



# Incompatibility of the Cuban Electoral System with the Inter-American Democratic Charter

## **International Institute of Race, Equality, and Human Rights**

T. (+1) 202-770-9946  
1620 I (Eye) Street NW, Suite 925  
Washington, DC 20006  
[www.raceandequality.org](http://www.raceandequality.org)  
[info@raceandequality.org](mailto:info@raceandequality.org)

**Carlos Quesada**

*Executive Director*

**Johanna Villegas**

*Legal Program Officer for Latin America*

**Design and layout**

*Celacanto Producciones*

October 2021

*The reproduction of the text of this edition is permitted for educational, non-commercial purposes, under the condition that the International Institute of Race, Equality, and Human Rights (Race & Equality) is recognized as its author.*

*We extend a special thanks to Esteban Ajete Abascal, Katia Hernández Torres and Diario de Cuba for contributing with the photographs used in this report.*

***Incompatibility of the Cuban Electoral System with the  
Inter-American Democratic Charter***

*October 2021*



# Table of content

<b>01. Acknowledgements.....</b>	<b>6</b>
<b>02. Introduction.....</b>	<b>7</b>
<b>A. Evolution of Cuban laws .....</b>	<b>8</b>
<b>B. Cuba in the Organization of American States (OAS) .....</b>	<b>11</b>
<b>C. Objectives and methodology .....</b>	<b>13</b>
<b>03. Analysis and State of Rights .....</b>	<b>14</b>
<b>A. Inter-American Democratic Charter .....</b>	<b>15</b>
<b>B. American Declaration of the Rights and Duties of Man .....</b>	<b>17</b>
<b>C. International Covenant on Civil and Political Rights .....</b>	<b>18</b>
<b>D. The political foundations of the Cuban State are incompatible with the essential elements of representative democracy .....</b>	<b>19</b>
<b>E. Law No. 127 of July 13, 2019: Cuban Electoral Law Ley No. 127 de 13 de julio de 2019: .....</b>	<b>24</b>
<i>i. The National Electoral Council.....</i>	<i>24</i>
<i>ii. Candidature Commissions .....</i>	<i>26</i>
<b>F. Elections of the principal public elective posts, pursuant to the Electoral Law and Constitution .....</b>	<b>27</b>
<i>i. Parliamentary elections: National Assembly of People's Power.....</i>	<i>27</i>
<i>ii. Nomination and election of members of the National Assembly of People's Power: legislative body.....</i>	<i>27</i>
<i>iii. Nomination and election of the President, Vice President, and Secretary of the National Assembly of People's Power and other members of the Council of State .....</i>	<i>29</i>
<i>iv. Nomination and election of the President and Vice President of the Republic.....</i>	<i>29</i>

v.	<i>Municipal elections</i> .....	31
vi.	<i>Nomination and election of the President and Vice President of the Municipal Assembly of People's Power</i> .....	31

#### **04. Analysis of State Responses .....32**

<b>A.</b>	Publications by official media and an interview with Miguel Díaz-Canel .....	33
<b>B.</b>	Common elements in the official discourse regarding the existence of a single party .....	38
<b>C.</b>	State responses regarding the nomination and election of opponents in municipal elections .....	40

#### **05. Conclusions .....43**

#### **06. Recommendations .....48**

	To the Cuban State.....	49
	To the Inter-American Commission on Human Rights.....	51
	To the Human Rights Council.....	52
	To Cuban civil society.....	53

# 01.

## Acknowledgements

**The International Institute of Race, Equality, and Human Rights** (hereinafter, **Race & Equality**) is an international non-governmental organization dedicated to the defense and protection of human rights that works with local counterparts and activists in Latin America to promote and protect the human rights of populations made vulnerable due to their national or ethnic origins, sexual orientation, or gender identity. Part of our work entails documenting and increasing the visibility of human rights violations by encouraging dialogue amongst diverse actors regarding matters that affect our counterparts in the countries in which we work, including Cuba.

Attentive to the state of civil and political rights in Cuba and their connection to democracy, **Race & Equality** believes it is important to analyze the Cuban political and electoral model, primarily the right to participation in governmental management in light of the Inter-American Democratic Charter. This report has been drafted from a perspective of human rights and their relation to representative democracy, within a framework of relevant international and regional standards.

**Race & Equality** wishes to express its profound appreciation to the organizations, activists, and independent jurists with whom we work in Cuba, who have provided us with valuable information for use in preparing this report in coordination with our Legal Program Officer Johanna Villegas.

As an organization that promotes human rights and the respect for universal and regional standards, we call on the State of Cuba to harmonize its political and electoral system with the essential premises of representative democracy enshrined in the Charter of the Organization of American States and Inter-American Democratic Charter.

**Carlos Quesada**  
*Executive Director*





# 02.

## Introduction

---

## A. Evolution of Cuban laws

1. In the middle of the 20th Century, two relevant events completely changed Cuban society. On one hand, the military coup on March 10, 1952, put an end to the government of Carlos Prío Socarrás, violated the 1940 Constitution, and encouraged armed violence. Secondly, the triumph of the Revolution in January 1959<sup>1</sup> represented an unprecedented shift within the national Cuban context. The political, social, and economic realms of the nation's life changed radically.
2. The document *History Will Absolve Me*<sup>2</sup> declared that the first revolutionary law would return sovereignty to the people and proclaim the 1940 Constitution as the supreme law of the State. This would be carried out by the revolutionary movement that would “momentarily” embody sovereignty and be the only source of legislative power, given the absence of popularly elected organs at the beginning. The text advocates for, among other issues, the separation of powers, political pluralism, and free elections for legitimating power<sup>3</sup>.
3. In January 1959, the 1940 Constitution was formally reinstated; nonetheless, one month later it was substituted by the Fundamental Law of February 7, 1959<sup>4</sup>, a text whose dogmatic portion is very similar to the Constitution, while the organic part was far removed from its predecessor. The Fundamental Law allocated legislative power to the Council of Ministers, which in turn assisted the President of the Republic in exercising executive power. The Council of Ministers had the power to reform the Fundamental Law without limit with the consent of two-thirds of its members. The Prime Minister was designated by the President, who freely appointed and removed the rest of the ministers.

---

1 Martín López-Ávalos. *La cultura política de la vanguardia o la construcción del etnos revolucionario*. Cuba 1952-1959 [The Political Culture of the Vanguard or the Construction of the Revolutionary Ethos: Cuba 1952-1959]. Available at <http://www.scielo.org.mx/pdf/tzintzun/n53/n53a3.pdf>.

2 Text containing the defense statement and political plans of Fidel Castro in the trial for the storming of the Moncada and Carlos Manuel de Céspedes Barracks in eastern Cuba on July 26, 1953.

3 Fidel Castro Ruz, *La historia me absolverá* [History Will Absolve Me]. 2007 edition. Instituto Cubano del Libro [Cuban Book Institute]. Available at <http://biblioteca.clacso.edu.ar/clacso/se/20191016101300/la-historia-me-absolvera-fidel-castro.pdf>.

4 UNAM Institute of Legal Research. *Cuba - Ley fundamental de 1959*. 7 de febrero de 1959 [Cuba - Fundamental Law of 1959: February 7, 1959]. Available at <https://archivos.juridicas.unam.mx/www/bjv/libros/6/2525/38.pdf>.



Paradoxically, this structure was identical to the (spurious) Constitutional Statutes imposed following the 1952 coup d'état<sup>5</sup>.

4. Another central point was the unfulfilled promise to hold pluralist elections following the rise to power of the revolutionaries. The Fundamental Law, imposed in the absence of popularly elected organs, established the obligatory nature of universal, egalitarian, and secret suffrage. It even contained sanctions for those who did not participate in the electoral processes<sup>6</sup>. Notwithstanding, no mechanism for popular elections was put into practice for 17 years – from 1959 to 1976 – when the Constitution of February 24<sup>7</sup> was enacted.
5. The multiparty system and political pluralism were gradually eliminated from the national context. Despite the fact that the Fundamental Law of February 1959 established the free organization of political parties and associations<sup>8</sup>, only three political associations were admitted – *Directorio Revolucionario 13 de Marzo* [March 13th Revolutionary Directorate], *Partido Socialista Popular* [Popular Socialist Party], and *Movimiento 26 de Julio* [26th of July Movement] – which in 1961 were merged into the *Organizaciones Revolucionarias Integradas* [Integrated Revolutionary Organizations] (ORI) and in 1963 into the *Partido Unido de la Revolución* [United Party of the Revolution] (PURS), finally adopting the name Communist Party of Cuba (PCC) on October 3, 1965<sup>9</sup>. This party continues to be in power; Article 5 of the current Constitution describes it as the “superior governing force of society and the State . . .” It became the only legal political party<sup>10</sup>.
6. The 1976 Constitution established the single nature of the party, a monist conception of the State without separation of powers and excluded any alternative of political pluralism. A system of indirect elections was created that only permits the populace to vote for delegates to municipal assemblies, who in turn vote

---

5 René Gómez Manzano. *Constitucionalismo y cambio democrático en Cuba*. [Constitutionalism and Democratic Change in Cuba]. Editorial Hispano Cubana. Edición Grace Piney. Madrid, 2007. Pp. 24-27, p. 24.

6 *Supra* note 4.

7 National Assembly of People's Power of the Republic of Cuba. *Constitución de la República de Cuba de 1976* [1976 Constitution of the Republic of Cuba]. Available at <https://www.parlamentocubano.gob.cu/index.php/constitucion-de-la-republica-de-cuba/>

8 *Supra* note 4.

9 Alejandra García. *Un pueblo, un Partido*. Partido [One People, One Party] CUBADEBATE. 18 agosto 2018. Available at <http://www.cubadebate.cu/opinion/2018/08/18/un-pueblo-un-partido/>

10 *Constitución de la República de Cuba* [Constitution of the Republic of Cuba]. Article 5, first paragraph. April 10, 2019. Available at <http://media.cubadebate.cu/wp-content/uploads/2019/01/Constitucion-Cuba-2019.pdf>

on the members of the National Assembly of People's Power, the legislative body that elects from among its membership those who will integrate the Council of State and its President as head of the Councils of State and ministers.

7. The 1976 Constitution was reformed in 1992, thereby reforming the direct manner of electing delegates to the Provincial Assemblies of People's Power and members of the National Assembly, who indirectly continue to comprise the Council of State and its maximum nomenclature. However, the new Electoral Law of October 29, 1992<sup>11</sup>, created a system of "candidature commissions" as a filter for determining the nomination of candidates, except those at the municipal level.
8. In 2002, the 1976 Constitution was reformed for the final time, with the fundamental goal of constitutionalizing the irrevocable character of both socialism and the revolutionary political and social system.
9. On April 10, 2019, the current Constitution was enacted, which despite substantial differences with its predecessor and having a different State structure, maintains the sole political party system, official ideology, and irrevocable nature of the political system. The constitutional text is complemented by the Electoral Law of July 13, 2019, whose composition is more complex than the 1992 version, while maintaining the system of candidature commissions as a filter, coincidence in the number of candidates and posts to be filled, and occasionally violating the principle of secret elections, among other irregularities.

---

11 Ley No. 27. *Ley Electoral* [Law No. 27, Electoral Law]. Gaceta Oficial [Official Newspaper], 1992-11-02, number 9, pp. 51-66. October 29, 1992. Available at <https://www.gacetaoficial.gob.cu/sites/default/files/goc-2019-o60.pdf>.

## B. Cuba in the Organization of American States (OAS)

10. In the Inter-American sphere, the Cuban State and Organization of American States (hereinafter, OAS) have historically maintained a most peculiar relationship. Cuba signed and ratified the OAS Charter<sup>12</sup> on April 30, 1948, and July 8, 1952, respectively. As such, it is a Member State of the organization and linked to each provision of this international instrument. Notwithstanding, the Cuban government was excluded from participating in the Inter-American System by Resolution VI<sup>13</sup> of January 31, 1962, at the Eighth Meeting of Consultation of Ministers of Foreign Affairs, given the country's adherence to Marxism-Leninism, which was viewed as being incompatible with the principles and purposes of the Inter-American System.
11. Following Cuba's exclusion from participation in the System, the Inter-American Commission on Human Rights (hereinafter, IACHR, or the Commission) continued to be interested in the state of human rights on the island, issuing eight country reports to date (1962, 1963, 1967, 1970, 1977, 1979, 1983, and 2020), several thematic reports, and precautionary measures in favor of Cuban citizens in imminent danger. It has also taken stances on individual cases and included Cuba in Chapter IV-B of its annual reports on several occasions<sup>14</sup>. This has generated controversy regarding the IACHR's jurisdiction. Nonetheless, the Commission's sphere of action vis-à-vis Cuba has been deemed legitimate, given the country has not denounced the OAS Charter, the sole mechanism for the instrument losing its binding nature. In another order, Resolution VI of January 31, 1962 excluded the Cuban government, though not the Cuban State, from the Inter-American System<sup>15</sup>. The Cuban State is a party to several international human rights instruments in the hemisphere, such as the American Declaration of the Rights and Duties of

12 Organization of American States (OAS). *Charter of the Organization of American States*. Valid as of December 13, 1951. Available at [http://www.oas.org/es/sla/ddi/docs/tratados\\_multilaterales\\_interamericanos\\_A-41\\_carta\\_OEA.pdf](http://www.oas.org/es/sla/ddi/docs/tratados_multilaterales_interamericanos_A-41_carta_OEA.pdf).

13 OAS. *Acta Final de la Octava Reunión de Consulta de Ministros de Relaciones Exteriores* [Final Accord of the Eighth Meeting of Consultation of Ministers of Foreign Affairs]. January 22-31, 1962. Available at [http://www.oas.org/consejo/sp/rc/actas/acta\\_8.pdf](http://www.oas.org/consejo/sp/rc/actas/acta_8.pdf).

14 The IACHR utilizes Chapter IV of its Annual Report as a mechanism for monitoring the state of human rights in countries that "for reasons related to internal circumstances or human rights practices merit [its] special attention." For greater detail, information is available at: [https://www.oas.org/es/cidh/consulta/docs/III.es.15.aportes\\_monitoreo\\_de\\_pases\\_celsconectasdpfldldejusticia.pdf](https://www.oas.org/es/cidh/consulta/docs/III.es.15.aportes_monitoreo_de_pases_celsconectasdpfldldejusticia.pdf).

15 The State and government are different concepts. The State "is the institution through which political action is organized based on the common good, comprised of a network of systematic relationships governed by law. The State comprises another, smaller concept, and that is the government, which is responsible for administering the State through a group of persons who are periodically updated." For greater detail, information is available at: <https://bit.ly/3mGbNwQ>

Man<sup>16</sup> and is a signatory to Resolution VIII of the Fifth Meeting of Consultation of Ministers of Foreign Affairs (Santiago de Chile, 1959), which instituted the Inter-American Commission on Human Rights<sup>17</sup>.

- 12.** In June 2009, OAS General Assembly Resolution No. 2438<sup>18</sup> invalidated Resolution VI of January 31, 1962. Cuba's participation in the OAS became subject to a process of dialogue at the country's request, pursuant to the organization's practices, purposes, and principles. Representative democracy is one of the essential purposes and principles enshrined in the OAS Charter. As such, a dialogue process between the government of the Republic of Cuba and this regional organization should include a critical analysis of the essential elements of this concept in contrast with the political and electoral system established in the country

- 13.** The Inter-American Democratic Charter<sup>19</sup> (hereinafter, the Democratic Charter), the tool for interpreting the OAS Charter, is one of the essential international instruments for drafting the present report. This instrument permits a critical analysis to be performed of the Cuban political and electoral system, in that it sets forth the essential elements of representative democracy as understood within the scope of the Inter-American System.

---

16 American Declaration of the Rights and Duties of Man. Available at <http://www.oas.org/es/cidh/mandato/Basicos/declaracion.asp>.

17 Inter-American Commission on Human Rights (IACHR). *Situación de los Derechos Humanos en Cuba* [State of Human Rights in Cuba]. OAS/Ser.L/V/II. Parag. 42 (February 3, 2020).

18 OAS. *Resolución sobre Cuba* [Resolution on Cuba]. AG/RES. 2438 (XXXXIX-O/09). June 3, 2009. Available at <https://www.acnur.org/fileadmin/Documentos/BDL/2009/7216.pdf>.

19 OAS. *Inter-American Democratic Charter*. September 11, 2001. Available at [https://www.oas.org/charter/docs\\_es/resolucion1\\_es.htm](https://www.oas.org/charter/docs_es/resolucion1_es.htm).

## ***C. Objectives and methodology***

- 14.** This report has the following objectives: demonstrate that the Cuban political and electoral model violates the right to participation in governmental administration; expose the lack of correlation between the national system and the essential elements of the concept of representative democracy employed by the Inter-American System; and, through recommendations, propose a set of measures aimed at achieving their harmonization.
- 15.** To that end, we will examine instruments containing the essential international standards in this field, including the OAS Charter; American Declaration of the Rights and Duties of Man (hereinafter, American Declaration); Inter-American Democratic Charter; Universal Declaration of Human Rights (hereinafter, Universal Declaration); International Covenant on **Civil** and Political Rights; and the Human Rights Committee's General Observation No. 25 on "participation in public matters and the right to vote." We additionally analyze the regulations of Cuba's domestic legal system, such as the Constitution of the Republic, By-laws of the Cuban Communist Party, and Electoral Law.
- 16.** Following the analysis of national and international standards, a simple deductive method is employed, based on a comparison of the aforementioned legal texts, to derive conclusions and offer recommendations within the worldwide, regional, and national spheres that enable a process to commence aimed at complying with the minimal parameters required for a democratic political and electoral system.



**03.**

# **Analysis and State of Rights**

---



- 17.** As was noted in the introduction, Cuba became an OAS Member State after ratifying its foundational Charter in 1952; as such, it must comply with its provisions. The OAS Charter sets out in its preamble, among various issues, that “representative democracy is an indispensable condition for stability, peace, and development in the region.”<sup>20</sup> It additionally indicates that “the genuine sense of American solidarity and neighborliness cannot be other than that of consolidating on this continent, within the framework of democratic institutions, a system of individual liberty and social justice founded on the respect for the essential rights of man.”<sup>21</sup>
- 18.** In addition, Article 2, point (b) of the Charter provides, among the essential purposes of the OAS, for “the promotion and consolidation of representative democracy, while respecting the principle of non-intervention,”<sup>22</sup> while Article 3, point (l) establishes the principle that “American States proclaim the fundamental rights of the human person without distinction as to race, nationality, creed, or sex.”<sup>23</sup>

---

<sup>20</sup> *Supra* note 12.

<sup>21</sup> *Supra* note 12.

<sup>22</sup> *Supra* note 12.

<sup>23</sup> *Supra* note 12.

## ***A. Inter-American Democratic Charter***

- 19.** The Inter-American Democratic Charter was approved in the first plenary session of the Permanent Council on September 11, 2001. Despite not being an agreement but rather a resolution whose role is to provide guidance and that functions as a behavior manual or guide to democratic behavior, it is an important tool for updating and interpreting the OAS Charter.

**20.** In the case of Cuba, while the Democratic Charter is not binding, we have selected this instrument to illustrate the clear unsuitability of the Cuban political and electoral model vis-à-vis the essential elements of representative democracy set forth therein. Another reason to employ this Charter as a reference are the provisions of the aforementioned GA Resolution No. 2438, regarding Cuba's participation in the OAS as a result of the process of dialogue held at the request of the government. In light of representative democracy being one of the essential purposes of the OAS, the dialogue agenda should include compliance with the prerogatives of the Democratic Charter.

**21.** These grounds are supported by Article 19 of the Democratic Charter that provides that:

The rupture of the democratic order or alteration of the constitutional order that gravely impacts the democratic order in a Member State constitutes, while it persists, an insurmountable obstacle for the participation of its government in the sessions of the General Assembly, Meeting of Consultation, Councils of the Organization, specialized conferences, commissions, working groups, and all other organs of the Organization.<sup>24</sup>

**22.** Article 1 of the Inter-American Democratic Charter establishes the right of the peoples of the Americas to democracy, the obligation of their governments to promote and defend democracy, and its essential nature for social, political, and economic development. Article 2 establishes that:

The effective exercise of representative democracy is the foundation for the rule of law and constitutional systems of the Member States of the Organization of American States. Representative democracy is strengthened and deepened through permanent, ethical, and responsible participation of the citizenry within a framework of legality pursuant to the respective constitutional order.<sup>25</sup>

---

<sup>24</sup> *Supra* note 18.

<sup>25</sup> *Supra* note 18.

- 23.** The core principle of the Democratic Charter is found in Article 3, which synthesizes the essential elements of representative democracy, among them:

Respect for human rights and fundamental freedoms; access to power and its exercise subject to the rule of law; the holding of periodic, free, fair elections based on universal secret suffrage as an expression of the sovereignty of the people; a plural system of parties and political organizations; and the separation and independence of political branches<sup>26</sup>.

- 24.** Another important aspect to consider in the Democratic Charter is the section on “Democracy and Electoral Observation Missions” (Articles 23, 24, and 25), which establishes that OAS Member States are responsible for organizing, carrying out, and guaranteeing free and fair electoral processes, and even asking the Organization, in the exercise of their sovereignty, for electoral observation missions for the purpose of providing counsel or assistance in strengthening and developing electoral institutions and processes. This is of the utmost importance in all democratization processes.

---

<sup>26</sup> *Supra* note 18.

## ***B. American Declaration of the Rights and Duties of Man***

- 25.** While the American Declaration of the Rights and Duties of Man does not have the nature of a binding agreement, it is an essential document regarding human rights in the region. It is an international standard within the continental sphere. The analysis of its precepts acquires greater relevance in the case of Cuba, given the fact that Cuba has not ratified other fundamental human rights instruments, such as the American Convention on Human Rights, its additional protocols, or any other inter-American conventions.

- 26.** Article XX of the American Declaration recognizes the right to vote and participate in the government as a human right. To that end, it affirms that “all persons with legal capacity have the right to take part in the government of their country, directly or through their representatives, and to participate in popular elections, which shall be conducted through secret, genuine, periodic, and free voting.”<sup>27</sup>

### ***C. International Covenant on Civil and Political Rights***

- 27.** The International Covenant on Civil and Political Rights<sup>28</sup> is one of the international legal instruments comprising the Human Rights Charter. Its precepts and commentaries contained in the General Observations of the Human Rights Committee (HRC) and its treaty body constitute international standards. Cuba signed this document on February 26, 2008; nonetheless, the text is not binding, given that it has yet to be ratified. As a principle of international law, after signing a treaty, though before it has ratified it, a State commits to not enter into any actions that violate the treaty’s goal and purpose. Therefore, it is essential to analyze the Covenant and IACHR General Observation No. 25 regarding “participation in public matters and the right to vote,”<sup>29</sup> to address the matter in this report.

- 28.** Article 25 of the Covenant establishes that:

All citizens shall enjoy, without any of the distinctions set forth in Article 2, and without any undue restrictions, the following rights and opportunities:

27 American Declaration of the Rights and Duties of Man. Loc. Cit.

28 International Covenant on Civil and Political Rights. December 16, 1966. Available at <https://www.ohchr.org/sp/professionalinterest/pages/ccpr.aspx>.

29 Human Rights Committee. General Observation No. 25: Article 25 – Participation in Public Matters and the Right to Vote. U.N. Doc. HRI/GEN/1/Rev.7 at 194 (1996). Available at <http://hrlibrary.umn.edu/hrcommittee/Sgencom25.html>.

a) Participate in directing public matters directly or through freely elected representatives.

b) Vote and be elected in periodic, authentic elections held through universal, equal suffrage and by secret ballot that guarantees the free expression of the will of the electors.

c) Have access, under general conditions of equality, to the public functions of their country<sup>30</sup>.

**29.** The distinctions in Article 2 are in reference to the prohibition against discrimination by race, color, sex, language, religion, political or other type of opinion, national or social origin, economic position, birth, or any other social condition.

**30.** The second paragraph of HRC General Observation No. 25 adds that “the rights enshrined in Article 25 are related to the right of nations to self-determination, although they are different from it. Pursuant to paragraph 1 of Article 1 [of the Covenant], nations enjoy the right to freely determine their political condition, as well as the right to choose the type of their constitution or government . . .”<sup>31</sup>

---

30 *Supra* note 29.

31 *Supra* note 29.

32 *Supra* note 10

## ***D. The political foundations of the Cuban State are incompatible with the essential elements of representative democracy***

**31.** Internally, Article 1 of the Constitution of the Republic establishes that “Cuba is a socialist State of law and social justice, democratic, independent, and sovereign, organized with everyone for the good of all.” This precept affirms the modality of a State under socialist law that is far from the conceptual term “social State

based on the rule of law,” which aims some of its political policies at promoting economic, social, and cultural rights, maintaining basic elements of the concept such as the rule of law, separation of powers, control of the legality of administration, and guarantees of fundamental rights.

32. The expression “*with everyone for the good of all*” is a phrase taken from José Martí, Cuba’s national hero, whose meaning is pluralist and inclusive. The State’s democratic nature is also affirmed as being an essential feature.
33. Article 3 of the Constitution declares that “sovereignty in the Republic of Cuba resides non-transferable in the people, from whom flows all State power . . .,”<sup>33</sup> while Article 204 establishes the right of all citizens to participate in State administration, whether directly or through their representatives in periodic elections, plebiscites, and popular referenda through free, equal, direct, and secret voting.
34. The proclamation of popular sovereignty as an expression of legitimacy of the State, so as to ensure that it is “*with everyone for the good of all*,” should include all quantifiable sectors of the populace, both the variable or circumstantial majorities as well as minority groups. The right to participate in public administration, directly or through representatives, should be manifested in conditions of equality, with political pluralism instituted.
35. That which is expressed in the foregoing precepts are formal declarations or rights empty of any content, if analyzed together with Articles 4 and 5 of the Constitution. Thus, Article 5 establishes that “the Communist Party of Cuba, sole, Martí-sequel, Castroist, Marxist-Leninist, the organized vanguard of the Cuban nation, supported by its democratic nature and permanent connection to the people, is the superior ruling force in society and the State . . .”<sup>34</sup>

---

33 *Supra* note 10

34 *Supra* note 10.



**36.** As can be seen, this article imposes an ideological and sole-party system as the only form of association, excluding public service for those sectors not identified with official policy. It places the Communist Party in a higher position than even public institutions, thereby rejecting the separation of powers and voiding of all content the fundamental rights related to participation in governmental management. This is incompatible with the essential elements of the rule of law and representative democracy.

**37.** The opinion expressed by the IACHR in its 1983 Country Report on the State of Human Rights in Cuba is thus important. Number 3 in Chapter II on political rights affirms that the exercise of the right to political participation entails:

The right to organize political parties and actions, which through free debate and ideological struggle can elevate the level of society and economic conditions of the community and excludes the monopoly of power by a single group or person . . . Governments have, vis-à-vis the political rights and the right to political participation, the obligation to permit and guarantee the organization of all political parties and other associations, unless they are constituted so as to violate fundamental human rights . . .<sup>35</sup>

**38.** With regard to the effects of a sole party, the IACHR offered an important opinion in number 141 of its 2020 Country Report on the State of Human Rights in Cuba when it declared that:

. . . the Commission believes that the constitutional provision of a sole party not only prevents a greater degree of political discussion, which is a fundamental condition for a democracy, but additionally limits the rights of those who do not adhere to the political convictions of the Communist Party, as it does not permit people to participate as provided for in Article XX of the American Declaration of the Rights and Duties of Man . . .<sup>36</sup>

35 CIDH. *La Situación de los Derechos Humanos en Cuba, Séptimo Informe. The State of Human Rights in Cuba: Seventh Report*. OEA/Ser.L/V/II.61 I/v/ii.61 Doc.29 rev. 1. October 4, 1983. Available at <http://www.cidh.org/countryrep/cuba83sp/indice.htm>.

36 *Supra* note 17, parag. 141.

- 39.** For its part, the composition of Article 4 of the Constitution has adverse effects on essential elements of representative democracy by affirming that:

The defense of the socialist homeland is the greatest honor and supreme duty of all Cubans.

The betrayal of the homeland is the gravest of crimes; anyone who does so is subject to the severest of sanctions.

The socialist system that endorses this Constitution is irrevocable.

Citizens have the right to fight, employing all means, including armed struggle when no other recourse is available, against anyone who attempts to overthrow the political, social, and economic order established by this Constitution.<sup>37</sup>

- 40.** The *intangibility clause* established by this precept is complemented by Article 224 in Chapter XI regarding constitutional reform, which determines that “under no circumstances may the declarations regarding the irrevocability of the socialist system established in Article 4 be reformed . . .”<sup>38</sup>

- 41.** The endorsement of the irrevocable and non-reformable nature of a socialist Marxist-Leninist system that excludes political pluralism violates the inalienable and undeniable right to the self-determination of nations, as established in the fundamental purposes of the United Nations Charter<sup>39</sup> to which Cuba is a signatory (Article 1.2 a) and the aforementioned second paragraph of HRC General Observation No. 25.

- 42.** Peoples’ right to self-determination is not exclusively based on the self-determination of nations without external meddling in their national sovereignty but rather, on peoples’ right to freely determine their political condition and their right to choose the form of their constitution or government. Free self-determination cannot, of course, be a banner used by dictatorships to perpetuate themselves in power, or by regions trying to

---

<sup>37</sup> *Supra* note 10.

<sup>38</sup> *Supra* note 10.

<sup>39</sup> United Nations Charter. Available at <https://www.un.org/es/about-us/un-charter>.

separate from the State, which is why it is not found in the Constitutions of many countries.

- 43.** The term “*pueblo*” [people, community, nation] is a dialectical concept, in that it changes its concrete circumstances, members, wishes and interests, etc. As such, an act of determination, whether imposed or agreed to, of a political system in a given moment cannot subject future generations through eternity or impose the rejection of a people to freely determine its fate.
- 44.** Such irrevocability stands in opposition to the inalienable and undeniable nature of the rights to participate in public administration, whether directly or through representatives, of associations, meetings, and other expressions unconditioned by a constitution that ideologizes the State so as to immortalize a party in power, a party with a linear order and circular historical focus that is incompatible with international human rights standards.
- 45.** Paragraph 4 of Article 4 of the Cuban Constitution adds to the impediment of modifying the established regime of using any method, including armed violence, against anyone attempting to modify the imposed political, economic, and social order, without alternatives. Notwithstanding, in a State governed by the rule of law it is possible to modify the political system through electoral processes or other legal tools.
- 46.** In terms of compliance with and the binding nature of international responsibilities, Article 8 of the 2019 Constitution clarifies that “what is enacted by international treaties in force for the Republic of Cuba is a part or is integrated into, as appropriate, the national legal system. The Constitution of the Republic of Cuba takes precedence over these international treaties.”<sup>40</sup>

---

40 *Supra* note 10.

47. This precept demonstrates little connection with compliance with international responsibilities. Within the sphere of treaties, the States that submit to their rules through the mechanism of consent acquire an obligation to comply in good faith. As such, domestic law should unavoidably be harmonized with the provisions of such treaties.

## ***E. Law No. 127 of July 13, 2019: Cuban Electoral Law<sup>41</sup>***

### **i. The National Electoral Council**

48. Number 20 of the United Nations Human Rights Committee's General Observation No. 25 on "participation in public affairs and the right to vote" states that "an independent electoral board should be established to supervise the electoral process and guarantee it is held fairly and impartially . . . compatibly with the Covenant."<sup>42</sup>
49. The Cuban Constitution created a National Electoral Council that, pursuant to Article 211, "has the fundamental mission of organizing, managing, and supervising elections . . . and guaranteeing the trustworthiness, transparency, speed, publicity, authenticity, and impartiality of the democratic participation processes. It works at the national, provincial, and municipal levels."<sup>43</sup>
50. In sum, the Electoral Council is the institution charged with fulfilling the role of judge or referee at the various electoral levels. Its essential element should be impartiality, as is formulated, though that is vitiated by the one who designates its members, based on which criteria, as detailed below.

41 Law No. 127 "Electoral Law" (GOC-2019-735-O60). Available at <https://www.gacetaoficial.gob.cu/sites/default/files/goc-2019-o60.pdf>.

42 *Supra* note 29.

43 *Supra* note 10.

51. In accordance with Article 36 of the Electoral Law, the National Electoral Council (CEN) is comprised of 21 members: one president, one vice president, one secretary, and 18 members.
52. The president, vice president, and secretary are elected by the National Assembly of People's Power at the proposal of the President of the Republic in a supposedly "*free, equal, direct, and secret*" election. Such wording demonstrates that in reality this deals with a ratification by the legislative body, as the head of State is the one who proffers the names of those who, according to him, will lead the organ that will fulfill a role of referee in the electoral processes. The foregoing, together with the ideological homogeneity of the parliamentarians, excludes the critical impartiality that must govern a democratic process.
53. The remaining 18 members of the Electoral Council are elected – in reality, ratified – by the National Assembly of People's Power or its Council of State, at the proposal of the President of the Electoral Council, who had in turn been proposed by the President of the Republic.
54. The Provincial Electoral Councils (CEPs), at a level below that of the CEN according to Article 44.2, are comprised of a president "elected" by the Council of State **at the proposal of the CEN President**, while the rest of their members are **designated** by agreement of the CEN.
55. Article 50.2 provides that the members of the Municipal Electoral Councils, at a level below that of the CEPs, are designated by the corresponding CEP, with the exception of the president, who is elected by the People's Municipal Assembly.
56. In sum, the members of the bodies responsible for imparting equity in the legislative processes are ratified by proposal of the President of the Republic at the highest level, and each ratifies the next level in turn, in descending vertical order. That is aggravated by the Federal Law's silence on which requirements must be considered for such proposals and designations, which is evidence of a discretionary act, according to political loyalties.

## ii. Candidature Commissions

57. The Candidature Commissions are established by the Electoral Law as the bodies charged with presenting proposed candidates for the principal public elective posts. The Commissions function in practice as a sort of ideological filter that serve as the inner workings of the Communist Party as is established in this section.
58. According to Article 153 of the Electoral Law, the Candidature Commissions are comprised of representatives of the so-called social and mass organizations: *Central de Trabajadores de Cuba* [Cuban Workers' Central Union], *Comités de Defensa de la Revolución* [Committees for the Defense of the Revolution], *Federación de Mujeres Cubanas* [Cuban Women's Federation], *Asociación Nacional de Agricultores Pequeños* [National Association of Small Farmers], *Federación Estudiantil Universitaria* [University Student Federation], and *Federación de Estudiantes de la Enseñanza Media* [Federation of Secondary School Students].
59. Article 14 of the Constitution provides that "the State recognizes and encourages social and mass organizations that bring together in their core various sectors of the population, represent their specific interests, and incorporate them into the task of edifying, consolidating, and defending the socialist society."<sup>44</sup> Article 62 of the By-laws of the Cuban Communist Party, the principal ruling force of the society and State, declares that "the party guides and directs the work of social and mass organizations . . ."<sup>45</sup> As such, social and mass organizations, apparent non-governmental organizations, are in reality guided and directed by the Communist Party and operate vertically, centrally, and in a planned fashion. They are not elements of citizen diversity and initiative but rather, of State centralization, whose goal is to create a virtual image of "civil society."

---

44 *Supra* note 10.

45 By-laws of the Cuban Communist Party. Available at <https://www.pcc.cu/sites/default/files/documentos/2020-07/estatutos-pcc.pdf>



60. Based on these assumptions, we can conclude that the social and mass organizations – and consequently the Candidature Commissions – do not fulfill their role of impartiality but rather, constitute tools of the highest State nomenclature.

## ***F. Elections of the principal public elective posts, pursuant to the Electoral Law and Constitution***

61. It is important to specify the mechanisms for accessing national-level public posts, with an eye to understanding how the principal State branches are constituted, except for the judicial branch, which is not elective. This section also mentions municipal elections due to their special particularity.

### **i. Parliamentary elections: National Assembly of People's Power**

62. The Candidature Commissions, as has been indicated, play a decisive role in the selection and election of all candidates who will hold parliamentary posts and their branches up to the President of the Republic. Below, one finds proof that in reality this is more about voting than electing, as the number of candidates always coincides with the number of posts to fill.

### **ii. Nomination and election of members of the National Assembly of People's Power: legislative body**

63. The proposed candidate slate for parliamentarian is comprised, according to Article 180 of the Electoral Law, in the following manner:
64. The Municipal Candidature Commissions select from among the delegates to Municipal Assemblies a number of candidates to occupy up to 50% of the posts that they are entitled to choose per municipality, relative to Article 176.

65. The remaining 50% is selected by the Municipal, Provincial, and National Candidature Commissions by “citizens in full exercise of their civil and political rights” and by current members of parliament. In the latter case, this selection corresponds to the National Candidature Commission.
66. Following the aforementioned preselection of candidates, the National Candidature Commission, after approving or rejecting the proposals of the lesser commissions, sends the requests, together with its own, to the National Electoral Council, for a second approval test. Nothing can be left to randomness (Articles 181 through 185).
67. In the event no “legal” objections exist, the National Candidature Commission sends the proposed candidatures to the Municipal Candidature Commissions so that the latter can in turn submit them for approval to the delegates to the corresponding Municipal Assemblies of People’s Power (Articles 186 through 188).
68. Once the proposed slate of candidates has been delivered to the delegates to the corresponding Municipal Assemblies, the law dictates that said delegates have the power to approve or reject one or more or all of the proposed candidates, in both [sic] cases by a vote of more than 50% of those present. However, it must be done **by a vote by show of hands** (Article 191 and those that follow).
69. These formalities for determining the candidates for parliamentarians are aimed at guaranteeing a popular vote though not an election, as the number of pre-candidates comprising the project approved by the National Candidature Commission is equal to the number of parliamentarians to be elected, while the municipal delegates nominate the same number of parliamentarians as the municipality can elect (Articles 175 and 192).
70. Lastly, the proposed slate of candidates is submitted to a popular vote, with the electorate advised they can vote for one, several, or all of the candidates. This last variant is what transpires as a general rule, given the coincidence between candidates and posts to fill (Article 202).

**iii. Nomination and election of the President,  
Vice President, and Secretary of the National  
Assembly of People's Power and other  
members of the Council of State**

- 71.** The posts of President, Vice President, and Secretary of the National Assembly are selected from amongst its members. The proposed candidate slate is developed by the National Candidature Commission following the request for **anonymous documents** from the members of the Assembly with their respective proposals (Article 215).
- 72.** The project is then presented to the National Assembly with only one proposal per post, and the members of the Assembly exclude or approve all or some of the proposals by more than 50% of the vote in **public voting**, which violates the [principle of] secret voting (Article 216).
- 73.** The President, Vice President, and Secretary of the National Assembly also hold those posts in the Council of State. The nomination of the rest of the candidates for the Council of State – 18 posts, given there are 21 members – transpires in a manner similar to that of its leadership, with the differences being that that nomination is equivalent to its membership. In other words, broader and anonymous documents are not required of the Assembly members (Article 217).
- 74.** Once the proposed candidatures have been approved, the law requires an “election” to be held through a “free, equal, direct, and secret vote” wherein the parliamentarians “elect” those whom they have already voted on publicly with the same options and posts. In those terms, that is merely a formality (Article 219).

**iv. Nomination and election of the President and  
Vice President of the Republic**

- 75.** The nomination process for the country's highest representatives is identical to the aforementioned one for the posts of President, Vice President, and Secretary of the National Assembly. It is performed by the National Candidature Commission following the request for anonymous documents from the members of the Assembly. A proposal is then developed with two candidates, one for President of the Republic and

the other for Vice President, both of whom are chosen from among the members of the Assembly (Article 221).

- 76.** The aforementioned proposal is submitted for exclusion or approval, in both cases by more than 50% of the Assembly members present, by a **vote of a show of hands**. This formality simplifies and ensures the elective mechanism based on the proposals that exist and avoids a possible challenge or change of intention by the officials who elect candidates who have already been proposed, as endorsed by Articles 221, 222, and 131.
- 77.** The formality is completed by the delivery to the parliamentarians of a ballot so they may perform the so-called “free, equal, direct, and secret vote.” The person who obtains votes from a simple majority of the Assembly Members will be elected, although as a general rule the Cuban parliament is unanimous (Article 222), which is possible due to the membership of its members [sic], the election mechanism, and because the issue, speaker, and what he/she should say or propose is programmed.
- 78.** In the hypothetical case that one of the candidates does not obtain the required votes, the National Candidature Commission will formulate another proposal based on the stipulations of Article 224.
- 79.** As has been established, the number of candidates coincides with the posts to be filled in all cases of the aforementioned public posts, which brings into question the existence of the elections themselves. In discussing that issue, paragraph 15 of the HRC’s General Observation No. 25 indicates that “the effective realization of the right to and possibility of presenting oneself for elective posts guarantees that all persons with the right to vote can elect from among various (alternatives) candidates . . .”<sup>46</sup>

---

<sup>46</sup> *Supra* note 29.

## **v. Municipal elections**

- 80.** The purpose of these types of elections is to establish the so-called Municipal Assemblies of People's Power, the local governments in municipalities. The initial stage of shaping the Assembly with regard to the nomination and popular election of the candidates, in contrast to the aforementioned elective processes, has a democratic procedure in the Electoral Law. Notwithstanding, an analysis of the State responses in this report will point up the discrepancy between form and reality.
- 81.** According to the Electoral Law, the candidates for Municipal Assembly Members are not nominated by the Candidature Commissions but rather, in general voter assemblies held in their electoral districts (neighbors). This is carried out in the mass presence of the electors who generally have the right to publicly propose any citizen who can be nominated if he/she receives the largest number of votes. Each electoral district must have a minimum of two candidates nominated (Articles 88 through 95).

## **vi. Nomination and election of the President and Vice President of the Municipal Assembly of People's Power**

- 82.** The nomination and election of the leadership of the Municipal Assembly does not suffer the same fate as the nomination and election of its members, as they again play a significant role in the Candidature Commissions. The Municipal Candidature Commissions, following an individual (secret) consultation with Assembly delegates, draw up a proposed slate containing only two candidates to hold the posts of President and Vice President (Articles 136, 137, and 138).
- 83.** As there are only two candidates for the two posts, the Assembly delegates only have the ability to decide which of the two shall be President and which shall be Vice President (Article 139).
- 84.** The proposals for candidates for President and Vice President are submitted for the approval or rejection of the Assembly delegates in a **vote by a show of hands** (Articles 140 and 141). If the proposals are approved by more than 50% of those present, they are put to a secret vote with the sole option of establishing an order of preference between the two options, President or Vice President (Article 141).



# 04.

## Analysis of State Responses

---



- 85.** In this section we cite some recent publications from the newspaper *Granma* (the official organ of the Central Committee of the Cuban Communist Party), the official site *Cubadebate*, and declarations – in their own media or audiovisual aids – of the highest leaders of the State and Communist Party in recent years, to wit: Fidel and Raúl Castro Ruz and their successor, Miguel Díaz-Canel Bermúdez.<sup>47</sup> After synthesizing the responses from the State media and aforementioned leaders, we analyze those aspects that constitute common elements, so as to address the issue from the perspective of the official discourse.
- 86.** With regard to the elections of delegates to the Municipal Assemblies of People's Power, whose nominations are not formally governed by the Communist Party or the Candidature Commissions, we cite what was expressed in an audiovisual aid produced by Miguel Díaz-Canel Bermúdez and a synthesis of some of the irregularities detected in the 2018 electoral process by the Inter-American Commission on Human Rights.<sup>48</sup>

47 Miguel Mario Díaz-Canel Bermúdez is the current President of Cuba and First Secretary of the Community Party on the island. The declarations in audiovisual aids included in the report were issued at times when he did not yet hold these posts. Previously, Díaz-Canel was interchangeably First Secretary of the Party in the provinces of Villa Clara and Holguín, Minister of Higher Education, Vice President, First Vice President, and later President of the Councils of State and of Ministers.

48 *Supra* note 17.

49 Fidel Castro Ruz. *¿Por qué en Cuba hay un partido único?* [Why Is There a Sole Political Party in Cuba?] *Granma*. August 16, 2018. Available at: <http://www.granma.cu/cuba/2018-08-16/por-que-en-cuba-hay-un-partido-unico-16-08-2018-21-08-04>.

## ***A. Publications by official media and an interview with Miguel Díaz-Canel***

- 87.** The August 16, 2018, edition of *Granma* included the article “*¿Por qué en Cuba hay un partido único?*”<sup>49</sup> [Why Is There a Sole Political Party in Cuba?] that contains fragments of the speech delivered by Fidel Castro Ruz at the close of the X Ordinary Period of Sessions of the Third Legislature of the National Assembly of People's Power. In sum, his principal arguments were:

The multiparty system is the great instrument of imperialism used to maintain societies fragmented, divided into a thousand pieces; it converts societies into impotent societies in order to resolve problems and defend its interests.

A country broken into 10 pieces is the perfect country for being dominated, for being subjugated, because it has no will as a nation, as the will of the nation is divided into many fragments, the efforts of the nation are divided into many fragments, all of the intelligence is divided, and what is left is a constant and unending struggle among the fragments of society.

A Third World country cannot afford such a luxury. Truly many do exactly that, of course they have been doing so for some time now, and it has been quite a while that a significant number of them have been subjugated and dominated.

Of course, that in a society that has to confront the problems of underdevelopment and must develop in conditions as difficult as those in which it must develop today, unity is essential...

. . . It is thus that I have the deepest conviction that the existence of a single party is and should be, over the course of a very long historic period whose length no one can anticipate, the way in which our society is politically organized...<sup>50</sup>

- 88.** On May 13, 2021, the newspaper *Granma* published the article entitled “¿Por qué no necesitamos más que un Partido?” [Why Don’t We Need More Than One Political Party?], which once again invokes a speech made by Fidel Castro on July 26, 1988, reproducing snippets such as the following:

And we should say here, once and for all, that we don’t need more than one political party, in the same way that Martí didn’t need more than one party to fight for Cuba’s independence, in the same way that Lenin didn’t need more than one party to lead the October Revolution. I say this so those who believe that we will begin permitting the existence of ‘parties in others’ pockets’ [*partidos de bolsillo*] here will release those hopes, to organize

---

50 *Ibid.*

51 Fidel Castro Ruz. *¿Por qué no necesitamos más que un Partido?* [Why Don’t We Need More Than One Political Party?] *Granma*. May 13, 2021. Available at: <http://www.granma.cu/cuba/2021-05-13/por-que-no-necesitamos-mas-que-un-partido-13-05-2021-02-05-14>.

whom, the counter-revolutionaries, the pro-Yankees, the bourgeoisie? No! Here there is a single party, which is the party of our proletarians, our campesinos, our students, our workers, our people, strongly and indestructibly united.

We don't have to rectify absolutely anything regarding that. We have an extremely democratic system, much more democratic than all of the bourgeois systems of millionaires, of the plutocracy which is, in truth, the one that generally governs capitalist countries.

We don't have anything to learn, and we aren't going to stray even one iota from this path, where power emanates from the people. And all of you know that our party emerged from the people, it didn't fall from the sky, and that our supporters are chosen from among the best of the youth and from among the best workers. . . .<sup>52</sup>

- 89.** On August 19, 2018, the official digital site *Cubadebate* published the article “*Un pueblo, un partido*”<sup>53</sup> [One People, One Party], taken from the newspaper *Granma*, by the author Alejandro García, who reiterated what had been expressed by Army General Raúl Castro Ruz, First Secretary of the Central Committee of the Cuban Communist Party, on April 19, 2018. With regard to the proposed Constitution, he declares that:

We do not intend to modify – he explained during the Constituent Session of the IX Legislature of the National Assembly of People's Power – either the irrevocable nature of socialism in our political and social system or the ruling role played by the Cuban Communist Party as the organized vanguard and superior ruling force in society and the State, as established by Article number 5 of the current Constitution, whose continuation in the next one we will defend.<sup>54</sup>

- 90.** For his part, when interviewed by the Telesur<sup>55</sup> television chain, Miguel Díaz-Canel Bermúdez said the following in response to a question posed by the journalist regarding the governance of a single party in Cuba:

---

52 *Ibid*

53 *Supra* note 9

54 The aforementioned draft Constitution is the one related to the Constitution enacted on April 10, 2019.

55 Special interview with Miguel Díaz-Canel Bermúdez by the Telesur channel via YouTube. The response to the question on the governing aspect of a sole party in Cuba occurs between minute 50 and minute 57. Available at: <https://youtu.be/Z7XZVI-n0EE>.

The matter of the leading role of the party in our society, which we don't renounce, and which is supported by the majority of the people, has to do with fundamentally historic reasons . . .

Some try to view the party as an electoral party and it's just that in Cuba's conditions, the party isn't electoral, it has to do with historic roots. Martí founded the Cuban Revolutionary Party, which was the foundation for today's Communist Party from a historical point of view . . . Not in order to seek a party for elections; [rather,] Martí sought a party with which to tackle the revolution, to carry out the revolution that would grant independence and sovereignty to the country on the basis of unity. A party that would be totally open and democratic, that would not offer possibilities for ruptures or disunity . . .

In our history, the issue of unity has left a profound mark, needed unity. When one goes through our history, when we've experienced gaps in our unity, when it has broken, we've had setbacks...

Fidel defined something that is of the utmost importance. There has only been one revolution in Cuba. The sense of continuity has been well conceptualized there . . .

The party is not a party of elections; it is a party of revolution; it is a party of the people; it is a party for achieving unity . . . The principal goal of the enemy is to break our unity.<sup>56</sup>

91. Lastly, in the April 10, 2020, edition of the newspaper Granma, in the article “¿Por qué en Cuba hay un único partido?” [Why Does Cuba Have Only One Party?] journalist Michel E. Torres Corona covers the aspects which this report deems as common elements in the official declarations. He begins by laying out the “attacks” (questioning) against the revolution by the “structuring of State power and by its ideological, functional, and regulatory elements.”<sup>59</sup> He then refers to “updating the

---

56 *Ibidem*.

57 *Supra* nota 49.

58 *Supra* nota 49.

‘social and economic model,’” even though said “update” does not include “the one-party system as a guide and governor of the society and State.”<sup>59</sup> Among the principal arguments put forth are the following:

The lack of unity in the revolutionary forces was a decisive factor in the signing of the Pact of Zanjón, in the resounding loss of the Chiquita War, and in the failed Gómez-Maceo Plan, to cite but a few examples. Therefore, José Martí thought about the need to find a party that would bring together and coordinate the efforts of the pro-independence patriots and guide a Revolution that would not be limited to military successes but rather, introduce a new order, a republic “with everyone and for the good of all.” A Revolution that would not succumb to either colonialist efforts in order to preserve the status quo, or an anti-nationalist vocation and the hired mourners of reformists and annexationists.

The history of Martí’s PRC was a powerful influence on the revolutionary process, which was reborn with the storming of the Moncada Barracks and had its crowning moment on January 1, 1959. It was, however, after the triumph of the Revolution, when it became even more clear the need to unite all forces based on the same goal. First, with the *Organizaciones Revolucionaras Integradas* [Integrated Revolutionary Organizations]; then, with the *Partido Unido de la Revolución Socialista de Cuba* [United Party of the Socialist Revolution of Cuba]; and lastly, the Communist Party of Cuba (in whose name it is always valid to declare the notable influence of the socialist camp and Soviet thinking), the Revolution sought to unite the political action in a country besieged by the reactionary forces of the Western Hemisphere.

The model for the sole party in Cuba is defined in the Constitution, which institutes the PCC as the guide for the State and society. However, the PCC does not have electoral functions, nor does it have the legal authority to nominate or designate candidates, remove administrative higher-ups, or supplant State powers, such as the meting out of justice or public administration.<sup>60</sup>

---

59 *Supra* note 49.

60 *Supra* note 49.

## ***B. Common elements in the official discourse regarding the existence of a single party***

- 92.** Three arguments are reiterated in official responses regarding the hegemony of a sole ideology and mode of political association: a) the historical legacy of the Cuban Revolutionary Party founded by José Martí in 1892; b) national unity to confront external harms; and c) the supposed non-electoral character of the Communist Party.
- 93.** Regarding the *historic legacy* of the Cuban Revolutionary Party (PRC),<sup>61</sup> despite the fact that it sought unity among the various political forces with an eye to achieving the common purpose of national independence, and indeed had no electoral goals, this was due to a concrete historical context. The undeniable historic significance of the PRC cannot be employed as a way to justify the nullification of inalienable rights.
- 94.** Notwithstanding, with a simple perusal of Articles 4 and 5 of the Foundations of the Cuban Revolutionary Party,<sup>62</sup> one can conclude that it did not have the purpose of emerging as the sole form of political organization, or of imposing its ideological hegemony:

Article 4 – The Cuban Revolutionary Party does not propose to perpetuate in the Cuban Republic, through new forms or alterations that are more apparent than essential, the authoritarian spirit and bureaucratic composition of the colony but rather, found, through the honest and cordial exercise of people’s legitimate capacity, a new nation and sincere democracy that is capable of defeating, through real work and a balance of social forces, the dangers to sudden freedom in a society composed for slavery.

61 The Cuban Revolutionary Party was a political organization created by José Martí on April 10, 1892, with the goal of organizing Cuban Independence and helping, to the degree possible, the independence efforts of Puerto Rico, as both at that time were overseas provinces of Spain.

62 José Martí, noted by Julio M. Shiling, *Bases del Partido Revolucionario Cubano* [Foundations of the Cuban Revolutionary Party]. 1892. Available at: <https://patriademarti.com/buscar/bibliografia-politica-cubana/documentos-pro-libertad/50-1892-bases-del-partido-revolucionario-cubano>.

Article 5 – The Cuban Revolutionary Party does not have the goal of bringing to Cuba a victorious association that views the island as its prey and possession but rather, preparing, with as many effective ways as are permitted to foreigners' freedom, the war that must be fought for the decency and good of all Cubans, and hand over to the entire country a free nation.

95. Regarding this aspect, there is also the well-known phrase uttered by José Martí, the founder of the PRC: *"It is always a tragedy to freedom for freedom to be a party."*<sup>63</sup>
96. With regard to national unity to confront external threats, while every sovereign nation is a unit onto itself, an entirety as a whole, and must act according to the principle of self-determination without external interference and with the right to preserve its identity and integrity, its population is and shall be heterogeneous, diverse in its interests and purposes. A democratic State is by necessity inclusive and plural, with all quantifiable sectors having access therein to public administration in their respective proportions. That is incompatible with the idea of a homogeneous and discriminatory political entity.
97. The assertion regarding the non-electoral character of the Communist Party and its non-intervention in the nomination of any candidate for public elective office is a crude and false argument.
98. As was demonstrated in the analysis of the state of rights, the Candidature Commissions, responsible for the nomination of candidates for the principal public elective offices, are comprised of social and mass organizations that are guided and directed by the Cuban Communist Party, which consequently is indeed electoral and decisive in the control of those who comprise State structures.

---

63 José Martí, *Obras completas: Edición conmemorativa del cincuentenario de su muerte* [Complete Works: Commemorative Edition on the Fiftieth Anniversary of His Death], Volume 2, Publishing house: Lex, Havana, 1946, p. 882.



## ***C. State responses regarding the nomination and election of opponents in municipal elections***

- 99.** The only way the citizenry can nominate candidates without intervention from the Candidature Commissions is the nomination of delegates to the Municipal Assemblies of People's Power where, according to the Electoral Law, any citizen in electoral assemblies can be publicly proposed. Some sectors of civil society, through various proposals, have attempted to participate thusly in municipal elections; however, they have not been able to do so due to the deployment of multiple repressive mechanisms.
- 100.** The lack of political will to permit the participation of sectors of the opposition in the electoral processes was documented in an audiovisual aid<sup>64</sup> by then-First Vice President of the Councils of State and of Ministers, Miguel Díaz-Canel, who declared:

. . . projects that are aimed at the 2018 elections seeking to put forward counter-revolutionaries, candidates for people's power delegates to become delegates [sic], if they become delegates they get to the Municipal Assembly and can then get to the Provincial and National Assemblies, and it would be a way of legitimizing a counter-revolution within our civil society, and now we are taking all possible steps to discredit such a thing, so that the people will have an understanding of the risk, so that the people will know of them.

In fact, in the previous process for delegates to the Municipal Assemblies here in Havana, three counter-revolutionaries were put forward in three areas. What transpired afterward is that the people came to know them and at the district level they did not succeed by a long shot, though this has already been attempted.

---

64 CiberCuba. Díaz-Canel sobre opositores en las elecciones [Díaz-Canel on Opponents in Elections]. August 30, 2017. Available at: <https://youtu.be/gkADx3tdKBU>.

In these moments during the last count I did, we had 43 counterrevolutionaries registered throughout the country who proposed being nominated in the 2018 electoral process that begins now, this year; that is, this battle we are already pitching during the second half of the year, we are in the midst of this process.<sup>65</sup>

**101.** What Miguel Díaz-Canel said is contradicted by paragraph 17 of the HRC's General Observation No. 25, which affirms that "... political opinions should not be employed as a reason for depriving someone of their right to run for election."<sup>66</sup>

**102.** By way of conclusion regarding the State's responses, the IACHR's last country report describes several of the repressive acts deployed by the State to prevent and repress attempts by civil society to participate in the 2018 elections. The following are summaries of some of those statements:

... The Commission has received information regarding repressive tactics employed by the State or by persons with its authorization, support, or acquiescence that are detrimental to all individuals whose work is identified as being a threat to the current system of government.

... Of particular note is the information received regarding actions aimed at preventing political participation in the 2017 electoral process. Among those acts, denunciations of the following acts are particularly noteworthy: harassment, threats, and reprisals; arbitrary detentions; raids of homes and confiscation of goods, generally linked to fabricated criminal lawsuits; obstacles to meeting for political purposes; wrongful restrictions on leaving the country and deportations from Havana to other provinces of the interior; and stigmatization and disparagement. According to the information received, those actions are aimed at hindering independent candidatures in the Candidate Nomination Assemblies, legalizing civil society organizations, holding training workshops on electoral matters, presenting citizen proposals for

---

65 *Ibid*

66 *Supra* note 29.

67 *Supra* note 17, Chapter 5: "Representative Democracy and Political Rights," "Restrictions of the Exercise of the Right to Vote," and "Restrictions of the Rights to Assembly and Freedom of Association, and Arbitrary Detentions," [and] "Restrictions for Preventing Political Participation."

reforms to electoral legislation, [and] campaigns in favor of holding a binding plebiscite, among other related activities.

. . . it was indicated that given the fact that Electoral Law No. 37 excludes the following from exercising the right to elect and be elected – “mental cripples,” “those who are legally disqualified for having committed a crime,” [and] “those who have been sanctioned by being deprived of their public rights after having fulfilled their sanction of being imprisoned – independent candidates have been criminally tried or convicted, generating the immediate result of the impossibility of their participation in the current electoral process.

- 103.** The statements made by the current leader of Cuba reaffirm the circular, deterministic focus of the story of power, which serves to reinforce old identities in order to endorse the predominance of a political power over the rest of society. Viewing the past as being based on the present not only distorts history, but also supplants the real nation with the nation created by the State. The ideologization, evident in the cited addresses and articles, negates the complex network of economic, social, and cultural connections, interests, and challenges on the island.

---

68 *Supra* note 17.

*La más des  
de las acti  
por no bus*

MACAR  
EADDS

**05.**

**Conclusions**

---

- 104.** Cuba has been an OAS Member State since it ratified its foundational Charter on July 8, 1952. OAS General Assembly Resolution No. 2438 of 2009 invalidated Resolution VI of January 31, 1962, which excluded the Cuban government from participating in the Inter-American System and established that its participation in the OAS would be subject to a dialogue process by request of the country, pursuant to OAS practices, purposes, and principles.
- 105.** Representative democracy is one of the fundamental purposes of the OAS Charter. As such, a process of dialogue between the government of the Republic of Cuba and the organization should entail a critical analysis of the essential elements of this concept, in contrast to the political and electoral system instituted in the country. To that end, the provisions contained in the Inter-American Democratic Charter will be unavoidable, as they are seen as a guide for democratic behavior and a tool for interpreting the foundational charter of the regional organization.
- 106.** 106. Despite the Cuban Constitution declaring the existence of a democratic, inclusive State characterized by the rule of law – *“with everyone and for the good of all”* – this is not guaranteed. Even so, the official assertion persists of the existence of the principle of popular sovereignty and the right of everyone, without exclusion, to run the State directly or through representatives in periodic elections via free, equal, direct, and secret voting. Other regulations in the constitutional text itself serve to empty the content set forth in these ideas.
- 107.** Among the constitutional regulations that violate the aforementioned principles, we cite those related to the official ideology of a sole party and the type of political association that excludes alternatives on the part of society, by considering the Communist Party to be the highest ruling force in the society and State, and above all those that define socialism as the sole form of political system and the use of any means, including armed violence, against anyone who might attempt to modify it.



- 108.** The existence of a sole-party State system excludes the possibility of real participation in public administration by sectors that dissent or have alternative political interests. It rejects the idea of political pluralism as an essential element of representative democracy, any variation of the rule of law, and impedes the holding of authentic elections wherein other divergent ideologies and interests can take part under equal conditions. As such, it nullifies the principle of popular sovereignty as a legitimate foundation for governmental powers.
- 109.** The Cuban Electoral Law establishes mechanisms that make impartiality impossible and ensure control over the result through irregular electoral processes, given that the members of the National Electoral Council are vertically selected by political actors who in turn will be or have been part of the electoral result. The role of the Candidature Commissions, instituted by law as a filter, an apparatus for transmission and indirect action by the sole party, is unfortunate, due to its monopolistic intervention in the proposal and selection of the most important public officeholders.
- 110.** The Electoral Law establishes another peculiarity that converts the electoral process for the principal public posts into acts of voting rather than electing, given that electing means choosing from amongst several alternatives. It is stipulated that the Candidature Commissions, the sole source of nominations except in the case of delegates to the Municipal Assemblies of People's Power, propose slates whose number of candidates always coincides with the number of public posts to fill: a game of appearances wherein the voters, instead of electing, ratify or reject an entire package.
- 111.** Closely related to the irregularity of the coincidence between candidates and posts to fill is the flagrant violation of the principle of the secret ballot, whose goal it is to ensure individuals vote freely and privately, free from the psychological coercion imposed by public knowledge of their decision. This encompasses the posts of Presidents [and] Vice Presidents of the Municipal Assemblies of People's Power, President, Vice President, and Secretary of the National Assembly, members of the Council of State, and Vice President of the Republic.

- 112.** For the aforementioned posts, the proposed candidatures are submitted for the consideration by the delegates to the Municipal Assemblies or members of the National Assembly, as appropriate, so that a vote by a show of hands approves or rejects the proposal. If the proposal is publicly approved by 50% plus one, these same Assembly members or delegates then participate in a second vote, though this time it is secret, where the person obtaining the same percentage of votes (50% plus one) is elected.
- 113.** The secret vote is a deception, due to the fact that the future voters are presented a proposal entailing a coincidence of candidates and posts that must be approved or rejected by a show of hands, by a percentage equal to the one that is later required in secret voting performed by the same subjects who previously had approved it publicly.
- 114.** With regard to the State responses regarding the existence in Cuba of a single political party with a supra-State rank, an analysis of the recent publications by official media and explanations given by those who have led the nation in recent years, yielded the following three elements as constants in their reasoning: the historic legacy of the Cuban Revolutionary Party (PRC) founded by José Martí; national unity in the face of danger from external aggression; and the alleged non-electoral nature of the Communist Party.
- 115.** None of the three justifications is satisfactory. The founding of the PCR emerged from the historic moment of the fight for independence; its purpose was not to register an elite or group in power. Martí's thinking is incompatible with the single-party idea, while the right of individuals to meet for political purposes and participate in public administration regardless of their ideology or political affiliation is inalienable. National unity cannot be used as an argument for excluding the essential pluralism of a democratic society. The supposed non-electoral nature of the Communist Party, after examining its discriminatory role and the control it exercises over the social and mass organizations and consequently, over the Candidature Commissions, is a falsity.



- 116.** With regard to the nomination and election of delegates to the Municipal Assemblies of People's Power, local elections, significant discrepancy exists between the provisions of the Electoral Law and attitude of political power. The law does not provide for the intervention of the Candidature Commissions in these types of processes. Any citizen can publicly nominate and be nominated in a voter assembly, with several candidates being nominated for each post. Nonetheless, there is no political will for opposition candidates or candidates who diverge from those in power to be nominated in these processes, as all attempts at alternative citizen participation have been the object of stigmatization, obstruction, and State repression, which violates fundamental civil and political rights, despite their being protected in international human rights instruments.



# 06.

## Recommendations

---

## **To the Cuban State**

- a.** Accept the provisions of GA Resolution No. 2438 of June 3, 2009 and commence a dialogue with the OAS aimed at ensuring Cuba's participation in this regional body. We suggest including on the dialogue agenda the necessary steps for harmonizing the Cuban political and electoral system with the essential premises of representative democracy established by the OAS Charter and Inter-American Democratic Charter.
- b.** Sign and ratify the American Convention on Human Rights and as a result, assume the commitment to adopt the necessary legislative measures for adjusting the prerogatives of the Convention to the domestic legal system with regard to the rights and freedoms that are violated by the current political and electoral system.
- c.** Accept the provisions of the Inter-American Democratic Charter as a guide for democratic behavior and tool for interpreting the OAS Charter regarding regional standards for representative democracy.
- d.** Ratify the International Covenant on Civil and Political Rights, signed by Cuba on February 28, 2008. Adjust its domestic legal system to the prerogatives of the Covenant and General Observations of the Human Rights Committee, especially General Observation No. 25 regarding "participation in public matters and the right to vote."
- e.** Extend an open invitation to the Special Procedures to make visits in loco and accept requests for in loco visits, even without responding, from the following parties responsible for mandates of the United Nations Human Rights Council Special Procedures: Special Rapporteur on the Situation of Human Rights Defenders; Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; and Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association. The visits should be permitted without any restrictions and transpire with the full participation of independent civil society.

- f.** Review Article 8 of the Constitution of the Republic, wherein, despite declaring that the international treaties in force comprise a part of and integrate the national legal system, then goes on to state that the Constitution takes precedence over international treaties. This denotes a lack of commitment and the absence of guarantees of compliance with the international responsibilities acquired by the State. What has been agreed to should be complied with in good faith, pursuant to the principles that govern international law.
- g.** Review the irreversible nature of the Marxist-Leninist type of socialism in the text of the Constitution as being the only type of political system established in Articles 4 and 224 of the Constitution. Both precepts violate the right of the Cuban people to freely determine their political condition, Constitution, or government, and the rights to real participation by divergent sectors. No political decision, with or without consensus, can justify the perpetual abdication of a people to self-determine its destiny. We suggest taking into consideration that all clauses that contradict the inalienable and undeniable character of human rights should be deemed invalid.
- h.** Review paragraph 4 of Article 4 of the Constitution that justifies the use of any method, even armed violence, against anyone who attempts to modify the political, economic, and social order imposed in perpetuity. There should exist peaceful ways in a democracy for effecting change while maintaining order, institutions, and respect for fundamental rights.
- i.** Review Article 5 of the Constitution that empowers the Cuban Communist Party as the highest leading force in society and the State, and sole force for political association. We suggest including legal formulas that guarantee political pluralism and freedom of association for political organizations and movements.

- j.** Reexamine Law No. 127, the Cuban Electoral Law, to guarantee a pluralist system of political parties or organizations and an independent electoral board or court that supervises the just and impartial nature of periodic electoral processes based on universal, secret suffrage.
- k.** Adopt the necessary measures for carrying out peaceful participation of all sectors of civil society in electoral processes without political or any other kind of discrimination and in the State's representative posts.
- l.** Request counsel and assistance from the OAS to strengthen and develop electoral institutions and processes through an electoral observation mission by the organization to the country that is carried out objectively, impartially, and transparently. To that end, the Cuban State must guarantee conditions of security, free access to information, and ample cooperation with the electoral observation mission.

### **To the Inter-American Commission on Human Rights**

---

- a.** Include the Cuban State in Section B of Chapter IV of the next Annual Report of the Commission to the OAS General Assembly, due to the grave violations of the fundamental elements and institutions of representative democracy set forth in the Inter-American Democratic Charter and the rights enshrined in the American Declaration of the Rights and Duties of Man, in accordance with the arguments put forward in the present report.
- b.** Recommend that the Cuban State adopt the necessary legislative measures to harmonize its legal system with the standards contained in the Inter-American Democratic Charter and American Declaration.

- c.** Recommend that the Cuban State adopt measures to guarantee respect for civil and political rights related to democratic participation in public administration within the framework of its domestic laws and constitutional precepts reformulated pursuant to the recommendations above.
- d.** Ask the Cuban State to provide periodic reports on the measures it adopts to implement legislative and actual changes aimed at institutionalizing representative democracy in the country and respect for human rights related to their exercise.

### **To the Human Rights Council**

---

- a.** During the first Universal Periodic Review (UPR), reiterate the recommendation that the State ratify the International Covenant on Civil and Political Rights, regarding which the State took note in the last UPR.
- b.** In terms of the Special Procedures, the Special Rapporteurs on the Situation of Human Rights Defenders, Promotion and Protection of the Right to Freedom of Opinion and Expression, Right to Freedom of Peaceful Assembly and Association, and Freedom of Peaceful Assembly and Association [sic] should demand an answer from the Cuban State regarding the state of their requests to make in loco visits to the country. Keep in mind that the visits should be made without restrictions and transpire with the full participation of independent civil society.
- c.** Those responsible for the mandates of the Special Procedures in the previous recommendation should produce thematic and annual studies and country reports about the foci of their mandates in Cuba and send them to the Human Rights Council.



## **To Cuban civil society**

---

- a.** Promote the acquiring of knowledge regarding international standards and best practices in matters related to representative democracy, rule of law, and electoral processes.
- b.** Learn the constitutional regulations and Electoral Law in force to contrast it with international standards in the domestic legal system and learn about the legal possibilities which, even with their limitations, provide it with more effective citizen participation.
- c.** In the event the State of Cuba and OAS agree to having an OAS electoral observation mission visit the country, request its accompaniment in the process of observation and counsel.



# Incompatibility of the Cuban Electoral System with the Inter-American Democratic Charter

