cervantes, released on bail after three months behind bars, with 39 days on hunger strike]; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 85.

³⁰⁰ Unpacu. [Uno de los principales líderes de UNPACU, Ovidio Martín Castellanos, en prisión ‘provisional’, acusado de un falso delito de ‘atentado’ por ser víctima de violenta golpiza de la policía política](#) [Prominent UNPACU leader, Ovidio Martín Castellanos, in “provisional” prison, accused of a false crime of “attack against a public authority” after a violent beating by the political police]. August 28, 2017; Martí Noticias. [Activista de UNPACU deberá esperar juicio en la cárcel](#) [UNPACU activist must await trial in jail]. August 29, 2017; Martí Noticias. [Opositor de UNPACU detenido el sábado condenado a prisión en juicio sumarísimo](#) [UNPACU opponent arrested on Saturday sentenced to prison in summary trial]. August 25, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 85.

³⁰¹ IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Paras. 423, 441; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 306; IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Paras. 225-260; IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 164; IACHR. [Annual Report 2003. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.118. Doc. 70 rev. 2. December 29, 2003. Para. 87.

security of the State, such as external security, domestic security, domestic enemy, and so on. The State uses these offenses, indicated in the following table, to criminalize the exercise of freedom of expression under the guise of protecting State security.³⁰²

Offense	Article	Criminal conduct	Penalty
Title I: Crimes against the security of the State			
Chapter I : Crimes against the external security of the State			
Acts against the independence or territorial integrity of the State	91	In the interest of a foreign State, committing an act with the intent to cause damage to the independence of the Cuban State or the integrity of its territory	Deprivation of liberty from 10 to 20 years or death
Espionage	97.1	To the detriment of the security of the State, participating in, collaborating with, or maintaining relations with information services of a foreign State, or to provide them with reports, or to obtain or procure such reports in order to communicate them to the foreign State	Deprivation of liberty from 10 to 20 years or death
Chapter II : Crimes against the domestic security of the State			
Sedition	100	Riotously and having either expressly or tacitly agreed to disrupt the socialist order, and do so using violence; or disrupt the holding of elections or referenda, or obstruct compliance with any judgment, legal provision or measure issued by the government, or by a civil or military authority in the exercise of their respective functions, or refuse to obey them, or make demands, or refuse to carry out their duties	
Enemy propaganda	103.1	a) Inciting against the social order, international solidarity, or the socialist State, by means of verbal or written propaganda or in any other form; b) Making, distributing, or possessing propaganda of the kind described in the previous paragraph	Deprivation of liberty from 1 to 8 years
	103.2	Disseminating false news or malicious predictions that tend to cause alarm or discontent in the population, or public disorder	Deprivation of liberty from 1 to 4 years
	103.3	Using mass media to carry out the acts described in the previous sections	Deprivation of liberty from 7 to 15 years
	103.4	Allowing mass media to be used for the purposes described in the previous paragraph	Deprivation of liberty from 1 to 4 years
Dissemination of false news against international peace	115	Disseminating false news with the purpose of disturbing international peace, or endangering the standing or credit of the Cuban State or its good relations with another State	Deprivation of liberty from 1 to 4 years

169. Nevertheless, a review of the charges applied by the authorities also shows that they make frequent use of charges alleging common crimes. These include the offenses of attack against a public authority, resistance, contempt of public authority, and disobedience, which are deemed “crimes against the public administration” under the Cuban Criminal Code. On other occasions, they use charges of “crimes against public order” like public disorder and incitement to commit a crime.³⁰³ There is also a

³⁰² IACHR. *Hearing on the Situation of Freedom of Expression in Cuba*. 119th Session. March 2, 2004.

³⁰³ IACHR. Office of the Special Rapporteur. Meeting of June 5, 2018; IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Paras. 421, 431, 440; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 354; IACHR. [Annual Report 2005](#). OEA/Ser.L/V/II.124. Doc. 7. February

certain change in the methods of repression, given that in some cases criminal proceedings are threatened but not actually brought. This is due to the fact that, as previously mentioned, the current model of repression appears to follow an extra-legal rationale.

Offense	Article	Criminal conduct	Penalty
Title II: Crimes against the public administration			
Attack against a public authority	142.1	Using violence or intimidation against authorities, public servants, or their agents or assistants, to prevent them from performing an act pertaining to their duties, or to require them to perform it, or for revenge or in retaliation for the exercise of such duties	Deprivation of liberty for a period of 1 to 3 years
Resistance	143.1	Resisting an authority, public servant, or his or her agents or assistants in the performance of their duties	Deprivation of liberty for a period of 3 months to 1 year or a fine of 100 to 300 units [cuotas]
	143.2	The act provided for in the above paragraph is committed with respect to a public servant or his or her agents or assistants, or a soldier, in the performance of his or her duties to apprehend criminals or guard individuals deprived of their liberty	Deprivation of liberty for a period of 2 to 5 years
Contempt of public authority	144.1	Threatening, slandering, defaming, offending, insulting, or in any way affronting or abusing, verbally or in writing, the dignity or decorum of an authority, public servant, or his or her agents or assistants, in the performance of, or in connection with, or because of their duties	Deprivation of liberty for a period of 3 to 9 months or a fine of 100 to 270 units [cuotas], or both
	144.2	The act provided for in the above paragraph is committed with respect to the President of the Council of State, the President of the National Assembly of People's Power, the members of the Council of State or the Council of Ministers, or the representatives of the National Assembly of People's Power	Deprivation of liberty for a period of 6 months to 3 years
Disobedience	147.1	Disobeying the decisions of public authorities or public servants, or the orders of their agents or assistants, issued in the performance of their duties	Deprivation of liberty for a period of 3 months to 1 year or a fine of 100 to 300 units [cuotas], or both
Title IV: Crimes against public order			
Public disorder	200.1	Any person who, without good cause, raises shouts of alarm, or makes threats against the general public in public places, at performances, or in large gatherings	Deprivation of liberty for a period of 3 months to 1 year or a fine of 100 to 300 units [cuotas], or both
	201.1	Any person who causes fights or altercations in establishments open to the public, public transport vehicles, social circles, performances, family or public parties, or other events or places attended by a large number of people	Deprivation of liberty for a period of 3 months to 1 year or a fine of 100 to 300 units [cuotas], or both
Incitement to commit a crime	202.1	Publicly inciting others to commit a particular crime	Deprivation of liberty for a period of 3 months to 1 year or a fine of 100 to 300 units [cuotas]

170. There are statutory definitions of criminal offenses that are used selectively for specific groups of people. In the case of journalists, for instance, we have the

27, 2006. Paras. 101-102; IACHR. [Annual Report 2004. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005. Para. 73; IACHR. [Annual Report 2002](#). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Paras. 27.a, 27.h.

abovementioned use of the charges of “impersonation of a public official” and “acting without legal capacity.” In the case of rights activists, the charge of unregistered association is used. Such crimes are cited interchangeably by State agents in their threats. In addition to these provisions of the Criminal Code, there are Law 88 of 1999 for the Protection of National Independence and Law No. 80 of 1996 for the Reaffirmation of Cuban Dignity and Sovereignty. Both also serve as a legal basis for the criminalization of freedom of expression in Cuba.

171. Additional information was received about the frequent use of the concept of “dangerous state” or “pre-criminal dangerousness” to deprive activists, dissidents, and others of their liberty.³⁰⁴ According to the CCDHRN, in 2018, at least the following twelve individuals were reportedly imprisoned on such charges:³⁰⁵

Name	Date of arrest	Duration of the measure	Activities/affiliation
Arcis Hernández, Osvaldo	09-12-2017	4 years	member of the <i>Frente Antitotalitario Unido</i> [United Anti-totalitarian Front]
Andera Barrera, Eliécer	23-09-2016	4 years and 10 months	UNPACU Activist
Bello González, Luis	05-03-2016	3 years	UNPACU Activist
Díaz Paseiro, Misael	22-11-2017	3 years and 6 months	Active member of the opposition, member of the <i>Frente de Resistencia Cívica Orlando Zapata Tamayo</i> [Orlando Zapata Tamayo Civic Resistance Front] (FRCOZT)
Fernández Pérez, Aracelis	21-03-2018	2 years	<i>Movimiento Opositor Juventud Despierta</i> [Awakened Youth Opposition Movement]
Matos Montes de Oca, Rafael	19-05-2017	Pending	UNPACU Member
Morera Jardines, Mario	21-07-2015	4 years	Active member of the opposition <i>Movimiento Cubano Reflexión</i> [Cuban Reflection Movement]. Participated in several protest activities.
Ortiz Delgado, José	23-04-2016	2 years	Active member of the <i>Foro Antitotalitario Unido</i>
Ramírez Baro, Alberto	24-04-2018	3 years	<i>Comité de Defensores de los DDHH</i> [Human Rights Defenders' Committee]
Ramírez Odio, Leonardo	24-04-2018	2 years and 6 months	<i>Comité de Defensores de los DDHH</i>
Ramírez Rodríguez, George	20-11-2016	2 years	Member of the <i>Movimiento Libertad Democrática por Cuba</i> [Democratic Freedom Movement for Cuba]
Triana González, Orlando	07-01-2018	3 years	Member of the <i>Movimiento Cubano Reflexión</i>

172. These concepts are established in Article 72 of the Criminal Code, which literally defines “dangerousness” as: “a special inclination on the part of a person to commit crimes, as demonstrated by behavior that is clearly contrary to the standards of socialist morality.”³⁰⁶ This classification authorizes the use of “pre-criminal security measures,” “to prevent the commission of, or in connection with the commission of, criminal offenses,”³⁰⁷ which may consist of therapeutic, re-educational, or surveillance measures by the bodies of the National Revolutionary Police.³⁰⁸ This

³⁰⁴ Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 7.

³⁰⁵ CCDHRN. [Lista parcial de condenados o procesados en cuba por razones políticas en esta fecha](#) [Partial list of persons convicted or tried in Cuba for political reasons to date]. June 11, 2018.

³⁰⁶ Article 73.2 states that “an individual who habitually breaks the rules of social coexistence by acts of violence, or by other provocative acts, violates the rights of others or by his general behavior breaks the rules of coexistence or disrupts the order of the community or lives, as a social parasite, off the work of others or exploits or practices socially reprehensible vices, is considered to be in a dangerous state on account of his or her antisocial behavior.” Criminal Code. Law of December 29, 1987.

³⁰⁷ Criminal Code. Law of December 29, 1987. Art. 76.

³⁰⁸ Criminal Code. Law of December 29, 1987. Arts. 78-81.

Office notes that this provision facilitates the harassment and criminalization of members of the opposition, and that, although it does not expressly provide for the restriction of personal freedom, it is reportedly used to that end.³⁰⁹ The Office of the Special Rapporteur reiterates that the provisions on “dangerous state” and “pre-criminal security measures” should be removed from the Criminal Code, as “since their lack of precision and their subjective nature constitute a source of [legal uncertainty] which creates conditions permitting the Cuban authorities to take arbitrary action.”³¹⁰ They are also contrary to the principle of legality and the presumption of innocence, given that—rather than punishing specific acts—they punish the likelihood of committing potential, future, and uncertain acts.

173. In addition, the concept of “*licencia extrapenal*” (conditional release amounting to house arrest) set forth in Article 31 of the Criminal Code allows a defendant to serve his or her sentence under house arrest, but does not suspend the criminal penalty and leaves open the possibility of returning to prison if it is determined that the beneficiary does not comply with “rules of good conduct.”³¹¹ The Office of the Special Rapporteur received information indicating that there are people under this kind of “house arrest” who are still serving sentences of up to 25 years that were imposed during the “Black Spring” of 2003.³¹² There are reportedly at least 10 former prisoners of conscience who have been released on so-called “*licencia extrapenal*” who remain exposed to the arbitrary restriction of their rights, including the prohibition against travelling freely abroad;³¹³ it also allows for political dissidents to be kept under State surveillance.³¹⁴

Considerations on criminal law provisions

174. The imposition of a criminal penalty for the exercise of freedom of expression is a severe restriction on this right. With this in mind, the Office of the Special Rapporteur is particularly concerned about the following aspects reflected in the criminal laws currently in force in Cuba and their application: (i) criminalization of conduct protected by the right to freedom of expression, (ii) incompatibility with the principle of legality, (iii) failure to pursue a legitimate aim, and (iv) lack of necessity and proportionality of the measure restricting the exercise of this right.
175. Some of the above-mentioned provisions prescribe criminal penalties for acts that are protected by the right to freedom of expression and should be openly permitted within the framework of a pluralistic and democratic political system. The fact that certain types of expression may be critical of a particular political regime or ideology, or may be offensive or inconvenient for authorities and public servants, is by no

³⁰⁹ AI. “Your Mind is in Prison”: Cuba’s Web of Control over Free Expression and Its Chilling Effect on Everyday Life. 2017. Pp. 12, 13, 15, 16, 17, 32; AI. [Cuba: Human Rights at a Glance](#). 2015.

³¹⁰ IACHR. Annual Report 1996. OEA/Ser.L/V/II.95. March 14, 1997. Chapter V. Para. 96.

³¹¹ IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 419.

³¹² Martí Noticias. [Son 93 los presos políticos en Cuba, según comisión de DDHH](#) [93 political prisoners in Cuba, according to Human Rights Commission]. April 25, 2016.

³¹³ CCDHRN. [Lista parcial de condenados o procesados en cuba por razones políticas en esta fecha](#) [Partial list of persons convicted or tried in Cuba for political reasons to date]. June 11, 2018.

³¹⁴ IAPA. [Report to the 69th General Assembly 2013](#).

means sufficient cause to justify their persecution through the harshest repressive instruments of the State.³¹⁵

176. In this regard, the Office of the Special Rapporteur has held on numerous occasions that “contempt of public authority laws” are incompatible with the inter-American human rights system because they violate freedom of thought and expression. Such provisions lend themselves to “abuse as a means to silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions.”³¹⁶ Citizens are entitled to “to criticize and scrutinize the officials’ actions and attitudes in so far as they relate to the public office,”³¹⁷ while, as established in Principle 11 of the Declaration of Principles “Public officials are subject to greater scrutiny by society.”³¹⁸ The intolerance of the Cuban authorities toward any form of criticism or political opposition constitutes the main limitation to the rights to freedom of expression and association.³¹⁹
177. The Office of the Special Rapporteur also wishes to call attention to the fact that any restriction or limitation that is based on criminal law must adhere to the strict requirements characteristic of the statutory definition of criminal offenses in order to satisfy the principle of legality in this area, using strict and unambiguous terms that clearly define the punishable conduct.³²⁰ In this regard, the Office of the Special Rapporteur is concerned by the provisions of Cuban law that describe punishable conduct in a vague and general manner, and are subject to broad interpretation, including such ambiguous terms as “material of a subversive nature,” “disrupting domestic order, destabilizing the country, and destroying the socialist State and the independence of Cuba,” as well as allusions to conduct such as offense, disparagement or denigration, the disturbance of international peace, attacks on Cuba’s credit, or causing dissatisfaction among the population, among others.
178. The Office of the Special Rapporteur recalls that, in the case of *Vladimiro Roca Antúnez et al.*, the IACHR referred specifically to the crimes provided for in Articles 100(c) and 125(c) of the Cuban Criminal Code. Under Article 100, the offense of sedition is committed by any persons who, riotously and using violence, “disrupt the socialist order,” “obstruct compliance with any judgment, legal provision, or measure issued by the government,” “make demands,” or “refuse to carry out their duties.” With respect to this law, the IACHR noted that the law is not specific in terms of the punishable conduct and, on the contrary, uses vague and indeterminate concepts to define the offense of sedition, making it impossible to know in advance what conduct is

³¹⁵ CPJ. [Critics Are Not Criminals: Comparative Study of Criminal Defamation Laws in the Americas](#). March 2, 2016.

³¹⁶ IACHR. Annual Report 1994. Chapter V. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995. P. 223.

³¹⁷ IACHR. Annual Report 1994. Chapter V. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995. P. 218.

³¹⁸ Declaration of Principles on Freedom of Expression. Principle 11.

³¹⁹ IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 117.

³²⁰ IACHR. Annual Report 1994. Chapter V. Title IV. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995; IACHR. Report No. 11/96. Case No. 11.230. Francisco Martorell. Chile. May 3, 1996. Para. 55; IACHR. Arguments before the Inter-American Court in the Case of Ricardo Canese v. Paraguay. Transcribed in: I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Para. 72(a).

punishable. As such, they are ambiguous concepts that invite arbitrary judicial interpretation.³²¹ The law is also not exhaustive; rather, it provides for different penalties depending on a variety of open-ended scenarios.³²²

179. Similarly, the IACHR determined in this matter that Article 125(c) of the Criminal Code uses vague terms to define “incitement” to the commission of crimes related to national security. The Office of the Special Rapporteur recalls that the imposition of sanctions for the abuse of freedom of expression based on the incitement of violence—understood as incitement to the commission of crimes, or the breach of public order or national security—must have as a legal requirement the actual, certain, objective, and conclusive proof that the person was not simply expressing an opinion—however harsh, unfair, or disturbing it may be—but that he or she had a clear intent to commit a crime, and the actual, real, and effective possibility of achieving those objectives.³²³
180. A second issue that must be examined in order to determine whether a restriction on fundamental rights is permissible under the American Convention concerns the identification of the aim pursued by the restrictive measure. The Office of the Special Rapporteur observes that the protection of national security and the safeguarding of public order—purposes often appealed to in Cuba—are legitimate aim for establishing subsequent liability for the abuse of freedom of expression, only if they are invoked and interpreted from a democratic perspective.³²⁴ According to Article XXVII of the American Declaration, restrictions on fundamental rights are permissible only to ensure “the rights of others,” “the security of all,” and “the just demands of the general welfare and the advancement of democracy.” Similarly, the inter-American case law has clearly indicated that, in order for any penalty to be imposed in the name of defending the public order, it must be demonstrated that the concept of “order” that is being defended is not authoritarian, but rather that of a democratic order, understood as the existence of structural conditions in which all persons, without discrimination, can freely exercise their rights, vigorously and without fear of being punished for it.³²⁵

³²¹ IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 91.

³²² IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al., Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 93.

³²³ See European Court on Human Rights (ECHR). *Karatas v. Turkey* [GC]. No. 23168/94. ECHR 1999-IV; *Genger v. Turkey* [GC]. No. 24919/94. 8 July 1999; *Okçuoglu v. Turkey* [GC]. No. 24246/94. 8 July 1999; *Arslan v. Turkey* [GC]. No. 23462/94. 8 July 1999; *Erdogdu v. Turkey*. No. 25723/94. § 69. ECHR 2000 – VI; I/A Court H.R.. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Para. 77.

³²⁴ IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 75; See, e.g., I/A Court H.R., *Case of Molina Theissen v. Guatemala*. Merits. Judgment of May 4, 2004. Para. 40.2. In addition, according to the [Global Principles on National Security and the Right to Information](#) (Tshwane Principles) adopted on June 12, 2013, “It is good practice for national security, where used to limit the right to information, to be defined precisely in a country’s legal framework in a manner consistent with a democratic society”; see also *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, adopted in November 1996. Similarly, see IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 101.

³²⁵ Indeed, in the opinion of the Inter-American Court, in general terms, “public order” cannot be invoked to suppress a right guaranteed by the American Convention, to distort it or to deprive it of real content. If this concept is invoked as a basis for limiting human rights, it must be interpreted in strict accordance with the “just demands of a

181. The IACHR has also recognized that national security can only be legitimately invoked if “its genuine purpose and demonstrable effect is to protect a country’s existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.”³²⁶ No democratic idea of “national security” or “public order,” which are based on respect for human rights and the subordination of public servants to the law, can be otherwise compatible with this proposition.
182. Any restriction must also be *necessary* and *proportionate*. In order for the restriction to be legitimate, its certain and compelling need must be clearly established; that is, that such a legitimate and imperative objective cannot reasonably be achieved by other means less restrictive of human rights. In particular, the IACHR has considered that, in order to be necessary, the restriction imposed must have as a legal requirement the actual, certain, objective, and conclusive proof that the person was not simply expressing an opinion—however harsh, unfair, or disturbing it may be—but that he or she had a clear intent to commit a crime, and the actual, real, and effective possibility of achieving those objectives.³²⁷
183. The restrictions must also be *strictly proportionate* to the legitimate aim for which they are intended. In order to determine the strict proportionality of the limiting measure, it must be determined whether the sacrifice of freedom of expression that it entails is exaggerated or excessive in view of the advantages obtained.³²⁸ On this point, in the *Case of Vladimiro Roca Antúnez et al.*, the IACHR found that the imposition of prolonged pretrial detention, the confiscation of items, criminal prosecution for the offense of sedition, the resulting imposition of severe prison sentences and other accessory penalties are by any reckoning excessive.³²⁹ The Office of the Special Rapporteur recalls that prosecutions and convictions have a systemic effect on the general conditions for the exercise of the rights concerned. In addition to the individual dimension of the impact of these measures, criminalization has an intimidating and chilling effect on society as a whole.³³⁰

democratic society.” I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Para. 64; IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 80.

³²⁶ IACHR. Report on Terrorism and Human Rights. OEA/Ser.L/V/II.116. Doc. 5 rev. 1 corr. October 22, 2002. Para. 329, citing the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*. Principle 2(a).

³²⁷ IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 82; IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al., Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 121.

³²⁸ IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 119.

³²⁹ IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 122.

³³⁰ IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al., Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 122.

184. Finally, the Office of the Special Rapporteur notes that the information received indicates that the prosecutions criminalizing freedom of expression in Cuba tend to involve violations of the right to due process.³³¹ The trials leading up to these incarcerations have been described as “prefabricated” because of their lack of due process guarantees.³³² The Commission has repeatedly stated that there is no proper separation of powers between the branches of the Cuban government to ensure that the justice system is free from influence from the other branches. In fact, Article 121 of Cuba’s Constitution establishes that “the courts are a system of state bodies, structured with functional independence from any other and hierarchically subordinate to the National Assembly of People’s Power and the Council of State.”

³³¹ IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 225-231; IACHR. [Annual Report 2000. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.111. Doc. 20 rev. April 16, 2001. Para. 56.

³³² IAPA. [Report to the Midyear Meeting 2017](#).

CHAPTER IV

SOCIAL PROTESTS AND DEMONSTRATIONS

IV. SOCIAL PROTESTS AND DEMONSTRATIONS

185. There is systematic repression in Cuba by State agents and groups loyal to the ruling party, who seek to prevent peaceful protests or meetings organized by human rights defenders, activists, or government opponents to protest human rights violations and/or political or social issues. **Article 54 of the Cuban Constitution of 1976** establishes the right to freedom of assembly in the following terms:

Article 54.- The rights of assembly, demonstration, and association are exercised by workers, both manual and intellectual, peasants, women, students, and other sectors of the working people, for which they have the necessary means. Mass and social organizations have every facility for the development of such activities in which their members enjoy the broadest freedom of speech and opinion, based on the unrestricted right to initiative and criticism.

186. The Office of the Special Rapporteur observes that, according to the text of the constitution, this right is enjoyed not by all people in general, but rather by “workers, both manual and intellectual, peasants, women, students, and other sectors of the working people,” including “mass and social organizations” recognized by the State. This means that the right is guaranteed only to those who are regarded as defending the political orientation of the State. Freedom of peaceful assembly is not guaranteed to individuals or groups of individuals who wish to demonstrate or protest for any reason; in principle, only demonstrations organized by or in support of the State are deemed to be “in accordance with the law.”
187. The Office of the Special Rapporteur notes that **Article 61 of the Draft Constitution**³³³ provides that “The rights of assembly, demonstration and association, for lawful and peaceful purposes, are recognized by the State provided that they are exercised with respect for public order and compliance with the provisions of the law.”³³⁴ Although entitlement to this right is not conditioned upon membership in specific organized groups like in the text of the current constitution, the broad interpretation and application of the concept of “public order” in Cuba—including through the abusive application of the criminal law (IV.C)—and the regulatory framework currently in force, may make it impossible in practice to exercise this right without being subject to obstacles and retaliation.
188. This constitutional framework is complemented by the criminal laws that penalize the exercise of the right to social protest. Article 209.1 of the Criminal Code imposes fines or prison sentences from 1 to 3 months on any person who takes part in demonstrations that violate the provisions regulating the right of assembly.³³⁵ There

³³³ In the new Constitution approved on February 24, 2019, it becomes Article 56, without modifications. According to this Article: “The rights of assembly, demonstration and association, for lawful and peaceful purposes, are recognized by the State provided that they are exercised with respect for public order and compliance with the provisions of the law.”

³³⁴ [Proyecto de Constitución de la República de Cuba](#) [Draft Constitution of the Republic of Cuba]. Art. 61.

³³⁵ Criminal Code. Law of December 29, 1987. Art. 209; Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 14.

are also other statutory definitions of criminal offenses in the Cuban legal system that criminalize social protest. The IACHR referred to this aspect in the *Case of Vladimiro Roca Antúnez et al.*, in which it observed that the terms used in Article 100 of the Criminal Code to define the offense of sedition³³⁶ favor the criminalization of social protest, civic activism, or any criticism of public authorities. A social protest could be understood as the “riotous” act of a group or multitude of people, intended to “make demands” or to “obstruct compliance with any [...] measure issued by the government,” under the aforementioned Article 100. In addition, the phrase “disrupt the socialist order” may be interpreted to penalize the legitimate right of individuals to express, in association with others, controversial opinions, messages that lead to protest actions, and legitimate demands on public authorities about the problems affecting a population or group.³³⁷

189. The information received indicates that, in Cuba, the State has far-reaching control over demonstrations, which are reportedly monitored. In general, activities in which anti-government dissidents are involved tend to be broken up, and the participants are often violently repressed and detained for short periods of time.³³⁸ Consistent reports indicate that it is a common practice for authorities to use force to prevent the exercise of the right of assembly, including through public beatings in the streets, public humiliations, the dragging of demonstrators by their hair, and other cases of physical assault.³³⁹ The IACHR has also granted precautionary measures to protect the life and integrity of persons who have been threatened and assaulted for

³³⁶ Criminal Code. Art. 100.- “Any persons who riotously and having either expressly or tacitly agreed to disrupt the socialist order, and do so using violence; or disrupt the holding of elections or referenda, or obstruct compliance with any judgment, legal provision or measure issued by the government, or by a civil or military authority in the exercise of their respective functions, or refuse to obey them, or make demands, or refuse to carry out their duties [...]”

³³⁷ IACHR. Report No. 27/18. Case 12.127. Merits (publication). Vladimiro Roca Antúnez, et al. Cuba. OEA/Ser.L/V/II.167. Doc. 32. February 24, 2018. Para. 92.

³³⁸ IACHR. [Annual Report 2013. Chapter IVB Cuba](#). 2013. Para. 169; IAPA. [Report to the Midyear Meeting 2014](#).

³³⁹ IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 452; IACHR. [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Paras. 429, 434; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 320; IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 252; IACHR. [Annual Report 2011](#). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Paras. 247; 250-251; IACHR. [Annual Report 2010](#). OEA/Ser.L/V/II. Doc. 5 corr. 1. March 7, 2011. Para. 402; IACHR. [Annual Report 2008](#). OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Para. 233; IACHR. [Annual Report 2002. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Paras. 104-105; IACHR. [IACHR Concerned Over Assault on Beneficiary of Precautionary Measures in Cuba](#). Press Release 118/11. November 10, 2011.

exercising their right to social protest.³⁴⁰ Cases involving the excessive use of force against demonstrators tend to go unpunished.³⁴¹

190. Organizers and participants have also been subject to arrests—normally of short duration—detentions, assaults, and threats. According to the information received, they are frequently threatened or prosecuted for crimes such as public disorder, attack against a public authority, and contempt of public authority³⁴² (IV.C). Detainees were in some cases reportedly beaten, kept incommunicado, subjected to humiliating treatment, and even forced to recite revolutionary slogans and participate in activities in support of the regime.³⁴³ Peaceful demonstrators are reportedly routinely detained, often in anticipation of future protests, for exercising or attempting to exercise the right to protest.³⁴⁴ For example, in March 2016, just before former President Obama arrived in Havana, Ladies in White and other members of the opposition were detained after their peaceful demonstration following Sunday mass.³⁴⁵ Police arrests and harassment of protesters often increase during the commemoration of Human Rights Day.³⁴⁶
191. A number of other recent incidents have also been cause for concern. In November 2016, graffiti artist Danilo Maldonado “El Sexto” was arrested for shouting “Down with Fidel! Down with Raúl!” during the live broadcast that followed Fidel Castro’s death. In May 2015, Maldonado had already been arrested on a previous occasion for putting on an artistic performance in a Havana park with two pigs that had been painted green and given the names Fidel and Raúl. His defense lawyer, a U.S. citizen, was reportedly arrested upon her arrival in the country in December 2016.³⁴⁷

³⁴⁰ For instance, in June 2012, the IACHR granted precautionary measures on behalf of Damaris Moya Portieles and her 5-year-old daughter, in Cuba. The request for precautionary measures stated that Moya Portieles is a human rights advocate, and that she had reportedly been deprived of her liberty on repeated occasions as a result of her participation in demonstrations in her country. The request indicated that, in May 2012, during a pro-freedom vigil in Cuba, Security police officers had again detained her, beaten her, and threatened to rape her daughter. IACHR. PM 163/12. *Damaris Moya Portieles and daughter, Cuba*. Similarly, see IACHR. PM 214/10. *Reina Luisa Tamayo Danger. Cuba*. July 20, 2010.

³⁴¹ IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Paras. 9-34; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. Paras. 9-45; IACHR [Annual Report 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II. Paras. 6-21.

³⁴² DDC. [El poco conocido Gulag del Caribe](#) [The little-known Caribbean Gulag]. August 16, 2018.

³⁴³ Martí. [Lisandra Rivera Rodríguez: ‘58 días en una celda por negarse a obedecer a sus carceleros’](#) [Lisandra Rivera Rodríguez: “58 days in a cell for refusing to obey her jailers”]. February 27, 2017; Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 14.

³⁴⁴ For example, on the eve of the meeting of the Community of Latin American and Caribbean States (CELAC) in January 2014, many opponents were arbitrarily arrested in order to prevent a demonstration that was expected to attract considerable international attention. Martí. [Comienzan reuniones previas a CELAC con arrestos a opositores](#) [Pre-CELAC meetings begin with arrests of opponents]. January 25, 2014.

³⁴⁵ Libertad Digital. *50 detenidos en una marcha de las Damas de Blanco durante la visita de Obama a Cuba* [50 arrested at a march of the Ladies in White during Obama’s visit to Cuba]. March 21, 2016.

³⁴⁶ In 2016, between 150 and 200 dissidents were arrested as a preventive measure, and some were harassed in their homes to keep demonstrations from taking place. Martí. *Gobierno cubano silencia celebraciones de la oposición en Día de Derechos Humanos* [Cuban Government Silences Opposition Celebrations on Human Rights Day]. December 11, 2016.

³⁴⁷ Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 13.

192. On July 26, 2017, three demonstrators were detained in Santiago de Cuba at a protest that took place during the “emblematic celebration of the regime on July 26, 2017, the anniversary of the failed assault on the Moncada Barracks.” Alberto Antonio and Leonardo Ramírez Odio, and their father Alberto de la Caridad Ramírez Baró, members of the Citizens’ Committee for the Defense of Human Rights in Cuba, were reportedly accused of public disorder and transferred to the Aguadores prison awaiting trial. They were reportedly released in October 2017.³⁴⁸
193. Similarly, in June 2017, four activists from the Cuban Patriotic Union (UNPACU), two of them members of the Ladies in White, as well as seven members of the Orlando Zapata Tamayo Civic Action Group, were reportedly tried after awaiting trial for more than a year. The first four activists were reportedly arrested and taken to detention centers after participating in a demonstration on April 15, 2016, in Havana’s Parque de la Fraternidad. The other seven were reportedly arrested and released on bail. Lady in White Marta Sánchez has reportedly remained in custody since March 11, 2018³⁴⁹ on charges of “contempt of public authority” and “resistance” for protesting during the Cuban elections.³⁵⁰ There is also the case of Daniel Llorente, known as “the dissident with the flag,” who was arrested for publicly waving a United States flag and later held against his will in a psychiatric hospital.
194. Social protest is a manifestation of the right to freedom of expression and the right of assembly, recognized by Articles XXI and IV of the American Declaration. The Office of the Special Rapporteur has stated that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society.”³⁵¹ Social protest is a fundamental tool for the defense of human rights, essential for critical social and political speech critical of the activities of government authorities, as well as for the establishment of positions and plans of action regarding human rights. Under Articles IV, XXI, and XXII of the Declaration,³⁵² in order for a restriction on these rights to be legitimate, it must be expressly set forth by law, clearly and precisely in both substantive and procedural terms, be justified by a compelling social interest, and be genuinely necessary in a democratic society and proportionate to the accomplishment of that purpose.³⁵³

³⁴⁸ ICLEP. [Liberados los tres activistas que se manifestaron el 26 de julio en la Catedral de Santiago](#) [Three activists who demonstrated in the Santiago Cathedral on July 26 released from custody]. October 20, 2017; Martí Noticias. [Liberan a opositores que protestaron el 26 de julio en Santiago de Cuba](#) [Opponents who protested on July 26 in Santiago de Cuba are released]. October 19, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 89.

³⁴⁹ Martí Noticias. [Dama de Blanco Martha Sánchez sigue detenida, policía rodea sede del grupo opositor](#) [Lady in White Martha Sanchez still detained, police surround opposition group’s headquarters]. April 8, 2018.

³⁵⁰ Diario de Cuba. [A horas del Primero de Mayo, allanamientos y arrestos de activistas de la UNPACU y las Damas de Blanco](#) [Hours before May Day, raids and arrests of UNPACU and Ladies in White activists]. April 30, 2018.

³⁵¹ United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, Special Rapporteur for Freedom of Expression of the IACHR. [Joint declaration on violence against journalists and media workers in the context of protests](#). September 13, 2013.

³⁵² IACHR. [Second Report on the Situation of Human Rights Defenders in the Americas](#) OEA/Ser.L/V/II. Doc. 66, December 31, 2011. Para. 107; UN. Human Rights Council. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. A/HRC/23/39. 24 April 2013. Para. 47.

³⁵³ IACHR. [Annual Report 2002](#). Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV. Para. 31; [Annual Report 2005](#). Volume III. Report of the Office of the Special Rapporteur for Freedom of

195. General prohibitions and the establishment of authorization requirements for individuals to exercise their right to participate in peaceful protests are inherently unnecessary and disproportionate. Nor can its regulation be intended to create the basis for a ban on assembly or demonstration.³⁵⁴ In short, the actions of State agents should not discourage the right to assemble and participate in social protests, but rather facilitate and protect it.³⁵⁵
196. The use of force at public demonstrations should be exceptional, and under circumstances that are strictly necessary according to internationally recognized principles.³⁵⁶ The IACHR has stated that “it is possible to impose reasonable limits on demonstrators to preserve the peace as well as to disperse demonstrations that are turning violent.”³⁵⁷ Nevertheless, such measures “must not discourage the right of assembly, but rather protect it, so that the dispersal of a demonstration must be justified by the duty to protect persons.”³⁵⁸

Expression. Chapter V. Para. 2; [Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II.124. Doc. 5 rev. 1. March 7, 2006. Para. 55; UN. Human Rights Council. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. A/HRC/20/27. May 21, 2012. Para. 15; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. A/HRC/23/39. April 24, 2013. Para. 47; [Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests](#). A/HRC/22/28. January 21, 2013. Para. 5.

³⁵⁴ IACHR. [Annual Report 2005](#). Volume III. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V. “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly”. Paras. 91-92.

³⁵⁵ IACHR. [Annual Report 2007](#). Chapter IV. Venezuela. Paras. 260-261; [Annual Report 2015](#). Chapter IV.A. “The Use of Force”. Para. 67.

³⁵⁶ IACHR. [Annual Report 2014](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 260; IACHR. [Annual Report 2008. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Paras. 97-100; IACHR. [Annual Report 2007](#). OEA/Ser.L/V/II.130. Doc. 22 rev. 1. December 29, 2007. Paras. 142-145.

³⁵⁷ IACHR. [Democracy and Human Rights in Venezuela](#). OEA/SER.L/V/II. Doc. 54. December 30, 2009. Para. 134.

³⁵⁸ IACHR. [Democracy and Human Rights in Venezuela](#). OEA/SER.L/V/II. Doc. 54. December 30, 2009. Para. 134.

CHAPTER V

LIMITATIONS ON THE RIGHT TO
FREEDOM OF EXPRESSION ON THE
INTERNET

V. LIMITATIONS ON THE RIGHT TO FREEDOM OF EXPRESSION ON THE INTERNET

197. If anything has changed recently in the field of freedom of expression in Cuba, it has mainly been due to the slow and gradual development of communication technologies which, even with severe restrictions, has gained relevance in a country whose legal media are controlled by a one-party State (III.A).³⁵⁹ In recent years, the use of the Internet and the development of digital media has opened up spaces for the circulation of information and ideas outside official control.³⁶⁰ It has been thanks to these technologies that independent media have emerged, in addition to blogs and websites dedicated to cultural groups, activism, and social demands.³⁶¹
198. The emergence of the Internet as a platform for content distribution was viewed with absolute suspicion by the Cuban authorities, who considered it a “subversive” medium.³⁶² The regime's main cadres seem to recognize the importance of the platform, but this has not led to any changes in media policies and regulation in Cuba. Indeed, in general terms, the current political framework understands that the Internet is the main platform for the dissemination of content and knowledge, on the condition that it does not contravene the rules and principles aimed at maintaining and favoring the regime.³⁶³ Any use of the Internet for other purposes, particularly open criticism of the system, runs the risk of being removed, blocked, or filtered from the web by authorities.
199. According to the information available, access to the web is seriously constrained by (i) highly restrictive and ambiguous legal provisions, (ii) the limited connectivity of the Cuban population, (iii) the blocking and censorship of critical media, and (iv) web surveillance, as discussed in this section. The risks of persecution and repression

³⁵⁹ CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016.

³⁶⁰ Infobae. May 7, 2016. [Internet en Cuba: lenta y cara, pero cada vez más masiva](#) [Internet in Cuba: slow and expensive, but increasingly massive]; CubaNet. February 8, 2016. [ETECSA, un monopolio capitalista en Cuba](#) [ETECSA, a capitalist monopoly in Cuba]; Knight Center for Journalism in the Americas. April 16, 2016. [ISOJ 2016: Yoani Sánchez explains how technology has made Cubans more free](#).

³⁶¹ Digital media in Cuba began almost a decade ago with the emergence of a number of blogs that were operated on a strictly individual basis. Many of these projects are based outside Cuba and work in coordination with actors within the country. CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.13.

³⁶² In 1995, Fidel Castro believed that the Internet would serve as a “Trojan horse” seeking to promote subversion and division, or an instrument for the dissemination of imperialist propaganda and the manipulation of consciences. Fidel Castro himself described the Internet in 2012 as “a revolutionary instrument that allows us to receive and transmit ideas, in both directions, something that we must know how to use.” La pupila insomne. [Fidel Castro: “Internet es un instrumento revolucionario”](#). [Fidel Castro: “Internet is a revolutionary instrument”]. March 7, 2012.

³⁶³ For example, in a session before Parliament on “the computerization of Cuban society,” Miguel Díaz-Canel reportedly stated that “On the ideological side, one of the impacts has to do with the content creation, and in this regard our platforms must be oriented toward knowledge management, so that people can enhance their spiritual and cultural values. We have to be able to produce content in cyberspace in favor of the Revolution,” Granma. [Informatización de la sociedad: principios y resultados de una política](#) [Computerization of society: principles and results of a policy]. July 13, 2017; See also, Martí. [Miguel Díaz-Canel clama por controlar el contenido de Internet en Cuba](#) [Miguel Díaz-Canel calls for control of Internet content in Cuba]. July 13, 2017.

against those involved in this type of activity seriously undermine progress in terms of press freedom on the Internet in Cuba.³⁶⁴

200. The Office of the Special Rapporteur recalls that the Internet is a unique tool for unlocking the enormous potential of human rights, and in particular the right to freedom of expression, across broad sectors of the population. The relevance of the Internet as a platform for the enjoyment and exercise of human rights is directly linked to the architecture of the network and the principles that govern it, including the principles of openness, decentralization, and neutrality. The work of the State, the development of public policies, and the actions of individuals in the digital environment must adhere to the principles of equal access, pluralism, non-discrimination, and privacy, as well as net neutrality and multisectoral governance as cross-cutting components of these principles.³⁶⁵ Far from these standards for a free, open, and inclusive Internet, regulatory developments and practices in Cuba create a controlled and biased space, as evaluated in this section.

A. Regulating the use of web-based networks and communication

201. There is currently a set of decrees, ministerial resolutions, and different regulations governing the use of new technologies in Cuba. The Office of the Special Rapporteur refers below to some of the decrees it considers to have the greatest impact on freedom of expression.

Legal provision	Entity	Purpose
Decree No. 209 of 1996	Presidency of the Council of Ministers	Regulates access from Cuba to global computer networks; establishes that policy in this area must be implemented in accordance with national interests; access will be selective and subject to prior authorization from the Interministerial Commission
Resolution No. 56 of 1999	Ministry of Culture	Regulates the requirements and procedures for publishing Cuban serial publications on the Internet; requires that a certificate of registration be obtained in advance for each serial publication on the Internet
Resolution No. 92 of 2003	Ministry of Information Technology and Communications	Introduces a number of restrictions on the principal modes of Internet use
Resolution No. 127 of 2007	Ministry of Information Technology and Communications	Enacts the Information Technology Security Regulations that prohibit the dissemination by any person or legal entity, through public data transmission networks of information contrary to the interests of society, morals, decency, and the integrity of persons, or that harms national security.
Resolution No. 179 of 2008	Ministry of Information Technology and Communications	Enacts the Regulations concerning the activity and responsibilities of another group of intermediaries
Resolutions No. 72 & 73 of 2009	Ministry of Culture	Creates the National Registry of Websites attached to the Periodicals Bureau of the Cuban Book Institute, and enacts its Regulations

³⁶⁴ CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016

³⁶⁵ IACHR. Office of the Special Rapporteur. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13 December 31, 2013; IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017.

202. ***Decree No. 209 of 1996 on the Republic of Cuba's Access to the Global Network.*** This Decree issued by the Presidency of the Council of Ministers regulates access from Cuba to global computer networks.³⁶⁶ Article 11 states that access to global computer networks (i.e. the WWW normally accessed from most of the world) “shall be established in order to guarantee access to full service from the Republic of Cuba to existing global computer networks, and to those that may be created in the future, in a regulated manner.” It is important to underline the reference to the notion of regulation, which is developed in the subsequent articles.
203. Thus, Article 12 states that policy in this regard must always be implemented “in accordance with national interests,” and goes on to indicate the need to ensure that “information disseminated is accurate, and that information obtained is in line with our ethical principles, and does not affect the interests or security of the country.” Articles 13 and 14 set those controls by providing that “access to the services of global computer networks shall be selective,” and by requiring administrative authorization to access the Internet, which is granted by the Interministerial Commission for Matters Concerning Global Computer Networks [*Comisión Interministerial para la Atención de lo Relacionado con Redes Informáticas de Alcance Global*].³⁶⁷
204. The selective nature and requirement for prior authorization to access the web run counter to the principle of universal access, according to which “All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition [...]”³⁶⁸ As the Office of the Special Rapporteur has indicated, contrary to the provisions of the Decree, this means taking actions to progressively promote universal access not only to infrastructure but also the technology necessary for its use and to the greatest possible amount of information available on the Internet, and to eliminate arbitrary barriers to access to infrastructure, technology and information online.³⁶⁹
205. On the other hand, the requirement to align oneself with national interests is openly at odds with pluralism and diversity, essential conditions for the process of public deliberation and the exercise of freedom of expression that must be preserved in the digital environment. Public policies on the subject must protect the multidirectional nature of the network and promote platforms that allow people to search for and disseminate information and ideas of all kinds, not just those that are in the national interest.³⁷⁰ In addition, the requirement that the information must be “accurate and

³⁶⁶ President of the Council of Ministers. [Decreto 209 de 1996 que regula el acceso desde Cuba a las redes informáticas de alcance global](#) [Decree 209 of 1996, regulating access from Cuba to global computer networks]. June 14, 1996.

³⁶⁷ This Commission was created by Decree 209 of 1996, and according to Article 2 is presided over by the Minister of the Iron and Steel, Metallurgical and Electronic Industries, and is composed of the Ministries of Science, Technology, and the Environment; Communications; the Interior; the Revolutionary Armed Forces; and Justice.

³⁶⁸ Declaration of Principles on Freedom of Expression. Principle 2.

³⁶⁹ IACHR. Office of the Special Rapporteur. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Para. 15.

³⁷⁰ IACHR. Office of the Special Rapporteur. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Paras. 18 & 19; IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 8.

in line with the ethical principles, interests, and security of the country” can only be satisfied by subjecting web content to strict control or prior censorship, blocking access to an enormous amount of material available on the web.

206. **Resolution No. 56 of 1999 on the authorization of serial publications on the Internet.** This resolution governs the requirements and procedures for the publication of serial publications on the Internet and subjects those publications to the existing legal system for paper publications, under Resolution No. 81 of 1997, previously cited by the Office of the Special Rapporteur (III.B).³⁷¹ In effect, it requires that every Cuban serial publication “that intends to be circulated, printed, or disseminated over the Internet” must have the specific approval of the National Registry of Serial Publications, regardless of the node, institution, or country that it uses as a gateway to that network. In addition, it imposes the requirement that persons disseminating information on the Internet must “maintain objectivity and high professional standards,” and “exhibit the most genuine national values,” among other things. It is also troubling to note that the registration application must present, *inter alia*, the rationale for “why—based on its objectives and thematic profile—it will be beneficial to the national interest to post the publication on the Internet [...]”³⁷²
207. The Office of the Special Rapporteur is of the opinion that this Resolution constitutes a form of prior censorship and seriously contravenes the principles of universal access, pluralism, and nondiscrimination, as well as net neutrality and multi-sectoral governance. It emphasizes that, if obtaining authorization prior to the publication of paper materials is already excessive because it involves arbitrary government interference in a fundamental element of the exercise of freedom of expression, such a requirement with respect to electronic publication is even more disproportionate and allows for a prior control that is incompatible with freedom of expression. It further recalls that “Approaches to regulation developed for other means of communication—such as telephony or broadcasting—cannot simply be transferred to the Internet.”³⁷³
208. **Resolution No. 92 of 2003 on email and chat access, and intermediary liability.** This resolution introduces a number of restrictions that are particularly relevant to two of the principal modes of Internet use: email and chat services.³⁷⁴ It establishes that Cuban websites that offer email services “will not be able to automatically create

³⁷¹ Ministry of Culture. [Resolución 56 de 1999 sobre los requisitos y procedimientos para la inserción de publicaciones seriadas cubanas en Internet](#) [Resolution 56 of 1999 on the requirements and procedures for publishing Cuban serial publications on the Internet]. June 16, 1999.

³⁷² Ministry of Culture. [Resolución 56 de 1999 sobre los requisitos y procedimientos para la inserción de publicaciones seriadas cubanas en Internet](#) [Resolution 56 of 1999 on the requirements and procedures for publishing Cuban serial publications on the Internet]. June 16, 1999. Annex: Requirements and Procedure for approval of the dissemination of a serial publication via the Internet. Arts. 1.1 & 2.1.1.

³⁷³ United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE), Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 1, 2011. Joint Declaration on Freedom of Expression and the Internet. Point 1(c); IACHR. Office of the Special Rapporteur. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Para. 12.

³⁷⁴ Ministry of Information Technology and Communications. [Resolution 92 of 2003](#). October 14, 2003.

email accounts (webmail) for individuals and legal entities that are not duly authorized.” With regard to chat services, it establishes that “They must ensure that individuals or legal entities that are only approved for access to national navigation are not able to use the International Chat service.” The Office of the Special Rapporteur considers these to be arbitrary restrictions on the free navigation and use of networks and a disproportionate interference with individual freedom without explanation or justification.

209. As for the role of intermediaries, the Office of the Special Rapporteur recalls the existing consensus on the principle of not holding them strictly liable for third-party content. According to that principle, “No one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so.”³⁷⁵ This rule is the opposite of a model of strict liability, whereby intermediaries are liable for unlawful content generated by third parties.³⁷⁶
210. A system of strict liability like the abovementioned would be contrary to the State’s duty to favor an institutional framework that protects and guarantees the right to freely seek, receive, and disseminate information and opinions.³⁷⁷ The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that “Holding intermediaries liable for the content disseminated or created by their users severely undermines the enjoyment of the right to freedom of opinion and expression, because it leads to self-protective and over-broad private censorship, often without transparency and the due process of the law.”³⁷⁸
211. **Resolution No. 127 of 2007 on Information Technology Security.** Through this resolution, the Ministry of Information Technology and Communications enacted the Regulations on Information Technology Security. Article 79 is of particular concern, as it prohibits “the dissemination by any individual or legal entity, through public data transmission networks, of information that is contrary to the interests of society, morals, decency, and the integrity of persons, or that harms national security.”³⁷⁹

³⁷⁵ United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE), Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#). Point 2(a); This rule is covered to the fullest extent by the Communications Decency Act (CDA) of the United States. US Government Printing Office. United States Code. Section 47. §230 (c)(1); IACHR. Office of the Special Rapporteur. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13 December 31, 2013. Para. 94.

³⁷⁶ IACHR. Office of the Special Rapporteur. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Para. 95.

³⁷⁷ IACHR. Office of the Special Rapporteur. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Para. 98.

³⁷⁸ United Nations. General Assembly. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#) Frank La Rue. A/HRC/17/27. 16 May 2011. Para. 40.

³⁷⁹ Ministry of Information Technology and Communications. Resolution No. 127 of 2007. Art. 79.

212. The Office of the Special Rapporteur recalls that the mandatory blocking or suspension of entire websites, platforms, conduits, IP addresses, domain name extensions, ports, network protocols, or any other type of application, as well as measures aimed at removing links, data, and web sites from the server on which they are hosted, constitute a restriction that will be admissible only in exceptional cases.³⁸⁰ In exceptional cases of clearly illegal content or speech that is not covered by the right to freedom of expression—such as war propaganda and hate speech inciting violence, direct and public incitement to genocide, and child pornography—the adoption of mandatory measures to block and filter specific content is admissible.³⁸¹
213. **Resolution No. 179 of 2008, Enacting the Regulations for Public Access Internet Service Providers.** This resolution enacts the regulations governing the activity and responsibilities of a group of intermediaries:³⁸² public access Internet providers (ISP). Among the obligations it imposes on these providers in Article 19, the following are of particular note: “to ensure that no software is used with cryptographic systems or encrypted file transfer”; “to take the necessary measures to prevent access to sites whose contents are contrary to the interests of society, morals, and decency; as well as the use of applications that affect the integrity or security of the State”; and “to establish procedures to identify the origin of access, as well as to record it and maintain such records for a period of not less than one (1) year.” Those ISPs that fail to perform these and various other duties correctly are subject to the temporary or permanent suspension of their contract with the Cuban Telecommunications Company (*Empresa de Telecomunicaciones de Cuba S. A. - ETECSA*), a state-owned company with a monopoly on telecommunications services.
214. Thus, direct obligations to monitor and “regulate” online content are imposed on intermediaries, in this case ISPs, on the basis of extremely vague criteria such as “content contrary to the interests of society, morals, and decency.” This vagueness, added to the strict liability regime established, would foreseeably lead to the strict censorship of any material that may be deemed to fit those criteria. In addition, the prohibition of the use of cryptographic systems to guarantee the privacy of users’ communications is contrary to the obligation of ISPs to safeguard that privacy, also suggesting that the authorities are interested in having easy access to exchanges on the Internet.
215. **Resolution No. 72 and Resolution No. 73 of 2009.** Resolution No. 72 creates the National Registry of Websites attached to the Periodicals Bureau of the Cuban Book

³⁸⁰ United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE), Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#). Point 3(a); IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 149; IACHR. [Annual Report 2010](#). Volume I. Chapter IV. OEA/Ser.L/V/II. Doc. 5 corr. 1. March 7, 2011. Para. 822.

³⁸¹ IACHR. Office of the Special Rapporteur. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Para. 85.

³⁸² Ministry of Information Technology and Communications. [Resolución 179 de 2008 por la que se aprueba el Reglamento para los proveedores de servicios de acceso a Internet del público](#) [Resolution 179 of 2008, enacting the Regulations for Public Access Internet Service Providers]. November 13, 2008.

Institute, and requires the registration of “the websites of national legal entities or legal entities based in the country [...] and; the websites of international organizations hosted on Cuban servers.”³⁸³ The regulations governing the registry were enacted through Resolution No. 73 of the same date. It provides that those responsible for each website must submit a registration application. In view of the noted restrictions on the creation of associations in Cuba, it is of particular concern to observe that in the “case of associations, foundations, civil societies, [they must] present the endorsement of their liaison body, giving its approval of the website,” which in practice is not possible. (IV.A.ii). It is also important to note that the registration requirements include providing all the information on the website, including URLs, service provider, thematic profile, objective, target audience, content sections, services, and interactivity and multimedia resources, among others.³⁸⁴

216. It further states that the registration, which must be renewed each year, can be suspended, cancelled, or denied to websites that: (i) do not comply with the requirements established by the legal provisions in force regarding the use of the Internet, or other provisions; (ii) disseminate, cover, or protect unregistered sites or periodical publications not approved by the Periodicals Bureau under their domain; (iii) disseminate and/or publish content contrary to the interests of society, morals, decency, and the integrity of persons; or (iv) are inconsistent with the profile or objectives approved for the publication of the website. It also contains a general provision for the cancellation of registration, without prior notice, “in cases of serious violations of ethics and morals, or other violations incompatible with the principles of our socialist society.”³⁸⁵ In the opinion of the Office of the Special Rapporteur, the website registration requirement is a form of prior censorship, incompatible with the exercise of the right to freedom of expression on the Internet.

B. Connectivity and universal access

217. The Office of the Special Rapporteur has received information proving that the Cuban population faces serious obstacles to connectivity and universal Internet access.³⁸⁶ Although Cuba first connected to the worldwide web in 1996, the private use of personal computers was not authorized by the State until 2008.³⁸⁷ In spite of the government’s claims that it intends to promote the widespread use of the Internet on

³⁸³ [Resolution No. 72](#) of the Ministry of Culture of September 16, 2009. Art. 2.

³⁸⁴ [Resolution No. 73](#) of the Ministry of Culture of September 16, 2009. Arts. 7, 12, 13

³⁸⁵ [Resolution No. 73](#) of the Ministry of Culture of September 16, 2009. Arts. 10, 11, 18.

³⁸⁶ IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 418, 453, 462, 463; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 308; IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 227; IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 172, 173, 175, 176, 179, 180; IACHR. [Annual Report 2008. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 90; IACHR. [Annual Report 2007](#). OEA/Ser.L/V/II.130. Doc. 22 rev. 1. December 29, 2007. Para. 134, 135, 136, 137, 138; IACHR. [Annual Report 2000. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.111. Doc. 20 rev. April 16, 2001. Para. 43.

³⁸⁷ CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. A year earlier, the number of people who had operated a computer was 33.2%, but only 5.2% had done so from home, according to official Cuban figures.

the island, over the years Cuba has been ranked last in Latin America in terms of the spread of information and communication technologies.

218. According to the International Telecommunication Union (ITU), in 2017, Cuba ranked 137 out of 176, having fallen two spots from the previous year.³⁸⁸ Figures citing independent estimates and government statistics estimate that somewhere between 5% and 27% of the population have access to the Internet, but none of the estimates clearly indicate the methodology used to calculate those figures. In the case of government statistics, the figure does not distinguish between connecting to the Internet and Cuba's intranet, a closed network of sites hosted mainly on Cuban domains.³⁸⁹
219. Cuba's Ministry of Information Technology and Communications reportedly controls the Internet in the country, mainly through the state-run Cuban Telecommunications Company (ETECSA). There is a dual system: an intranet that is provided to the public, with filtered content that is subject to government restrictions; and the global Internet, which is inaccessible to the Cuban population.³⁹⁰
220. In fact, ETECSA offers Internet access that only allows users to connect to Cuban websites (.cu) for some US\$ 0.60 per hour. However, for those who wish to connect to the global Internet, the price increases exponentially. Those fees, usually US\$ 2.00 an hour, are exorbitant in a country where the majority of formal employees work for the State and earn approximately US\$ 30.00 a month. Based on the principle of universal access, this Office places particular importance on those measures that seek to ensure that pricing structures are inclusive, so as not to hinder access.³⁹¹ Moreover, not all foreign sites may be accessible, since authorities have reportedly blocked access to those considered undesirable for the Cuban public (VI.C).³⁹²
221. Service for the Cuban population is reportedly provided mainly through cybercafés (*salas de navegación*). Wi-Fi hotspots can be found in hotels, at a price and on terms not affordable to Cubans, and in public parks for the price—clearly burdensome in view of the average Cuban's income—of US\$ 2.00 an hour. Hotspots have also begun to be set up in the streets of towns and cities.³⁹³ In public places, the connection is reportedly very slow. It is reportedly only available in the provincial capitals, and at times known dissidents are barred from entering. Employees are reportedly able to gain controlled access to the intranet in places of employment or government institutions.³⁹⁴ Internet speeds are reportedly also poor, and the average download

³⁸⁸ ITU. [Measuring the Information Society Report 2017](#). P. 31.

³⁸⁹ CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.27.

³⁹⁰ AI. [Cuba's Internet paradox: How controlled and censored Internet risks Cuba's achievements in education](#). 2017; AI. [Six facts about censorship in Cuba](#). 2016; FH. [Freedom on the Net 2016: Cuba](#); FH. [Freedom on the Net 2015: Cuba](#).

³⁹¹ IACHR. Office of the Special Rapporteur. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13 December 31, 2013. Para. 16.

³⁹² CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.15.

³⁹³ CubaDebate. September 21, 2016. [Habrá wifi en todo el malecón habanero](#) [There will be wifi all along Havana's Malecón].

³⁹⁴ IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147th Session. March 11, 2013.

speed is reportedly 1 Mbps.³⁹⁵ Hard-wire connection, a service also provided by ETECSA, is reportedly not accessible to the majority of the Cuban population from their homes.³⁹⁶ Barely 5% of the population reportedly has a home Internet connection, which is very expensive.³⁹⁷

222. One characteristic worth noting is how the conditions of the island's connection to the global network determine the quality of the flow of information circulating through its electronic networks. In 2007, the government began the construction of a fiber optic cable to facilitate access to the global network and increase the available bandwidth. After a few technical and administrative problems, it became operational in 2013. Also, the recent installation of a fiber optic cable between Santiago and Havana, which serves as the backbone of the Cuban Internet, has reportedly improved the country's inferior situation in this area.³⁹⁸ Nevertheless, for the time being, it does not seem to be meeting expectations for improvement. After the re-establishment of diplomatic relations with the United States in 2014, other initiatives to guarantee connectivity in Cuba were announced.³⁹⁹
223. The information available indicates that progress in the development of infrastructure is slow.⁴⁰⁰ The Office of the Special Rapporteur considers that, as part of the measures to ensure the effective and universal enjoyment of the right to freedom of expression, serious efforts are required to develop and implement plans to ensure that infrastructure and services progressively guarantee universal access. In addition, it recalls that both the Office of the Special Rapporteur and the IACHR have recalled "how important it is for the initiatives to ensure Internet connectivity in Cuba, announced following the reestablishment of diplomatic relations with the United in December 2014, to guarantee unrestricted respect for human rights, especially the right to freedom of expression."⁴⁰¹

³⁹⁵ In contrast, according to the U.S. Federal Communications Commission, Internet download speeds in the United States must be greater than 25 Mbps in order to qualify as broadband. CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.27. In November 2017, it was learned that ETECSA and United Telecommunication Services (UTS) had reportedly signed an agreement to expand broadband Internet service in Cuba. CubaNet. November 3, 2017. [ETECSA firma acuerdo para aumentar el ancho de banda de Internet](#) [ETECSA signs agreement to increase Internet bandwidth]; Cubasí. November 1, 2017. [Etecsa en Fihav: Sólido paso en proceso de informatización](#) [Etecsa at Fihav: Solid step in the computerization process].

³⁹⁶ FH. [Freedom of the Net 2015. Cuba](#); CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.15.

³⁹⁷ IACHR. [Office of the Special Rapporteur for Freedom of Expression. Annual Report 2016](#). Chapter II. OEA/Ser.L/V/II. Doc. 22/17 March 15, 2017. Para. 463.

³⁹⁸ CIMA – NED. [Cuba's Parallel Worlds: Digital Media Crosses the Divide](#). August 30, 2016.

³⁹⁹ For instance, in 2018, Google and Cuba discussed how the company could help connect Cuba to the underwater fiber optic cables located relatively close to the island, which would give Cubans faster access to data stored worldwide. The New York Times. June 4, 2018. [Cuba's New President Meets With US Senator, Google Exec.](#)

⁴⁰⁰ AI. [Cuba's Internet paradox: How controlled and censored Internet risks Cuba's achievements in education](#), 2017. AI. [Six facts about censorship in Cuba](#). 2016; CIMA–NED. [Cuba's Parallel Worlds: Digital Media Crosses the Divide](#). August 30, 2016. In January 2016, Daniel Sepúlveda, the Deputy Assistant Secretary of State and U.S. Coordinator for International Communications and Information Policy at the State Department, told *OnCuba* that government representatives had been reluctant to accept offers for an underwater cable connecting Cuba and the United States. CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P.36.

⁴⁰¹ IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 418; IACHR. [Annual Report 2011. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 147; IACHR.

224. The Cuban government maintains that, because it is not possible for its people to have Internet access at home, the collective distribution of connectivity is a better use of resources. The regulations give priority to hard-wire service for companies, universities, and other organizations and entities that have obtained the appropriate authorization.⁴⁰² However, this is questionable considering that foreigners can purchase Internet service from their homes, while Cubans cannot.⁴⁰³
225. Various sources indicate that the lack of access is related to the authorities' apprehension about opening up the system to the flow of information contained on the Internet.⁴⁰⁴ This means that Internet access and quality are considerably inadequate in Cuba. These profound shortcomings greatly affect the terms on which citizens can access Internet content and, therefore, culture, entertainment, and information not coming from official State media. To circumvent this limitation, Cubans have developed compilation and distribution mechanisms through systems that allow for alternative offline access.
226. As for mobile telephony, only some 3.3 million of a population of 11 million reportedly have a device, according to the ITU. The information received indicates that ETECSA offers mobile telephony services through the company Cubacel and mainly with 2G technology, although some 3G networks are apparently in operation, and there are plans to meet 4G standards. For this reason, mobile telephony to date offers most users voice and short message services (SMS), but no data services. Although Cubacel provides an email service called NAUTA that is accessible from mobile phones, it requires prior user registration and does not offer minimum privacy guarantees (VI.D).⁴⁰⁵
227. There is a parallel reality to the State monopoly on access service, which is the so-called *Street Net*. This is an informal web of computers that are interconnected to exchange messages, content, applications, and so on. According to the information available, in Havana these types of initiatives have managed to connect thousands of home computers to each other that would otherwise have no opportunity for interconnection of any kind.⁴⁰⁶ It is also important to note what is commonly referred

[Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 189, 192, 193.

⁴⁰² IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 462; IACHR. [Annual Report 2004. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005. Para. 74.

⁴⁰³ IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147th Session. March 11, 2013.

⁴⁰⁴ IACHR. Office of the Special Rapporteur. Working meeting with journalists. 168th Session. June 2018.

⁴⁰⁵ FH. [Freedom of the Net 2015. Cuba](#).

⁴⁰⁶ The circulation of information and ideas beyond the control of the State is also possible due to the use of electronic memory sticks (USB), flash drives, CDs, external hard drives, and other devices [The New York Times. June 4, 2018. [Cuba's New President Meets With US Senator, Google Exec](#)]. The people who manage these networks take care to avoid content of a political nature, and even establish internal rules that exclude content that serves to "attack the internal order, the security of the country, or the stability of the Cuban State."[\[Reglas Generales y Código de Sanciones de SNet\]](#) [SNet General Rules and Penalties Code]. Its existence is so indisputable that the official digital newspaper *CubaDebate* devoted an article to it on September 16, 2016. *CubaDebate*. [SNET: La primera comunidad inalámbrica en Cuba](#) [SNET: Cuba's first wireless community]. September 16, 2016].

to as *El Paquete*. According to a CPJ study, it is a weekly delivery of content previously downloaded from the web. It is sold to the public at the price of US\$ 1.00, on USB drives and DVDs, so it can be consumed offline. It is said to be consumed by nearly half the population. Thanks to this system, a significant number of citizens are able to access content that is not accessible by other means due to connection issues and government control over the platform.⁴⁰⁷

228. The Office of the Special Rapporteur recalls that Internet access should be “universal, ubiquitous, equitable, truly affordable, and of adequate quality,”⁴⁰⁸ and that it is incumbent upon the State to decide which means are the most appropriate under the circumstances to ensure implementation of these principles. This gives rise to a number of consequences that the Office of the Special Rapporteur calls upon the State to observe: the duty to progressively promote universal access not only to the Internet infrastructure, but also to the technology necessary for its use and to the maximum amount of information available on the Internet; the duty to eliminate arbitrary barriers to access to online infrastructure, technology, and information; and the duty to adopt positive differentiation measures to enable the effective enjoyment of this right by individuals or communities who so require because of their circumstances of social exclusion or discrimination.⁴⁰⁹

C. Content blocking and censorship

229. In addition to the limited connectivity in Cuba, Internet access and use presents a number of obstacles related to content blocking and censorship. According to different sources, part of the content hosted on the global Internet is not accessible from Cuba because it is blocked or filtered by the authorities. In some cases, the blocks are temporary, but others it has proved to be impossible to access websites, platforms, and social networks like Facebook, Twitter, Youtube, Yahoo, MSN, and Hotmail.⁴¹⁰
230. The information available indicates that the Ministry of Information Technology and Communications reportedly gives priority to accessing web pages that are a kind of national intranet and that are aimed at replicating or presenting a native version of services that are well known in the rest of the world.⁴¹¹ For most people, the only

⁴⁰⁷ CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). Recent reports on the content of *El Paquete* underscore the increasing absence of politically controversial content, meant to avoid a reaction from the authorities. [BBC Mundo. [Cómo hacen los cubanos para tener acceso a la TV internacional](#) [How Cubans access international TV]. October 9, 2014; Ventana Política. [Desconectados en Cuba: sí pero cuánto?](#) [Disconnected in Cuba: yes but how much?]. March 20, 2016.

⁴⁰⁸ IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV. OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 16; IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 7.

⁴⁰⁹ IACHR. Office of the Special Rapporteur. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13 December 31, 2013. Para. 16; IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 15.

⁴¹⁰ CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016; CPJ. [Attacks on the Press. Journalism on the Front Lines in 2013: Cuba](#). 2013.

⁴¹¹ Accordingly, *CubaRed.com* is reportedly a local version of Facebook, and *EcuRed.cu* is a replica of Wikipedia. It is also important to highlight the existence of some intranets, particularly in the university and health services sectors. In addition, since the liberalization of relations with the United States, some companies in that country's communications technology sector have begun to look toward Cuba. For instance, companies like Netflix (which

option is the Cuban intranet, which allows access to websites that are registered with the .cu domain or are supportive of the country's government, but as stated earlier, the majority of the population lacks access to the global web. The national intranet is a controlled network that allows users to browse certain selected international sites, as well as to have email access.⁴¹²

231. Internet access and use in Cuba is also seriously hindered by the blocking of websites that criticize or dissent from the party of the government.⁴¹³ The websites of independent journalists, websites critical of the government, and human rights-related websites have remained blocked throughout the years.⁴¹⁴ This reportedly affects blogs, web pages, or platforms with content managed by critical voices, whether they are hosted in Cuba or abroad. According to a study by the Open Observatory of Network Interference (OONI),⁴¹⁵ at least 41 websites are reportedly blocked in Cuba, including *14yMedio*, *Martí Noticias*, *Damas de Blanco*, *La Nueva Cuba*, *Diario de Cuba*, *El Estornudo*,⁴¹⁶ *CiberCuba*, and *Cubanet*.⁴¹⁷ All the sites blocked had one thing in common: they expressed criticism of the Cuban government, they covered human rights issues, or had to do with circumvention tools (techniques to get around censorship).⁴¹⁸

already offers its on-demand content service in Cuba), Verizon (offering roaming services), Airbnb, and Paypal already have a presence on the island, within the limited possibilities still offered. Google has symbolically opened the first hotspot from which you can enjoy a free Wi-Fi connection, in the studio of a Havana artist. CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016.

⁴¹² IACHR. [Hearing on the Situation of the Right to Freedom of Expression in Cuba](#). 147th Session. March 11, 2013.

⁴¹³ IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 452, 461; IACHR. [Annual Report 2014. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Para. 350; IACHR. [Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 173, 174; IACHR. [Annual Report 2008. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009. Para. 91.

⁴¹⁴ IAPA. [Report to the Midyear Meeting 2018](#); IAPA. [Report to the 71st General Assembly of 2015](#); IAPA. [Report to the Midyear Meeting 2015](#).

⁴¹⁵ AI. August 29, 2017. [Cuba's Internet paradox: How controlled and censored Internet risks Cuba's achievements in education](#); Periódico Cubano. August 31, 2017. [Cuba bloquea 41 sitios de internet en los puntos Wifi, señala informe del Observatorio Abierto de Interferencias en la Red \(LISTADO\)](#) [Cuba Blocks 41 Web Sites at Wifi Points, Says Report of Open Observatory on Network Interference (LIST)]; Similarly, see CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. Pp. 16 & 23.

⁴¹⁶ Revista El Estornudo. February 26, 2018. [Nota al Censor: ¿Por qué no puede leerse El Estornudo en Cuba?](#) [Note to Censor: Why can't you read *El Estornudo* in Cuba?]; Diario Las Américas. February 26, 2018. [La revista El Estornudo denuncia que el régimen cubano bloqueó su página web](#) [*El Estornudo* magazine condemns Cuban regime's blocking of its website].

⁴¹⁷ Journalist and activist Boris González Arenas stated that the website of Miami-based *Cubanet* has also been blocked at times, and blogger Taylor Torres affirmed that *Cuba Encuentro* and *Martínoticias* are also occasionally blocked. CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P. 29.

⁴¹⁸ AI. [Cuba's Internet paradox: How controlled and censored Internet risks Cuba's achievements in education](#). August 29, 2017; Periódico Cubano. August 31, 2017. [Cuba bloquea 41 sitios de internet en los puntos Wifi, señala informe del Observatorio Abierto de Interferencias en la Red](#) [Cuba Blocks 41 Web Sites at Wifi Points, Says Report of Open Observatory on Network Interference]; IACHR. [Office of the Special Rapporteur for Freedom of Expression. Annual Report 2017](#). Chapter II. OEA/Ser.L/V/II. Doc. 210/17 December 31, 2017. Para. 395.

232. According to reports, the number of censored websites has reportedly grown in recent years. In order to access them, Cubans use virtual private network (VPN) services or websites that function as anonymous proxies.⁴¹⁹ The information available suggests that it is not uncommon for content previously posted on the network to be removed, either as a result of government pressure on its author, or directly if it is hosted on .cu domains.⁴²⁰
233. *14ymedio*, the first independent news website in Cuba, founded by Yoani Sánchez, warrants special mention.⁴²¹ This website is hosted outside Cuba, and according to the information available, has been repeatedly blocked by authorities and therefore very difficult to access from within the country. Despite the systematic prohibition of content and the blocking of Sánchez's blog, as well as her numerous arrests, her work has shown the outside world the efforts of a significant and numerous community of journalists willing to hold the government to account, rejecting the official model of journalism.^{422, 423}
234. These actions are reportedly based on the previously examined regulatory framework.⁴²⁴ Closely linked is the legal status of those engaged in the dissemination of information and opinion. As noted, access to the journalistic profession is regulated and controlled by the authorities and the official union, the UPEC (III.B). Those who provide reporting and opinion outside this context are treated as if they were acting unlawfully, with the risks of persecution and repression that this entails (III.C, IV and V). Consequently, people seeking to establish channels of communication through new technologies risk not only being blocked or censored in the digital world, but also directly and personally suffering the consequences. For this reason, in many cases such journalists hide behind anonymity or use pseudonyms. In addition, the fear of being subjected to similar acts or being arrested reportedly leads many independent journalists to censor themselves.⁴²⁵

⁴¹⁹ 14ymedio. [Recetas para sortear la censura en internet](#) [How to circumvent censorship on the Internet]. August 9, 2017.

⁴²⁰ FH. [Freedom of the Net 2015. Cuba](#)

⁴²¹ The site *14ymedio* was developed by Yoani Sánchez following the success of her personal blog *Generación Y*. This blog unquestionably influenced the future development of digital communication in the country. This influence was bolstered when Sánchez received several international prizes (including the 2008 Ortega y Gasset Prize for journalism in Spain). She and her husband (a journalist who was fired from the official publication *Juventud Rebelde*) also started a training academy for citizen journalists in their Havana apartment.

⁴²² International Journalists Network. [Beyond Yoani Sanchez, 4 Cuban Bloggers to Know](#). April 15, 2015; The New York Times. [Cuba's Promising New Online Voices](#). December 23, 2014; El País. [El periodismo que sacude conciencias](#) [Journalism that shakes consciences]. May 29, 2013.

⁴²³ Yoani Sánchez's situation has received special attention from the IACHR and the Office of the Special Rapporteur. On November 9, 2012, the IACHR issued precautionary measures on behalf of Yoani Sánchez and her family. The IACHR asked the Cuban State to take the necessary measures to guarantee their lives and physical integrity, to agree on the measures to be taken with the beneficiary and her representatives, and to report on the actions taken to investigate the events that led to the adoption of precautionary measures. IACHR. [PM 350/12 – Yoani María Sánchez Cordero](#), Cuba. November 9, 2012.

⁴²⁴ Ministry of Information Technology and Communications. [Resolución 179 de 2008 por la que se aprueba el Reglamento para los proveedores de servicios de acceso a Internet del público](#) [Resolution 179 of 2008, enacting the Regulations for Public Access Internet Service Providers]. November 13, 2008. Article 19.

⁴²⁵ For instance, this is the case of OnCuba, which is registered as a foreign media outlet and therefore has legal status. This status has reportedly led it to engage in "a significant exercise of moderation and self-censorship in order to keep from losing its current status." CPJ. [Connecting Cuba: More space for criticism but restrictions slow press](#)

235. As the Special Rapporteurs for Freedom of Expression have stated,⁴²⁶ “Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure—analogous to banning a newspaper or broadcaster—which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.” The Office of the Special Rapporteur similarly recalls that “Content filtering systems which are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior censorship and are not justifiable as a restriction on freedom of expression.”⁴²⁷

D. Surveillance

236. The Office of the Special Rapporteur has received information on alleged surveillance activities to monitor Internet users, contrary to the right to privacy and data protection. This is either as a consequence of using email and messaging services, or through software used for general surveillance of the web, especially of those users connecting from cybercafés.

237. Indeed, access to email and messaging services is a matter of concern. According to the information available, there is a single service, called NAUTA, authorized for use either through the mobile phone or the Wi-Fi connection points provided by ETECSA, through Cubacel. The use of this service reportedly requires the full identification of the user to the authorities, who have the power to cancel it in the event of misuse.⁴²⁸ Different sources have indicated that this service does not offer minimum guarantees of privacy in communications.⁴²⁹

238. It was also recently reported that the new messaging application toDus, created by the University of Information Science (UCI) and ETECSA, would endanger users’ personal data held by the government. In particular, it was reported that the application asks “to connect with friends and family and exchange photos and videos with them, and gives ToDus access to your contacts, photos, media, and general files stored on your device.” In addition, according to the terms of service, the user would reportedly agree “not to make comments that are offensive or contrary to morality, as well as those that denigrate or offend governments or government policies.”⁴³⁰

[freedom progress](#). 2016. P. 16.

⁴²⁶ United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression, and African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#).

⁴²⁷ IACHR. [Annual Report 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017. Para. 466.

⁴²⁸ FH. [Freedom of the Net 2015. Cuba](#).

⁴²⁹ FH. [Freedom of the Net 2015. Cuba](#).

⁴³⁰ Martí. [Nueva App creada en la UCI compromete información de usuarios, alerta Yoani Sánchez](#) [New App created at UCI puts user information at risk, Yoani Sanchez warns]. July 5, 2018; Cubanos por el mundo. [Yoanis Sánchez advierte que el “Whatsapp cubano” compromete información de usuarios](#) [Yoanis Sánchez warns that “Cuban

239. A related problem noted by the Office of the Special Rapporteur concerns the use of mobile phone messages or SMS. Various digital newspapers linked to the political opposition reported that Cubacel was censoring SMS containing words such as “democracy,” “human rights,” and “hunger strike.” Various sources cite the experience of a certain number of users, as well as the tests carried out by the sources themselves. Apparently, messages containing phrases such as these have not reached their intended recipients on a significant number of occasions.⁴³¹
240. The information available also indicates that Web traffic is “routed through the software program Ávila Link, which has monitoring capabilities.”⁴³² Several cases have been reported of personal online profiles being hacked, as well as cases of tracking and monitoring of web browsing data and telephones.⁴³³ The legal framework regulating the provision of Internet service has allowed the government to have access to information contained on the personal pages and in the emails of Internet users in Cuba.⁴³⁴ According to Resolution 179 of 2008 of the Ministry of Information Technology and Communications, a service provider must record and store Internet traffic for at least a year and ensure that users do not use “encrypted software or share encrypted files.”⁴³⁵
241. It is of particular concern that, in recent years, government surveillance of web activity has reportedly been used as a way to identify independent journalists and political dissidents, leading to patterns of harassment—traditionally used against the print media—against those engaged in these types of online activities, as well as to arbitrary arrests and even prosecution for crimes associated with the exercise of freedom of expression through the Internet.⁴³⁶
242. For instance, according to the information available, journalists Sol García Basulto and Henry Constantín of *La Hora de Cuba*, have reportedly been spied on repeatedly and have been the victims of cyber-harassment through social media.⁴³⁷ The same has reportedly happened to journalist Iris Mariño García, also of *La Hora de Cuba*.⁴³⁸

Whatsapp” puts user information at risk]; Civicus & CCDHRN. *Joint Submission to the UN Universal Periodic Review*. October 5, 2017. P. 13.

⁴³¹ 14ymedio. [Cubacel censura los SMS con las palabras “democracia” y “huelga de hambre”](#). [Cubacel censors SMS containing the words “democracy” and “hunger strike”]. September 3, 2016; AI. [Cuba’s Internet paradox: How controlled and censored Internet risks Cuba’s achievements in education](#). 2017; IAPA. [Report to the Midyear Meeting 2018](#); IAPA. [Report to the 72nd General Assembly 2016](#).

⁴³² FH. [Freedom of the Net 2015: Cuba](#); CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P. 34.

⁴³³ FH. [Freedom on the Net 2017: Cuba](#); FH. [Freedom on the Net 2016: Cuba](#); FH. [Freedom on the Net 2015: Cuba](#); FH. [Freedom on the Net 2014: Cuba](#). Pp. 13-16.

⁴³⁴ FH. [Freedom on the Net 2017: Cuba](#); FH. [Freedom on the Net 2016: Cuba](#).

⁴³⁵ Ministry of Information Technology and Communications. [Resolución 179 de 2008 por la que se aprueba el Reglamento para los proveedores de servicios de acceso a Internet del público](#) [Resolution 179 of 2008, enacting the Regulations for Public Access Internet Service Providers]. November 13, 2008. Art. 19(e).

⁴³⁶ FH. [Freedom on the Net 2017: Cuba](#); FH. [Freedom on the Net 2016: Cuba](#); FH. [Freedom on the Net 2015: Cuba](#); FH. [Freedom on the Net 2014: Cuba](#). Pp. 13-16.

⁴³⁷ IAPA. [Cuba](#). October 26, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 81.

⁴³⁸ IAPA. [Cuba](#). October 26, 2017; IACHR. [Annual Report 2017](#). Chapter IV.B. Cuba. Para. 81.

Cuban journalists and bloggers have also reportedly told the CPJ and Amnesty International that they have been subjected to State surveillance.⁴³⁹ Other critical bloggers have reported being harassed by online “trolls” that are suspected to be organized and encouraged by the State.⁴⁴⁰

243. The Office of the Special Rapporteur underscores that respect for privacy is a guiding principle of the digital environment. The right to privacy, according to which no one may be subject to arbitrary or abusive interference with his privacy, family, home, or correspondence, is a prerequisite for the exercise of the right to freedom of expression online, which must be protected by law and strictly promoted in public policy.⁴⁴¹ This point is closely linked to the State’s obligation to create a safe environment for the exercise of freedom of expression, as the violation of communication privacy has a chilling effect and hinders the full enjoyment of the right to communicate.⁴⁴²
244. Internet surveillance, in any of its forms, constitutes interference in the private lives of people and, when conducted illegally, can also affect the rights to due process and a fair trial, freedom of expression, and access to information.⁴⁴³ There is international consensus that surveillance practices and the unlawful or arbitrary interception and collection of personal data affect the right to privacy and freedom of expression, and may be contrary to the principles of a democratic society.⁴⁴⁴ The Office of the Special Rapporteur calls upon the Cuban State to cease any form of internet surveillance, as it constitutes interference with privacy.⁴⁴⁵

⁴³⁹ CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. Pp. 18 & 27; AI. [Cuba’s Internet paradox: How controlled and censored Internet risks Cuba’s achievements in education](#). August 29, 2017.

⁴⁴⁰ The CPJ reported, for instance, in 2013, that a video was posted of an interview with Eliécer Ávila, a former student of the University of Information Science, who stated that he had participated in a project known as “Operation Truth.” According to Ávila, his participation in the project (allegedly linked to the Communist Party Youth), was to monitor online conversations in search of signs of dissidence, and to write comments attacking the reputation of journalists and bloggers who criticized the government. CPJ. [Connecting Cuba: More space for criticism but restrictions slow press freedom progress](#). 2016. P. 34.

⁴⁴¹ IACHR. Office of the Special Rapporteur. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Para. 130; IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 10.

⁴⁴² IACHR. Office of the Special Rapporteur. [Freedom of Expression and the Internet](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13. December 31, 2013. Para. 23; IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 10.

⁴⁴³ IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 212; UN. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue](#). A/HRC/23/40. 17 April 2013.

⁴⁴⁴ UN. General Assembly. Resolution 68/167 adopted on 18 December 2013. The right to privacy in the digital age. A/RES/68/167. 21 January 2014. Para. 4.

⁴⁴⁵ Internet surveillance can come in different forms and nuances, including documentation, monitoring of activities and communications, or mass or targeted collection of online communications or activity. Targeted surveillance is generally protected in criminal proceedings or other kinds of investigations, and involves collecting and/or monitoring the communications of an identified or identifiable individual, and IP address, a specific device, a specific account, etc. Mass data and communications surveillance involves tapping and monitoring entire cables, networks, or equipment, or buying server or intermediary data from a third party, then accessing all the data collected that has not been encrypted. IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 210.

245. To protect privacy on the Internet, the confidentiality of personal online data must be guaranteed,⁴⁴⁶ through any email, messaging, or other service. The Cuban State must adopt policies to prohibit data processing—including storage, analysis, and disclosure of personal data—except when authorized or when the person affected has given informed consent. It should take regulatory measures to prohibit these practices and establish effective and independent oversight mechanisms.⁴⁴⁷
246. The right to privacy includes the preservation of anonymous platforms for content exchange and the use of proportionate authentication services.⁴⁴⁸ Anonymity is a means of protecting privacy, and its connection to freedom of expression has been particularly noteworthy because it facilitates participation in the public discourse without the need to identify oneself, thereby preventing potential retaliation for an opinion, which is particularly relevant in the Cuban context.⁴⁴⁹ This applies especially to the relationship between journalists and their sources. Cuban Internet regulations, far from containing provisions designed to guarantee such privacy, are rather aimed at preserving ongoing and effective access by the authorities to the data of individuals communicating through networks from or to the island.
247. Encryption is also a means of protecting the privacy of information in the digital age and the inviolability of communications. Measures aimed at restricting encryption reduce people's ability to protect themselves against illegitimate invasions of their privacy.⁴⁵⁰ The most burdensome measures include legal prohibitions on private encryption, as in the case of Cuba, which, as noted, expressly requires Internet service providers to ensure that no software is used with cryptographic systems or encrypted files.

⁴⁴⁶ IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 204.

⁴⁴⁷ IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 205.

⁴⁴⁸ IACHR. [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV. OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 23.

⁴⁴⁹ IACHR. Office of the Special Rapporteur. [Standards for a Free, Open, and Inclusive Internet](#). OEA/Ser.L/V/II CIDH/RELE/INF.17/17. March 15, 2017. Para. 227.

⁴⁵⁰ UN. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye](#). A/HRC/29/32. May 2015; UN. [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye](#). Encryption and Anonymity follow-up report. A/HRC/38/35/Add.5. 13 July 2018.

CHAPTER VI
CONCLUSIONS AND
RECOMMENDATIONS

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

248. Cuba continues to be the only country in the hemisphere where there are no guarantees for the exercise of the right to freedom of expression. A State in which there is a persistent and serious failure to observe the essential elements of freedom of expression, representative democracy, and its institutions. Despite the years that have passed and the repeated recommendations in this regard, intolerance continues to be the norm for the Cuban authorities towards all forms of criticism or opposition, and the main limitation to fundamental rights and freedoms in Cuba.
249. The State continues to have a monopoly on the media, and it is still against the law to establish private media, all of which is incompatible with international standards on freedom of expression. The selective and deliberate persecution of independent media and journalists continues, and even intensifies at times. As extensively noted in this report, this persecution—carried out by State bodies or tolerated by the State—takes the form of arbitrary detentions, threats, and acts of harassment or censorship against journalists who disseminate ideas, opinions, and information critical of the ruling party. It is also reflected in the multiple acts and threats by authorities and public servants to intimidate anyone who expresses critical ideas about the country's politics and institutions, such as artists, human rights defenders, political dissidents, and others.
250. Today's repressive practices seem to be based on a rationale that is outside the legal framework, but they are far from disappearing. On the contrary, they are strongly replicated in the new media. With respect to the Internet, the extremely restrictive and ambiguous legal provisions, the limited connectivity of the Cuban population, the blocking and censorship of critical media, and surveillance seriously impede the exercise of the rights to freedom of expression and privacy on the Internet.
251. The Cuban legal system—from the Constitution itself, to the legal and regulatory provisions outlined in this report—is designed to repress dissent and criticism. Thus, in the opinion of the Office of the Special Rapporteur, the main problem with current legislation is its overtly repressive approach to freedom of expression. Far from protecting the exercise of freedom of expression and other fundamental rights and freedoms, it provides the State with legal tools to repress it. It also facilitates serious discrimination on political grounds in the exercise of human rights, since anyone who thinks or wants to express themselves differently from the socialist regime cannot exercise their rights without repression.
252. Although the Constitution of 1976 and the Draft Constitution approved in February 2019 affirm that Cuba is a democratic State governed by the rule of law, it will not be so until freedom of expression is truly respected and fully guaranteed. In order to contribute to the achievement of this objective, the Office of the Special Rapporteur makes the following recommendations.

B. Recommendations

Regulatory framework

1. Bring the Constitution into line with the inter-American standards on freedom of expression and information, protecting these rights unconditionally and definitively, within the framework of a plural, diverse, and open understanding of public and media space, as well as in direct connection with the principle of democracy. In particular, by (i) not providing for any form of prior censorship dictated by the aims of socialist society or otherwise, (ii) ending the State monopoly on the media and the prohibition against the operation of private media, and (iii) not including the potential criminalization of the exercise of freedom of expression.
2. Repeal and/or amend the current criminal laws on the exercise of freedom of expression, in particular: (i) the provisions of the Criminal Code of 1987, (ii) Law No. 88 of 1999 for the Protection of National Independence, and (iii) la Law No. 80 of 1996, for the Reaffirmation of Cuban Dignity and Sovereignty, referred to in sections II.B and IV.C, to make them compatible with the inter-American standards cited in this report.
3. Repeal the laws that establish the offense of contempt of public authority, in whatever form, given that such provisions are contrary to inter-American standards and restrict public debate, an essential element of a functioning democracy.
4. Amend the criminal defamation laws to eliminate the use of criminal proceedings to protect honor and reputation when information is disseminated about matters of public interest, public servants, or candidates for public office.
5. Eliminate any provision that authorizes prior censorship by any State body, as well as any prior conditions that may entail censorship of freedom of expression, such as prior requirements related to the veracity, timeliness, and impartiality of information.
6. Have clear, proportionate, and appropriate legislation to protect freedom of expression and information. In particular, the exercise of journalistic activities and the establishment of means of communication must be permitted and facilitated by law, and the State should abstain from imposing administrative or other obstacles that allow it to maintain control over access to the public sphere. Fundamental principles such as the protection of sources, the conscience clause, and the right of reply should be appropriately and proportionately regulated.
7. Repeal Executive Order No. 199 of 1999 and its supplemental provision, Resolution No. 1, "Regulations on the security and protection of official information," issued by the Ministry of the Interior on December 26, 2000; and enact effective legislation, policies, and practices that permit access to information and equal participation in accordance with principles and guidelines for the design and implementation of access laws in the region.

Free and independent journalism in Cuba

8. Take legislative and other measures necessary to guarantee pluralism, including laws preventing the existence of public or private monopolies, and adjusting institutional frameworks in order to not only prevent the power of the State from being used to reward or punish media according to their editorial line, but to foster pluralism and diversity in public debate.
9. Take the necessary measures to ensure that State media are subject to appropriate legislation and regulation, and undertake the necessary transformation processes to turn them into providers of a public service aimed at meeting the needs and interests of citizens, in a manner completely independent of any form of political or ideological control by State institutions or the Cuban Communist Party.
10. Guarantee the conditions for the free exercise of journalism, establish legal guarantees to ensure unfettered press freedom, and allow non-State media to exist.
11. Adopt appropriate prevention mechanisms to deter violence against journalists, including public condemnation of all attacks on journalists and the training of public servants, especially police and security forces; and conduct serious, impartial, and effective investigations into attacks, threats, and acts of intimidation committed against journalists and media workers.
12. Abstain from using the power of the State to punish or reward media and journalists for their editorial line or coverage of certain information, whether through the discriminatory and arbitrary placement of government advertising or other indirect means aimed at preventing the communication and circulation of ideas and opinions.
13. Encourage democratic debate through public statements, practices, and policies that promote tolerance and respect for all people, on equal terms, whatever their thoughts or ideas.

Criminalization of criticism and politically motivated discrimination against different population groups

14. Put an end, as soon as possible, to the practice of harassment, including summonses, detentions of any duration, and harassment of any person for reasons related to the exercise of their freedom of expression, freedom of association, assembly, or other related freedoms.
15. Abstain from making unlawful or arbitrary arrests, and in the event that a person is deprived of his or her liberty, ensure that it is an exceptional measure and that all guarantees for the restriction of this right are observed, including that of being brought immediately before a judge.
16. Take the necessary measures to prevent and eradicate the criminalization of persons who exercise the right to freedom of expression and association, including artists, political dissidents, human rights defenders, and others.

17. Take the necessary measures to bring laws, procedures, and practices into line with international human rights standards on due process and access to justice. In particular, amend legislation to ensure due process guarantees, and amend the Constitution with a view to ensuring the independence of the judiciary.
18. Amend cultural policy laws to allow freedom of artistic expression not conditioned on the aims of socialist society or otherwise, and immediately cease any act that inhibits the exercise of such freedom.
19. Immediately cease attacks on human rights defenders; ensure that they are able to carry out their work and cooperate freely with human rights mechanisms without fear of intimidation or retaliation, and without undue restrictions on their right to freedom of movement.
20. Promote a human rights culture that publicly and unequivocally recognizes the fundamental role played by human rights defenders in guaranteeing democracy and the rule of law in society.
21. Amend the Associations Act, Law No. 54 of 1985, to allow for the creation of media outlets and a professional guild.
22. Guarantee citizens and political groups the right to political participation and freedom of expression without fear of reprisal, allowing and encouraging a plural, broad, and robust public debate.
23. To take the necessary measures to fully guarantee the right of all Cuban persons to leave the country, to move within its borders, to choose their place of residence, and to enter or re-enter the country of their citizenship. This includes, in particular, not preventing or in any way obstructing the departure from or entry into the country of persons to participate in events linked to the human rights situation in Cuba.

Social protests and demonstrations

24. Recognize and protect the right to peaceful assembly and freedom of expression, without discrimination on the basis of political opinion.
25. Take the necessary measures to prevent violence against journalists during public demonstrations, as well as against the demonstrators taking part in them.
26. Establish reasonable limits, governed by the principles of legality, necessity, and proportionality, to ensure the peaceful holding of protests and social demonstrations.

Limitations on the right to freedom of expression on the Internet

27. Adapt the regulations referred to in this report and others that could affect the nature of the digital environment in Cuba, in accordance with the aforementioned principles of equal access, pluralism, nondiscrimination, and privacy, as well as net neutrality and multisectoral governance as cross-cutting components of these principles.

28. Facilitate citizens' unrestricted connection to the Internet, and guarantee free access to the Internet to all citizens without discrimination; this includes, but is not limited to, making Internet access cheaper and expanding unrestricted connectivity.
29. Lift blocks on content as soon as possible, especially blocks on censored independent media.
30. Ensure that intermediaries are not subject to a regulatory regime that establishes strict liability for the content they distribute or requires them to exercise supervisory functions over it.
31. Abstain from any kind of data surveillance or handling, including the storage, analysis, and disclosure of personal data, except where it is legitimate to do so or with the informed consent of the person concerned; and take regulatory measures to prohibit such practices and establish effective and independent oversight mechanisms.