

HOW TO UNDERSTAND JULY 11 AND NOVEMBER 15 IN LIGHT OF INTERNATIONAL HUMAN RIGHTS STANDARDS

An Intersectional Focus



**International Institute on Race,
Equality and Human Rights
- Race and Equality -**

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in Light of International Human Rights Standards
An Intersectional Focus***

March 2022



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The Institute on Race, Equality and Human Rights (Race and Equality) profoundly thanks the Cuban independent civil society organizations that work as our partners. Many of the members of our partner organizations participated in the demonstrations and other actions in the context of July 11 and November 15, 2021. It is important to note that this participation was just one more moment in the tireless struggle they have been carrying out for years in favor of human rights in Cuba. We admire their daily commitment to the protection and promotion of human rights in Cuba in the face of a repressive system that constantly tries to silence them.

Race and Equality would also like to thank the members of the institutional team who contributed to this report and whose names appear at the beginning of the document. It was a team effort in response to reports in the context of the July 11, 2021 protests describing repressive acts being committed against our counterparts on the island.

Finally, we hope that this report will contribute to making visible and putting an end to the human rights violations that continue to occur in Cuba, both in the context of the peaceful protests of 2021, as well as in general. Race and Equality renews our commitment to work hand in hand with our Cuban partner organizations to seek an end to impunity and full respect for human rights in Cuba.

Carlos Quesada
Executive Director of Race and Equality

Photograph: "Protesters in Front of the Police"
Waldo Fernández Cuenca

Executive Summary

The present report addresses the State's response and subsequent situation of human rights in Cuba following peaceful popular protests on July 11 and November 15, 2021. We present an analysis of the human rights that were violated within the context of and following the protests based on the information that has been documented by members of independent civil society and news gathered from various media. In short, the report seeks to serve as a voice of denunciation informing the international community about the historical persecution suffered by anyone who dares to express independent ideas and opinions that differ from those held by the government, including Afro-descendants, women, the LGBTI+ population, independent journalists, artists, and young people. The report identifies these historically disadvantaged groups and provides an intersectional analysis of the violations.

The report is divided into the following chapters: I) presentation; II) introduction; III) methodology; IV) human rights violations documented and applicable regulatory frameworks (domestic and regional/international); VI) conclusions; and VII) recommendations.

Race and Equality recognizes and is appreciative of the courage and commitment to the defense and promotion of human rights of the persons on the island with whom we work.

July 11, 2021 (11J) represented a turning point in Cuban history. The demands of the thousands of persons who took to the streets throughout the country to denounce governmental repression and the health and economic crises once again focused the international community's attention on what was transpiring in Cuba. In the days prior to the 11J protests, Cuba was the Caribbean country with the greatest number of weekly COVID-19 cases, which was in turn aggravated by the ever worsening scarcity and shortage of basic products such as foodstuffs, basic staples, and medicine. The scarcity within the context of the pandemic generated enormous lines outside of stores, markets, and commercial centers. The response of the Cuban authorities to this difficult economic situation was to increase their repressive control of persons who dared to think differently and express their independent ideas and opinions. As is set forth in the report, the State repression of the attempts to hold protests on 15 November (15N) differed from those employed to contain 11J.

The right to peaceful protest has been identified as "a fundamental pillar of democratic governance and open societies, through which persons and groups can express their opinions on matters of public interest. Through its exercise in a favorable milieu, they can shape public

debate and improve general governance.”¹ As such, participation in peaceful protests or demonstrations cannot be suppressed or criminalized. This right takes on greater relevance when the citizens of a State decide to exercise it as a form of expression in the face of a worrisome situation, as was the context of 11J vis-à-vis the health and economic crises.

In Cuba, dissidents, human rights defenders, and independent journalists confront serious obstacles to self-expression, declaring their thoughts, and defending human rights. Since 1992, there has been continuous documentation of the denunciations of acts of persecution that seek to hinder the exercise of human rights defense and discourage protests against and criticisms of the government through acts of harassment, threats, assaults, criminalization, short-term arbitrary detentions, forced disappearances, and torture.

There were arbitrary detentions, forced disappearances, Internet cutoffs, excessive use of force by members of the police and military during the 11J and 15N protests which criminalized the persons who took to the streets to protest and generated an environment of violence, authoritarianism, [and] repression that gravely limited the rights of expression, association, and assembly, personal freedom, and dignity, among others.

The report establishes that one of the most common forms of harassment is the temporary detention of persons who after being interrogated and kept incommunicado for periods of hours or days are then freed without being charged. The United Nations Working Group on Arbitrary Detention has noted the existence of a “systematic practice of arbitrary detentions”² and that the communications it has received involve individuals who have been detained on multiple occasions. Both the Working Group and Inter-American Commission on Human Rights (hereinafter, IACHR) have rejected the types of criminal offenses employed by the State to carry out arbitrary detentions, in light of said offenses being ambiguous, which makes them invalid as a legal basis for arrest and any resulting detention arbitrary.

According to the *Observatorio Cubano de Derechos Humanos* [Cuban Observatory for Human Rights] (hereinafter, OCDH), the July protests generated at least 1,745 repressive actions in Cuba, 1,103 of which were arbitrary detentions and 642 entailed other forms of abuse, such as sieges of homes (402), assaults (63), harassment (55), summons (53), and fines (40). The OCDH notes that these data are not final. For its part, Prisoners Defenders documented that more than 5,000 persons were detained between July 11 and 17. Likewise, it indicates that rising estimates could place the figure between 6,000 and 8,000 detained and that

[1] Working Group on Arbitrary Detention, *Opinion 50/2020*, regarding José Daniel Ferrer García, para. 65, U.N. Doc. A/HRC/WGAD/2020/50 (Oct. 14, 2020).

[2] Working Group on Arbitrary Detention, *Opinion 50/2020*, regarding José Daniel Ferrer García, para. 65, U.N. Doc. A/HRC/WGAD/2020/50 (Oct. 14, 2020).

more than 1,500 remained detained after July 17. With regard to 15N, the OCDH has documented more than 400 repressive actions since November 12; among the most frequent, it documented 122 cases of home detention with police surveillance, 87 cases of detentions, 62 cases of the issuance of summons to police stations, 50 cases of threats, 35 cases of Internet cutoffs, and 14 acts of repudiation. For its part, Cubalex documented 87 cases of detention within the context of 15N.

Within the framework of arbitrary detentions, the Cuban State has employed forced disappearance as a generalized and systemic practice to suppress those it considers to be “opponents.” This pattern occurs when investigating officials and prosecutors refuse access to information to persons in custody regarding their procedural situation and their right to immediate communication with their family and legal representative. As a consequence, people’s whereabouts are unknown, oftentimes until the day of their trial. To that end, the State employs as a tactic not recording their names in police station admittance registries in direct opposition to international human rights standards such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules).

Within the context of the protests begun on 11J, and to a lesser degree 15N, civil society organizations such as Cubalex recorded this information in real time after receiving denunciations from persons on the island. In each case, the number of disappeared persons dropped over time as relatives

learned the location of detainment or the persons were released. According to this NGO, 1,282 detentions and disappearances were documented within the context of the 11J protests. For its part, the Committee on Enforced Disappearance, pursuant to Article 30 of the International Convention on the Protection of All Persons against Enforced Disappearance, submitted a requirement for urgent action that the Cuban State adopt all necessary measures to seek and locate 187 persons who had disappeared between July 11 and 12.

The report also documents cases of torture and abuse. Mostly within the context of the 11J protests, denunciations were received of torture and abuse against several detained persons. These individuals reported that grave human rights violations occurred in the criminal detention and processing centers, such as beatings, electroshocks, verbal insults, threats of sexual abuse, use of dogs to intimidate (with some persons being bitten late at night), interruption of sleep, isolation in dark cells, deplorable hygiene conditions, and overcrowding in cells, putting people in grave exposure and increasing the risks of COVID-19 contagion. Information was also received regarding several people who were forced to remain many hours standing under the sun, exposed to high temperatures, without being able to drink water or use the toilet. It was reported that in some cases, they were kept naked, causing several of them to urinate on or sully themselves, resulting in increased taunts and ridicule from State agents. Cases of sexually-laced taunts have also been reported.

Data gathered by international observers reveal a series of Internet cutoffs during the day and night of 11 July, among them at least two periods when it was completely shut down. In particular, data showed that the messaging and streaming (live online transmission) platforms such as WhatsApp, Facebook, Instagram, YouTube, and Telegram remained blocked or interrupted for days. These measures were taken to limit the capacity of people with access to the Internet to disseminate information to a worldwide audience. Unlike any other previous means of communication, the Internet permits individuals to instantly communicate at low cost, and its repercussions in the exchange of and access to information and ideas are astonishing. As such, the Internet cutoffs, website and/or platform blockages, and censoring of text messages are incompatible with the duties of the State vis-à-vis freedom of expression.

In the weeks following the protests that began on 11J, there was documentation of a large number of persons who were sentenced in summary trials that transpired without prior notification and without the defendants being able to mount an adequate defense. Many people were sentenced to incarceration without the assistance of legal counsel. In order to perform these proceedings, the authorities invoked a procedure known as *'atestado directo'* [direct attestation], set forth in a 2017 People's Supreme Court pronouncement that runs contrary to due process.

The use of surveillance and harassment worsened within the context of the 11J and

15N protests. Already in a 1994 report, a United Nations Special Rapporteur had attested that “the excessive control exercised over the populace through the institutional apparatus, results in a systematic violation, among others, of the principle of non-discrimination for political reasons and the right to freedom of opinion and expression.”³ A specific type of surveillance and harassment applied by the State within the 11J and 15N context as a measure to suppress participation in the protests was home confinement with State Security surveillance.

In the days following the 11J protests, upon returning to their homes the activists noted a substantial increase in the police presence in several provinces of the country. Many of them denounced that they were under police surveillance in their homes and were unable to leave, with some of them even receiving warnings from State Security that they would be detained and tried in the event they attempted to leave their homes. For example, the OCDH documented 402 cases of homes being under siege and 55 cases of harassment.

The deployment of agents to prevent activists, human rights defenders, and independent journalists from taking to the streets was the government's principal

[3] Special Rapporteur on the human rights situation in Cuba, *Report on the Human Rights Situation in Cuba, presented by the Special Rapporteur, Mr. Carl-Johan Groth, in accordance with Commission Resolution 1993/63*, para. 16, Human Rights Commission, U.N. Doc. E/CB.4/1994/51 (Jan. 24, 1994) (by Carl-Johan Groth).

strategy for confronting the protests convened for 15N. Without a doubt, the case of Yúnior García was the most obvious and high-profile. In 1993, Special Rapporteur Carl-Johan Groth noted that “a particular form of intimidation is the holding of so-called ‘acts of repudiation’ or protests apparently organized by official initiative of the so-called Rapid Response Brigades, whereby a large group of persons, some of whom can be identified as members of security forces in civilian dress, concentrate outside the home of a person who is supposedly involved in activities considered to be counterrevolutionary, and for several hours scream insults and threats and inflict damage on the property.”⁴

Both the home confinement under surveillance and ‘acts of repudiation’ constitute types of arbitrary imprisonment. In this sense, the Working Group on Arbitrary Detention established that “imprisonment is not simply a question of a legal definition, but also a fact. If the interested person is not free to leave the place in which he/she is imprisoned, all of the appropriate safeguards that have been established in order to prevent arbitrary detention must be respected.”

Likewise, there were reports of cases of digital surveillance (on networks) by State

Security against activists, human rights defenders, and independent journalists. When identifying impacts on particular groups, the IACHR established that the guarantee of the right to protest “deserves special attention when underrepresented or marginalized sectors or groups use it to confront institutional frameworks that do not favor their participation, or serious barriers to accessing other forms of mass communication. Protest is particularly relevant for lending greater resonance to the voices of marginalized persons or those who present an alternative message to those of the established political and economic interests.”⁵

The present report documents historical patterns of violations against certain groups and concrete cases against persons due to their belonging to those groups. In the case of acts of persecution against Afro-descendants, the report discusses the existence and persistence in Cuba of a grave problem of institutional racism. In this sense, in 2018 the Committee on the Elimination of Racial Discrimination expressed its profound concern regarding this situation. The most notable differentiated impact against members of this group can be seen in the only death recorded within the context of the repressive actions of the State as a result of 11J and 15N: the assassination of Diubis Laurencio Tejeda, a young Afro-Cuban man. Likewise, the report documents

[4] Special Rapporteur on the human rights situation in Cuba, *Report on the Human Rights Situation in Cuba*, presented by the Special Rapporteur, Mr. Carl-Johan Groth, in accordance with Commission Resolution 1992/61, para. 45, Human Rights Commission, U.N. Doc. E/CN.4/1993/39 (Feb. 4, 1993) (by Carl-Johan Groth).

[5] IACHR Special Rapporteurship on freedom of expression, *Protest and Human Rights*, OAS/Ser.L/V/II/CIDH/RELE(INF.22/19, para. 16 (Sept. 2019)..

other assaults against Afro-Cuban activists and organizations within the context of the protests.

The report also records differential violence against women within the context of the 11J and 15N protests including, among others, physical, psychological, [and] emotional violence, disproportionate use of force, and arbitrary detention. Nonetheless, one of the most evident differentiated impacts began prior to the protests, and is related to the historic role that has been assigned to women as the principal ones responsible for the work of caring for their homes. This has forced them to stand in long lines due to the scarcity of foodstuffs, medicine, and other staples, thereby exposing them to greater risks of contagion. According to the information presented by Cubalex in its list of detained and disappeared persons, of the 1,292 persons detained and disappeared due to 11J, at least 195 were women, while of the 87 persons detained as a result of 15N, 16 were women.

The most well-known, documented cases of gender-based violence are the use of motherhood as a form of emotional blackmail employed against women. Activists have recorded how the government and police have threatened mothers with detaining their children if they go protest. Mothers on the island are fearful that if they raise their voices, the State will legally retaliate against their children. And in the case of mothers with children not of legal age, they are threatened with having their parental rights removed for political reasons.

With regard to acts of persecution against the LGBTI+ community, the report documents how LGBTI+ persons were suppressed and subject to specific forms of physical and verbal violence that demonstrate the LGBTI-phobia that exists in Cuba. Many of them were even stripped naked and referred to disrespectfully with an eye to embarrassing and humiliating them.

The report also highlights the role played by independent journalism in covering incidents that transpired during the July 11, 2021 protests, which permitted the world to know what was happening in Cuba. Their work faced the same degree of repression as that experienced by the protest participants. When the 15N demonstrations were announced, the government directly decided to prevent them from leaving their homes, whether through home confinement with State Security surveillance or carrying out acts of repudiation.

The government also suppressed artists' participation in the protests. This is not something new: for more than three decades the IACHR has been affirming that a practice of close control exists in Cuba that evidences "a noticeable intolerance of artistic protests that might call into question the benefits of the political system or wisdom of the ruling group." Following the events of 11 July, several artists and musicians were detained, tried, and sentenced as retaliation for their role in encouraging the protests and to remove them from the public eye.

Lastly, the young people played a leading role during the 11 July protests. Diverse young people, representing different political [and] religious positions [and] ethnic and racial identities were the ones who took to the streets to demonstrate their disapproval with the way in which the government had managed matters that affected them and their families. Their role was also vital in that they were essential in the transmission of information over social media in both protests.

According to Cubalex, 44 young people under the age of 18 were arrested during the 11J protests and taken to jails where they received inhuman and degrading treatment that included beatings, overcrowding, [and] deprivation of water, food, and medicine. As of 18 November, according to information gathered by *Justicia 11J* [11J Justice], 15 people under the age of 18 were still detained.

Lastly, the report includes a chapter with conclusions and recommendations. We provide recommendations to the Cuban State, United Nations System, IACHR, Cuban civil society, and the international community.

01.

Presentation



Photograph: "Protesters" - Waldo Fernández Cuenca

- 1.** The International Institute of Race, Equality, and Human Rights (hereinafter, Race and Equality) presents this report on the state of human rights in Cuba following the peaceful popular protests on 11 July and 15 November, 2021 (hereinafter, 11J and 15N). During both events, we were profoundly concerned as we monitored the occurrences and state of security of the persons who took to the streets to protest. With help from members of independent civil society and the news received through various modes of communication, we documented a significant number of human rights violations perpetrated by Cuban authorities, with an eye to denouncing what was happening and advocate for the respect for human rights pursuant to international standards. This report is that denunciation. We hope the information and analysis presented will help apply pressure for positive change for the Cuban people.
- 2.** We are profoundly grateful for the courage and commitment to the defense and promotion of human rights on the part of the individuals with whom we worked who are on the island. Their resilience in the face of constant repression exerted by the Cuban government is incredibly inspiring, even more so during a period as difficult as the one analyzed in this report. Their work, guided by internationally accepted human rights, represents a sign of hope.
- 3.** Race and Equality is an international non-governmental organization that defends and protects human rights by working with local counterparts and activists in Latin America to promote and protect the human rights of populations that are marginalized, whether due to their national or ethnic origin, sexual orientation, or gender identity. We strengthen grassroots organizations with an eye to them becoming political actors that promote structural changes in the countries wherein we work. Our methodology is based on technical training, documentation of human rights violations, and political advocacy work at the national and international levels to achieve sustainable structural change.

02.

Introduction

TO LA DICTADUR
RIA Y VIDA



Photograph: "Protester with Sign" - Waldo Fernández Cuenca

- 4.** July 11, 2021 represents a turning point in Cuban history. On that day, thousands of persons took to the streets throughout the country to demand their rights and denounce the government and health and economic crises that as of the publication of this report continue to plague the populace. For months, the international community's attention was focused on the largest of the Greater Antilles as independent Cuban civil society mobilized firstly in order to continue to protest and later to respond to the strong repression with which the Cuban government responded. As we will demonstrate throughout this report, this repression was a continuation of the historic repression faced by all individuals who dare to express ideas and opinions that are independent and differ from those of the government. Historically, some groups in particular have suffered – and within the current context continue to suffer – special forms of repression, including Afro-descendants, women, the LGBTI+ community, artists, independent journalists, and young people.
- 5.** The report begins with an explanation of the methodology that was employed in its development. We then discuss the current context, including the health and economic crises, historic repression on the island, and 11J and 15N protests. The next section focuses on the documented human rights violations and applicable regulatory framework at the domestic and international levels. Following that we provide an analysis of the particular impacts on vulnerable groups. Lastly, we close by providing general conclusions and a set of recommendations both for the Cuban State as well as international organizations and civil society actors in Cuba and around the world.

03.

Methodology



LUCHAR CONTRA
LO IMPOSIBLE Y
VENCER

- 6.** As a result of the events experienced since 11J when several protests were held on Cuban streets, we decided to concentrate all of the information received from the island according to the following procedure:
- a. A chat group was created in which all members of the Cuba team participated, to receive all information in real time.
 - b. Each participant resent the information, images, videos, and voicemails received from the island.
 - c. Three participants were designated as the consolidators, reviewers, and catalogers of the information received.
 - d. A database was created according to the following criteria: date information sent; organization that sent the information; incidents reported; supporting materials (photographs, videos, voicemails); the information received was catalogued as being private or public; and the group participant who had received it.
 - e. Parameters were created for cataloging the information according to the issue – economic, political, social, and health – according to the following criteria:
 - i. Economic: information related to the supply of foodstuffs, distribution of medicine, etc.
 - ii. Social: information regarding the protests, forced disappearances, deaths, persons forced to take to the streets to march in support of the government, cutoffs of communication, persons threatened and/or taken to court, curfews, new movement, and other decrees in the social sphere.
 - iii. Political: information related to the political sphere at the national and international levels, for example the position of the United Nations (hereinafter, UN), declarations made by the Inter-American Commission on Human Rights (hereinafter, IACHR), the Díaz-Canel government, United States, and other human rights protection bodies.

iv. Human rights defenders: the arbitrary detention of human rights defenders, journalists, and other civil society leaders who have had problems in the past with the government violating their rights.

v. Health: information on the state of the COVID-19 pandemic on the island, number of dead, number of cases, vaccination campaign, [and] hospital capacity.

f. Various files were created with material that accompanied the information, such as videos, voicemails, photographs, etc.

g. The same procedure was employed to document the incidents surrounding 15N.

04.

Context



Photograph: "Protesters in Front of the Police" - Waldo Fernández Cuenca

A.

Economic and Health Crises

7. The massive protests that were held in Cuba on July 11, 2021 were the result of several factors. First, the country was confronting (and continues to confront) a profound economic crisis characterized by the scarcity and shortage of foodstuffs, medicine, and basic staples for the home. Second, the COVID-19 virus had impacted the country very strongly and the government had not taken the necessary steps to control it. Lastly, the growing repression in response to the crisis made it unsustainable for the thousands of people who decided to take to the streets to protest.

8. By 8 July, Cuba had become the Caribbean country with the greatest number of weekly [COVID] cases. During the first days of July, the Ministry of Public Health had counted 44,546 new cases and 235 deaths.⁶

[6] OPS. *Cuba reporta el mayor número de casos en el Caribe* [Cuba Reports the Largest Number of Cases in the Caribbean], RADIO TELEVISIÓN MARTÍ, July 7, 2021, available at <https://www.radiotelevisionmarti.com/a/cuba-registra-el-mayor-n%C3%BAmero-de-casos-nuevos-en-el-caribe/298899.html> | PAHOTV, *Conferencia de prensa OPS* [OPS Press Conference], July 7, 2021, available at <https://www.youtube.com/watch?v=eQkFZ1KxPxs>

9. This situation was worsened by the growing scarcity and shortage of basic products such as foodstuffs, staples, and medicine.⁷ The scarcity within the context of the pandemic generated enormous lines outside of stores, markets, and commercial centers, forcing people to wait for hours to enter those establishments, including in many cases people who despite the wait were unable to obtain the goods they sought. This situation primarily affected women, who have been unable to care for their children in order to sleep in those places, thereby increasing their exposure to congregant settings and therefore, the risk of contagion.⁸ According to a study performed by the Observatorio Cubano de Derechos Humanos [Cuban Human Rights Watchdog] (hereinafter, OCDH), 60% of the people surveyed said the food crisis constituted the principal problem they faced as a country⁹ and

that during 2021 45% of the population had to deprive themselves of at least one meal.¹⁰

10. The government adopted measures to control the few existing foodstuffs and their sale. This reality, which is ongoing today, became a trigger for the protests launched on July 11, 2021. Some individuals view this reality as being similar to the one that characterized the “special period” experienced by the country during the 1990s, wherein the lack of foodstuffs and long lines to obtain them was a constant.¹¹ Sadly, 30 years passed and the government responded to the crisis situation in the same manner as it had during that “special period.” In the words of the Secretary-General’s Special Representative regarding the state of human rights in Cuba in 1991,

Unfortunately for the cause of human rights, the Cuban authorities have decided to confront that difficult economic situation by increasing their repressive control over supposed opponents of the regime, the majority of whom aspire to non-violent changes in some circumstances which they find intolerable. The rights to freedom of expression,

[7] *Miles de cubanos toman las calles contra el Gobierno, que llama a sus partidarios a enfrenarlos* [Thousands of Cubans Take to the Streets against the Government, Which Calls On Its Supporters to Confront Them], EL DIARIO.ES, July 12, 2021, available at https://www.eldiario.es/internacional/miles-cubanos-toman-calles-gobierno-llama-encararlos_1_8126205.html

[8] International Institute on Race, Equality, and Human Rights, *Carta de alegaciones ante Procedimientos Especiales de Naciones Unidas* [Letter of Allegations to United Nations Special Procedures], October 22, 2020.

[9] Observatorio Cubano de Derechos Humanos [Cuban Observatory for Human Rights]. *El estado de los derechos sociales en Cuba. Informe IV* [The State of Social Rights in Cuba, IV Report], 2021, available at https://derechossocialescuba.com/wp-content/uploads/2021/09/Factsheet_ODS4-Final-Version-

[ES.pdf](#).

[10] *Ibid.*

[11] *Cubanos ante la escasez de alimentos: ¡Volvimos al sopinguete!* [Cubans In the Face of Food Scarcity: We’re Back to Eating Sopinguete! (a soup made during the ‘special period’ with whatever was available to calm the hunger, though oftentimes no meat)], DIARIO DE CUBA, May 29, 2021, available at https://diariodecuba.com/cuba/1622303652_31510.html

*political participation, and freedom of association have been seriously cut back.*¹²

11. On November 22, 2021, the government announced a year-long extension of the exceptional ration booklets issued following 11J,¹³ together with another set of measures that sought to prevent new social flareups as had occurred in July.¹⁴
12. Moreover, the country was confronting (and continues to confront) a lack of all types of medicine. According to official figures from the Cuban Medicine Program, there was a shortage in 2020 of more than 116 of the Basic Schedule of Medicines' 619 products, with this shortage affecting more than three

[12] Special Representative of the Secretary-General, *Informe sobre la situación de los derechos humanos en Cuba, preparado por el Representante Especial del Secretario General, Sr. Rafael Rivas Posada, en cumplimiento del mandato conferido por la resolución 1991/68 de la Comisión* [Report on the State of Human Rights in Cuba, prepared by the Special Representative of the Secretary-General, Mr. Rafael Rivas Posada, in compliance with the mandate conferred upon him by Commission Resolution 1991/68], parag. 30, Human Rights Commission, U.N. Doc. E/CN.4/1991/27 (January 28, 1992) (by Rafael Rivas Posada).

[13] *El régimen cubano extiende un año las libretas de racionamiento excepcionales otorgadas tras el 11J* [The Cuban Regime Extends Exceptional Ration Booklets issued after 11J for One Year], DIARIO DE CUBA, November 22, 2021, available at https://diariodecuba.com/cuba/1637579798_35693.html

[14] *Curitas y migajas: las medidas del Gobierno cubano para sacar vapor a la caldera tras el 11J* [Band-aids and Crumbs: The Cuban Government's Measures to Diffuse Tension Following 11J], DIARIO DE CUBA, August 11, 2021, available at https://diariodecuba.com/cuba/1628679944_33303.html

million patients.¹⁵ This was recognized by the Cuban authorities in a State television program wherein Ms. Tania Urquiza Rodríguez, Vice President of BioCubaFarma – a State-owned company responsible for developing and producing medicine – noted that “in 2021 we have been running out of supplies and raw materials, with the average monthly shortage totaling 120 basic medicines.”¹⁶ In the same vein, a report from OCDH indicates that eight out of every 10 people were unable to find medicines in the pharmacies over the last three months, with 29% attributing this to shortages.¹⁷ This has resulted in 21% of the persons

[15] *Crisis Sanitaria: Cuba debe aceptar ayuda internacional* [Health Crisis: Cuba Should Accept International Assistance], DW, July 13, 2021, available at <https://www.dw.com/es/crisis-sanitaria-cuba-debe-aceptar-ayuda-internacional/a-58256238>

[16] *Gobierno reconoce faltante de 120 medicamentos básicos en Cuba* [Government Recognizes Shortage of 120 Basic Medicines in Cuba], RADIO TELEVISIÓN MARTÍ, June 23, 2021, available at <https://www.radiotelevisionmarti.com/a/gobierno-reconoce-faltante-de-120-medicamentos-b%C3%A1sicos-en-cuba/298021.html>; and Mailenys Oliva Ferrales, *Única fábrica de medicamentos líquidos orales en Cuba: de la realidad a sus posibilidades* [Sole Factory of Oral Liquid Medicines in Cuba: From Reality to Its Possibilities], GRANMA, November 23, 2021, available at <https://www.granma.cu/cuba/2021-11-23/unica-fabrica-de-medicamentos-liquidos-orales-en-cuba-de-la-realidad-a-sus-posibilidad-es-23-11-2021-01-11-58>

[17] *Observatorio Cubano de Derechos Humanos* [Cuban Human Rights Watchdog]. *El estado de los derechos sociales en Cuba. Informe IV* [The State of Social Rights in Cuba, IV Report], 2021, available at https://derechossocialescuba.com/wp-content/uploads/2021/09/Factsheet_ODS4-Final-Version-ES.pdf.

surveyed affirming that the state of their family's health has worsened and 20% saying they have taken expired medicines.¹⁸

[18] *Ibid.*

B.

Historical Repression

13. In Cuba, dissidents, human rights defenders, and independent journalists confront serious obstacles to self-expression, declaring their thoughts, and defending human rights.¹⁹ However, this situation is not related to the 11J and 15N protests but rather, is well established.
14. The 1992 report of the Special Representative of the Secretary-General on the Situation of Cuba warns that a "disturbing increase" in denunciations of acts of persecution against dissidents and opponents of the regime, whether through simple harassment, threats, or the lodging of expedited judicial proceedings against them, not always with due guarantees of defense.²⁰
15. In the same vein, since it issued its 1992-1993 Annual Report, the IACHR has been observing with considerable concern the Cuban State's systematic use of summary arbitrary detention as

[19] [Chap. IV. B: Cuba], Inter-American Commission on Human Rights (IACHR), *Informe Anual de la Comisión Interamericana de Derechos Humanos 2016* [2016 Annual Report of the Inter-American Commission on Human Rights], OEA/Ser.L/V/II. Doc. 22, parag. 44, (March 15, 2017).

[20] Special Representative of the Secretary-General, *Informe sobre la situación de los derechos humanos en Cuba, preparado por el Representante Especial del Secretario General, Sr. Rafael Rivas Posada, en cumplimiento del mandato conferido por la resolución 1991/68 de la Comisión* [Report on the State of Human Rights in Cuba, prepared by the Special Representative of the Secretary-General, Mr. Rafael Rivas Posada, in compliance with the mandate conferred upon him by Commission Resolution 1991/68], parag. 28, Human Rights Commission, U.N. Doc. E/CN.4/1991/27 (January 28, 1992) (by Rafael Rivas Posada).

a method of harassment.²¹ Already in that report the IACHR had identified that “one of the most common forms of harassment is the temporary detention of individuals who after being interrogated and held incommunicado for several hours or days, are later released without being charged with any crime.”²² Also adding its voice to this complaint was the Committee against Torture (hereinafter, CAT).²³

16. The 1993 report of the Special Rapporteur on Cuba warned that he had received denunciations regarding individuals who had been detained for some hours or several days, submitted to interrogations, and later released without being charged with any crime for reasons linked to the exercise of their rights to expression, assembly, or association.²⁴ Therefore, his judgement was that:

The goal of intimidation is, without a doubt, relevant in these cases. Throughout the duration of the detention,

[21] [Chap. IV: Cuba: III. Métodos de hostigamiento en contra de activistas de Derechos Humanos [Methods of Harassment against Human Rights Activists], IACHR, Informe Anual de la Comisión Interamericana de Derechos Humanos 1992 [1992 Annual Report of the Inter-American Commission on Human Rights], OEA/Ser.L/V/II.83, Doc. 14, (March 12, 1993).

[22] *Ibid.*

[23] Comité contra la Tortura, *Examen de los informes presentados por los Estados partes en virtud del artículo 19 de la Convención, Cuba*, párr. 20, U.N. Doc. CAT/C/CUB/CO/2 (25 junio 2012).

[24] Committee against Torture, *Examen de los informes presentados por los Estados partes en virtud del artículo 19 de la Convención, Cuba* [Examination of the Reports Presented by the States Parties By Virtue of Article 19 of the Convention, Cuba], parag. 20, U.N. Doc. CAT/C/CUB/CO/2 (June 25, 2012).

*it is common for individuals to remain incommunicado, without the possibility of contacting their families and receiving no assistance from a lawyer. In some cases, individuals are forced to sign, prior to being freed, the so-called “official warnings.”*²⁵

17. In the final observations of CAT’s 1998 initial report on the situation of Cuba, it stated that the information contained in the report of the Special Rapporteur charged by the Human Rights Commission with studying the state of human rights in Cuba, as well as in reports by non-governmental organizations, enabled

*thinking that grave violations of the Convention are committed related to arrest, detention, criminal proceedings, communication with a lawyer, and incarceration, in particular with regard to persons designated in the reports as dissidents.*²⁶

18. In its 2012 report, the CAT added its concern regarding the lack of access to independent medical exams or notification of the detention of a relative in cases identified by the Committee as having been imprisoned for presumably political reasons.²⁷

[25] *Ibid.*

[26] Committee against Torture, *Informe del Comité contra la Tortura* [Report of the Committee against Torture], parag. 111, U.N. Doc. A/53/44(SUPP) (September 16, 1998).

[27] Committee against Torture, *Examen de los informes presentados por los Estados partes en virtud del artículo 19 de la Convención, Cuba* [Examination of

19. More recently, in its 2020 Annual Report²⁸, and 2020 report on Cuba²⁹, it recognized that there is a strong context of repression in the country manifested through actions of harassment, threats, assault, and summary arbitrary detentions which seek to hinder the exercise of human rights defense and discourage protests against and criticisms of the government.

20. Since 1959, Cuba has been governed by a single political party that controls and dominates the executive, legislative, and judicial branches, as well as the country's media and means of production. This reality runs contrary to the "political pluralism that nourishes a democracy, and impacts several rights, such as the right to freedom of expression [and] freedom of thought, and can even generate situations of discrimination for political reasons," as has been noted by the IACHR.³⁰

21. Within this framework, hundreds of politically-motivate extrajudicial executions were documented in the early 1960s. Later, during the 'Black

Spring' (2003), 75 opponents were detained, summarily tried, and given long sentences.³¹ In fact, the IACHR has identified Cuba, "virtually every year over the last 35, as a country with severe problems in terms of human rights protection."³² These violations have been repeatedly highlighted in the annual and country reports.³³ They have also been the object of concern on the part of United Nations bodies, in particular the Special Procedures, as was mentioned above.³⁴

22. Criminalization is a reality that impacts activists, human rights defenders, artists, and independent journalists throughout the island. Although the Constitution in force in Cuba recognizes a broad range of human rights – including "freedom of expression, conscience, and expression"³⁵, "freedom of assembly, protest, and association"³⁶,

the Reports Presented by the States Parties By Virtue of Article 19 of the Convention, Cuba], parag. 8, U.N. Doc. CAT/C/CUB/CO/2 (June 25, 2012).

[28] [Chap. IV. B: Cuba], IACHR, *Informe Anual de la Comisión Interamericana de Derechos Humanos 2020* [2020 Annual Report of the Inter-American Commission on Human Rights], OEA/Ser.L/V/II. Doc. 28, parags. 82 – 91, (March 30, 2021).

[29] IACHR, *Situación de los derechos humanos en Cuba* [Situation of Human Rights in Cuba], OEA/Ser.L/V/II. Doc. 2, parags. 174 – 194, (February 3, 2020).

[30] *Ibid*, parag. 102.

[31] International Institute on Race, Equality, and Human Rights, *Condenas premeditadas: Análisis de la situación de la administración de justicia en Cuba* [Premeditated Sentences: An Analysis of the State of the Administration of Justice in Cuba], June 2019, parag. 2, available at <https://raceandequality.org/wp-content/uploads/2019/09/2019.09.10-FINAL-PDF-.pdf>

[32] *Ibid*

[33] IACHR, *Situación de los derechos humanos en Cuba* [Situation of Human Rights in Cuba], OEA/Ser.L/V/II. Doc. 2, parag. 37, (February 3, 2020).

[34] See, among others, CUB 3/2021, CUB 6/2018, CUB 3/2016, CUB 2/2016, CUB 2/2014, CUB 8/2012, CUB 3/2012, CUB 3/2011.

[35] Political Constitution of the Republic of Cuba, Art. 54 (2019), available at <http://media.cubadebate.cu/wp-content/uploads/2019/01/Constitucion-Cuba-2019.pdf>

[36] *Ibid*, Art. 56.

“legal security”³⁷ and “due process”³⁸; in practice these rights are not guaranteed under similar conditions for all of its residents. Differentiated and violent treatment exists for those who express a position contrary to the government.

- 23.** This repression worsened within the context of the COVID-19 pandemic, especially against human rights defenders, activists, and independent journalists. In addition, the pandemic has generated grave economic and social impacts on the residents of the island. The scarcity of basic products such as foodstuffs, medicine, and cleaning supplies has become more acute. Furthermore, the pandemic has negatively impacted economic activities in Cuba, increasing unemployment, particularly in the non-State sector wherein work the majority of vulnerable persons such as the LGBTI+ population, women, and Afro-descendants. The latter impact has played an historically important role in independent Cuban activism.

a. Afro-Cuban Activism

- 24.** Despite the significant amount of repression against Afro-descendant activists and organizations, many of them were the ones who during the 12 months prior to the massive

11J protests issued several public complaints that entailed a series of challenges to the government. Those challenges to the government were the most well-known during that period.

- 25.** The year of the Afro-Cuban protest was triggered by the death of Hansel Hernández in June 2020. On Wednesday, June 24, Hernández, an unarmed 26-year-old Afro-Cuban, died by gunshot in a confrontation with the police.³⁹ Although the Ministry of the Interior reported that the actions of the police were justified by the violent behavior exhibited by Hernández⁴⁰, this version does not coincide with the testimony of his relatives, who reported he was shot in the back.⁴¹
- 26.** Within the worldwide context of the protests inspired by the Black Lives Matter movement, the death of

[39] Jorge Carrasco, *Un policía le disparó por la espalda: indignación y ola de represión en Cuba tras el homicidio de un joven negro* [A Police Officer Shot Him in the Back: Indignation and a Wave of Repression in Cuba Following Homicide of Young Black Man], TELEMUNDO, July 1, 2020, available at <https://www.telemundo.com/noticias/noticias-telemundo/un-policia-le-disparo-por-la-espalda-indignacion-y-ola-de-represion-en-cuba-tras-el-tmna3817335>

[40] *Tres días después, el MININT cubano ‘explica’ la muerte de Hansel Hernández* [Three Days Later, Cuba’s MININT ‘Explains’ Death of Hansel Hernández], DIARIO DE CUBA, June 28, 2020, available at https://diariodecuba.com/cuba/1593298108_23426.html.

[41] *La Policía cubana habría matado a un joven en La Habana* [Cuban Police Kill Young Man in Havana], DIARIO DE CUBA, June 26, 2020, available at https://diariodecuba.com/cuba/1593125697_23381.html

[37] *Ibid.*, Art. 94.

[38] *Ibid.*, Art. 94.

Hernández resonated strongly. In Cuba, the Afro-Cuban rejection of police violence and differentiated treatment of young Afro-Cubans was confronted with more violence. On June 30, 2020, the Cuban State unleashed a wave of arbitrary detentions, laid siege to people's homes, and cut Internet service so as to disrupt peaceful protests against racially-motivated and police violence.⁴² According to independent sources, 29 people were detained and 28 others were unable to leave their homes due to police presence.⁴³ The protest was unable to be held.

- 27.** The detention on November 9, 2020 of the Afro-Cuban rapper Denis Solís, a member of the artist collective *Movimiento San Isidro* [San Isidro Movement] (MSI), is another important landmark moment of this period. Previously, Solís had been detained on 10 October in a coordinated operation by the public security forces and the government's citizen supporters. The latter organized an 'act of repudiation' in front of the MSI's headquarters,

while the former detained more than 20 activists, artists, and independent journalists associated with the organization.⁴⁴

- 28.** On November 6, 2020, a police officer entered Solís' home without permission and without presenting any warrant, in violation of both Cuban law and international standards.⁴⁵ Solís broadcast his interaction with the officer over Facebook Live, reproaching him and insisting that he leave his home. Due to his actions, Solís was detained on November 9, 2020, accused of "desacato" [disregard for legally constituted authority]⁴⁶ and sentenced

[42] *Cuba Prevents Protest Over Police Killing of Black Man*, REUTERS, June 30, 2020, available at <https://www.reuters.com/article/us-cuba-racism-protests-idUSKBN2413R5>

[43] *Estos son los detenidos por intentar manifestarse contra la violencia policial y racial en Cuba* [These Are the Ones Who Have Been Detained for Protesting against Racially-Motivated and Police Violence in Cuba], RADIO Y TELEVISIÓN MARTÍ, June 30, 2020, available at <https://www.radiotelevisionmarti.com/a/estos-son-los-detenidos-por-intentar-manifestarse-contra-la-violencia-policial-y-racial-en-cuba/267914.html>

[44] *Más de 20 activistas detenidos el sábado en Cuba ya han sido liberados* [More than 20 Activists Detained on Saturday in Cuba Have Been Released], DIARIO DE CUBA, October 11, 2020, available at https://diariodecuba.com/derechos-humanos/1602403426_25592.html

[45] *Denis Solís no cometió desacato y su encarcelamiento ha sido provocado por la Policía* [Denis Solís Didn't Commit 'Desacato' and His Imprisonment Was Provoked by the Police], DIARIO DE CUBA, November 22, 2020, available at https://diariodecuba.com/derechos-humanos/1606070525_26663.html

[46] Cuban Criminal Code, Article 160: "1. Anyone who threatens, slanders, defames, insults, damns, or in any other manner gravely affronts or offends, through words or writings, the dignity or decorum of an authority, public official, or his/her agents or deputies during the exercise of his/her duties or on the occasion or due to said duties, incurs the punishment of incarceration for three to nine months, or a fine of 100 to 270 charges ['cuotas'], or both. 2. If the occurrence set forth in the foregoing section is directed at the President of the Council of State, President of the National Assembly of People's Power, members of the Council of State or Council of Ministers, or Deputies of the National Assembly of People's Power, the punishment shall

to eight months in prison in a two-day trial.⁴⁷

29. Solís' situation became a cause célèbre among Cuban activists. His livestream of the confrontation went viral in the following weeks, and as of this writing has been seen more than 108,000 times.⁴⁸ MSI advocated for his immediate release. The group gathered in its offices and declared a hunger strike to demand the release of Solís, drawing national and international attention. Under the pretext of health protocols related to the COVID-19 pandemic, the police suppressed this protest, thereby triggering international condemnation and additional months of activism.⁴⁹

30. Another high-profile case is the activism in favor of the Afro-Cuban 'artista' [artist-activist]⁵⁰ Luis Manuel

be imprisonment for six months to three years." Available at <https://www.parlamentocubano.gob.cu/index.php/documento/codigo-penal/>

[47] *Las autoridades condenan a Denis Solís a ocho meses de prisión por 'desacato'* [The Authorities Sentence Denis Solís to Eight Months in Prison for 'Desacato'], DIARIO DE CUBA, November 16, 2020, available at https://diariodecuba.com/derechos-humanos/1605557866_26522.html

[48] Facebook page of Denis Solís, November 6, 2020, available at <https://www.facebook.com/denis.solisgonzalez.5/videos/790464094872551>

[49] *Cuba: Covid-19 Rules Used to Intensify Repression*, HUMAN RIGHTS WATCH, 7 diciembre 2020, available at <https://www.hrw.org/news/2020/12/07/cuba-covid-19-rules-used-intensify-repression>

[50] Wikipedia. *Artivismo* ['Artivism'], available at <https://es.wikipedia.org/wiki/Artivismo>. See also, *Los "artistas" y su forma creativa del compromiso político a*

Otero Alcántara, the highest-profile member of MSI. In his art and public platform, Otero Alcántara strongly criticizes Cuba's social reality and the practices of the Cuban government. When police agents plundered his home in April 2021, confiscating and destroying his works of art, Otero Alcántara launched a hunger strike.⁵¹ During the first days of that strike, the police created a cordon around his home and nine persons who attempted to cross it to check on his wellbeing were detained.⁵² During the early morning hours of 2 May, State Security entered his home and transferred him by force to the Calixto García Hospital.⁵³ The authorities

través del arte ['Artivists' and Their Creative Form of Political Commitment Through Art]. Infobae. April 2, 2017. Available at: <https://www.infobae.com/cultura/2017/04/02/los-artistas-y-su-forma-creativa-del-compromiso-politico-a-traves-del-arte/>

[51] *La Seguridad del Estado irrumpe en la casa de Otero Alcántara y lo traslada a un hospital* [State Security Bursts In to Otero Alcántara's Home and Transfers Him to a Hospital], 14YMEDIO, May 2, 2021, available at https://www.14ymedio.com/cuba/Seguridad-Estado-irrumpe-casa-Otero-Alcantara-traslada-hospital_0_3086691304.html

[52] *Las personas detenidas por exigir el fin del cerco policial contra Otero Alcántara* [Persons Detained for Demanding an End to Police Cordon against Otero Alcántara], PERIÓDICO CUBANO, May 3, 2021, available at https://www.periodicocubano.com/las-personas-detenidoas-por-exigir-el-fin-del-cerco-policial-contra-otero-alcantara/?utm_source=rss&utm_medium=rss&utm_campaign=las-personas-detenidoas-por-exigir-el-fin-del-cerco-policial-contra-otero-alcantara

[53] *La Seguridad del Estado irrumpe en la casa de Otero Alcántara y lo traslada a un hospital* [State

refused the habeas corpus petition submitted in favor of Otero Alcántara⁵⁴ and kept him in the hospital through 31 May.⁵⁵ During that month of detention Otero Alcántara was unable to communicate with the outside world: the only source of information on his status was a series of “proof-of-life” videos distributed through official channels,⁵⁶ a tactic employed by the Cuban government to create a pretense for a distorted reality.

Security Bursts In to Otero Alcántara's Home and Transfers Him to a Hospital], 14YMEDIO, May 2, 2021, available at https://www.14ymedio.com/cuba/Seguridad-Estado-irrumpe-casa-Otero-Alcantara-traslada-hospital_O_3086691304.html

[54] *Tribunal de La Habana niega Hábeas Corpus a favor de Otero Alcántara* [Havana Court Denies Habeas Corpus for Otero Alcántara], PERIÓDICO CUBANO, May 8, 2021, available at https://www.periodicocubano.com/tribunal-de-la-habana-niega-habeas-corpus-a-favor-de-otero-alcantara/?utm_source=rss&utm_medium=rss&utm_campaign=tribunal-de-la-habana-niega-habeas-corpus-a-favor-de-otero-alcantara

[55] *Cuban Artist Luis Manuel Otero Alcántara released after a month in hospital detention*, PEN INTERNATIONAL, 1 junio 2021, available at <https://pen.org/press-release/cuban-artist-luis-manuel-otero-alcantara-released/>

[56] *Régimen cubano muestra a Otero Alcántara tras 18 días* [Cuban Regime Presents Otero Alcántara After 18 Days], EL NUEVO HERALD, May 20, 2021, available at <https://www.elnuevoherald.com/noticias/mundo/america-latina/cuba-es/article251553978.html>

C.

Protests Commencing on July 11 and State Repression

31. On Sunday, July 11, 2021, thousands of persons in Cuba peacefully protested in more than 50 cities on the island, including Havana, Santiago de Cuba, Pinar del Río, San Antonio de los Baños, Camagüey, Santa Clara, Holguín, Cienfuegos, and Guantánamo. The protests were motivated by the profound health crisis confronted by the country due to the COVID-19 pandemic, the grave situation of scarcity and shortage described above, and massive human rights violations.⁵⁷ The protests began in the localities of San Antonio de los Baños, in the province of Artemisa, near Havana, and Palma Soriano, in Santiago, and then extended to all parts of the country.⁵⁸ These peaceful protests were strongly suppressed by Cuban State authorities, as well as parapolice groups related to the government, that employed disproportionate force, arbitrary detentions, abuse, electricity cutoffs, and Internet service blockages.

[57] International Institute on Race, Equality, and Human Rights, *#SOS Cuba: Raza e Igualdad exige respeto a la vida y al derecho a la protesta* [*#SOS Cuba: Race and Equality Demands Respect For Life and the Right to Protest*], July 12, 2021, available at <https://raceandequality.org/es/espanol/soscuba-protestas-cuba-2021/>

[58] *¿Qué está pasando en Cuba? Las claves para entender las protestas contra el Gobierno* [*What's Happening in Cuba? The Keys to Understanding the Protests against the Government*], EL PAÍS, July 13, 2021, available at <https://elpais.com/internacional/2021-07-12/protestas-en-cuba-seis-claves-para-entender-las-manifestaciones-contr-el-gobierno.html>

32. One of the mass protests took place in front of the Capitol in the city of Havana, where nearly 2,000 people gathered.⁵⁹ Although initially the protest transpired without police intervention, over the course of the afternoon the police authorities began suppressing the protesters.⁶⁰ On Sunday afternoon, some protesters were detained and transferred against their will to police vehicles and removed from the area.⁶¹ Likewise, some people were seriously beaten, including an Associated Press (AP) reporter, the Spanish photographer Ramón Espinosa, who was violently attacked.⁶²

33. Concurrently, Cuban President Miguel Díaz-Canel called on his supporters “to confront these protests in the streets” and issued declarations in which he threatened people who chose to exercise their right to protest, stating that “they will have to do so over our dead bodies and we are ready for anything”

and calling them “mercenaries” and counterrevolutionaries.”⁶³ Furthermore, on 12 July, when more information was circulating regarding the repression by the authorities, the President declared that the protesters “have received the response they deserve.”⁶⁴

34. Thus did the President of the Cuban State manifestly incur in defending the crime and incentivizing hatred through his public discourse; this runs contrary to international human rights standards and principles that prohibit this type of behavior because it limits freedom of expression, especially if undertaken by a State authority. Lastly, the Commission concluded that the President’s declarations are

inadmissible and reckless, the official declarations that declare protesters to be enemies. These declarations stigmatized the protest, generate a climate of permissiveness regarding violence, can encourage confrontations amongst the

[59] *Miles de cubanos toman las calles contra el Gobierno, que llama a sus partidarios a enfrentarlos* [Thousands of Cubans Take to the Streets against the Government, Which Calls on Its Supporters to Confront Them], EL DIARIO.ES, July 12, 2021, available at https://www.eldiario.es/internacional/miles-cubanos-toman-calles-gobierno-llama-encararlos_1_8126205.html

[60] *Ibid.*

[61] *Las protestas contra el gobierno en Cuba en imágenes* [The Protests against the Cuban Government in Images], EL PAÍS, July 11, 2021, available at https://elpais.com/elpais/2021/07/12/album/1626056483_854034.html#foto_gal_10

[62] *Ibid.*

[63] Díaz-Canel: ‘Tienen que pasar por encima de nuestros cadáveres y estamos dispuesto a todo’ [Díaz-Canel: ‘They will have to do so over our dead bodies and we are ready for anything’], DIARIO DE CUBA, July 11, 2021, available at https://diariodecuba.com/cuba/1626037621_32576.html

[64] Maykel González, “Han tenido la respuesta que merecen”, dice Díaz-Canel sobre represión a manifestantes en Cuba [‘They Have Received the Response They Deserve,’ Says Díaz-Canel Regarding Suppression of Protesters in Cuba], CIBERCUBA, July 12, 2021, available at <https://www.cibercuba.com/noticias/2021-07-12-u185759-e185759-s27061-han-tenido-respuesta-merecen-dice-diaz-canel-represion>

*citizenry, and are incompatible with international standards to guarantee the right to protest and freedom of expression.*⁶⁵

- 35.** Around 3:00 p.m. on Sunday the 11th local time, the Internet service for mobile phones was cut and calls commenced manifesting instability. This resulted in a digital outage that lasted several hours, which prevented the outside world from knowing what was going on in Cuba in real time for several hours.⁶⁶ By Wednesday, July 14, three days after the protests had begun, Internet service and telecommunications continued to be restricted.⁶⁷ This was a strategy employed by the country's highest authorities based on communications policies aimed at restricting access to the Internet and information, as was corroborated through a telephone call placed by a user to the Empresa de Telecomunicaciones de Cuba S.A.

[65] IACHR, *Comunicado de prensa: la CIDH y sus Relatorías Especiales condenan la represión estatal y el uso de la fuerza en el marco de las protestas sociales pacíficas en Cuba, llamando al diálogo sobre los reclamos ciudadanos* [Press release: The IACHR and its Special Rapporteurs condemn State repression and the use of force within the context of the peaceful social protests in Cuba, and call for dialogue on citizen complaints], July 15, 2021, available at <http://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/177.asp>

[66] *El apagón de internet enfría las movilizaciones en Cuba* [Internet Outage Dampens Protests in Cuba], EL PAÍS, July 14, 2021, available at <https://elpais.com/internacional/2021-07-14/el-apagon-de-internet-enfria-las-movilizaciones-en-cuba.html>

[67] *Ibid.*

[Telecommunications Company of Cuba] (ETECSA).⁶⁸

- 36.** The digital security and rights organization NetBlocks⁶⁹ confirmed the partial interruption of social media and messaging platforms in Cuba starting July 12, 2021. The organization's metrics demonstrate that the WhatsApp, Facebook, [and] Instagram communication platforms, as well as some Telegram servers, were interrupted by ETECSA, including Cubacel. Access to the YouTube streaming platform and Google Video servers was limited.⁷⁰ The IACHR reported having received information of a decrease in Internet traffic to and from Cuba, according to the Internet Outage Detection and Analysis (IODA) report, which had even dropped to zero on Sunday, July 11.⁷¹ That

[68] Twitter, *Inventario*, July 15, 2021, available at <https://twitter.com/inventario/status/1415851450639425538?s=19>

[69] NetBlocks is a worldwide Internet monitor that works at the intersection of digital rights, cybersecurity, and Internet governance. NetBlocks' reports cover issues from Internet access [and] digital policies to the energy supply in countries throughout the world, in an accessible and contextualized manner.

[70] Net Blocks, *Social media restricted in Cuba amid widening anti-government protests*, 12 julio 2021, available at <https://netblocks.org/reports/social-media-restricted-in-cuba-amid-widening-anti-government-protests-QAdrmwyl>

[71] *El apagón de internet enfría las movilizaciones en Cuba* [Internet Outage Dampens Protests in Cuba], EL PAÍS, July 14, 2021, available at <https://elpais.com/internacional/2021-07-14/el-apagon-de-internet-enfria-las-movilizaciones-en-cuba.html>

prevented any information regarding the repression from freely circulating.

37. Furthermore, it is important to note that commencing on 12 July, numerous groups related to the government were mobilized to occupy and take control of public spaces where the protests had taken place on Sunday, with the goal of preventing new protests. These groups were armed with sticks and baseball bats, as has been documented by various media outlets.⁷² Despite this, the protests that same day continued and in the afternoon, the authorities reported that protests had transpired on Monday in the Havana neighborhood of Arroyo de Naranjo, during which a 36-year-old Afro-descendant man was killed.⁷³ On Tuesday, July 13, the streets of the capital and principal cities of the country dawned with a strong police deployment and the presence of numerous groups related to the government.

38. Despite the grave crisis that was facing Cuba, its authorities did not declare a state of emergency that would have justified the restriction or suspension of human rights. On the contrary, this situation was cause for concern

on the part of several international organizations, including the IACHR, United Nations Office of the High Commissioner for Human Rights, and European Union.

39. On 15 July, the Inter-American Commission expressed its concern and called on the Cuban State “to comply with its human rights obligations, in particular the right to protest; furthermore, the repeated recommendation regarding democratic openness on the island and the duty to ensure consistency of its institutions with Inter-American standards.”⁷⁴ Likewise, it called for “respect for international human rights standards regarding the use of State force and due diligence in investigating the denounced incidents, and to establish a dialogue within the society so as to address the population’s demands and cease its distancing from international human rights systems.”⁷⁵ Through a press release, the IACHR also expressed concern about the detentions of journalists from independent media outlets such as *Cubamet*, *Tremenda*

[72] Grupos afines al Gobierno toman las calles para acallar la protesta en Cuba [Groups Related to the Government Take to the Streets to Quell the Protest in Cuba], EL PAÍS, July 13, 2021, available at <https://elpais.com/internacional/2021-07-13/tension-politica-en-cuba-el-presidente-diaz-canel-advierte-de-que-reprimira-si-hay-mas-protestas.html>

[73] *Ibid.*

[74] Twitter, IACHR, July 11, 2021, available at <https://twitter.com/CIDH/status/1414390305680461826>

[75] IACHR, Press release: *la CIDH y sus Relatorías Especiales condenan la represión estatal y el uso de la fuerza en el marco de las protestas sociales pacíficas en Cuba, llamando al diálogo sobre los reclamos ciudadanos* [The IACHR and its Special Rapporteurs condemn State repression and the use of force within the context of the peaceful social protests in Cuba, and call for dialogue on citizen complaints], July 15, 2021, available at <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/177.asp>

Nota, Palenque Visión, ADN Cuba, and La Hora de Cuba, in Havana as well as other cities, and about police operations that prevented several reporters from leaving their homes.⁷⁶

40. In a second press release dated 12 August, the IACHR once again declared “its preoccupation [this time] for the numerous denunciations of arbitrary detentions and violations of the minimum guarantees of due process” within the context of the protests.⁷⁷ In addition, it called “on the State to cease the repression, guarantee due process, and offer decent treatment to those under its custody.”⁷⁸

41. For her part, on 16 July the United Nations High Commissioner for Human Rights, Michelle Bachelet, expressed her concern regarding the “excessive use of force against protesters in Cuba and the detention of a large number of persons, including several journalists.”⁷⁹

[76] *Ibid.*

[77] IACHR, Press release: *la CIDH y sus Relatorías Especiales manifiestan su preocupación por las denuncias de detenciones arbitrarias, incomunicación, falta de defensa y otras violaciones al debido proceso, en el marco de las protestas del 11 de julio en Cuba* [The IACHR and its Special Rapporteurs declare their concern regarding the arbitrary detention, holding of people incommunicado, lack of defense, and other violations of due process, within the context of the 11 July protests in Cuba], August 12, 2021, available at <http://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/211.asp>

[78] *Ibid.*

[79] UNHCR, *Cuba: Bachelet insta al diálogo y pide la liberación de los manifestantes detenidos* [Bachelet Presses for Dialogue and Calls For the Release of

She additionally employed the press release to urge “the government to address the demands of the protesters through dialogue, and to fully respect and protect the rights of all persons to peaceful assembly and freedom of opinion and expression.”⁸⁰

43. Along the same lines, on July 29, 2021, the Council of the European Union expressed its concern regarding the recent incidents in Cuba, declaring that

*we unequivocally support the right of all Cuban citizens to express their opinions peacefully, demand changes, and gather together to give voice to their opinions, as well as over the Internet. We urge the Cuban government to respect the human rights and freedoms enshrined in the universal covenants on human rights. We ask that it release all protesters who were arbitrarily detained, that it listen to the voices of its citizens, and that it establish a conciliatory dialogue surrounding their demands.*⁸¹

Detained Protesters], July 16, 2021, available at <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=27316&LangID=S>

[80] *Ibid.*

[81] Council of the European Union, *Cuba: declaración del Alto Representante en nombre de la Unión Europea sobre los recientes acontecimientos* [Cuba: Declaration of the High Representative on Behalf of the European Union Regarding Recent Events], July 29, 2021, available at <https://www.consilium.europa.eu/es/press/press-releases/2021/07/29/cuba-declaration-by-the-high-representative-on-behalf-of-the-european-union-on-recent-events/?fbclid=IwAR2opvpZ1O5bR53hIVF9g8-2xAn3nL7y87Za8GFCCzHZ5dlqH78-Rpm5xNQ>

D.

November 15th Protest

43. While the 15N protest sought to provide continuity to the one on 11J, the State response to this second exercise of the right to protest had some particular characteristics.
44. The repression of 15N in reality began with summons issued to members of the *Archipiélago* [Archipelago] platform and other individuals who had signed letters of support for the "Civic March for Change" days before the day on which people were to take to the streets to protest.⁸² Even the IACHR

[82] *Archipiélago denuncia el acoso de la Policía cubana a sus simpatizantes* [Archipiélago Denounces Harassment of its Supporters by Cuban Police], 14 Y MEDIO, October 25, 2021, available at https://www.14ymedio.com/cuba/Archipelago-denuncia-Policia-cubana-simpatizantes_0_3192280745.html; Mauricio Vicent, *El Gobierno cubano avisa de que no tolerará la Marcha por el Cambio* [Cuban Government Announces It Will Not Tolerate the March for Change], EL PAÍS, October 25, 2021, available at <https://elpais.com/internacional/2021-10-25/el-gobierno-cubano-avisa-de-que-no-tolerara-la-marcha-por-el-cambio.html>; *La policía política cubana amenaza a Nairobis Schery con ir a prisión si acude a la marcha del 15N* [Cuban Political Police Threatens Nairobis Schery With Imprisonment If She Attends 15N March], 14 Y MEDIO, October 27, available at https://www.14ymedio.com/cuba/policia-politica-cubana-Nairobis-Schery-amenaza-prision_0_3193480628.html; *Así intentan amedrentar los "revolucionarios" de Díaz-Canel a los cubanos para impedir las marchas del 15 de noviembre* [This Is How the Díaz-Canel "Revolutionaries" Try to Intimidate Cubans So As To Prevent the 15 November Marches], INFOBAE, October 27, 2021, available at <https://www.infobae.com/america/america-latina/2021/10/27/asi-intentan-amedrentar-los-revolucionarios-de-diaz-canel-a-los-cubanos-para-impedir-las-marchas-del-15-de-noviembre/>; Abraham Jiménez Enoa, *No hay una sola razón para que los cubanos no salgan a marchar contra el régimen* [There Is No Single Reason That Cubans Don't March against the Regime], THE WASHINGTON POST, October 31, 2021, available

and Special Rapporteur on the Right to Freedom of Assembly and Association, Clément Nyaletsossi Voule, had expressed their concern regarding information they were receiving of reports of intimidation, police sieges, summons for interrogation, threats to organizations, pressure on the press, and the arbitrary withdrawal of credentials from international journalists,⁸³ and reminding [the Cuban State] that the denial of the government to permit the protest to go forward violated the international obligation of the State to provide a safe space wherein to express disagreement.⁸⁴ Commencing days prior to the date on which the protest was to be held, information circulated on how the government was preparing to counteract the attempt to exercise the right to protest.⁸⁵

at <https://www.washingtonpost.com/es/post-opinion/2021/10/31/cuba-marcha-15-noviembre-2021-15n-miguel-diaz-canel/>; and Claudia Padrón Cueto, *La Seguridad Cubana vs Archipiélago: cronología del asedio* [Cuban Security v. Archipiélago: A Chronology of the Siege], CUBANET, November 12, 2021, available at <https://www.cubanet.org/destacados/la-seguridad-cubana-vs-archipelago-cronologia-del-asedio/>

[83] Twitter, IACHR, November 14, 2021, available at <https://twitter.com/CIDH/status/1459974259112095745?s=20> y Twitter, UN Special Rapporteur Freedom of Association, 12 de noviembre, disponible en <https://twitter.com/cvoule/status/1459174864904982559?s=20>

[84] Twitter, UN Special Rapporteur for Freedom of Association, November 12, available at <https://twitter.com/cvoule/status/1459175501289955329?s=20>

[85] Camila Acosta, 15N: Régimen alista “brigadas de respuesta rápida” en la Isla de la Juventud [15N: Regime Enlists ‘Rapid Response Brigades’ of Youth on the Island], CUBANET, November 13, 2021, available at

45. This repression sought to extinguish any attempt to protest and was primarily characterized by, on one hand, the imprisonment or home confinement with surveillance and ‘acts of repudiation’ of dissidents, human rights defenders who had declared through social media their intention to take to the streets to protest, or whom the government assumed would do so, and independent journalists; and on the other hand, the arbitrary detention of persons who protested. According to a significant number of national and international media⁸⁶ and human rights

<https://www.cubanet.org/cobertura-especial/15n-regimen-alista-brigadas-de-respuesta-rapida-en-la-isla-de-la-juventud/>; and Youtube, Régimen alista “brigadas de respuesta rápida” en la Isla de la Juventud poco antes del 15N [Regime Enlists ‘Rapid Response Brigades’ of Youth on the Island Shortly Before 15N], November 13, 2021, available at <https://www.youtube.com/watch?v=tfpWFToaPvE>

[86] *Actos de repudio, represión y vigilancia a opositores marcaron el 15N* [Acts of Repudiation, Repression, and Surveillance of Opponents Marked 15N], CUBANET, November 15, 2021, available at <https://www.cubanet.org/destacados/15n-vivo-marcha-civica-cambio-viene-llegando-14n-1/>; Yoani Sánchez, *La vigilancia y los actos de repudio amordazan el 15N en Cuba* [Surveillance and Acts of Repudiation Muzzle 15N in Cuba], DW, November 16, 2021, available at <https://www.dw.com/es/la-vigilancia-y-los-actos-de-repudio-amordazan-el-15n-en-cuba/a-59834504>; Lucía Alfonso Mirabal, *Reclusión domiciliaria: el régimen cubano continúa violando sus propias leyes* [House Arrest: Cuban Regime Continues to Violate Its Own Laws], DIARIO DE CUBA, November 15, 2021, available at https://diariodecuba.com/derechos-humanos/1636986813_35559.html; Katherine Mojena Hernández, UNPACU y Cuba Decide: Detenciones, cercos policiales y amenazas después del 15N [UNPACU and Cuba Decide: Detentions, Police Cordons, and Threats Following 15N], CUBANET, November 22, 2021, available at <https://www.cubanet.org/noticias/unpacu-y-cuba-decide-detenciones-cercos-policiales-y-amenazas->

organizations,⁸⁷ dissidents, human rights defenders, and independent journalists have denounced through social media that they were under home confinement and continuously surveilled by State Security, and in

many cases were the targets of ‘acts of repudiation’ organized in front of their homes. According to some media, the operation deployed by the government to prevent scenes of people in the street dressed in white or holding flowers was one of greater control, meter by meter, than many in this country can remember ever having happened.⁸⁸

[despues-del-15n/](#); Abraham Jiménez Enoa, *El terror neutralizó las protestas en Cuba, pero la lucha no ha terminado* [Terror Neutralized Protests in Cuba, Though Struggle Has Not Ended], WASHINGTON POST, 16 noviembre 2021, available at <https://wapo.st/35JzYfZ>; Frances Robles, *Cuba aplasta a la disidencia y sofoca las protestas* [Cuba Smashes Dissidence and Suffocates Protests], THE NEW YORK TIMES, November 15, 2021, available at <https://www.nytimes.com/es/2021/11/15/espanol/protesta-cuba-que-paso.html>; El Gobierno cubano desactiva el 15N desplegando un gran dispositivo policial [Cuban Government Deactivates 15N by Deploying Significant Police Presence], EFE, November 15, 2021, available at <https://www.efe.com/efe/america/politica/el-gobierno-cubano-desactiva-15n-desplegando-un-gran-dispositivo-policial/20000035-4676525>; and *Policías en las calles, detenciones y actos de repudio: el gobierno de Cuba frena la inédita protesta convocada para el 15N* [Police in Streets, Detentions, and Acts of Repudiation: Cuban Government Stops Unprecedented Protest Planned for 15N], BBC, November 16, 2021, available at <https://www.bbc.com/mundo/noticias-america-latina-59276950>

[87] Observatorio Cubano de Derechos Humanos [Cuban Human Rights Watchdog]. *Comunicado de prensa: OCDH reclama la liberación de los prisioneros políticos y de conciencia en Cuba* [Press release: OCDH Demands Release of Political Prisoners and Prisoners of Conscience in Cuba], November 17, 2021, available at <https://observacuba.org/ocdh-reclama-liberacion-prisioneros-politicos-conciencia-cuba/>; Twitter, José Miguel Vivanco, November 14, 2021, available at <https://twitter.com/JMVivancoHRW/status/1459959356460523529?s=20>; Twitter, José Miguel Vivanco, November 15, 2021, available at <https://twitter.com/JMVivancoHRW/status/1460303599041490957?s=20>; and *Entre actos de repudio, vigilancia policial y amenazas transcurrió el 15N en Cuba, según defensores de derechos humanos* [15N Transpired in Cuba Among Acts of Repudiation, Police Surveillance, and Threats], DIARIO DE CUBA, November 16, 2021, available at https://diariodecuba.com/derechos-humanos/1637095084_35590.html

46. The OCDH has documented more than 400 repressive actions since 12 November, highlighting from amongst the most common, the following: 122 cases of home confinement with police surveillance; 87 cases of detentions and 62 summons to police stations; 50 cases of threats; 35 cases of Internet service cutoffs; and 14 ‘acts of repudiation.’⁸⁹ Cubalex documented 87 cases of detentions.⁹⁰

[88] Yoani Sánchez, *El día en que el régimen cubano corrió solo y... no ganó* [The Day the Cuban Regime Ran Alone and . . . Didn't Win], 14 Y MEDIO, November 19, 2021, available at https://www.14ymedio.com/opinion/regimen-cubano-corrio-solo-gano_0_3207279245.html

[89] Observatorio Cubano de Derechos Humanos [Cuban Human Rights Watchdog]. *Comunicado de prensa: OCDH reclama la liberación de los prisioneros políticos y de conciencia en Cuba* [Press release: OCDH Demands the Release of Political Prisoners and Prisoners of Conscience in Cuba], November 17, 2021, available at <https://observacuba.org/ocdh-reclama-liberacion-prisioneros-politicos-conciencia-cuba/>

[90] Cubalex, *Listado de desaparecidos Cuba* [List of the Disappeared in Cuba], available at <https://docs.google.com/spreadsheets/d/1-38omFpJdDiKTSBoUOg19tv2nJxtNRS3-2HfVUUwtSw/edit#gid=0>

- 47.** These actions were accompanied by activities organized by the government, such as popular fairs⁹¹ or “acts of revolutionary reaffirmation,”⁹² which were accompanied by an account provided by the Cuban government that attempted to portray to the world that the “Civic March for Change” had faded away as if by magic, without noting that they had pushed the situation to such an extreme that not even those individuals who had been planning it for months participated. It was thus that several sources, including especially Chancellor Bruno Rodríguez, claimed to be unaware of the reasons

[91] *Organizan feria en el Parque Quijote, donde Yunior García iniciará su marcha el 14 de noviembre* [Fair Organized in Quijote Park, Where Yunior García Will Start His March on 14 November], ADN CUBA, November 13, 2021, available at <https://adncuba.com/noticias-de-cuba/otra-estrategia-contra-el-15n>

[92] Twitter, Office of the President of Cuba, November 14, 2021, available at <https://bit.ly/3rnVsWY>; Iris de la Cruz Saborit, *El Parque Central y Los pañuelos rojos de la paz* [Central Park and the Red Peace Kerchiefs], GRANMA, November 13, 2021, available at <https://www.granma.cu/cuba/2021-11-13/el-parque-central-y-los-panuelos-rojos-de-la-paz>; Leticia Martínez Hernández, *Díaz-Canel en la Sentada de los Pañuelos Rojos* [Díaz-Canel in the Red Kerchiefs Sit-In] (+Video), GRANMA, November 14, 2021, available <https://bit.ly/3nycEYl> YouTube, *Conga oficialista avanza por la céntrica calle 23 gritando consignas* [Pro-Government Conga Line Proceeds Down Calle 23 in Center Shouting Slogans], November 14, 2021, available at <https://www.youtube.com/watch?v=R-PaVdHwug8>; y YouTube, *Régimen cubano toma G y 23 con una conga oficialista* [Cuban Regime Takes G and 23 With Pro-Government Conga Line], November 14, 2021, available at <https://www.youtube.com/watch?v=g-O7JlqtmHM>; and Milagros Pichardo, *La Habana tomada por la alegría* [Havana Consumed by Happiness], GRANMA, November 15, 2021, available at <https://www.granma.cu/cuba/2021-11-15/la-habana-tomada-por-la-alegria-15-11-2021-00-11-02>

why the streets did not fill with people protesting, as occurred on 11J. The Chancellor called for people to

*explain when nothing happened last weekend, when Monday, November 15 was a celebratory Monday in Cuba, when no one in the world can provide any evidence, or images, of either a protest or repression or militarization in this country. They should tell us, finally, what the circumstances were. They were the previous ones or they are the circumstances that were made manifest after this weekend.*⁹³

- 48.** Pro-government media in this way manage the discourse by making public declarations, maintaining that “it becomes ever clearer that the battle being waged today against the Cuban Revolution transpires primarily in the media-communications realm, especially the digital space.”⁹⁴ For its part, the newspaper *Granma*, the official organ of the Central Committee of the Communist Party of Cuba, with

[93] Bruno Rodríguez *sobre la fallida movilización opositora en Cuba: “Fue un lunes de celebración, no hubo ni protestas ni represión ni militarización”* [Bruno Rodríguez on the Failed Mobilization of the Opposition in Cuba: “It was a celebratory Monday, there were no protests or repression or militarization”], RUSSIA TODAY, November 17 2021, available at <https://actualidad.rt.com/actualidad/410705-bruno-rodriguez-fallida-movilizacion-opositora-entrevista>

[94] Jorge Armando Hernández and Melanie Armas Arcia, *CNN en español y EFE sobre Cuba: ¿Ingenuidad o connivencia?* [CNN In Spanish and EFE on Cuba: Naiveté or Collusion?], CUBADEBATE, November 26, 2021, available at <http://www.cubadebate.cu/especiales/2021/11/26/cnn-en-espanol-y-efe-sobre-cuba-ingenuidad-o-connivencia/>

regard to the National Day of Defense, has organized a process to review the protocols for a defensive scenario, viewing communication as “a strategic defense weapon.”⁹⁵ In the same manner, journalist Arleen Rodríguez Derivet, a well-known government defender, was shown when she defended and justified the “acts of repudiation.”⁹⁶

- 49.** Cuban author and journalist Carlos Manuel Álvarez summed up the government’s repressive actions in the following manner:

*After militarizing the public space and then varnishing it with festive sit-ins, loudspeakers in the top parks in the country, food sales, and in general, the arbitrary appearance of a celebration, the Cuban regime corralled tens of citizens in their homes who had planned to peacefully march on 15 November.*⁹⁷

[95] La comunicación, arma estratégica que también se ajusta en días de defensa [Communication, A Strategic Weapon that Can Also Be Adjusted in Days of Defense], GRANMA, November 20, 2021, available at <https://www.granma.cu/cuba/2021-11-20/la-comunicacion-arma-estrategica-que-tambien-se-ajusta-en-dias-de-defensa>

[96] Youtube, Vocera del régimen de #Cuba justifica los actos de repudio contra activistas del #15NCuba [Cuban Regime’s Spokesperson Justifies Acts of Repudiation against #15NCuba Activists], November 17, 2021, available at <https://bit.ly/35PupfS> and Una vocera del régimen cubano justifica los actos de repudio: ‘tendrán que asumir lo que la gente les responda’ [A Spokesperson for the Cuban Regime Justifies Acts of Repudiation: ‘They will have to accept the people’s response to them’], CUBANET, November 17, 2021, available at https://diariodecuba.com/derechos-humanos/1637148960_35602.html

[97] Carlos Manuel Álvarez, *La marcha reprimida en Cuba* [The Suppressed March in Cuba], EL PAÍS,

- 50.** Lastly, on 15 November the Archipiélago platform communicated, through a communiqué over its social media, its decision to extend the “Civic March for Change” through 27 November, justifying this decision by saying that “the reasons that inspired the convening of 15N are still valid and the government has not gotten the message.”⁹⁸

- 51.** In the face of these issues, the IACHR and its Special Rapporteur on Freedom of Expression expressed their concern regarding the State’s repressive actions and called on the State to

*ensure the non-repetition of the human rights violations that have been verified since 11 July in Cuba; and remind [the Cuban State] about its duty to respect, protect, and guarantee the exercise of freedom of expression and the right to peaceful assembly.*⁹⁹

November 16, 2021, available at https://elpais.com/opinion/2021-11-16/la-marcha-reprimida-en-cuba.html?event_log=oklogin

[98] Facebook, Archipiélago, November 15, 2021, available at <https://www.facebook.com/PlataformaArchipelago/posts/319670079876120> and Los convocantes del 15N en Cuba piden extender las protestas hasta fin de mes [15N Conveners in Cuba Call for an Extension of the Protests Through End of Month], EFE, November 16, 2021, available at <https://bit.ly/3sDB4Tu>

[99] IACHR, Comunicado de prensa: La CIDH y su RELE expresan preocupación por acciones represivas del Estado que impidieron realizar la marcha cívica convocada para el 15 de noviembre en Cuba [Press release: The IACHR and its Special Rapporteur on Freedom of Expression express their concern about the repressive actions of the State that prevented the civic march convened for 15 November in Cuba to take place], November 29, 2021, available at <https://>

05.

**Documented
Human Rights
Violations and
Applicable
Regulatory
Framework**



Photograph: "Detained" - Daniel González Oliva

A.

Suppression of Protests

52. The freedom to protest and peacefully assemble are inalienable rights that offer the possibility to express ideas [and] opinions and develop political, artistic, religious, economic, and social activities, as the case may be, enabling an enriching co-existence among individuals. The Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions declared in a joint statement that persons who participate in peaceful mass gatherings, demonstrations, or protests enjoy several protected rights, such as for example the rights to peaceful assembly, expression, association, and beliefs; participation in managing public affairs; physical integrity, which comprises the rights to security, not being the target of abuse or cruel, inhuman, or degrading treatment, and the right to life; dignity; intimacy; and an effective appeal as a result of any human rights violations;¹⁰⁰ and that these rights are

www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/317.asp

[100] Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, *Informe conjunto del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias acerca de la gestión adecuada de las manifestaciones* [Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions on the Appropriate

not dependent on the political or any other type of content of the expression of that demonstration.¹⁰¹

53. The right to peaceful protest has been identified as “a fundamental pillar of democratic governance and of open societies by which persons and groups can express their opinions on issues of public interest. By exercising it in a favorable environment, they can shape the public debate and improve general governance.”¹⁰²

54. The right to freedom of peaceful assembly, recognized in Article 20 of the Universal Declaration of Human Rights, is an essential instrument with which persons and groups can make known their opinions to those who govern them, in order to shape the public policies and decisions that affect society as a whole. For governments, it constitutes a barometer that can help them calibrate and adjust their policies and decisions. Nonetheless, in some contexts, the exercise of this right is seen as a threat to governance

and public order.¹⁰³ As such, blocking, restricting, prohibiting, or interrupting the exercise of these mandates contradicts the development and strengthening of a country’s democratic processes, as well as open, inclusive, and beneficial communication between society and the government.

55. This right assumes greater relevance when the citizens of a State decide to exercise it as a form of expression in the face of a concerning situation and suffer grave violations to their fundamental rights. Such is the case of the Cuban people, who last 11J decided to take to the streets in full exercise of their rights and express their concern about the worsening economic crisis that has caused greater shortage of foodstuffs, medicine, [and] hygiene products, among others, and the COVID-19 pandemic, which had caused hospitals and health centers to collapse due to insufficient medical supplies and a growing rate of contagion, as well as policies imposed by the government to silence and intimidate activists and journalists who have wanted to report on the situation on the island since the outset of the pandemic. And even given the repression suffered due to 11J, they convened a new march for 15N, but this time were not able to go out to protest in the manner in which they would have wanted to due to the actions taken by the State.

Management of the Protests], parag. 8, Human Rights Council, U.N. Doc. A/HRC/31/66 (February 4, 2016) (by Maina Kiai and Christof Heyns, respectively).

[101] *Ibid.*, párag. 11.

[102] Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. *Informe del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación* [Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association], parag. 39, Human Rights Council, U.N. Doc. A/HRC/38/34 (July 26, 2018) (by Clément Nyaletsossi Voule).

[103] *Ibid.*

- 56.** According to the Special Rapporteur of the IACHR, the exercise of the right to freedom of expression within the context of social protests must be guaranteed not only in terms of the dissemination of ideas and information received that are viewed as favorable, inoffensive, or indifferent, but also those that offend, are at odds, unsettling, disagreeable, or disturbing to the State or any other sector of the population due to the type of demand involved.¹⁰⁴
- 57.** During the 11J protests, there were arbitrary detentions, forced disappearances, Internet cutoffs, and excessive use of force on the part of members of the police and military. This generated an environment of violence, authoritarianism, [and] repression that seriously restricted the rights of association and expression, with nonviolent activities deemed crimes and protesters' activism criminalized without any qualms. There were also reports of arbitrary detentions and disappearances of protesters and journalists within the context of 15N, although another repressive strategy was utilized.
- 58.** Freedom of assembly and peaceful association is a natural exercise that seeks to strengthen society by providing the citizenry with a space for dialogue and expression, with an eye to achieving a strong State and collaborating constructively with the government to institutionalize the laws, agreements, and decision-making regarding matters of national interest.
- 59.** Various international instruments exist that safeguard the protection of the human right to peaceful assembly, such as Article 21 of the International Covenant on [Civil and Political] Rights. According to this article, the exercise of this right may only be subject to restrictions set forth in the law that are necessary in a democratic society, in the interests of national security, public security, or public order, or to protect public health or morale or the rights and liberties of the rest of the populace.¹⁰⁵
- 60.** The free and peaceful expression of ideas that transpired on 11J in Cuba, as well as the one convened for 15N, did not pose a risk to the security of the country but rather, represented the full exercise of their rights and the change of an era, given that a social protest of that size had never been seen

[104] IACHR Special Rapporteur on Freedom of Expression, *Protesta y Derechos Humanos* [Protest and Human Rights], OEA/Ser.L/V/II CIDH/RELE/INF.22/19, parag. 63 (September 2019).

[105] International Covenant on Civil and Political Rights. G.A. Res 2200 A (XXI), Art. 21, (December 16, 1966).

previously [in Cuba]. International law establishes that the participants of meetings are free to choose and express the contents of their messages. Restrictions may only be placed on the content of the meetings if they are compliant with legitimate limitations when the message promotes national, racial, or religious hatred such that it constitutes a defense of discrimination, hostility, or violence.¹⁰⁶

- 61.** According to the data provided by civil society organizations such as Prisoners Defenders up through September 2, 2021, there were 381 prisoners sentenced in summary trials for their participation in one of the protests held in Cuba between July 11-17, and a record of 5,000 detainees, 1,500 of whom still had their freedom restricted in some fashion, all as a result of the protests.¹⁰⁷

[106] Special Rapporteur on the Rights of Freedom of Peaceful Assembly and Association and Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, *Informe conjunto del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias acerca de la gestión adecuada de las manifestaciones* [Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions on the Appropriate Management of the Protests], parag. 33, Human Rights Council, U.N. Doc. A/HRC/31/66 (February 4, 2016) (by Maina Kiai and Christof Heyns, respectively).

[107] Prisoners Defenders, *¡Atención! Prisoners Defenders verifica 381 presos, condenados políticos y 5000 detenciones. Balance del 11j* [Attention! Prisoners Defenders Verifies 381 Prisoners,

- 62.** It is important to mention at this point that the Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association and Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions declared that “mass detentions” of persons who participate in meetings tend to be indiscriminate and arbitrary.¹⁰⁸ Likewise, the IACHR Special Rapporteur issued a reminder that a detention based exclusively on the act of participating in a public protest or demonstration does not comply with the requirements of reasonability and proportionality established by international standards.¹⁰⁹ Lastly, it issued a reminder that:

Political Convicts, and 5,000 Detentions: The Balance of 11J], September 2, 2021, *available at* , <https://www.prisonersdefenders.org/2021/09/02/atencion-prisoners-defenders-verifica-381-presos-y-condenados-politicos-5000-detenciones-balance-del-11j>

[108] Special Rapporteur on the Rights of Freedom of Peaceful Assembly and Association and Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, *Informe conjunto del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias acerca de la gestión adecuada de las manifestaciones* [Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions on the Appropriate Management of the Protests], parag. 45, Human Rights Council, U.N. Doc. A/HRC/31/66 (February 4, 2016) (by Maina Kiai and Christof Heyns, respectively).

[109] IACHR Special Rapporteur on Freedom of Expression, *Protesta y Derechos Humanos* [Protest and Human Rights], OEA/Ser.L/V/II CIDH/RELE/INF.22/19, parag. 228 (September 2019).

*the loss of freedom while a protest is underway has the immediate effect of preventing the detained person from exercising the right to protest and generates an inhibitory effect with regard to participation in public protests, all of which affects the enjoyment and exercise of the right to social protest.*¹¹⁰

63. According to the IACHR Special Rapporteur:

*The criminalization of social protest consists of the use of the punitive power of the State to dissuade, punish, or prevent the exercise of the right to protest and in some cases, of social and political participation more broadly, through the arbitrary, disproportionate, or repeated use of criminal or contraventional justice against protesters, activists, [or] social or political referents due to their participation in a social protest, or being singled out as having organized it, or due to being a member of the organizing or convening collective or entity. Its habitual effects are being subject to arbitrary and prolonged offense or criminal trials, the application of fines, and/or arbitrary detention with or without a sentence.*¹¹¹

64. The Cuban criminal system permits authorities to keep a person suspected of having committed a crime incommunicado for a period of seven days, without the right to legal

counsel until 72 hours after a court has reviewed the legality of the detention. This violates international standards that demand an immediate review of the detention prior to imprisoning an individual. It is equally alarming that in the process of detaining someone, the authorities do not notify the suspect of his/her rights.

65. The repressive governmental machinery also consisted of forcibly disappearing persons who participated in the protests, in order to later sentence or fine them without following due legal process or providing the option for relatives or lawyers to have access to them, thereby violating all valid international treaties and their own Constitution.

66. Members of civil society, such as the *Comité Ciudadanos por la Integración Racial* [Citizen Committee for Racial Integration], were detained while they walked to the meeting point for one of the 11J protests, then imprisoned for hours, and lastly submitted to hostile interrogations in which State Security forces threatened them and were psychologically violent to them to intimidate them and make them cease their activism. In response to these actions, several civil society and international organizations raised their voices, calling on the Cuban State “to immediately take the necessary measures to guarantee the right to peaceful protest and the right to freedom of expression, including

[110] *Ibid*

[111] *Ibid*, párag. 188.

online, pursuant to international human rights standards.”¹¹²

67. In the events of 11J as well as 15N, digital media were a direct communication channel between the protesters and the world. Thanks to live broadcasts over different platforms, one could observe how police [and] paramilitary squads and the elite Revolutionary Armed Forces group known as “the Black Berets” beat protesters and prevented them from advancing, or surveilled the homes of activists and journalists. Videos also circulated of detentions of journalists and social leaders who were in the protests or in their homes. Similarly, our Cuban counterparts sent videos, photographs, and voicemails in which they recounted the violent persecution they were experiencing.

68. The island experienced a complete Internet blackout for four days; even when the connection was reestablished, social media continued to be blocked, a fact that alarmed and aroused concern among the international community.

69. Following the 11J protests, the department of investigation and National Police continued their

intelligence-gathering work by surveilling and following those citizens who participated in the protests or sent images and videos any way they could.

70. On July 15, 2021, the Inter-American Commission and its Special Rapporteurs issued a communiqué calling on the Cuban government to commence a dialogue on citizen demands, condemning State coercion of the protesters, [and] calling on the State to recognize, protect, and guarantee the rights to peaceful assembly and freedom of expression, without discrimination based on political opinions. Likewise, the communiqué reiterated the importance of State Security agents’ actions being in strict adherence with international human rights standards, which establish that the use of force should be governed by the principles of legality, exceptionality, proportionality, and absolute need.¹¹³

71. In response to this call, the Cuban government did not issue any official response. Nonetheless, President Díaz-Canel and Chancellor Bruno Rodríguez

[112] World Organization against Torture. Press release: *Cuba: Detenciones arbitrarias y hostigamiento a miembros del Comité Ciudadanos por la Integración Racial* [Cuba: Arbitrary Detention and Harassment of Members of the Citizen Committee for Racial Integration], July 30, 2021, available at <https://bit.ly/3heMXc9>

[113] IACHR, *Comunicado de prensa: la CIDH y sus Relatorías Especiales condenan la represión estatal y el uso de la fuerza en el marco de las protestas sociales pacíficas en Cuba, llamando al diálogo sobre los reclamos ciudadanos* [Press release: The IACHR and its Special Rapporteurs condemn State repression and use of force in the context of the peaceful social protests in Cuba and call for a dialogue on citizen complaints], July 15, 2021, available at <http://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/177.asp>

made several declarations in which they declared that the protests were orchestrated by “agents from a foreign power” and denied that Cuba was in need of humanitarian assistance, noting that “in Cuba no one is dying from a lack of food and that the Internet outages were the same as the shortage of medical supplies, electricity, and foodstuffs resulting from the current international health crisis.”¹¹⁴ In the same vein, Díaz-Canel also declared that “humanitarian assistance is, in reality, a military intervention that crushes the rights [and] sovereignty of all peoples” and asked the international community to raise its voice against the economic embargo before condemning the supposed repression and violation of rights on the island.¹¹⁵

- 72.** The European Union and Organization of American States have always had a pro-human rights posture and supported the exercise of each of those rights, as established in Article 10 of the Charter of Fundamental Rights of the European Union¹¹⁶, and Article 13 of the American Convention on Human Rights¹¹⁷, which state the importance

[114] YouTube. Bruno Rodríguez press conference on Cuba’s media campaign, available at https://www.youtube.com/watch?v=t_1a8_cIREo&t=18s

[115] YouTube. Message from Díaz-Canel on 11 July protests, <https://www.youtube.com/watch?v=V5deF9ZTrB4>

[116] Charter on Fundamental Rights of the European Union. Official Journal of the European Union C 303/17 - 14.12.2007.

[117] American Convention on Human

of freely making and manifesting any artistic, social, economic, or religious expression, as the case may be.

- 73.** Taking into consideration the foregoing, and in the face of the incidents that transpired in Cuba on 11 July, the European Union called on the authorities to respect human rights [and] fundamental freedoms, free the prisoners who were arbitrarily detained, and enter into a dialogue to address Cubans’ complaints. Likewise, it made itself available to the Cuban State as a mediator in the face of the critical situation throughout the world produced by COVID-19.¹¹⁸

- 74.** The government issued a forceful response to the demands of the various entities generated by the violence and repression meted out against the protests. The government expressed the following in a press release:

There are no forced disappearances, torture, or extrajudicial executions in Cuba. There have been none of these things since January 1, 1959 with the triumph of the Revolution. Cuba has honored its commitments as a State Party to the International Convention for the

Rights, signed in the Inter-American Specialized Conference on Human Rights (B-32).

[118] European Parliament. *Represión gubernamental de las protestas y de los ciudadanos en Cuba* [Governmental Repression of Protests and Citizens in Cuba], P9_TA(2021)0389, (September 16, 2021, available at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0389_ES.pdf

*Protection of All Persons From Enforced Disappearance and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment. The Constitution of the Republic and all other laws ensure the necessary conditions for guaranteeing that such incidents do not occur in the country, including in detention centers.*¹¹⁹

75. Notwithstanding, these declarations were made in the midst of endless documentation of cases of arbitrary detentions, torture, forced disappearances, and summary trials, some of which we will present below, that have landed thousands of Cubans in prison without enjoying any individual guarantees.

76. The Law on Cuban Associations includes the guarantee of the right to association; nonetheless, in practice it prohibits all independent exercise by requiring coordination amongst persons wishing to protest against a State organ. This entails the presence of a State representative in preparatory meetings and the obligation that they inform on the actions they will take nationally and internationally, as well

as the date and time of any planned protest, thereby controlling any free activity of the protesters.

77. An example of the Cuban State's refusal to strengthen its government is its refusal to dialogue with its citizens and illegitimately sentencing and sanctioning the exercise of rights such as the right to association and protest, viewing them as violent actions. The most recent violation of these rights, one more proof of the position the Cuban State maintains vis-à-vis any opinion that it might consider oppositional, is the prohibition against holding new social protests on 15N and the subsequent repression of thousands of individuals' attempts to take to the streets. It is important to recall that the right to freedom of peaceful assembly includes "the right to plan, organize, promote, and announce any kind of legal mass gathering. All restrictions against such activities should be considered as ex ante restrictions to exercising the right,¹²⁰ and that due

[119] Ministry of Foreign Affairs of Cuba. Comunicado de prensa: Nuestra verdad sobre falsas alegaciones que intentan desacreditar al gobierno cubano [Press release: Our Truth Regarding False Allegations That Attempt to Discredit the Cuban Government], July 23, 2021, available at <http://misiones.minrex.gob.cu/es/articulo/nuestra-verdad-sobre-falsas-alegaciones-que-intentan-desacreditar-al-gobierno-cubano-0>

[120] Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, *Informe conjunto del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias acerca de la gestión adecuada de las manifestaciones* [Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions on the Appropriate Management of the Protests], parag. 19, Human Rights Council, U.N. Doc. A/HRC/31/66 (February 4, 2016) (by Maina Kiai and

to the fact that freedom of peaceful assembly is a right and not a privilege, its exercise must not be subject to prior authorization by the authorities. It is thus that the procedure for notification should not function as either a de facto request for authorization or form of regulation based on the content.¹²¹

Christof Heyns, respectively).

[121] Ibid., parag. 21. See in the same sense, IACHR Special Rapporteur on Freedom of Expression, *Protesta y Derechos Humanos* [Protest and Human Rights], OEA/Ser.L/V/II CIDH/RELE/INF.22/19, parag. 56 (September 2019).

B.

Arbitrary Detentions

78. The defense and promotion of human rights in Cuba faces significant challenges. The Cuban government has not reported official figures of the total number of persons detained during the 11J or 15N protests; nonetheless, in a press release dated August 19, 2021, it informed that 67 people had been charged with matters linked to the 11J protests.¹²²

79. In the absence of official data, the work of civil society organizations has been invaluable in documenting the cases of imprisonment since the outset of the protests. For example, the OCDH reported that the July protests generated at least 1,745 repressive actions in Cuba, 1,103 of which were arbitrary detentions and 642 were other forms of abuse, such as sieges of homes (402), assault (63), harassment (55), summons (53), and fines (40). The organization notes that that data are not definitive.¹²³ Prisoners Defenders asserted after a study that more than 5,000 people

[122] Ministry of Foreign Affairs of Cuba. Cuba's diplomatic representatives abroad, *Comunicado de prensa* [Press release], August 19, 2021, available at <https://misiones.minrex.gob.cu/es/articulo/comunicado-de-prensa-11>

[123] Observatorio Cubano de Derechos Humanos [Cuban Human Rights Watchdog]. *Comunicado de prensa: OCDH: Protestas de julio dejaron al menos 1.745 acciones represivas en Cuba, de las cuales 1.103 fueron detenciones arbitrarias* [Press release: OCDH: July Protests Produced At Least 1,745 Repressive Actions in Cuba, 1,103 of Which Were Arbitrary Detentions], August 3, 2021, available at <https://observacuba.org/ocdh-protestas-de-julio-dejaron-al-menos-1-745-acciones-represivas-en-cuba-de-las-cuales-1-103-fueron-detenciones-arbitrarias/>

had been detained between 11-17 July. Likewise, it states that higher estimates could place the figure between 6,000 and 8,000 detainees, with more than 1,500 of them remaining detained even after 17 July.¹²⁴ With regard to 15N, the OCDH has documented more than 400 repressive actions since 12 November; among the most frequent were 122 cases of home confinement with police surveillance, 87 cases of detentions and 62 cases of summons to police stations, 50 cases of threats, 35 cases of Internet cutoffs, and 14 ‘acts of repudiation.’¹²⁵ Cubalex documented 87 cases of detentions within the context of 15N.¹²⁶

80. Within the context of both demonstrations, imprisonment was

[124] Prisoners Defenders. Press release: ¡Atención! Prisoners Defenders verifica 381 presos, condenados políticos y 5000 detenciones. Balance del 11j [Attention! Prisoners Defenders Verifies 381 prisoners, political convicts, and 5,000 detention: The Balance of 11J], September 2, 2021, available at <https://www.prisonersdefenders.org/2021/09/02/atencion-prisoners-defenders-verifica-381-presos-y-condenados-politicos-5000-detenciones-balance-del-11j/>

[125] Observatorio Cubano de Derechos Humanos [Cuban Human Rights Watchdog]. Comunicado de prensa: OCDH reclama la liberación de los prisioneros políticos y de conciencia en Cuba [Press release: OCDH Demands the Release of Political Prisoners and Prisoners of Conscience in Cuba], November 17, 2021, available at <https://observacuba.org/ocdh-reclama-liberacion-prisioneros-politicos-conciencia-cuba/>

[126] Cubalex, Listado de desaparecidos Cuba [List of the Disappeared in Cuba], available at <https://docs.google.com/spreadsheets/d/1-38omFpJdDiKTSBoUOg19tv2nJxtNRS3-2HfVUUwtSw/edit#gid=0>

employed as a mechanism for punishing persons who decided to exercise their human rights to peaceful protest and freedom of expression. This reality is not foreign to Cuba, given that historically the government has employed several methods to criminalize those persons who decide to express themselves in opposition to the status quo. For example, the 8th Congress of the Communist Party of Cuba was held April 17-19, 2021. This is the only legal political party on the island and is of a supraconstitutional nature, according to Article 5 of the Constitution. The organization of that Congress was accompanied by an increase in political repression in the form of arbitrary detentions, forced home confinement of members of independent civil society, and cutoffs of telephone service and access to the Internet.¹²⁷ Measures for addressing the principal problems being confronted by the country were not discussed or agreed upon in the Congress; rather, hardline proposals against those considered to be ‘dissidents’ or ‘opponents’ took precedence.

81. The United Nations Working Group on Arbitrary Detention has repeatedly noted the existence of a

[127] Carlos Vázquez, *El descontento eleva la represión ante el retiro de Raúl Castro* [Discontent Increases Repression in Face of Raúl Castro’s Retirement], LA RAZÓN, April 16, 2021, available at <https://www.larazon.es/internacional/20210416/co6vqkqoxzemxkj6z3v4sfnmzy.html>

*psystematic practice of arbitrary detentions . . . carried out by Cuban authorities for decades against people who belong to civil society organizations and citizen groups, or who participate in public and community activities that represent a nuisance to governmental authorities.*¹²⁸

- 82.** It even recognized that the communications received involved individuals who have been detained on multiple occasions, including some who have been detained tens of times for periods of short, medium, and long duration.¹²⁹ It described the following systematic pattern:

a) imprisoned persons share a profile of being rights defenders, critical activists, and opponents of the government; b) the use of the same types of indeterminate criminal offenses with ambiguous behavior that enable broad discretion; c) imprisonment for exercising one's human rights; d) repeated violation of the fundamental guarantees of due process and a fair trial; and e) alleged

*cruel, inhuman, or degrading treatment or punishment, or detention conditions that do not accord with human dignity and integrity.*¹³⁰

- 83.** In the same vein, the IACHR has also affirmed its continued concern regarding the “grave and systematic” violations of human rights in Cuba that impact, among others, the protection against arbitrary detention.¹³¹

- 84.** With regard to the types of criminal offenses employed by the State to carry out these arbitrary detentions, the IACHR has rebuked the validity of ambiguous types of criminal offenses. It specifically expressed its concern regarding the use of certain types against defenders: “charges of crimes such as ‘desacato’ [disregard for legally constituted authority], pre-criminal riskiness and social riskiness, failure to pay fines, disorderly conduct, and resistance or rebellion with an eye to disincentivize the work of defending and promoting human rights.”¹³² With regard to these types of criminal offenses, the Working Group on Arbitrary Detention declared:

[128] Working Group on Arbitrary Detention, *Opinión 50/2020, relativa a José Daniel Ferrer García* [50/2020 Opinion, related to José Daniel Ferrer García], par. 65, U.N. Doc. A/HRC/WGAD/2020/50 (October 14, 2020).

[129] Working Group on Arbitrary Detention, *Opinión 4/2020, relativa a Aymara Nieto, Eliecer Bandera, Humberto Rico, José Pompa, Melkis Faure, Mitzael Díaz y Silverio Portal* [4/2020 Opinion, related to Aymara Nieto, Eliecer Bandera, Humberto Rico, José Pompa, Melkis Faure, Mitzael Díaz, and Silverio Portal], par. 142, U.N. Doc. A/HRC/WGAD/2020/4 (June 26, 2020).

[130] *Ibid.*

[131] [Chap. IV. B: Cuba], IACHR, *Informe Anual de la Comisión Interamericana de Derechos Humanos 2019* [2019 Annual Report of the Inter-American Commission on Human Rights], OEA/Ser.L/V/II. Doc. 9, par. 10 (February 20, 2020).

[132] *Ibid.*, par. 22.

*These types of criminal offenses, while being extremely vague, contravene Cuba's international obligations and make them invalid as a legal basis for arrest, which makes it impossible, in the present case, to invoke any legal grounds at all to justify the detention, thus making it arbitrary.*¹³³

85. More recently, within the context of the COVID-19 pandemic, the State began to employ the “propagation of epidemics”¹³⁴ criminal offense. According to the Cuban press, at least 114 persons were tried during the pandemic for the latter crime.¹³⁵

86. April 10, 2021 marked two years since the proclamation of the 2019 Constitution that “recognizes and guarantees persons the inalienable, imprescriptible, indivisible, universal, and interdependent enjoyment and exercise of human rights,”¹³⁶ including

[133] Working Group on Arbitrary Detention, *Opinión 4/2020, relativa a Aymara Nieto, Eliecer Bandera, Humberto Rico, José Pompa, Melkis Faure, Mitzael Díaz y Silverio Portal* [4/2020 Opinion, related to Aymara Nieto, Eliecer Bandera, Humberto Rico, José Pompa, Melkis Faure, Mitzael Díaz, and Silverio Portal], parag. 135, U.N. Doc. A/HRC/WGAD/2020/4 (June 26, 2020).

[134] L. 62/87, *Código Penal* [Criminal Code], December 29, 1987, G.O., Art. 187, available at <https://www.wipo.int/edocs/lexdocs/laws/es/cu/cu004es.pdf>

[135] *La pandemia como pretexto para el abuso policial en Cuba: una cronología* [Pandemic as a Pretext for Police Abuse in Cuba: A Chronology], DIARIO DE CUBA, July 14, 2020, available at https://diariodecuba.com/cuba/1594716069_23585.html

[136] POLITICAL CONSTITUTION OF THE

personal freedom.¹³⁷ However, in practice these regulations are breached repeatedly, above all when people have been imprisoned for being critical of the government or for their work defending and promoting human rights and democracy on the island.

87. The right to personal liberty, which includes the prohibition against arbitrary detention, is guaranteed in Inter-American and universal human rights instruments. At the universal level, this right is protected by the Universal Declaration of Human Rights (Art. 9) and International Covenant on Civil and Political Rights (Art. 9). By being a State Party to the Organization of American States, and based on the principle of good faith, Cuba should observe the provisions of the Universal Declaration. In the case of the aforementioned Covenant, Cuba has a duty reinforced by good faith, in light of the fact that, having signed it on February 28, 2008, by virtue of international law, the State committed to not hinder the objective and purpose of the Covenant, pursuant to Article 18(a) of the Vienna Convention on the Law of Treaties.¹³⁸

REPUBLIC OF CUBA, Art. 41 (2019), available at <http://media.cubadebate.cu/wp-content/uploads/2019/01/Constitucion-Cuba-2019.pdf>

[137] *Ibid.*, Art. 46.

[138] Vienna Convention on the Law of Treaties, Art. 18(a), May 23, 1969, U.N. Doc. A/CONF.39/27 (1969), 1155 U.N.T.S. 331.

88. At the regional level, the right to personal freedom is guaranteed by Article 1 of the American Declaration of the Rights and Duties of Man in accordance with Article 25 that addresses the matter of protection against arbitrary detention, as well as Article 7 of the American Convention on Human Rights. The latter instrument has not been signed or ratified by the Cuban State; notwithstanding, Cuba “is a party to international human rights instruments in the hemisphere, such as the American Declaration of the Rights and Duties of Man and the Charter of the Organization of American States and a signatory to Resolution VIII of the Fifth Meeting of Consultation of Ministers of Foreign Affairs (Santiago de Chile, 1959), which established the Inter-American Commission on Human Rights.”¹³⁹

89. According to the Working Group on Arbitrary Detention, imprisonment is considered arbitrary when the incidents are subsumed within one of these five categories:

a) when it is manifestly impossible to invoke any legal grounds that justifies it, such as keeping a person imprisoned after he/she has fulfilled his/her sentence or despite an amnesty law that is applicable to him/her (Category

I); b) when imprisonment results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, and 18 through 21 of the Universal Declaration of Human Rights and, with respect to States Parties, by Articles 12, 18, 19, 21, 22, and 25 through 27 of the International Covenant on Civil and Political Rights (Category II); c) when the total or partial incompliance with international standards related to the right to an impartial trial, as established in the Universal Declaration of Human Rights and relevant international instruments accepted by the interested States, is of such a grave nature that it confers an arbitrary nature on the imprisonment (Category III); d) when requesters of asylum, immigrants, or refugees are the objects of prolonged administrative detention without the possibility of review or administrative or judicial appeal (Category IV); and e) when imprisonment constitutes a violation of international law, in that it deals with discrimination due to birth, national, ethnic, or social origin, language, religion, economic condition, political or other type of opinion, gender, sexual orientation, handicap, or other condition that leads or can lead to ignoring the principle of the equality of human beings (Category V).¹⁴⁰

[139] IACHR, *Situación de los derechos humanos en Cuba* [Situation of Human Rights in Cuba], OEA/Ser.L/V/II. Doc. 2, parag. 3 (February 3, 2020).

[140] Working Group on Arbitrary Detention, *Métodos de trabajo del Grupo de Trabajo sobre la Detención Arbitraria* [Methods of Work of the Working Group on Arbitrary Detention], Human Rights Council, parag. 8, U.N. Doc. A/HRC/36/38 (July 13, 2017).

90. In the same vein, the Inter-American Court of Human Rights (hereinafter, ‘Inter-American Court’), upon analyzing the legal figure of arbitrary detention in the case *Yvon Neptune v. Haiti*, ruled that four elements must be considered in order to determine whether or not imprisonment is arbitrary. First, that “the goal of the measures that deprive or restrict freedom is legitimate.”¹⁴¹ Second, that “the measures adopted are appropriate for accomplishing the goal pursued.”¹⁴² Third, that the measures for depriving or restricting the right to freedom are “necessary, in the sense that they are absolutely essential for accomplishing the desired goal and that no other less burdensome measure exists with respect to the right that has been curtailed.”¹⁴³ As expressed by the Inter-American Court, said measures should be “exceptional.”¹⁴⁴ Fourth, that the measures are “strictly proportional, such that the sacrifice inherent to restricting the right to freedom is not excessive or disproportionate vis-à-vis the advantages obtained through the restriction and the accomplishment of the end pursued.”¹⁴⁵

[141] *Yvon Neptune v. Haiti*, Merits, Reparations, and Costs, Inter-American Court of Human Rights [Inter-American Court], (Series C No. 180), parag. 98 (May 6, 2008).

[142] *Ibid*, parag. 98.

[143] *Ibid*, parag. 98.

[144] *Ibid*, parag. 98.

[145] *Ibid*, parag. 98.

91. The detentions within the context of the protests in Cuba did not comply with the aforementioned parameters. The imprisonments conformed to the *illegitimate* end of preventing people from protesting or punishing those who were protesting, for exercising their human rights to freedom of expression and peaceful protest. Furthermore, they sought to silence them through the use of criminal law and common crimes, which “does not constitute a legitimate end, in light of democratic principles.”¹⁴⁶ This practice is not novel in Cuba: the IACHR has recognized that “use is made of common-crime trials in order to bring to justice opponents of the government” on the island.¹⁴⁷ As such, imprisoning protesters, including under the legal figure of pre-trial detention, was not done in pursuit of any *legitimate or appropriate* end. Furthermore, in light of the lack of a legitimate end, the need for the measure was not justified, as it was neither “certain” nor “imperative.”¹⁴⁸ On the contrary, it was “harmful to other rights.”¹⁴⁹ Nor was the measure proportional, as it subjected the imprisoned persons

[146] *Vladimir Herzog et al v. Brazil*, Case 12.879, IACHR, Report No. 71/15, Merits, OEA/Ser.L/V/II.156, doc. 24, parag. 149 (2015).

[147] IACHR, *Situación de los derechos humanos en Cuba* [Situation of Human Rights in Cuba], OEA/Ser.L/V/II. Doc. 2, parag. 129 (February 3, 2020).

[148] *Vladimiro Roca Antúñez et al v. Cuba*, Case 12.127, IACHR, Report No. 27/18, Merits, OEA/Ser.L/V/II.167, doc. 32, parag. 118 (2018).

[149] *Ibid.*, párag. 118.

to conditions that were “excessive” and “disproportionate,”¹⁵⁰ including prolonged incommunicado periods and forced disappearance, which in turn violated other fundamental rights, such as the right to personal integrity, as shall be explained in the following sections of this report.

[150] *Yvon Neptune v. Haiti*, Merits, Reparations, and Costs, Inter-American Court, (Series C No. 180), parag. 98 (May 6, 2008).

C. Enforced Disappearances

92. For several years, the Cuban State has employed forced disappearance as a generalized and systematic practice for repressing those it considers to be “opponents” or “dissidents.”¹⁵¹ “This pattern occurs within the context of arbitrary detentions, oftentimes of short duration (hours or days),¹⁵² where investigating officials and prosecutors¹⁵³ refuse imprisoned persons access to information regarding their procedural situation and the right to immediately communicate with their relatives and legal representative.¹⁵⁴ As a result, the person’s whereabouts are unknown, oftentimes until the day of his/her trial, as occurred with musician and activist member of the San Isidro Movement, Denis Solís.¹⁵⁵ The disappeared persons’

[151] IACHR, *Situación de los derechos humanos en Cuba* [Situation of Human Rights in Cuba], OEA/Ser.L/V/II. Doc. 2, para. 164 (February 3, 2020).

[152] A frequent practice of the authorities is to not issue an arrest warrant when detaining someone and not instruct the person regarding the charges against him/her or explain the rights of detained persons (Law on Criminal Procedure, Art. 244).

[153] Article 156 of the Constitution of the Republic of Cuba establishes that the Office of the Public Prosecutor’s mission is to control criminal investigations and carry forward proceedings in representation of the State. It is additionally responsible for ensuring compliance with legality.

[154] POLITICAL CONSTITUTION OF THE REPUBLIC OF CUBA, Art. 95 h) (2019), available at <http://media.cubadebate.cu/wp-content/uploads/2019/01/Constitucion-Cuba-2019.pdf>

[155] Lien Carrazana, *¿Quién es Denis Solís y por qué lo condenan a ocho meses de cárcel en Cuba?* [Who Is Denis Solís and Why Has He Been Sentenced to Eight Months in Jail in Cuba?], DIARIO DE CUBA, November 17, 2020, available at <https://diariodecuba.>

relatives do not know the place where their loved ones have been detained, because the State denies having them in its custody, even when evidence exists that they have been imprisoned. To that end, the State employs the tactic of not recording their names in the entry registers at police stations, thereby contravening international human rights standards, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)¹⁵⁶ and Principles and Best Practices for the Protection of Persons Deprived of Liberty in the Americas.¹⁵⁷

com/derechos-humanos/1605616778_26533.html?_cf_chl_jschl_tk_=pmd_7f33c7ab09ee312215bec32d66f4bb89f7046401-1628015135-0-gqNtZGzNAfjcnBszQmO

[156] United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rule 6: “In all places with prisoners, there shall be a normalized system for managing their case files. Said system may consist of an electronic database or labeled register with each page signed. Procedures shall be established to ensure a secure audit trail and prevent unauthorized access to the system’s information and unauthorized modifications to it.” United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rule 6, December 17, 2015, A.G. Res 70/175.

[157] Principles and Best Practices for the Protection of Persons Deprived of Liberty in the Americas, Principle IX 2): “The data of persons admitted to places where they are deprived of their liberty must be recorded in an official register which shall be accessible to the person deprived of liberty, his/her representative, and competent authorities. The register shall contain, at a minimum, the following data: a. information on personal identity, which shall include, at a minimum, the following: name, age, sex, nationality, address, and names of the parents, relatives, legal representatives, or

93. During such detentions, the imprisoned persons are not informed about the charges against them or of the investigations that are underway. According to the Law on Criminal Procedure, the preparatory phase of the oral hearing, whose purpose is to “investigate and confirm the existence of the crime and its circumstances, gather and preserve the instruments and material evidence,”¹⁵⁸ can last 60 days and be extended up to six months.¹⁵⁹ This entire phase transpires without any judicial control or supervision.

94. Although the Cuban Constitution recognizes that all persons have the right “to receive legal assistance in exercising their rights in all trials in

advocates, as the case may be, or other relevant data of the person deprived of liberty; b. information regarding the personal integrity and state of health of the person deprived of liberty; c. reasons or causes for the deprivation of liberty; e. [sic] the authority that transfers the person to the establishment; f. the authority that legally controls the deprivation of liberty; g. the day and hour of entry and departure; h. the day and time of transfers and the party responsible for same; j. inventory of personal assets; and k. signature of the person deprived of liberty and, in the case of refusal or the impossibility to sign, an explanation of the reason.” Principles and Best Practices for the Protection of Persons Deprived of Liberty in the Americas, adopted by the Inter-American Commission on Human Rights during the 131st Ordinary Period of Sessions, held March 3-14, 2008, OEA/Ser/L/V/II. 131 doc. 26.

[158] L. 5/77, *Ley de Procedimiento Penal* [Law on Criminal Procedure], August 13, 1977, G.O., Art. 104, available at <https://www.parlamentocubano.gob.cu/index.php/documento/ley-de-procedimiento-penal/>

[159] *Ibid*, Art. 107.

which they take part,”¹⁶⁰ and in the case of persons tried criminally, includes the right to legal assistance from the outset of the trial,¹⁶¹ in practice these provisions do not guarantee the effective exercise of these rights. According to international human rights standards, the right to be assisted by a legal representative is activated at the moment the person is deprived of his/her liberty;¹⁶² however, in Cuba a person charged with a crime is not considered to be “part of a criminal trial” until a ruling is made imposing a precautionary measure such as pretrial detention.¹⁶³ Only at that moment is the defendant permitted to obtain legal assistance, which can take up to seven

days¹⁶⁴ after the initial detention.¹⁶⁵ This is due in part to the fact that a criminal case is not considered to exist until the ‘preparatory phase’ is finished and the initial investigation has been completed, thereby identifying a specific person as the author of the crime. Consequently, if a criminal case does not exist, there is no need to provide protections to the defendant during this part of the trial such as, for example, the assistance of a lawyer.¹⁶⁶

[160] POLITICAL CONSTITUTION OF THE REPUBLIC OF CUBA, Art. 94 b) (2019), available at <http://media.cubadebate.cu/wp-content/uploads/2019/01/Constitucion-Cuba-2019.pdf>

[161] *Ibid.*, Art. 95 b).

[162] Principles and Best Practices for the Protection of Persons Deprived of Liberty in the Americas, Principle V, adopted by the Inter-American Commission on Human Rights during the 131st Ordinary Period of Sessions, held March 3-14, 2008, OEA/Ser/L/V/II. 131 doc. 26.

[163] L. 5/77, *Ley de Procedimiento Penal* [Law on Criminal Procedure], August 13, 1977, G.O., Art. 249, available at <https://www.parlamentocubano.gob.cu/index.php/documento/ley-de-procedimiento-penal/>

[164] Following detention, the police have 24 hours to decide whether to proceed with the case or release the person. If they decide to continue with the trial, the police will send the person to the investigating official [‘instructor’], an official in charge of the investigation who has 72 additional hours to decide whether to continue with the case or release the person. If the ‘instructor’ decides to continue with the trial, he/she can impose a precautionary measure other than detention or recommend pretrial detention to the public prosecutor. In the latter situation, the case passes to a public prosecutor who then has 72 hours to decide if he/she will continue with the case or release the person. Throughout this period, the detainee is not brought before a judge and has no access to a lawyer. According to Article 245 of the Law on Criminal Procedure, only when the public prosecutor decrees pretrial detention are the actions remitted to a court. From there, the court has 72 hours to confirm the actions of the public prosecutor.

[165] L. 5/77, *Ley de Procedimiento Penal* [Law on Criminal Procedure], August 13, 1977, G.O., Art. 241-260, available at <https://www.parlamentocubano.gob.cu/index.php/documento/ley-de-procedimiento-penal/>

[166] International Institute on Race, Equality, and Human Rights, *Condenas premeditadas: Análisis de la situación de la administración de justicia en Cuba* [Premeditated Sentences: An Analysis of the State of the Administration of Justice in Cuba], June 2019, parag. 127, available at <https://raceandequality.org/wp-content/uploads/2019/09/2019.09.10-FINAL-PDF.pdf>

95. Within the context of the protests begun on 11J, and to a lesser degree on 15N, this practice of forced disappearances increased, as the government wielded it in retaliation for the exercise of human rights such as freedom of expression, association, assembly, and peaceful protest. Despite the mass detentions, the government maintained its silence regarding the total number of persons imprisoned within the context of the protests and their whereabouts.

96. Despite the obstacles the State attempted to put up, civil society organizations such as Cubalex recorded this information in real time after receiving denunciations from persons on the island. In each case, the number of disappeared persons dropped with the passage of time, as relatives learned where their loved ones were detained or the persons were released from jail. According to that NGO, 1,282 detentions and disappearances were documented within the context of the 11J demonstrations.¹⁶⁷ The OCDH reports that the July protests resulted in at least 1,745 repressive actions in Cuba, 1,103 of which were arbitrary detentions and 642 were other types of abuse, such as sieges of homes (402), assault (63), harassment (55),

summons (53), and fines (40).¹⁶⁸ Lastly, Prisoners Defenders tallied more than 5,000 detentions between 11-17 July¹⁶⁹ and Human Rights Watch documented human rights violations, including arbitrary detentions, abuse, and abusive criminal trials against 130 victims in 13 of the 15 Cuban provinces.¹⁷⁰

97. The closure of public and private establishments, including courts and prisons, and the restrictions placed on public transport due to the COVID-19 pandemic restricted the actions of relatives when attempting to learn the whereabouts of disappeared persons. In

[167] Cubalex, *Listado de desaparecidos Cuba* [List of the Disappeared in Cuba], July 2021, available at <https://docs.google.com/spreadsheets/d/1-38omFpJdDiKTSBoUOg19tv2nJxtNRS3-2HfVUUwtSw/edit#gid=0>

[168] Observatorio Cubano de Derechos Humanos [Cuban Human Rights Watchdog]. *Comunicado de prensa: OCDH: Protestas de julio dejaron al menos 1.745 acciones represivas en Cuba, de las cuales 1.103 fueron detenciones arbitrarias* [Press release: OCDH: July Protests Produced At Least 1,745 Repressive Actions in Cuba, 1,103 of Which Were Arbitrary Detentions], August 3, 2021, available at <https://observacuba.org/ocdh-protestas-de-julio-dejaron-al-menos-1-745-acciones-represivas-en-cuba-de-las-cuales-1-103-fueron-detenciones-arbitrarias/>

[169] Prisoners Defenders. Press release: *¡Atención! Prisoners Defenders verifica 381 presos, condenados políticos y 5000 detenciones. Balance del 11j* [Attention! Prisoners Defenders Verifies 381 prisoners, political convicts, and 5,000 detention: The Balance of 11J], September 2, 2021, available at <https://www.prisonersdefenders.org/2021/09/02/atencion-prisoners-defenders-verifica-381-presos-y-condenados-politicos-5000-detenciones-balance-del-11j/>

[170] HRW. *Descripciones de los casos de manifestantes detenidos por el gobierno cubano* [Descriptions of Cases of Protesters Detained by Cuban Government], July 2021, October 19, 2021, available at <https://www.hrw.org/es/video-photos/interactive/2021/10/19/descripciones-de-los-casos-de-manifestantes-detenidos-por-el>

the few cases where families were able to lodge habeas corpus petitions, they were denied without just motivation. With regard to that, it is important to recall that pursuant to Article 467 of the Law on Criminal Procedure, habeas corpus is not possible in cases that “arise from a sentence or pretrial detention judicial decree entered into the case file or lawsuit due to a crime,”¹⁷¹ which prevents judicial control over arbitrary detentions. The CAT had already warned about this in its 2012 report, wherein it expressed its concern by noting that “this precept unjustifiably limits the right to challenge the legality of detention by excluding those situations in which deprivation of liberty, though initially adjusted to the legality in force, becomes illegal at a later moment.”¹⁷²

98. Furthermore, although the courts are obligated to judicially supervise the actions of the agents of the National Revolutionary Police (PNR) and State Security after receiving a habeas corpus petition, legal and practical obstacles exist in Cuba that make it ineffective.

[171] L. 5/77, *Ley de Procedimiento Penal* [Law on Criminal Procedure], August 13 1977, Gaceta Oficial [G.O.], Art. 467, available at <https://www.parlamentocubano.gob.cu/index.php/documento/ley-de-procedimiento-penal/>

[172] Committee against Torture, *Examen de los informes presentados por los Estados partes en virtud del artículo 19 de la Convención, Cuba* [Analysis of the Reports Presented by States Parties By Virtue of Article 19 of the Convention, Cuba], parag. 8, U.N. Doc. CAT/C/CUB/CO/2 (June 25, 2012).

For example, the petitioner must report the place of detention and identity of the authority in charge of imprisonment,¹⁷³ when it is precisely the whereabouts of the person that is the principal reason for lodging the petition in the first place.

99. Within the context of 11J, the United Nations High Commissioner for Human Rights expressed her concern for the “persons who have allegedly been kept incommunicado and persons whose whereabouts are unknown [within the context of the protests].”¹⁷⁴ In the same vein, the IACHR issued a declaration recognizing that “at least 151 people had been detained or whose where abouts were unknown as a result of their participation in the protests.”¹⁷⁵ As for the Committee on Enforced Disappearance, it sent a

[173] L. 5/77, *Ley de Procedimiento Penal* [Law on Criminal Procedure], August 13, 1977, [G.O.], Art. 467, available at <https://www.parlamentocubano.gob.cu/index.php/documento/ley-de-procedimiento-penal/>

[174] OHCHR, *Cuba: Bachelet insta al diálogo y pide la liberación de los manifestantes detenidos* [Cuba: Bachelet Presses for Dialogue and Calls For Release of Detained Protesters], July 16, 2021, available at <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=27316&LangID=S>

[175] IACHR, *Comunicado de prensa: La CIDH y sus Relatorías Especiales condenan la represión estatal y el uso de la fuerza en el marco de las protestas sociales pacíficas en Cuba, llamando al diálogo sobre los reclamos ciudadanos* [Press release: IACHR and its Special Rapporteurs condemn the State repression and use of force in the context of the peaceful social protests in Cuba and call for dialogue on citizen demands], July 15, 2021, available at <http://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/177.asp>

requirement for urgent action to the Cuban State, in accordance with Article 30 of the Convention on the Protection of All Persons against Enforced Disappearance, to adopt all necessary measures to seek and find 187 persons who had disappeared between July 11 and 12 and protect their lives and personal integrity, in compliance with its conventional obligations.¹⁷⁶

- 100.** The forced disappearance of persons violates a series of human rights enshrined in the Universal Declaration of Human Rights and set forth in the International Covenants of Human Rights of which Cuba is a signatory,¹⁷⁷ such as the right to legal personhood,¹⁷⁸ the right to personal freedom and security, and the right to not be subjected to torture or other cruel, inhuman, or degrading treatment, and can also be in violation of the right to life or of being placed in grave danger.¹⁷⁹

[176] Committee on Enforced Disappearance, CED UA CUB (6-192), June 15, 2021.

[177] OHCHR, State of Cuba's Ratifications, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=44&Lang=EN

[178] Working Group on Forced or Involuntary Disappearances, *Cuestión de los Derechos Humanos de todas las personas sometidas a cualquier forma de detención o prisión y en particular: cuestión de las personas desaparecidas o cuyo paradero se desconoce* [Issue of the Human Rights of All Persons Subjected to Any Form of Detention or Prison, and in Particular, the Issue of Disappeared Persons or Those Whose Whereabouts are Unknown], Human Rights Commission, parag. 184, U.N. Doc. E/CN.4/1435 (January 22, 1981).

[179] Working Group on Forced or Involuntary

- 101.** Forced disappearance in Cuba has been an issue that several international human rights bodies have analyzed, including the Committee on Enforced Disappearance (CED). Cuba has been a party to the International Convention on the Protection of All Persons against Enforced Disappearance since February 2, 2009, which has enabled the CED to evaluate the State within the framework of the presentation of periodic reports, despite the fact it has not recognized the competence of the CED to receive and examine the communications presented by persons who are under its jurisdiction.¹⁸⁰ In the CED's last evaluation of Cuba, which was performed in 2017, it recommended the State adapt its domestic legislation to the standards established by the Convention, including the classification of forced disappearance as an "autonomous crime" and its recognition as a crime against humanity.¹⁸¹ Likewise, the

Disappearances, *Observación general sobre el derecho al reconocimiento de la personalidad jurídica en el contexto de las desapariciones forzadas* [General Observation Regarding the Right to Recognition of Legal Personhood in the Context of Forced Disappearances], Human Rights Council, parag. 42, U.N. Doc. A/HRC/19/58/Rev.1 (March 2, 2012).

[180] OHCHR, State of Cuba's Ratifications, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=44&Lang=EN

[181] Committee on Enforced Disappearance, *Observaciones finales sobre el informe presentado por Cuba en virtud del artículo 29, párrafo 1, de la Convención* [Final Observations Regarding the Report Presented by Cuba By Virtue of Article 29, Paragraph 1 of the

CED suggested adopting measures to ensure judicial independence, prevent forced disappearance, and assume responsibility for the commission of this crime, including performing a review of military jurisdiction¹⁸². To date, the Cuban State has not implemented those recommendations.

102. In the same vein, in its last country report the IACHR warned about the existence of forced disappearances in Cuba, and recommended [that the State] “adopt measures to enable cases of forced disappearances to be processed with guarantees of independence and impartiality, which according to what was reported by the Committee [on Enforced Disappearance] would not be granted by the Military Court.”¹⁸³

103. As a State Party to the International Convention on the Protection of All Persons against Enforced Disappearance, Cuba is obligated to consider the crime of forced disappearance to be punishable by appropriate punishments that accord with its extreme gravity, as well as to adopt the necessary measures for preventing this crime. Likewise, it must facilitate relatives learning the truth “about the circumstances of the

forced disappearance, evolution and results of the investigation, and fate of the disappeared person.”¹⁸⁴ Said right is closely related to the right to information and in particular the right of relatives or other persons with a legitimate interest and their representatives or lawyers to obtain information regarding a person deprived of his/her freedom.¹⁸⁵ In the view of the Working Group on Forced or Involuntary Disappearances, relatives and persons with a legitimate interest have the right to access information regarding the detained person, which together with the inalienable right to habeas corpus, should be considered an essential instrument for preventing forced disappearances.¹⁸⁶

Convention], U.N. Doc. CED/C/CUB/CO/1 (April 19, 2017).

[182] *Ibid.*

[183] IACHR, *Situación de los derechos humanos en Cuba* [Situation of Human Rights in Cuba], OEA/Ser.L/V/II. Doc. 2, para. 124 (February 3, 2020).

[184] Working Group on Forced or Involuntary Disappearance, *Observación general sobre el derecho a la verdad en relación con la desaparición forzada* [General Observation on the Right to Truth With Regard to Forced Disappearance], Human Rights Council, para. 39 point 4, U.N. Doc. A/HRC/16/48 (January 26, 2011).

[185] *Ibid.*, para. 39 point 3.

[186] *Ibid.*, para. 39 point 2.

D.

Torture and Abuse

104. During the protests that began on 11 July, Race and Equality received denunciations of torture and abuse committed against several imprisoned persons. Persons on the island reported that grave human rights violations occurred in detention and criminal prosecution centers, such as beatings, electroshocks, verbal insults, threats of sexual abuse, use of dogs to intimidate (with some persons being bitten late at night), interruption of sleep, isolation in dark cells, deplorable hygiene conditions, and overcrowding in cells, putting people in grave exposure and increasing the risks of COVID-19 contagion.¹⁸⁷ For example, historian Leonardo Fernández was one of the first to publicly denounce over social media the acts of physical and psychological violence he suffered after being released for having participated in the peaceful protests. He reported having been isolated in a punishment cell where he was handcuffed for three hours, as well as being beaten and verbally abused.¹⁸⁸

[187] International Institute on Race, Equality, and Human Rights, *Organizaciones internacionales reiteran preocupación por la respuesta represiva de parte del Estado Cubano, al cumplirse un mes de las protestas del 11 de julio* [International Organizations Reiterate Their Concern Regarding Repressive Response of Cuban State, One Month After the 11 July Protests], August 11, 2021, available at <https://raceandequality.org/es/espanol/organizaciones-internacionales-preocupacion-respuesta-represiva-estado-protestas-11-julio/>

[188] *Los detenidos del 11J en Cuba: testimonio de Leonardo Fernández* [The 11J Detainees in Cuba: Testimony of Leonardo Fernández], PERIODISMO DE

105. There were also reports of beatings and abuse within the context of the 11J protests of persons imprisoned in the Capri Police Unit in Arroyo Naranjo, Havana and the Cotorro Youth Prison in Havana (known as Ivanof). Several individuals were forced to remain many hours standing in the sun, exposed to high temperatures, without access to water or a toilet. It was reported that in some cases, they were kept naked, causing several of them to urinate on or sully themselves, resulting in increased taunts and ridicule from State agents. Cases of sexually-laced taunts have also been reported.

106. In addition to the foregoing, a decree shuttered the courts for a week commencing Monday, July 12 through the following Monday, July 19. The courts were not in session during that time and it was impossible to lodge appeals, nor did legal representatives have access to criminal prosecution centers or prisons to corroborate the detention status of their defendants.

107. The arbitrary imprisonment and resulting state of *incommunicado* of detained persons is a constant practice in Cuba. This was replicated in the majority of the cases of persons who were imprisoned during the protests, thereby increasing the risk of violations to their physical integrity. With regard

to that, the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment declared in a 2020 report that any detention “that deprives a person of all contact with the outside world, in particular with physicians, lawyers, and family members . . . has been repeatedly recognized as a form of torture.”¹⁸⁹ Therefore, this Special Procedure has repeatedly made the suggestion to “establish the illegality of being held *incommunicado* and release without delay all persons being held *incommunicado*.”¹⁹⁰

108. The right to personal integrity includes the prohibition against torture and cruel, inhuman, or degrading treatment at all times and in all spaces. Due to its transcendent importance, this right has been regulated in several international instruments,

[189] Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment. *Informe del Relator Especial contra la Tortura y otros tratos o penas crueles, inhumanos o degradantes* [Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment], parag. 57, Human Rights Council, U.N. Doc. A/HRC/43/49 (March 20, 2020) (by Nils Melzer).

[190] Special Rapporteur on the Matter of Torture, *Los derechos civiles y políticos, en particular las cuestiones relacionadas con la tortura y la detención, Informe presentado por el Relator Especial sobre la cuestión de la tortura de conformidad con la resolución 2002/38 de la Comisión* [Civil and Political Rights, in Particular Matters Related to Torture and Detention, report presented by the Special Rapporteur on the Matter of Torture, pursuant to Commission Resolution 2002/38], parag. 26(g), Human Rights Commission, U.N. Doc. E/CN.4/2003/68 (December 17, 2002) (by Theo van Boven).

BARRIO, August 10, 2021 available at https://www.youtube.com/watch?v=yZUH_NJkGcM

including the Universal Declaration of Human Rights (Art. 5), International Covenant on Civil and Political Rights (Art. 7), American Declaration of the Rights and Duties of Man (Art. 1), and American Convention on Human Rights (Art. 5). The Cuban State signed the Covenant on Civil and Political Rights on February 28, 2008, entailing a duty, by virtue of international law, to not hinder the aim and purpose of the Covenant, pursuant to Article 18(a) of the Vienna Convention on the Law of Treaties.¹⁹¹ While Cuba has not ratified the American Convention, by being a member of the Organization of American States, it must guarantee in good faith the rights contained in its instruments, including the American Declaration. It is the same with the Universal Declaration, in that Cuba is a member of the United Nations. In fact, in light of the human rights instruments, the Cuban State holds the “position of guarantor” vis-à-vis detainees, given that “State authorities exercise total control over persons who are subject to their custody.”¹⁹² This means that “anyone deprived of their freedom has the right to live in detention conditions that are compatible with their personal dignity, and the State must guarantee

him/her the rights to life and personal integrity.”¹⁹³

- 109.** To guarantee the personal integrity of imprisoned persons, the IACHR has recognized in its Principles and Best Practices for the Protection of Persons Deprived of Liberty in the Americas that detainees must be treated “humanely.”¹⁹⁴ This requires, among other things, the prohibition of torture, abuse, and discriminatory treatment due to “political opinions.”¹⁹⁵ In the same vein, the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) require that “all imprisoned persons [be] treated with the respect which their dignity and intrinsic value as human beings deserve,”¹⁹⁶ without any discrimination whatsoever.¹⁹⁷ The principles of the IACHR and Nelson Mandela Rules also require the elimination of all “methods whose goal

[191] Vienna Convention on the Law of Treaties, Art. 18(a), May 23, 1969, U.N. Doc. A/CONF.39/27 (1969), 1155 U.N.T.S. 331.

[192] IACHR, *Informe sobre los derechos humanos de las personas privadas de libertad en las Américas* [Report on the Human Rights of Detained Persons in the Americas], OEA/Ser.L/V/II, doc. 64, parag. 49 (December 31, 2011).

[193] *Case of Neira Alegría et al v. Peru*. Merits, Inter-American Court. Series C, No. 20, parag. 60 (January 19, 1995).

[194] Principles and Best Practices for the Protection of Persons Deprived of Liberty in the Americas, preface, adopted by the Inter-American Commission on Human Rights during its 131st Ordinary Period of Session held March 3-14, 2008, OEA/Ser.L/V/II. 131 doc. 26.

[195] *Ibid*, Principles I y II.

[196] United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rule 1, December 17, 2015, A.G. Res 70/175.

[197] *Ibid*, Rule 2.

is to nullify a person's personality or decrease his/her physical or mental capacity."¹⁹⁸

- 110.** The international prohibition against torture is contained in international and regional human rights instruments, and has even been addressed by international courts as a *jus cogens norm*.¹⁹⁹ That is, it is a prohibition that has been accepted and recognized by the international community as a "norm that does not admit an agreement to the contrary"²⁰⁰ and as such, compliance with it is obligatory for all States. In light of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, ratified by Cuba on May 17, 1995, torture is defined as:

Any act by which grave pain or suffering, whether physical or mental, is intentionally inflicted on a person with the goal of obtaining from him/her or from a third party information or a confession, punishing him/her for an act he/she has committed or is suspected of

*having committed, or intimidating or coercing said person or others, or for any reason based on any type of information, when said pain or suffering is inflicted by a public servant or other person in the exercise of his/her public duties, at his/her instigation, or with his/her consent or acquiescence.*²⁰¹

- 111.** To that end, the Inter-American Court has ruled that there exist three constituent elements of torture, to wit: "a) an intentional act; b) causing severe physical or mental suffering; and c) is committed with that specific aim or purpose."²⁰²
- 112.** In the case of persons imprisoned within the context of the protests, Cuban authorities employed threats [and] deliberate physical, verbal, and psychological attacks against many of them. State agents inflicted suffering, both physical as well as mental, upon them to punish them for their legitimate exercise of their human rights, such as freedom of expression, assembly, and peaceful protest.

[198] Principles and Best Practices for the Protection of Persons Deprived of Liberty in the Americas, Principle I, adopted by the Inter-American Commission on Human Rights during its 131st Ordinary Period of Session held March 3-14, 2008, OEA/Ser/L/V/II. 131 doc. 26.

[199] *Prosecutor v. Anto Furundzija*, Judgement, International Criminal Tribunal for the Former Yugoslavia, parags. 153-157 (December 10, 1998).

[200] Vienna Convention on the Law of Treaties, Art. 53, May 23, 1969, U.N. Doc. A/CONF.39/27

[201] Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Art. 1, December 10, 1984, A.G. Res. 39/46.

[202] *Case of Bueno Alves v. Argentina*, Merits, Representation, and Costs, Inter-American Court, Series C No. 164, parag. 79 (May 11, 2007).

E.

Cutoffs of Internet Service

- 113.** As has been emphasized by the overwhelming majority of the foregoing analysis, the protests demonstrate the potential social and political impact of Internet connectivity on the island. The increase in the number of persons with access to mobile 3G and 4G Internet service has strengthened the capacity of Cuban civil society to document abuses, share information with the world, and coordinate the protests.²⁰³ Anyone with access to the Internet now has the ability to disseminate information to a worldwide audience. The Internet has developed based on specific design principles whose application has favored and enabled the online environment to be a decentralized, open, and neutral space. In fact, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression indicated that with the increased usage of 2.0 web platforms, information is no longer the exclusive preserve of professional journalists, in that a much broader range of persons participate in the compilation, screening, and distribution of news.²⁰⁴

[203] [Chap. IV. B: Cuba], IACHR, *Informe Anual de la Comisión Interamericana de Derechos Humanos 2020* [2020 Annual Report of the Inter-American Commission on Human Rights], OEA/Ser.L/V/II. Doc. 28, parag. 76, (March 30, 2021).

[204] Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión* [Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression], parag. 13, Human Rights Council, U.N. Doc. A/66/290 (August 10, 2011) (by

114. This situation is replicated in all of the world's countries, the reason why the IACHR's Special Rapporteur on Freedom of Expression suggests that "access to the Internet constitutes a condition *sine qua non* for the effective exercise of human rights nowadays, including especially the rights to freedom of expression and opinion, association, and assembly."²⁰⁵ In the same vein, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression recognized that unlike any other prior means of communication, the Internet enables people to instantly communicate and at low cost, and its results in terms of the exchange of and access to information and ideas and in journalism itself are astonishing.²⁰⁶ Likewise, she noted that due to its multi-directional and interactive nature, velocity, and global reach at a relatively low cost, plus its decentralized and open design principles, the Internet possesses unprecedented potential for the effective realization of the right to seek, receive, and disseminate information

in two dimensions, individual and collective, while serving as a platform for realizing other human rights such as the right to participate in cultural life and enjoy the benefits of scientific and technological progress, the right to education, the right to assembly and association, political rights, and the right to health, among others.²⁰⁷

115. The aforementioned Special Rapporteur also noted that the Internet can serve as a positive tool for increasing transparency in the behavior of those who hold power, obtaining access to diverse sources of information, facilitating the active participation of the citizenry in the construction of democratic societies, and fighting against authoritarian regimes.²⁰⁸ As a necessary consequence of the Internet's prominent role recognized by the Special Rapporteurs in the universal as well as Inter-American systems, the flow of information via the Internet must be restricted as little as possible, except in the few very exceptional and limited circumstances that are set forth in international law in order to protect other human rights.²⁰⁹

Frank La Rue).

[205] IACHR, *Estándares para una Internet Libre, Abierta e Incluyente* [Standards for a Free, Open, and Inclusive Internet], OEA/Ser.L/V/II CIDH/RELE/INF.17/17, parag. 32 (March 15, 2017).

[206] Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión* [Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression], parag. 10, Human Rights Council, U.N. Doc. A/66/290 (August 20, 2011) (by Frank La Rue).

116. To prevent the Internet from being used for those purposes, the Cuban State, acting through the State's monopolistic business, the *Empresa de Telecomunicaciones de Cuba S.A.*

[207] *Ibid.*

[208] *Ibid.*, parag. 12.

[209] *Ibid.*, parag. 36.

[Telecommunications Company of Cuba] (ETECSA), restricted and eventually cut off access completely to the Internet on the island. In a press conference hosted by Chancellor Bruno Rodríguez, in response to a question about the cutoffs of Internet service, he initially appeared to justify them as a consequence of the cuts in electrical service, though he then clarified that “Cuba will never renounce its right to defend itself,” making known that the service cuts had entailed a “defensive measure” on the part of the Cuban government.²¹⁰ On 13 July, pro-government journalist Arleen Rodríguez Derivet much more directly and clearly justified the cutoffs:

*I understand as a journalist, although it hurts me, the measure to cut social media, because it is the area wherein is being organized the war against Cuba. . . . Our people will understand, regarding the matter of social media, that a sovereign measure is taken to prevent this situation.*²¹¹

[210] Facebook, GRANMA, July 13, 2021, minute 1:04:58 a 1:15:10, available at <https://www.facebook.com/granmadigital/videos/270628184835441/>

[211] YouTube, Periodista oficialista Arleen Rodríguez: “Entiendo la medida del corte de internet” [Pro-Government Journalist Arleen Rodríguez: ‘I understand the measure of cutting off the Internet’], July 14, 2021, available at <https://www.youtube.com/watch?v=2tU6EOSeePE>

117. Data gathered by international observers reveal a series of Internet cutoffs during the day and night of 11 July, among them at least two periods of total blackouts.²¹² The independent watchdog organization NetBlocks identified which messaging and streaming (live online broadcast) platforms – such as WhatsApp, Facebook, Instagram, YouTube, and Telegram – remained blocked or interrupted for days.²¹³ The populace attempted to navigate these restrictions through the use of VPN (Virtual Private Network) services.

118. Moreover, independent media report that ETECSA apparently was censoring text messages that included the words ‘VPN’ or ‘Psiphon’ (a popular VPN tool in Cuba).²¹⁴ In response to these

[212] Data compiled by Outage Severity Overview, Center for Applied Internet Data Analysis, available at <https://ioda.caida.org/ioda>. See also, Twitter, Doug Madory, July 11, 2021, available at <https://twitter.com/DougMadory/status/1414327987525275659>

[213] Social Media Restricted in Cuba Amid Widening Anti-Government Protests, NETBLOCKS, July 12, 2021, available at <https://netblocks.org/reports/social-media-restricted-in-cuba-amid-widening-anti-government-protests-QAdrmwyl>”<https://netblocks.org/reports/social-media-restricted-in-cuba-amid-widening-anti-government-protests-QAdrmwyl>

[214] ETECSA censura los SMS con las palabras “Psiphon” y “VPN” [ETECSA Censors SMS Using the Words ‘Psiphon’ and ‘VPN’], PERIÓDICO CUBANO, July 15, 2021, available at <https://www.periodicocubano.com/etecsa-censura-los-sms-con-las-palabras-psiphon-y-vpn/> and Cubacel censura los SMS con las palabras “democracia” o “huelga de hambre” [Cubacel Censors SMS Using the Words ‘Democracy’ and ‘Hunger Strike’], 14YMEDIO, September 3, 2016, available at <https://www.14ymedio.com/>

actions, an urgent call made by various United Nations Special Procedures mandates highlighted their concern regarding the information received about interruptions to Internet service throughout the country.²¹⁵

- 119.** The Cuban Constitution celebrates the triumph of the Revolution as an “essential pillar” for the importance of “[the political, economic, and] social order,”²¹⁶ and presents the State (and its organs, by extension) with the objective of “channeling the efforts of the nation into building socialism and strengthening national unity.”²¹⁷ This role grants to the State and its organs the necessary regulatory support for implementing any agenda, provided it addresses the principles of socialism. The latter is also reflected in a communiqué sent to the Cuban State by the mandates of the Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression, Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, and Special Rapporteur on the Situation of Human Rights Defenders, wherein they refer to Decree-Law No. 35, its Regulations, and its Resolution 105/2021. In

reportajes/Cubacel-censura-SMS-palabras-democracia_0_2064993492.html

[215] AL CUB 3/2021, p. 4, August 3, 2021.

[216] POLITICAL CONSTITUTION OF THE REPUBLIC OF CUBA, Conscientes (2019), available at <http://media.cubadebate.cu/wp-content/uploads/2019/01/Constitucion-Cuba-2019.pdf>

[217] Ibid, Article 13, a).

this missive, the Special Procedures principals expressed their concern, as they consider that the assumptions established in the regulations that empower the interruption of the services do not constitute a legitimate reason for restricting expression, that the prohibitions noted are not adjusted to the criteria of necessity and proportionality that issue from applicable international human rights standards, and in that they authorize the interruption of access to telephone or Internet service without judicial analysis or oversight.²¹⁸

- 120.** Unlike what had transpired within the context of the 11J protests wherein total Internet blockage was employed as a form of censorship, during the incidents surrounding 15N, while selective service cuts were denounced that impacted activists and independent journalists, there were no complete Internet blackouts on the island. In this sense, journalist Abraham Jiménez Enoa sums it up in one phrase:

*This time, they didn't see the need to disconnect the entire island from the Internet. No surprise there: they had the country squeezed in a fist and no one took to the streets to broadcast live the cries for “freedom,” “down with the dictatorship,” and “homeland and life.”*²¹⁹

[218] OL CUB 6/2021, October 20, 2021.

[219] Abraham Jiménez Enoa, *El terror*

121. The cuts to Internet service, blocking of websites and/or platforms, and censoring of text messages are incompatible with the duties of the State with regard to the right to freedom of expression. Firstly, the Internet blackout on the island executed by ETECSA represents a grave violation of the principle of universal access to the Internet, identified by the IACHR Special Rapporteur as a guiding principle for all State actions in the realm of freedom of expression on the Internet.²²⁰ As the IACHR Special Rapporteur herself stated in her 2018 report on freedom of expression in Cuba, the State has repeatedly violated this right for years by blocking sites that “have in common the fact that they criticize the government, relate to human rights, or are tools of elusion, which would be techniques for ‘navigating censorship’.”²²¹ It is

neutralizó las protestas en Cuba, pero la lucha no ha terminado [While the Terror Neutralized Protests in Cuba, the Struggle Hasn't Ended], WASHINGTON POST, November 16, 2021, available at https://www.washingtonpost.com/es/post-opinion/2021/11/16/cuba-protestas-15-noviembre-15n-miguel-diaz-canel/?utm_campaign=wp_post_opinion&utm_medium=email&utm_source=newsletter&wpisrc=nl_postopinion&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-tr%2F354c7ca%2F6193cef69d2fdab56b8e6d6b%2F5d8bda209bbc0f783c4d6fda%2F9%2F41%2F6193cef69d2fdab56b8e6d6b

[220] IACHR, *Estándares para una Internet Libre, Abierta e Incluyente* [Standards for a Free, Open, and Inclusive Internet], OEA/Ser.L/V/II CIDH/RELE/INF.17/17, par. 7 (March 15, 2017).

[221] IACHR Special Rapporteur on Freedom of Expression, *Libertad de expresión en Cuba* [Freedom of Expression in Cuba], OEA/Ser. L/V/II CIDH/RELE/INF. 21/18, par. 231 (December 31, 2018).

important to note in this regard that the principle of non-discrimination, in the Special Rapporteur's judgement, “obligates the State to guarantee that all persons – especially those who belong to vulnerable groups or express critical views on matters of public interest – can disseminate content and opinions on an equal footing.”²²²

122. The incompatibility of these blockages with human rights standards is even clearer when considering a joint declaration made by several international mechanisms that promote freedom of expression, among them the mechanisms of various regional human rights systems, as well as the universal system. These experts declared that:

*The compulsory blockage of entire websites, IP addresses, ports, network protocols, and some types of usage (such as social media) constitute an extreme measure . . . that could only be justified pursuant to international standards, for example when necessary to protect underage children from sexual abuse.*²²³

[222] IACHR, *Estándares para una Internet Libre, Abierta e Incluyente* [Standards for a Free, Open, and Inclusive Internet], OEA/Ser.L/V/II CIDH/RELE/INF.17/17, par. 9 (March 15, 2017).

[223] IACHR Special Rapporteur on Freedom of Expression, *Declaración Conjunta Sobre Libertad de Expresión e Internet* [Joint Declaration on Freedom of Expression and Internet], 2011, available at <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=849>

123. These mechanisms also explicitly declared that “the interruption of access to the Internet, or to a portion of it, when applied to entire populations or particular segments of the general public (cancellation of the Internet) cannot be justified under any condition, not even for reasons of public order or national security.”²²⁴

124. Lastly, the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and Association issued a reminder that total cutoffs of the Internet within the context of peaceful protests give rise to the commission of abuse and grave human rights violations. The Rapporteur specified that total cutoffs of the Internet tend to be accompanied by other repressive tactics employed against protesters, thereby making their efforts ineffective to inform and demand responsibility of the government for the human rights violations committed within the context of peaceful protests, and added that Internet cutoffs within the context of protests also permit States to control information and the related accounts of what occurs therein, especially because the closures of the Internet almost always come together with other measures that restrict freedom to communication media.²²⁵

[224] *Ibid.*

[225] Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *Informe del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación* [Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association], parag. 33, Human Rights

125. The censorship of text messages on the ETECSA network to prevent discussion of VPN tools represents another violation of the right to freedom of expression. The IACHR consistently maintains that freedom of expression is of a double nature: the individual dimension “guarantees the free expression of ideas, information, and opinions for all persons,” whereas the societal dimension “guarantees the right to society as a whole to receive information and ideas of all kinds.”²²⁶ The prohibition against discussing VPNs violates the freedom of expression of users of the telephonic network on two dimensions: the right to share information regarding this tool (which, it should be noted, is a tool that is widely available and has many legitimate uses) and the right to receive said information – that is, to be informed regarding the topic.

126. With regard to the use of encryption and pseudonymization technologies and other means, as are VPNs, the Human Rights Council has highlighted that:

the technical solutions for ensuring and protecting the confidentiality of digital communications, in particular the measures for encryption and anonymity,

Council, U.N. Doc. A/HRC/47/24/Add.2 (June 15, 2021) (by Clément Nyaletsossi Voule).

[226] IACHR Special Rapporteur on Freedom of Expression, *Marco jurídico interamericano sobre el derecho a la libertad de expresión* [Inter-American Legal Framework on the Right to Freedom of Expression], Ser.L/V/II CIDH/RELE/INF (2010),

*can be important for guaranteeing the enjoyment of human rights, in particular the rights to privacy, freedom of expression, and freedom of peaceful assembly and association.*²²⁷

- 127.** In addition to violating the right to freedom of expression, meddling in SMS messages clearly violates the right to privacy. Arbitrary or abusive meddling in correspondence is explicitly prohibited by Article 11 of the American Convention, which protects the right to privacy. The Inter-American Court of Human Rights, in the cases *Tristán Donoso v. Panama* and *Escher et al v. Brazil*, has maintained that Article 11 also protects telephonic communications and those sent through new technologies such as the Internet.²²⁸ The IACHR Special Rapporteur thus concludes that:

*the right to privacy, according to which no one can be the object of arbitrary or abusive meddling in their . . . correspondence, is a presupposition of the exercise of freedom of expression online that must be protected by law and strictly promoted through public policy.*²²⁹

[227] Human Rights Council, *Promoción, protección y disfrute de los derechos humanos en Internet* [Promotion, Protection, and Enjoyment of Human Rights on the Internet], Whereas 13, U.N. Doc. A/HRC/38/L.10/Rev.1 (July 4, 2018).

[228] *Case of Tristán Donoso v. Panama*, Preliminary Exception, Merits, Reparations, and Costs, Inter-American Court, Series C No. 139, parag. 55 (January 27, 2009). See also, *Case of Escher v. Brazil*, Merits, Reparations, and Costs, Inter-American Court, Series C No. 200 (July 6, 2009).

[229] IACHR, *Estándares para una Internet Libre*,

Abierta e Incluyente [Standards for a Free, Open, and Inclusive Internet], OEA/Ser.L/V/II CIDH/RELE/INF.17/17, parag. 10 (March 15, 2017).

F.

Summary Justice

128. In the weeks following the protests that began on 11 July, Race and Equality's counterparts reported that several of the persons detained during or after the protests were sentenced for crimes in summary trials that transpired without prior notification and without the defendants being able to present an adequate defense. Many persons were sentenced to prison without the assistance of legal counsel, in violation of the guarantees provided by the Cuban Constitution and Cuba's international obligations related to due process. Cuban authorities invoke a procedure named '*atestado directo*' [direct attestation], set forth in a 2017 declaration of the People's Supreme Court.²³⁰

a. Cases of Summary Justice Following the July 11 Protests

129. Several cases of summary trials of Cubans who participated in the 11J protests and some from 15N have been reported in international and Cuban media. On August 18, 2021, the official Cuban government information organ, Granma, reported that Cuban courts had tried 67 persons charged with crimes related to the 11J protests in summary trials, the overwhelming majority for disorderly conduct.²³¹

[230] Tribunal Supremo Popular [People's Supreme Court], March 27, 2017, Ruling 238.

[231] *Continúan procesos penales con apego a las*

Only one of the sentenced individuals was acquitted. The article claims that

the Law on Criminal Procedure sets forth the guarantees that must be assured and that have been honored, as is the practice, by the courts in the course of judicial acts, including the right of both the plaintiff and defendant to contribute evidence, the right of the latter to appear with a lawyer of his/her choosing or abstain from doing so, and the right to lodge appeals.”

130. Nonetheless, it also notes that only 23 of those sentenced were represented by legal counsel.²³² The article also indicates that the majority of the persons sentenced received “sanctions subsidiary to imprisonment, combined with fines,” though there are far from just a few examples of persons who were imprisoned.

131. On 22 July, the *El Mundo* newspaper reported that 12 persons had received sentences of between 10 months and one year in prison in summary trials, among them the musician Anyelo Troya.²³³ According to the article, Troya

was detained on 11 July and his family did not receive any information until 19 July, when they were informed that Troya was accused of disorderly conduct and that he had the right to legal representation. When the family arrived at the prison with a lawyer on 20 July, they were informed that the trial had already been held. Only two of the 12 persons tried that day had legal representation.²³⁴

132. Likewise, the BBC reported on 24 July that Gabriela Zequeira, a 17-year-old woman, was sentenced to eight months in prison for disorderly conduct in a summary trial. According to Zequeira’s mother, the authorities did not present evidence that her daughter had participated in the protests and Zequeira declared in her trial that she had not participated but rather, had been on her way to a hairdresser when she saw a protest and decided to return home and was detained by members of the National Special Brigade.²³⁵ Just as with Troya, Zequeira was released shortly thereafter to await the appeal of her case at her home.²³⁶ On 18

garantías [Criminal Trials Continue With Adherence to Guarantees], GRANMA, August 18, 2021, available at <http://www.granma.cu/cuba/2021-08-18/continuan-procesos-penales-con-apego-a-las-garantias-18-08-2021-23-08-41>

[232] *Ibid.*

[233] *Condenan a prisión a doce cubanos sin defensa en un juicio sumario* [Twelve Cubans Sentenced Without Defense in Summary Trial], EL MUNDO, July 22, 2021, available at <https://bit.ly/3nJ8ddB>

[234] *Ibid.*

[235] *Protestas en Cuba: condenan a una adolescente de 17 años a 8 meses de prisión por las manifestaciones en la isla* [Protests in Cuba: A 17-Year-Old Adolescent Sentenced to 9 Months in Prison for Protests on the Island], BBC NEWS, July 24, 2021, available at <https://www.bbc.com/mundo/noticias-america-latina-57952376>

[236] *El régimen excarcela a tres artistas y una menor de edad condenados a prisión tras las protestas en Cuba* [Regime Releases From Prison Three Artists

August, the Provincial Court of Havana changed its sentence to “prison labor without imprisonment,” a type of house arrest that permits her to continue her studies. The sentences of nine other women who were tried together with Zequeira were also confirmed by the Court.²³⁷

- 133.** On 29 July, the *Diario de Cuba* reported in a publication that four young people were sentenced in summary trials. Yeneisy Hernández was sentenced to one year in prison for disorderly conduct, even though two officers and one criminal investigating official said during the trial that they could not provide assurances that Hernández had participated in the protest, according to her sister. Magdelys Curbelo was sentenced to 10 months in prison and later released to await the appeal of her case at her home. Yanay Solaya Baruh and Annia Romero Fonseca were tried without the assistance of legal counsel, transferred to the El Guatao Women’s Prison after receiving sentences of one year imprisonment.²³⁸

and Underage Girl Sentenced to Prison After the Protests in Cuba], DIARIO DE CUBA, July 25, 2021, available at https://diariodecuba.com/derechos-humanos/1627206550_32915.html

[237] *Tribunal ratifica condena de Gabriela Zequeira por protestar el 11J* [Court Ratifies Sentence of Gabriela Zequeira for Protesting on 11J], ADV Cuba, August 18, 2021, available at <https://adncuba.com/noticias-de-cuba/actualidad/tribunal-ratifica-condena-joven-de-17-anos>

[238] *El régimen cubano continúa sentenciando a prisión a los participantes en las protestas del 11 de julio* [Cuban Regime Continues Sentencing to Prison

- 134.** Orquídea León Prieto, an UNPACU activist, was sentenced to one year in prison in a summary trial and sent to the El Guatao Women’s Prison, according to CubaNet. She was detained for more than a week before the trial without her relatives having been notified. She had no legal counsel during her trial, which the public was not permitted to attend.²³⁹

- 135.** The *Diario de Cuba* reported that Yunion Villarejo Estévez was detained for screaming ‘*Patria y Vida*’ [Homeland and Life] on 11 July and sentenced in a summary trial to 10 months in jail, despite the fact that a video circulated on social media showing the young man being grabbed by a plainclothes agent and beaten by other people. He had no legal representative during the trial and his relatives were unable to attend. The Provincial Court of Havana ratified the sentence on 10 August.²⁴⁰

Participants in Protests of 11 July], DIARIO DE CUBA, July 29, 2021, available at https://diariodecuba.com/derechos-humanos/1627583196_33033.html

[239] Katherine Mojena Hernández, *Régimen cubano condena a Orquídea León, una de las manifestantes del 11 de julio* [Cuban Regime Sentences Orquídea León, One of the Protesters of 11 July], CUBANET, August 4, 2021, available at <https://www.cubanet.org/noticias/regimen-cubano-envia-a-prision-a-orquidea-leon-una-de-las-manifestantes-del-11-de-julio/>

[240] *Un abogado independiente solicita la revisión del caso de un cubano condenado a 10 meses de prisión tras las protestas del 11J* [Independent Lawyer Asks to Review Case of a Cuban Sentenced to 10 Months in Prison Following the Protests of 11J], DIARIO DE CUBA, September 2, 2021, available at <https://diariodecuba.com/derechos->

136. Other than the aforementioned cases, NBC News reported on 13 August that “tens” of persons were sentenced to up to a year in prison or prison labor in these proceedings.²⁴¹ The summary trials of individuals who participated in the 11 July protests continue as of this writing. Some of the defendants are in prison awaiting trial.

b. Summary Justice in Cuban Law

137. Articles 359 through 379 of the Law on Criminal Procedure outline the trial process in the People’s Municipal Courts of persons accused of crimes that are punishable by up to one year imprisonment and/or a fine of 300 installments [*cuotas*]. The People’s Supreme Court issued directives [*instrucciones*] in 2017 (Directive 238) to explain in greater detail the methodology of this procedure, known as “*atestado directo*” [direct attestation].²⁴²

138. According to the aforementioned law and Directive 238, during this trial the Court presides over a review of the evidence to determine the culpability of the defendant; however, it is not necessary for either the Public

Prosecutor or the legal representatives to participate in the oral proceedings.²⁴³ When the defendant is summoned to the trial, the summons should state that the former may have the assistance of legal counsel and that he/she must appear with the evidence for his/her defense.²⁴⁴ If the defendant is detained, the National Revolutionary Police must facilitate communication with his/her family or directly inform the family that the defendant can have legal counsel.²⁴⁵ While the law establishes that the Court “shall admit the participation of a lawyer if the defendant attends the trial assisted by him/her,”²⁴⁶ there is no obligation in the law to ensure that the defendant has legal counsel.

139. It is not clear in either the Law on Criminal Procedure or Directive 238 when the defendant or his/her legal representative can have access to the charges against the person who is subject to oral proceedings. The oral proceedings summons do not need to specify the charges against

[humanos/1630586424_33817.html](https://www.humanos.org/1630586424_33817.html)

[241] In Cuba, Hundreds Remain Behind Bars After July Protests, NBC NEWS, August 13, 2021, available at <https://www.nbcnews.com/news/latino/cuba-hundreds-remain-bars-july-protests-rcna1669>

[242] People’s Supreme Court, March 27, 2017, Directive 238.

[243] L. 5/77, August 13, 1977, G.O., Art. 364, 369, 368, 374, available at <https://www.parlamentocubano.gob.cu/index.php/documento/ley-de-procedimiento-penal/>

[244] Tribunal Supremo Popular [People’s Supreme Court], March 27, 2017, Directive 238; y L. 5/77, 13 August 1977, G.O., Art. 371, available at <https://www.parlamentocubano.gob.cu/index.php/documento/ley-de-procedimiento-penal/>

[245] *Ibid*, Directive 238.

[246] L. 5/77, August 13, 1977, Gaceta Oficial [G.O.], Art. 368, available at <https://www.parlamentocubano.gob.cu/index.php/documento/ley-de-procedimiento-penal/>

the defendant.²⁴⁷ While Directive 238 indicates that the legal counsel can have access to the criminal file of the defendant prior to the trial, it does not require, nor does it specify, how much time in advance: “If the lawyer appears in order to represent the defendant in the act of the oral proceedings, the court, prior to holding the trial, shall permit him/her access to examine the actions for his/her preparation.”²⁴⁸

c. Summary Justice Violates Cuba’s Human Rights Obligations

- 140.** The right of defendants who have been accused of committing crimes to defend themselves and access legal counsel is a fundamental right that is ensured in human rights instruments such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and American Declaration of the Rights and Duties of Man. Article 11 of the Universal Declaration grants to persons accused of a crime the right to “all of the necessary guarantees for their defense,”²⁴⁹ while the International Covenant on Civil and Political Rights says that persons accused of a crime have the right to “have the adequate

time and means to prepare their defense and communicate with the lawyer of their choosing,”²⁵⁰ and additionally have the right to “personally defend themselves or be assisted by a lawyer of their choosing.”²⁵¹ As for the American Declaration, it grants the right to defendants to “be heard impartially and publicly.”²⁵²

- 141.** The summary trials in Cuba clearly violate the right of defendants to present a defense and receive legal counsel. The trials were held without prior notification and without giving the defendants the opportunity to learn the charges and evidence against them or to present a defense. In a press release issued on August 12, 2021, the IACHR expressed concern regarding the use of summary trials in Cuba and the inability of defendants to defend themselves: “An adequate defense must be guaranteed that enables defendants to have regular contact with their legal representatives and be involved in the preparation of their respective hearings.”²⁵³

[247] *Tribunal Supremo Popular* [People’s Supreme Court], March 27, 2017, Directive 238; y L. 5/77, 13 August 1977, G.O., Art. 371, available at <https://www.parlamentocubano.gob.cu/index.php/documento/ley-de-procedimiento-penal/>

[248] *Ibid*, Directive 238.

[249] Universal Declaration of Human Rights, G.A. Res. 217(III)A, U.N. Doc. A/RES/217(III), Art. 11 (December 10, 1948).

[250] International Covenant on Civil and Political Rights, A.G. Res. 2200 a (XXI), Art. 14(3), (December 16, 1966).

[251] *Ibid*, Art. 14(3).

[252] American Declaration of the Rights and Duties of Man, OAS Res. XX, approved during the Ninth International Conference of American States, Art. 26, OEA/Ser.L/V/II.23, doc. 21.6 (1948).

[253] IACHR, *Comunicado de prensa: la CIDH y sus Relatorías Especiales manifiestan su preocupación por las denuncias de detenciones arbitrarias, incomunicación, falta de defensa y otras violaciones al debido proceso, en el marco de las protestas del 11 de julio en Cuba* [Press release: The IACHR and its Special

142. The use of summary trials to imprison people who participated in the protests on 11 July is consistent with methods that the Cuban government has been employing to criminalize individuals who express oppositional opinions. Through the official process of *'atestado directo,'* the authorities create the illusion that the rights of defendants are being respected. The authorities can declare with certainty that summary trials comply with Cuban laws and that they comply with the letter of the law, in that they are following the steps required by law. For example, in several of the aforementioned summary trials, relatives reported that they received a call from the police informing them that their detained family member had the right to legal counsel, as required by the Law on Criminal Procedure. Nonetheless, as was explained above, the law also only requires the court to admit a legal representative if the defendant arrives at the oral proceedings accompanied by said counsel. As such, if the court can convene the oral proceedings prior to the family having time to hire a lawyer, it can still claim to be complying with the process.

143. At the same time that the courts were convening the oral proceedings without giving the defendants time to hire legal counsel, other authorities were working to ensure that there would be no defense lawyers available for hiring. According to *El Toque Jurídico*, several lawyers in Havana, Cienfuegos, and Villa Clara received threats and pressure from the authorities to not represent defendants for their participation in the protests.²⁵⁴ Thus were the authorities able to hold trials and through them criminalize persons who participated in the protests of 11 July, with the appearance of having complied with formal processes while at the same time ensuring the defendants would not have the assistance of a defense lawyer.

144. These tactics clearly violate the rights of defendants, and the international community must work to expose them. Although Cuban authorities declare they are respecting the rights of defendants, one must look deeper into their actions as well as loopholes in the laws that enable them to create the appearance of respecting rights while in reality actively working to prevent defendants from defending themselves.

Rapporteurs Declare Their Concern Regarding the Denunciations of Arbitrary Detentions, People Being Held Incommunicado, Lack of Defense, and Other Violations of Due Process, Within the Context of the Protests of 11 July in Cuba], August 12, 2021, available at <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/211.asp>

[254] *Empiezan juicios por protestas en Cuba sin abogados defensores* [Trials Commence for Protests in Cuba Without Defense Lawyers], *EL TOQUE JURÍDICO*, July 21, 2021, available at <https://eltoque.com/juicios-por-protestas-en-cuba-sin-abogados-defensores>

G.

Surveillance and Harassment

145. The Cuban government, through its State Security apparatus, has for years been implementing a strategic tactic of surveillance and harassment against human rights defenders in order to maintain social, political, and economic control in Cuba. In 1993, the report of the Special Rapporteur on the Situation of Human Rights in Cuba warned that persons linked to groups whose objective was to denounce human rights violations or from various perspectives are critical of the current political system, were the target of harassment, despite acting perfectly peacefully and dealing with the authorities in a respectful manner.²⁵⁵

146. In a 1994 report, Special Rapporteur Groth reported "excessive control exercised over the populace through the institutional apparatus, resulting in a systematic violation of, among others, the principle of non-discrimination for political reasons and the right to freedom of opinion and expression."²⁵⁶ This control, according

[255] Special Rapporteur on the Situation of Human Rights in Cuba, *Informe sobre la situación de los derechos humanos en Cuba, presentado por el Relator Especial, Sr. Carl-Johan Groth, en cumplimiento de la resolución 1992/61 de la Comisión* [Report on the Situation of Human Rights in Cuba, presented by Special Rapporteur, Mr. Carl-Johan Groth, in compliance with Commission Resolution 1992/61], parag. 29, Human Rights Commission, U.N. Doc. E/CN.4/1993/39 (February 4, 1993) (by Carl-Johan Groth).

[256] Special Rapporteur on the Situation of Human Rights in Cuba, *Informe sobre la situación*

to the Rapporteur, was exercised in the daily life of every citizen through places of work, study centers, or their own neighborhoods.²⁵⁷ He added that another form of social and political control was exercised through “direct harassment by the security organs, or through arrest and judicial sentencing for crimes classified in the law.”²⁵⁸ In this dynamic, the sector that perceived itself to be the most vulnerable was comprised of individuals belonging to groups performing human rights defense or labor unions and in some cases, political groups.²⁵⁹

- 147.** This control that was referenced by the Special Rapporteur in the early 1990s extends through to the present day. A recent urgent call issued by several United Nations Special

de los derechos humanos en Cuba, presentado por el Relator Especial, Sr. Carl-Johan Groth, en cumplimiento de la resolución 1993/63 de la Comisión [Report on the Situation of Human Rights in Cuba, presented by Special Rapporteur, Mr. Carl-Johan Groth, in compliance with Commission Resolution 1993/63], parag. 16, Human Rights Commission, U.N. Doc. E/CN.4/1994/51 (January 24, 1994) (by Carl-Johan Groth).

[257] *Ibid.*

[258] Special Rapporteur on the Situation of Human Rights in Cuba, *Informe sobre la situación de los derechos humanos en Cuba, presentado por el Relator Especial, Sr. Carl-Johan Groth, en cumplimiento de la resolución 1993/63 de la Comisión [Report on the Situation of Human Rights in Cuba, presented by Special Rapporteur, Mr. Carl-Johan Groth, in compliance with Commission Resolution 1993/63],* parag. 22, Human Rights Commission, U.N. Doc. E/CN.4/1994/51 (January 24, 1994) (by Carl-Johan Groth).

[259] *Ibid.*

Procedures mandates reminded the Cuban State that the allegations made regarding surveillance, threats, travel prohibitions, and arbitrary detentions against human rights defenders that were under study coincided with what in Cuba appears to be a “practice of employing detentions as a method for intimidating and harassing human rights defenders and as such, constitutes arbitrary detention under international law.”²⁶⁰

- 148.** In the same vein, both the IACHR as well as its Special Rapporteur have reiterated that in Cuba there exists a strong context of repression manifested through harassment, threats, intimidation, attacks, and brief arbitrary detentions against journalists, human rights defenders, political dissidents, intellectuals, and thought leaders.²⁶¹ UN Special Rapporteur on the Situation of Human Rights Defenders, Mary Lawlor, called on the Cuban State to “cease” the “surveillance exercised by agents of the Department of Security of the State,” as it runs “contrary to international law.”²⁶² Lastly, the Committee against

[260] AL CUB 1/2021, p. 9, January 18, 2021.

[261] See, for example, IACHR, *Situación de los derechos humanos en Cuba* [Situation of Human Rights in Cuba], OEA/Ser.L/V/I. Doc. 2, parags. 174-194, (February 3, 2020).

[262] *Cuba: Los derechos de las personas defensoras deben ser protegidos, dice una experta de la ONU* [Cuba: Defenders’ Rights Must Be Protected, Declares UN Expert], United Nations Office of the High Commissioner for Human Rights, March 11, 2021, available at <https://www.ohchr.org>.

Torture declared itself to be “seriously concerned” about the continued denunciations of invasive surveillance operations, physical attacks, and other acts of intimidation and harassment, allegedly committed by agents of the National Revolutionary Police and members of State Security organs.²⁶³

- 149.** Several human rights defenders groups and opponents in Cuba have reported instances over the years of surveillance and harassment committed by agents and officials of the Cuban police. The OCDH reports, among other repressive acts, the “use of arbitrary detention in the home” and “threats against activists and their families.”²⁶⁴ In their 2019 annual report, the *Damas de Blanco* [Ladies in White], a specific group of women who take to the streets in protest in support of the release of political prisoners, included instances of home surveillance performed by PNR officials in the provinces of Havana and Matanzas.²⁶⁵ Similarly, another

[org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26875&LangID=S](https://www.oecd.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26875&LangID=S)

[263] Committee against Torture, *Examen de los informes presentados por los Estados partes en virtud del artículo 19 de la Convención, Cuba* [Examination of the Reports Presented by States Parties By Virtue of Article 19 of the Convention, Cuba], parag. 20, U.N. Doc. CAT/C/CUB/CO/2 (June 25, 2012).

[264] *Observatorio Cubano de Derechos Humanos* [Cuban Human Rights Watchdog]. *Cuba Derechos Humanos 2019* [Cuba Human Rights 2019], p. 6, available at https://observacuba.org/wp-content/uploads/2020/08/ocdh_ddhh2019.pdf

[265] *Movimiento Damas de Blanco* [Ladies in White Movement]. *Resumen Anual 2019* [2019 Annual Summary], February 6, 2020, available

of the most surveilled groups on the island is the *Unión Patriótica de Cuba* [Patriotic Union of Cuba] (UNPACU), whose members are the targets of constant harassment and surveillance by State Security, specifically in their national headquarters located in the province of Santiago de Cuba, which is the target of police cordons.²⁶⁶

- 150.** The practice of surveillance and harassment also extends to independent journalists and artists. On several occasions, the use of surveillance and harassment has been used to control the sphere of influence of particular activists/opponents/independent journalists. The objectives of this tactic are to inform the State about public opinion with regard to many events, identify the originators, and maintain effective control over public expression and the State’s image in its response. Journalists like Roberto Quiñonez, Camila Acosta, Henry Constantín, Alberto Corzo Corzo, and Martha Liset Sánchez have reported cases of harassment, intimidation, and surveillance in recent years.²⁶⁷

at https://primaveradigital.org/wp-content/uploads/2020/02/622_damas-informe-anual-2019.pdf

[266] *Ferrer anuncia el fin del cerco policial y evalúa suspender la huelga de hambre*, 14YMEDIO, 9 abril 2021, disponible en https://www.14ymedio.com/cuba/Ferrer-Unpacu-huelga-hambre-levantamiento-cerco-policial-cubano_0_3072892688.html

[267] CIDH, *Situación de los derechos humanos en Cuba*, OEA/Ser.L/V/II., Doc. 2, párr. 207, (3 febrero 2020),

151. A specific type of surveillance and harassment employed by the State within the context of 11J and 15N as a measure to suppress participation in the protests and prevent information on the actions taken by the State to suppress those protests to be known by the international community was home confinement with surveillance by State Security. This type of tool of repression is not new for the Cuban State. The IACHR had already acknowledged having received information regarding the siege of homes of human rights defenders as part of maneuvers to prevent them from exercising their right to participate in a protest convened on October 31, 2020.²⁶⁸ Special Rapporteur on the Situation of Human Rights Defenders, Mary Lawlor, indicated that defenders in Cuba are the targets of attacks and frequently “suffer from restrictions to their freedom of movement due to what appears to be an intelligence schema that commences with the wrongful use of criminal law and ends with daily harassment by the authorities.”²⁶⁹ This practice runs

contrary to regional and international human rights standards, inasmuch as it constitutes “imprisonment or, at a minimum, an illegitimate restriction of freedom of movement,”²⁷⁰ according to Erika Guevara Rosas, Americas Director for Amnesty International.

152. Surveillance produces impacts on the rights to privacy and freedom of expression, according to the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. In his report on surveillance and human rights, he concluded that

persons who are surveilled have their rights interfered with, regardless whether the surveillance activities are successful or not. It is not necessary for the surveilled person to be aware of the intrusion, be it a failure or success, for that to constitute a complete interference in his/her right to privacy. In fact, governments generally seek instruments that enable them to carry out the intrusion without the surveilled person having any knowledge of it. Notwithstanding, it is essential

[268] [Chap. IV. B: Cuba], IACHR, *Informe Anual de la Comisión Interamericana de Derechos Humanos 2020* [2020 Annual Report of the Inter-American Commission on Human Rights], OEA/Ser.L/V/II. Doc. 28, parag. 90, (March 30, 2021); see also, IACHR, *Situación de los derechos humanos en Cuba* [Situation of Human Rights in Cuba], OEA/Ser.L/V/II. Doc. 2, paras. 170 and 180, (February 3, 2020).

[269] United Nations Office of the High Commissioner on Human Rights (OHCHR), *Cuba: Los derechos de las personas defensoras deben ser protegidos, dice una experta de la ONU* [Cuba: Defenders' Rights Must Be Protected, Declares UN

Expert], March 11, 2021, available at <https://www.ohchr.org/SP/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26875&LangID=S>

[270] Amnesty International. *Cuba: El movimiento San Isidro y sus aliados, sometidos a aterradores niveles de vigilancia* [Cuba: The San Isidro Movement and Its Allies Subjected to Terrifying Levels of Surveillance], December 15, 2020, available at <https://www.amnesty.org/es/latest/press-release/2020/12/cuba-san-isidro-movement-allies-under-frightening-levels-surveillance/>

*to view that interference as part of a general effort to impose a particular situation on the target. If it is carried out with illicit ends, the attempt to impose surveillance – and its successful operation – can be employed as an effort to silence dissidence, sanction criticisms, or punish the facilitation of independent information (and also punish the sources of that information).*²⁷¹

153. During both 11J and 15N, human rights defenders, activists, and independent journalists denounced their inability to leave their homes, given the presence of State Security agents.

154. Within the context of the July 11, 2021 protests, the practices of surveillance and harassment were extensively used against activists, journalists, and human rights defenders in order to extend societal control over the populace. In the days following the protests, those activists who were able to return to their homes noted a substantial increase in the police presence in several provinces in the country.²⁷² The Special Rapporteur

[271] Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión* [Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression], parag. 21, Human Rights Council, U.N. Doc. A/HRC/41/35 (May 28, 2019) (by David Kyle).

[272] Declarations made to Race and Equality by an independent Cuban activist.

on the Rights to Freedom of Peaceful Assembly and Association vehemently defended the position that no one should be punished, threatened, or suffer violence, harassment, persecution, intimidation, or reprisals for having exercised their rights to freedom of peaceful assembly and association.²⁷³

155. Many people denounced that they were under police surveillance in their homes and unable to leave, with some even receiving warnings from State Security that they would be detained and tried in the event they went out on the street. This display of force and intimidation hindered the work of many organizations and activists to track detained or disappeared persons. In July 2021, the OCDH documented 402 cases of homes that were surrounded and 55 cases of harassment.²⁷⁴

[273] Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *Informe del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación* [Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association], parag. 39, Human Rights Council, U.N. Doc. A/HRC/38/34 (July 26, 2018) (by Clément Nyaletsossi Voule).

[274] Observatorio Cubano de Derechos Humanos [Cuban Human Rights Watchdog]. *Protestas de julio dejaron al menos 1.745 acciones represivas en Cuba, de las cuales 1.103 fueron detenciones arbitrarias* [July Protests Resulted in At Least 1,745 Repressive Actions in Cuba, 1,103 of Which Were Arbitrary Detentions], August 3, 2021, available at <https://observacuba.org/ocdh-protestas-de-julio-dejaron-al-menos-1-745-acciones-represivas-en-cuba-de-las-cuales-1-103-fueron-detenciones-arbitrarias/>

156. The deployment of agents to prevent activists, human rights defenders, and independent journalists from leaving their homes was the government's principal strategy for confronting a new protest. The fact that that protest was announced in advance gave the State even more time to prepare its repressive strategy to eliminate any type of activity in the streets and therefore show that despite the announcements, the People had not responded in the same fashion as it had on 11J and therefore, that 15N never existed.²⁷⁵ Nonetheless, in the following sections we document hundreds of cases of individuals who were prevented from leaving their homes, even though doubtless the symbol of this type of repression was the case of Yunior García.²⁷⁶ The IACHR

[275] Bruno Rodríguez sobre la fallida movilización opositora en Cuba: "Fue un lunes de celebración, no hubo ni protestas ni represión ni militarización" [Bruno Rodríguez on the Failed Mobilization of the Opposition in Cuba: "It was a celebratory Monday, there were no protests or repression or militarization"], RUSSIA TODAY, November 17, 2021, available at <https://actualidad.rt.com/actualidad/410705-bruno-rodriguez-fallida-movilizacion-opositora-entrevista>

[276] Facebook, Archipiélago, November 14, 2021, available at <https://www.facebook.com/PlataformaArchipelago/>; YouTube, Humberto López muestra ACTO de REPUDIO al activista Yunior Aguilera [Humberto López shows ACT of REPUDIATION to Activist Yunior Aguilera], available at <https://www.youtube.com/watch?v=m2Uv4Z4wLTc>; Twitter, Atahualpa Amerise, November 14, 2021, available at <https://twitter.com/atareports/status/1459994942680539138>; Twitter, Patrick Oppmann CNN, November 14, 2021, available at https://twitter.com/CNN_Oppmann/status/1460069869353852934?s=20 y El and El Gobierno cubano impide policialmente el primer acto de la protesta del 15N [Cuban Government Uses Police to Prevent the First Act of Protest on 15N],

Commissioner Rapporteur for Cuba condemned the deployment of military forces, 'brigadas de choque' [shock troops], and 'Boinas Negras' [Black Berets] that surrounded the homes of activists and leaders so as to prevent protests against the government on 15N from taking place.²⁷⁷

157. The case of Yunior García also demonstrated another form of harassment utilized by the Cuban government: the so-called "acts of repudiation." This does not represent a new tool; in fact, Special Rapporteur Carl-Johan Groth had already described it in 1993 as follows:

*A particular form of intimidation is the holding of the so-called "acts of repudiation," or protests organized apparently by official initiative by the so-called Rapid Response Brigades, in which a large group of people, some of whom can be identified as members of the country's security forces in plainclothes, gather outside the home of a person who is supposedly involved in activities considered to be counter-revolutionary and shout insults and threats for hours and damage the property.*²⁷⁸

EFE, November 14, 2021, available at <https://www.efc.com/efe/america/sociedad/el-gobierno-cubano-impide-policialmente-primer-acto-de-la-protesta-del-15n/20000013-4675570>

[277] Twitter, Stuardo Ralón, November 16, 2021, available at <https://bit.ly/3qHcpwf>

[278] Special Rapporteur on the Situation of Human Rights in Cuba, *Informe sobre la situación de los derechos humanos en Cuba, presentado por el Relator Especial, Sr. Carl-Johan Groth, en cumplimiento de la resolución*

158. He concluded that the use of these “acts of repudiation” constituted a practice by the authorities aimed at intimidating human rights activists by employing methods that were **“unacceptable in any society in which the rule of law prevails.”**²⁷⁹

159. By 1992, it was being reported that the so-called “Rapid Response Brigades” comprised one “of the most troubling modalities of the repressive trends of those years.”²⁸⁰ They were created in 1991 and “charged with anticipating any attempt at public protest, with the goals of controlling and sanctioning through generally violent means.”²⁸¹ The Special Rapporteur assigned responsibility to those brigades for the “acts of repudiation,” which are

*apparently sponsored by or at least tolerated by the authorities, wherein groups of citizens, according to official sources, functioning in a spontaneous manner and with an eye to expressing their rejection of opponents of the regime, harass, publicly insult, commit acts of violence, and threaten the personal security of the alleged dissidents and activists.*²⁸²

160. The IACHR has declared in several reports that it has received information from activists, human rights defenders, and independent journalists regarding the presence of higher levels of intensity in the ‘acts of repudiation.’²⁸³

161. Both the home confinement under surveillance as well as the ‘acts of repudiation’ constitute types of arbitrary imprisonment. To that end, the Working Group on Arbitrary Detention established that:

1992/61 de la Comisión [Report on the Situation of Human Rights in Cuba, presented by Special Rapporteur, Mr. Carl-John Groth, in compliance with Commission Resolution 1992/61], parag. 45, Human Rights Commission, U.N. Doc. E/CN.4/1993/39 (February 4, 1993) (by Carl-Johan Groth).

[279] *Ibid.*, parag. 51.

[280] Special Representative of the Secretary-General, *Informe sobre la situación de los derechos humanos en Cuba, preparado por el Representante Especial del Secretario General, Sr. Rafael Rivas Posada, en cumplimiento del mandato conferido por la resolución 1991/68 de la Comisión* [Report on the Situation of Human Rights in Cuba, prepared by Special Representative of the Secretary-General, Mr. Rafael Rivas Posada, in compliance with the mandate conferred by Commission Resolution 1991/68], parag. 31, Human Rights Commission, U.N. Doc. E/CN.4/1991/27 (January 28, 1992) (by Rafael Rivas Posada).

[281] *Ibid.*

[282] *Ibid.*

[283] See, for example, Chap. IV. B: Cuba], IACHR, *Informe Anual de la Comisión Interamericana de Derechos Humanos 2016* [2016 Annual Report of the Inter-American Commission on Human Rights], OEA/Ser.L/V/II. Doc. 22, parag. 59, (March 15, 2017); [Chap. IV: Cuba], IACHR, *Informe Anual de la Comisión Interamericana de Derechos Humanos 2014* [2014 Annual Report of the Inter-American Commission on Human Rights], OEA/Ser.L/V/II. Doc. 13, parag. 200 (March 9, 2015); and [Chap. IV: Cuba], IACHR, *Informe Anual de la Comisión Interamericana de Derechos Humanos 1994* [1994 Annual Report of the Inter-American Commission on Human Rights], OEA/Ser.L/V/II.88. Doc. 9 rev. (February 17, 1995), section II. *El derecho a la libertad de expresión* [The Right to Freedom of Expression].

*imprisonment is not simply a question of legal definition, but also of fact. If the interested person does not have the freedom to leave the place in which he/she is imprisoned, all of the appropriate safeguards that have been planned for preventing arbitrary detention must be respected.*²⁸⁴

- 162.** Lastly, in many instances, there were reports of cases of digital surveillance (on social media) by State Security with the goal of identifying alleged opponents, political dissidents, human rights activists, and independent journalists. Through the extensive control exerted by the State telecommunications company ETECSA, State Security was able to censor a lot of information shared within and outside of the island. It also has the capacity to block, hack, or fraudulently alter social media accounts when they publish information that runs contrary to what the State wishes to disseminate. Many activists have reported that such acts have occurred in their accounts,²⁸⁵ especially during meetings with foreign organizations or on important dates.

[284] Working Group on Arbitrary Detention, Informe del Grupo de Trabajo sobre la Detención Arbitraria [Report of the Working Group on Arbitrary Detention], parag. 56, Human Rights Council, U.N. Doc. A/HRC/36/37 (July 19, 2017).

[285] Hackeo de cuentas y suplantación de identidad: ataques contra tres mujeres cubanas [The Hacking of Accounts and Fraudulent Altering of Identity: Attacks against Three Cuban Women], YUCABYTE, March 5, 2021, available at <https://www.yucabyte.org/2021/03/05/hackeo-mujeres-cubanas/>

H.

Impacts on Particular Populations

163. The IACHR established that the protection and guarantee of the right to protest “merit special attention when underrepresented or marginalized groups use it to express themselves when confronting institutional frameworks that do not favor their participation, or serious barriers to accessing other forms of mass communication. Protesting is particularly relevant “in lending greater resonance to the voices of marginalized persons or those who present an alternative message to the established political and economic interests.”²⁸⁶

a. Afro-descendants

164. The IACHR has warned about the persistence in Cuba of a profile of institutional racism that is reflected in the historical negation of racism on the part of the State which has been employed to criminalize the movement.²⁸⁷

165 As for the Committee on the Elimination of Racial Discrimination, in 2018 it indicated its profound concern regarding:

[286] IACHR Special Rapporteur on Freedom of Expression, *Protesta y Derechos Humanos* [Protests and Human Rights], OEA/Ser.L/V/II CIDH/RELE/INF.22/19, parag. 16 (September 2019).

[287] IACHR, *Situación de los derechos humanos en Cuba* [Situation of Human Rights in Cuba], OEA/Ser.L/V/I. Doc. 2, parag. 293, (February 3, 2020).

*the allegations of acts of bullying, harassment, intimidation, threats, disparagement, and criminalization of human rights defenders, in particular against civil society leaders, journalists, communicators, and human rights defenders whose work takes aim at racial discrimination and is in favor of the human rights of Afro-descendants. It is concerning to the Committee that, according to denunciations it has received, human rights defenders and civil society leaders who defend the rights of Afro-descendants have repeatedly been detained for short periods of time or been prevented from leaving the country to attend meetings organized by international human rights protection mechanisms.*²⁸⁸

- 166.** Lastly, the IACHR in a similar vein urged the Cuban State to:

*adopt effective measures for preventing and combatting the stigmatization and criminalization of protesters, in particular when said stigmatization or criminalization can be of a discriminatory nature based on a person's ethnic-racial origin, as well as guarantee the right to freedom of expression.*²⁸⁹

[288] Committee on the Elimination of Racial Discrimination, *Observaciones finales sobre los informes periódicos 19º y 21º combinados de Cuba* [Final Observations on Cuba's 19th and 20th combined Periodic Reports], para. 13, U.N. Doc. CERD/C/CUB/CO/19-21 (August 30, 2018).

[289] IACHR, *Situación de los derechos humanos en Cuba* [Situation of Human Rights in Cuba], OEA/Ser.L/V/II. Doc. 2, para. 309, (February 3, 2020).

- 167.** The most notable differentiated impact of the events of 11 July is the death of Diubis Laurencio Tejeda, a young Afro-Cuban man. The fact that what was apparently the only death that occurred within the context of the protests was of a citizen of African descent²⁹⁰ underlines the persistent complaints by Afro-Cubans of differentiated treatment at the hands of the police.

- 168.** Furthermore, Race and Equality and our Cuban counterparts have documented detentions, harassment, Internet cutoffs, and other attacks against Afro-Cuban activists and organizations within the context of both the 11J and 15N protests perpetrated by State authorities or civilian groups related to the government.²⁹¹ CAs Race and Equality has extensively documented, Afro-Cuban civil society is a particular target of these attacks due to its special role in activism against racial discrimination and in support of the human rights of all Cubans. Over the last two years, the central role of Afro-Cuban artists and activists who employ a discourse based on the Afro-Cuban experience has advanced the position

[290] The death of Diubis Laurencia Tejeda is the only one confirmed by the authorities. To date, independent civil society in Cuba has not reported another case of death associated with the protests, even though there are still cases of disappeared persons whose whereabouts and status are unknown.

[291] All of the data in this section were compiled through the investigative work performed by Race and Equality in collaboration with our Cuban counterparts.

of Afro-Cubans in the movement for change in Cuba and has been the focus of particular repression.

169. The organization *Comité Ciudadanos por la Integración Racial* [Committee of Citizens for Racial Integration] (CIR) was the target of several attacks aimed at preventing the participation of their members in the protests. The director of the organization reported police cordons and members of the Rapid Response Brigades prevented him from leaving his home to participate in the protests and/or document the State response to the protests. This surveillance, which began on 12 July, continued for at least 10 days, accompanied by Internet cutoffs through the mobile network.

170. In addition, CIR member Richard Zamora, the rapper known as ‘El Radikal,’ was arbitrarily detained and unjustly prosecuted. On several occasions, the members of CIR were refused information regarding the whereabouts of Mr. Zamora or his legal situation.²⁹²

171. The Afro-Cuban journalist Jorge Amado was detained on 12 July and threatened so that he would not participate again in the protests.

[292] For more details about this case, see below section H.5

172. Almost one month after the protests, on 9 August, the young Afro-Cuban influencer Ruhama Fernández, known for her criticism of the Cuban government on videos uploaded to the YouTube platform, was the target of a police raid on her home. Fernández was detained while her house was searched. During the search, several devices were confiscated which she uses to produce her videos.²⁹³ When she came to the police station to demand those assets, none of the recording or connectivity equipment were turned over to her.

b. Women

173. The differential violence experienced by Cuban women within the context of the 11J and 15N demonstrations includes physical, psychological, [and] emotional violence, the disproportionate use of force, and arbitrary detention, among others. The foregoing is in addition to the barriers women face to accessing basic subsistence goods, which has worsened due to the health crises produced by COVID-19. Given that women are the ones primarily in charge of caring

[293] Youtuber cubana Ruhama Fernández denuncia allanamiento en su detención: “Se llevaron mis equipos de trabajo,” [Cuban YouTuber Ruhama Fernández Denounces the Police Raid of Her Home: “They took my work equipment.”] CIBERCUBA, August 11, 2021, available at <https://www.cibercuba.com/noticias/2021-08-11-u1-e199370-s27061-youtuber-cubana-ruhama-fernandez-denuncia-allanamiento-su>

for the home,²⁹⁴ they have faced day after day the shortage of foodstuffs, medicine, and other staple products.

- 174.** In the report she drafted following her visit to Cuba in 1999, the Special Rapporteur on Violence against Women, Its Causes, and Consequences highlighted that “a vulnerable group of women in Cuba are those whose political opinions are unacceptable to the government.”²⁹⁵ With regard to this group, she documented cases of women arbitrarily detained due to their political or journalistic activism. Based on this information, she concluded that “the problem of arbitrary detention continues to be one of the gravest human rights violations in Cuba, even with regard to cases involving violence against women.”²⁹⁶

- 175.** The IACHR has highlighted that the results of the National Survey on Gender Equality, produced by the *Centro de Estudios de la Mujer* [Women’s Studies Center] of the FMC and *Centro de Estudios de Población y Desarrollo* [Population and

Development Studies Center] (CEPDE) of the *Oficina Nacional de Estadísticas e Información* [National Office of Statistics and Information] (ONEI) in 2016 demonstrate the persistence of discriminatory stereotypes against women.²⁹⁷ According to the IACHR:

the use of and references to gender-based stereotypes constitute a form of discrimination against women, girls, and female adolescents based on preconceptions that situate them in a position of inferiority that promotes, legitimates, and exacerbates the gender-based violence against them.

- 176.** In addition, the Commission issued a reminder that the organs of the Inter-American Human Rights System have affirmed that gender-based stereotypes refer to:

*a preconception of attributes or characteristics possessed or roles that should be played by men and women, respectively. [It is] possible to associate the subordination of women to practices based on socially-dominant and -persistent gender-based stereotypes, conditions that are exacerbated when the stereotypes are reflected, implicitly or explicitly, in policies and practices, particularly in the reasoning and language of judicial police authorities.*²⁹⁸

[294] Special Rapporteur on Violence against Women, Its Causes, and Consequences, Informe de la Sra. Radhika Coomaraswamy, *Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias* [Report of Ms. Radhika Coomaraswamy, Special Rapporteur on Violence against Women, Its Causes, and Consequences], Human Rights Commission, U.N. Doc. E/CN.4/2000/68/Add.2, para. 28 (February 8, 2000) (by Radhika Coomaraswamy).

[295] *Ibid.*, para. 14.

[296] *Ibid.*, para. 14.

[297] IACHR, *Situación de los derechos humanos en Cuba* [Situation of Human Rights in Cuba], OEA/Ser.L/V/II. Doc. 2, para. 313 (February 3, 2020).

[298] *Ibid.*, para. 314

177. According to the information presented by Cubalex in its list of detained and disappeared persons, at the time this report wrapped, Cubalex had reported 1,292 persons detained and disappeared as a result of 11J, 195 of whom were women, and 87 detainees as a result of 15N, 16 of whom were women.²⁹⁹

178. Women's role has been varied in this scenario. On one hand, some women actively participated in the protests as part of the movement. On the other, some women, as part of the resistance, contribute by making known their discontent, others by caring for their nuclear family, and others by demanding the release of their partners, children, or parents.

179. Since the start of the pandemic and health crisis it generated, women have had to deal with a series of problems that have damaged their quality of life. As was mentioned earlier, because they are the ones (the majority of them) who are in charge of the work caring for the home, they face long lines to obtain foodstuffs.³⁰⁰ Furthermore, the increase

in COVID-19 cases and lack of access to beds in hospitals and/or medicine³⁰¹ led the citizenry to take to the streets.

180. However, women have also protested about some aspects that impact them differentially. An example of this is the increase in gender-based violence during the present year.³⁰² Through November 30, 2021, at least 31 women had been the victims of femicide.³⁰³ This number represents an increase in these cases since the year before (25 victims in total). Women have also been impacted by the shortages, not only as regards the lines and lack of foodstuffs, but also the absence of menstrual hygiene products. The *Plataforma Femenina* [Feminine Platform], in its report 'Menstruation and Human Rights in Cuba,'³⁰⁴ makes

[299] Cubalex. *Listado detenidos y desaparecidos en Cuba* [List of Detained and Disappeared Persons in Cuba], available at <https://docs.google.com/spreadsheets/d/1-38omFpJdDiKTSBoUOg19tv2nJxtNRS3-2HfVUUwtSw/edit#gid=627497176>

[300] Mauricio Vicent. *Colas, virus y escasez en la Cuba del VIII Congreso* [Lines, Virus, and Shortages in the Cuba of the VIII Congress], EL PAIS, April 18, 2021, available at <https://elpais.com/internacional/2021-04-18/colas-pymes-y-virus-en-la-cuba-del-viii-congreso.html>

[301] *Cuba reporta 6 208 nuevos casos de COVID-19, 87 fallecidos y 7 085 altas médicas* [Cuba Reports 6,208 New Cases of COVID-19, 87 Deaths, and 7,085 Medical Discharges], CUBADEBATE, September 2, 2021, available at <http://www.cubadebate.cu/noticias/2021/09/02/cuba-reporta-6-208-nuevos-casos-de-covid-19-87-fallecidos-y-7-085-altas-medicas-video/>

[302] *Organizaciones independientes lanzan una campaña contra todas las formas de violencia en Cuba* [Independent Organizations Launch Campaign against All Forms of Violence in Cuba], DIARIO DE CUBA, November 25, 2021, available at https://diariodecuba.com/cuba/1637868395_35774.html

[303] *Siguen creciendo los feminicidios en Cuba: una mujer muere apuñalada en Matanzas* [Femicide Continues to Increase in Cuba: A Woman Dies After Being Stabbed in Matanzas], DIARIO DE CUBA, November 22, 2021, available at https://diariodecuba.com/cuba/1637598544_35701.html

[304] *Plataforma Femenina* [Feminine Platform]. *Menstruación y Derechos Humanos en Cuba* [Menstruation and Human Rights in Cuba], June 10,

clear that the absence of menstrual hygiene products affects the life and dignity of Cuban women, a problem that has increased in the midst of the health crisis.

181. These conditions were of central importance leading women to protest on 11 July, to which the Cuban regime responded with physical violence, threats, and gender-based violence. As stated by a female Cuban activist from Santiago: “Women march today for the release of the imprisoned protesters, they protest the police violence in the streets which has not been condemned by the government; women call for justice to be done and for the repressors to be sentenced.”³⁰⁵

182. Currently, women find themselves in a great deal of uncertainty. A Cuban activist in Havana declares that:

*the situation faced by independent civil society on the island is one of uncertainty and fear. The impact on women has been grave: there are many women detained, the percentage of deaths from COVID is high, the financial needs produce constant stress on Cuban women, and on top of all of this are the constant violation of human rights.*³⁰⁶

2021, available at https://www.plataformafemenina.org/es/FINAL_V2_Menstruacion-y-derechos-humanos-en-cuba

[305] Interview with a female Cuban activist (2021). Name protected to guarantee the activist's security.

[306] *Ibid.*

183. This reveals that the reality experienced by women has not changed since 11J but rather, to the contrary, the vulnerability to which they are exposed is greater due to the repression and persecution by the authorities.

184. While there have been no cases of sexual violence against women recorded within the context of the 11J and 15N protests, there are other forms of gender-based violence that have been inflicted upon the island's women. The cases that have received the most responses on social media and from activists make reference to violence that employs motherhood as a form of emotional blackmail against women. Activists have recorded how the government and police have threatened mothers with detaining their children if they take to the streets to march.³⁰⁷

185. As stated by a female activist from Santiago, “of course the women have found themselves in difficult situations after 11J due to illegal persecutions and threats made to the protesters in their homes. It's the mothers who denounce the disappearance of their children and relatives, as well as suffer from the summary trials without due process to

[307] *La Policía cubana chantajea a las madres con detener a sus hijos si salen a la calle* [Cuban Police Blackmail Mothers by Threatening to Detain Their Children if They Leave Their Homes], EFE/14YMEDIO, August 4, 2021, available at <https://www.14ymedio.com/cuba/feminicidios-violencia-contra-las-mujeres-Red-Femenina-de-Cuba-0-3143085664.html>

which the protesters are subjected.”³⁰⁸
The mothers on the island fear that if they raise their voices, the State will legally retaliate against their children. Mothers with underage children are threatened with having their parental rights removed from them for political reasons.³⁰⁹

186. Another form of gender-based violence against women can be seen with detained mothers, who are not permitted to inform their sons, daughters, or relatives where they are detained. According to information from Cubalex, at least 174 women who were detained within the context of 11J were mothers.³¹⁰ This practice represents types of emotional and symbolic gender-based violence, in that these types of violence target women, who have had a historic social role as caregivers.

187. A female activist from Pinar del Río maintained that:

[308] Interview with a female Cuban activist (2021). Name protected to guarantee the activist's security.

[309] *La Patria Potestad, instrumento para la represión en Cuba* [Parental Rights: Instrument for Repression in Cuba], DIARIO DE CUBA, December 18, 2020, available at https://diariodecuba.com/derechos-humanos/1608294048_27336.html

[310] “Mujeres del 11J”: denuncia y solidaridad en América Latina tras protestas en Cuba [“The Women of 11J”: Denunciations and Solidarity in Latin America Following Protests in Cuba], ADN CUBA, August 31, 2021, available at <https://adncuba.com/noticias-de-cuba/actualidad/mujeres-del-11j-denuncia-y-solidaridad>

*violence against women, as a result of 11J, has worsened considerably. The police and other repressive organs have brutally beaten, abused, and detained many women. Surveillance and harassment also increased after that day; up to and including today, there are still women with repressors surrounding their homes.*³¹¹

188. In many of the accounts of women detained within the context of 11J, they attest to having been beaten and/or seen other detained women beaten and bloody,³¹² which demonstrates that women who have taken to the streets to protest have faced physical, direct, emotional, structural, and gender-based violence.

189. According to a female Cuban activist from Pinar del Río, women today protest “demanding freedom for all those detained in the 11J protests; many of the female participants are relatives of prisoners, while the rest of the women provide their support.”³¹³ The trigger for many Cuban women’s social activism has been the need to

[311] Interview with a female Cuban activist (2021). Name protected to guarantee the activist's security.

[312] “Mujeres del 11J”: denuncia y solidaridad en América Latina tras protestas en Cuba [“The Women of 11J”: Denunciations and Solidarity in Latin America Following Protests in Cuba], ADN CUBA, August 31, 2021, available at <https://adncuba.com/noticias-de-cuba/actualidad/mujeres-del-11j-denuncia-y-solidaridad>

[313] Interview with a female Cuban activist (2021). Name protected to guarantee the activist's security.

guarantee their sons' and daughters' freedom. Motherhood and social mobilization demonstrate two fundamental aspects of the creation of the subject of 'mother': on one hand, the work of caregiving, and on the other, the possibility of being a social actor with agency and advocacy, as well as the capacity for representation in themselves and by setting a precedent for other mothers.

190. As of 22 November, at least four mothers of underage children detained within the context of 11J were on hunger strikes to demand the release of their children.³¹⁴

191. With regard to the repression surrounding 15N, the beginning of a criminal process has begun against three UNPACU activists after they were arrested for protesting that day.³¹⁵ Agents of the political police informed Miraida Martín Calderín, Alexei Vargas Martín, and Miranda that

they would be subject to a criminal process for “disorderly conduct” and “disobedience.”³¹⁶

192. During 15N, State Security continued employing the moral blackmail techniques mentioned above. Daniela Rojo, one of the administrators of the *Archipiélago* platform, recounted that the State Security officer assigned “in a very friendly manner warned me that I should think about my children and the consequences that could befall them if they were to grow up without their mother.”³¹⁷

193. Through these violations of women's rights, the Cuban State is failing to comply with several international treaties of which it is a signatory, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), due to the fact that it is not guaranteeing the full development of women's capacity and perpetuating sociocultural notions of discrimination against women. Likewise, the IACHR, its Special Rapporteur on Freedom of Expression, and the United Nations have issued repeated calls for Latin American States to guarantee women's ability to exercise their right to protest.³¹⁸

[314] Yolanda Huerga, *Cuatro madres ayunan por la libertad de sus hijos menores de edad, presos del 11J* [Four Mothers on Hunger Strike for Release of Their Underage Children, 11J Prisoners], RADIO TELEVISIÓN MARTÍ, November 22, 2021, available at <https://www.radiotelevisionmarti.com/a/cuatro-mujeres-est%C3%A1n-en-ayuno-en-cuba-por-la-libertad-de-sus-hijos/307791.html>

[315] Yolanda Huerga, *Inician proceso penal contra tres activistas de UNPACU por salir a la calle el 15N* [Criminal Proceedings Commence against Three UNPACU Activists for Taking to Streets on 15N], RADIO TELEVISIÓN MARTÍ, November 24, 2021, available at <https://www.radiotelevisionmarti.com/a/inician-proceso-penal-contra-tres-activistas-de-unpacu-por-salir-a-la-calle-el-15n-/307911.html>

[316] *Ibid.*

[317] Facebook, Daniela Rojo, November 4, 2021, available at <https://www.facebook.com/dany.rojo.7311/posts/409073717608978>

[318] IACHR, its Special Rapporteur on Freedom of Expression, and United Nations Office of the High Commissioner for Human Rights in Latin America,

c. LGBTI+ Population

194. The LGBTI+ community also joined the 11J and 15N complaints, demanding better living conditions and guarantees for their community. Despite some progress made in the area of LGBTI+ rights, they continue to be marginalized and discriminated against by society and the State. The discrimination, financial crisis, [and] shortage of foodstuffs and medicine led the LGBTI+ community to also take to the streets on 11J. In an interview with *Tremenda Nota*, a trans woman said she went out to march “because I am tired of the repression the police inflict on trans people; they don’t let us take to the streets, they ask us for credentials, they take us away claiming we are prostitutes.”³¹⁹ Another trans woman highlighted the police harassment as another reason for which to protest. She explained that trans persons are abused by the police and criminalized under the type of crime known as “dangerous state.”

press release: *La CIDH, su RELE y ONU Derechos Humanos hacen un llamado a los Estados de la región a proteger a las mujeres en el marco de las protestas y su participación en los movimientos feministas* [IACHR, its Special Rapporteur on Freedom of Expression, and United Nations Human Rights call on the States in the Region to Protect Women Within the Context of the Protests and Their Participation in Feminist Movements], (July 22, 2021), available at <http://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/187.asp>

[319] Cuba, 11 de julio de 2021: *La manifestación LGBTIQ+* [Cuba, July 11, 2021: LGBTIQ+ Protests], TREMENDA NOTA, July 15, 2021, available at <https://www.tremendanota.com/cuba-11-de-julio-de-2021-la-manifestacion-lgbtig/>

195. The IACHR has warned on various occasions about the ambiguity of the concept of “dangerous state,” considered based on Article 27 and the ones that follow in the Criminal Code. According to how it is decreed, the “dangerous state” can be deduced from the special proclivity of an individual to commit crimes, given the observed “manifest contradiction with the norms of socialist morality,” demonstrated by the coming together of one of the “indices of danger,” to wit: habitual drunkenness and alcoholism, narcomania, and antisocial behavior, the latter understood as someone who habitually violates the rules of social coexistence through acts of violence or by other provocative acts, violates the rights of the others, or due to his/her behavior in general harms the rules of coexistence or disturbs community order or lives, like a social parasite, off of others’ work or exploits or practices socially reprehensible vices.³²⁰

196. Mr. Carl-Johan Groth, the Special Rapporteur on the Situation of Human Rights in Cuba, explained with regard to this type of crime:

This legislation is utilized not only to control common crime, which may possibly have increased due to the financial crisis, but also against persons

[320] [Chap. IV. B: Cuba], IACHR, *Informe Anual de la Comisión Interamericana de Derechos Humanos 2018* [Annual Report of the Inter-American Commission on Human Rights], OEA/Ser.L/V/II. Doc. 30, parag. 41, (March 17, 2019).

*suspected of activities that run contrary to official ideology. The criterion of a “special proclivity” to commit crimes is just another assessment laden with subjectivism that oftentimes leads to the use of measures that entail restrictions on freedom with regard to persons whose sole inclination is to hold opinions that differ from the official line.*³²¹

- 197.** Maykel González Vivero, a journalist for *Tremenda Nota*, also noted that he was detained along with two trans women on 11 July and that they were treated by the police as if they were men and called by their legal names.³²² These are not the only accounts of LGBTI-phobia. As with the rest of the populace, LGBTI+ persons were repressed and subject to physical and verbal violence, demonstrating the LGBTI-phobia in the country. Many of them were stripped nude and referred to disrespectfully in order to embarrass and humiliate them. Leonardo Romero Negrín, in an interview with *La Joven*

Cuba, declared: “When we got to the unit, they undressed us all. They told us we were faggots [*maricones*].”³²³ Negrín also said they touched his buttocks and called him by disrespectful names just because he was allied with LGBTI+ persons in Cuba and had contributed to a marriage equality campaign.³²⁴

- 198.** Activists on the island also have pointed out that a trans man was detained in a women’s prison and his gender identity was not respected. Brenda Díaz García, a trans woman from Güira de Melena, was detained for several weeks, charged with throwing rocks during the protests. Her brother Luis says they went to the protests and when they returned home, the police were already looking for her, “but she wasn’t there. She was walking, they saw her, they fell in behind her and grabbed her, and I went to defend her and they grabbed me, too. They charged her with throwing rocks, but she didn’t throw any.”³²⁵ Luis was

[321] Special Rapporteur on the Situation of Human Rights in Cuba, *Informe sobre la situación de los derechos humanos en Cuba, presentado por el Relator Especial, Sr. Carl-Johan Groth, en cumplimiento de la resolución 1994/71 de la Comisión* [Report on the Situation of Human Rights in Cuba, presented by the Special Rapporteur, Mr. Carl-Johan Groth, in compliance with Commission Resolution 1994/71], parag. 28, Human Rights Commission, U.N. Doc. E/CN.4/1995/52 (January 11, 1995) (by Carl-Johan Groth).

[322] *Cuba, 11 de julio de 2021: La manifestación LGBTIQ+* [Cuba, July 11, 2021: The LGBTIQ+ Protest], TREMENDA NOTA, July 15, 2021, available at <https://www.tremendanota.com/cuba-11-de-julio-de-2021-la-manifestacion-lgbtiq/>

[323] Maykel González Vivero, *Homofobia y transfobia, las otras violencias usadas contra los manifestantes del 11 de julio en Cuba* [Homophobia and Transphobia, the Other Forms of Violence Employed against Protesters on 11 July in Cuba], TREMENDA NOTA, July 19, 2021, available at <https://www.tremendanota.com/homofobia-y-transfobia-las-otras-violencias-usadas-contra-los-manifestantes-del-11-de-julio-en-cuba/>

[324] *Ibid.*

[325] Mel Herrera, *Mujeres trans detenidas en el 11J: A las arbitrariedades reportadas, se añade la violencia de género* [Trans Women Detained on 11J: To the Arbitrariness Reported Can Be Added Gender-Based Violence], TREMENDA NOTA, August 5, 2021, available at <https://www.tremendanota.com/mujeres-trans-detenido-en-el-11j-a-las-arbitrariedades->

detained alongside his sister and told [the police] that Brenda has a health condition, but they have not given her good healthcare and the guards make fun of her. Brenda is not the only trans woman who has been detained. Nathalie Álvarez was also detained and charged with disorderly conduct. She was detained for 11 days.

199. An activist told Race and Equality that:

*currently, there are LGBTI+ persons detained. I can't tell you exact figures because there are no statistics on sexual orientation and such. We know a gay guy, Yoan de la Cruz, who is a prisoner in a maximum-security prison in Guanajay, the same place where the artist Luis Manuel Otero Alcántara is being held. That young man was the first person who broadcast live during the protest in San Antonio de los Baños and it went viral. He was charged with having instigated the protests through his live broadcast.*³²⁶

200. According to that same activist, just one part of the LGBTI+ community has issued pronouncements regarding these LGBTI-phobic acts by the police:

As a result of the repressive response of the government against the protesters, when the testimonies of many released persons were made known, only a small

*portion of the LGBTI+ community has said anything. The discourse has materialized of 'defending the rights of LGBTI+ persons.' As an activist, I've questioned the silence of many groups, groups that could create networks in order to, for example, seek data on a trans guy on whom nothing is known, and in that way investigate what his legal situation is, how we can help him, him and all the others who are imprisoned or under arbitrary measures. Yes, I've observed how LGBTI+ persons who do not think of themselves as activists press for the release of the detainees and are more proactive than the activists themselves. Just yesterday, a group of transvestite men did a show on Facebook during the evening schedule and said they were dedicating it to the young man Yoan de la Cruz who is unjustly imprisoned. They communicated that at the end, for fear their connection would be cut due to Decree-Law 35 being in force. Confirming their concerns, the connection was interrupted after they stated the goal of the show.*³²⁷

201. The Commission has highlighted the situation of LGBTI+ persons who have been imprisoned, due to the double or triple intersectional discrimination of which they are the target in detention centers. Likewise, it has called [on the Cuban government] to guarantee the right to life [and]

[reportadas-se-anade-la-violencia-de-genero/](#)

[326] Interview with a female Cuban activist (2021). Name protected to guarantee the activist's security.

[327] Interview with a female Cuban activist (2021). Name protected to guarantee the activist's security.

physical and psychological integrity of detained LGBTI+ persons, including the rights to their names and to non-discrimination.³²⁸ Furthermore, the Yogyakarta Principles highlight that “all persons deprived of their liberty shall be treated humanely and with the respect due to the dignity inherent to human beings. Sexual orientation and gender identity are fundamental to the dignity of all persons.”³²⁹

- 202.** The IACHR has also issued a pronouncement on the situation in Cuba, including a reminder to the Cuban State that it has the duty to:

*guarantee due process of the detainees within the context analyzed. In particular, the duty to immediately inform detainees [and] their relatives and legal representatives regarding the motives and reasons for the detention. Similarly, it must ensure adequate defense that permits the defendants to have regular contact with their legal representatives and be involved in preparing for their respective hearings.*³³⁰

[328] IACHR, *Violencia contra personas LGBTI* [Violence against LGBTI Persons], OEA/Ser.L/V/II.rev.2, parags. 145-146 (November 12, 2015).

[329] Yogyakarta Principles on the Application of International Human Rights Law With Regard to Sexual Orientation and Gender Identity, 2006. Principle 9.

[330] IACHR, *Comunicado de prensa: la CIDH y sus Relatorías Especiales manifiestan su preocupación por las denuncias de detenciones arbitrarias, incomunicación, falta de defensa y otras violaciones al debido proceso, en el marco de las protestas del 11 de julio en Cuba* [Press release: The IACHR and its Special

d. Independent Journalists

- 203.** Independent journalism played an important role in the coverage and dissemination of the incidents that transpired during the protests on July 11, 2021, and this work confronted the same level of repression as was faced by the participants in the protests. And given its importance during the 11J protests, the government decided to prevent independent journalists from leaving their homes on 15N, whether by home confinement with surveillance by State Security or the performance of ‘acts of repudiation.’ The Special Rapporteur on the Situation of Human Rights Defenders has declared on numerous occasions that journalists and media professionals can be considered human rights defenders when they promote human rights in general through their activities and try to protect the rights of others.³³¹

- 204.** Article 6 of the “Declaration on the Rights and Responsibilities of Individuals, Groups, and Organs of Society to Promote and Protect

Rapporteurs Declare Their Concern Regarding the Denunciations of Arbitrary Detentions, Persons Held Incommunicado, Lack of Defense, and Other Violations to Due Process Within the Context of 11 July in Cuba], August 12, 2021, available at <http://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/211.asp>

[331] Special Rapporteur on the Situation of Human Rights, *Informe de la Relatora Especial sobre la situación de los defensores de los derechos humanos* [Report by the Special Rapporteur on the Situation of Human Rights], parag. 32. Human Rights Council, U.N. Doc. A/HRC/19/55 (December 21, 2011) (by Margaret Sekaggya).

Universally Recognized Human Rights and Fundamental Freedoms” clearly references journalistic work when it establishes that all persons have the right to know, gather, obtain, receive, and possess information about all human rights and to freely publish, impart, or disseminate to third parties opinions, information, and knowledge related to all human rights and fundamental freedoms.³³² That right derives from the right to seek and receive information that is protected by Article 19, paragraph 2 of the International Covenant on Civil and Political Rights.

- 205.** In particular, with regard to rights within the context of protests, United Nations Rapporteurs have affirmed that all persons, including those working in journalism, “have the right to observe and, by extension, audit the meetings.”³³³ The concept

[332] Declaration on the Rights and Responsibilities of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Art. 6, March 8, 1999, U.N. Doc. A/RES/53/144.

[333] Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association and Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, *Informe conjunto del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias acerca de la gestión adecuada de las manifestaciones* [Joint Report by the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association and Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions Regarding the Appropriate Management of Protests], parag. 68, Human Rights Council, U.N. Doc. A/HRC/31/66 (February 4, 2016) (by Maina Kiai

of auditing encapsulates not only the fact of observing a meeting, but also the activity of obtaining, verifying, and immediately utilizing [information] with an eye to addressing human rights problems.³³⁴

- 206.** In turn, the Special Representative of the Secretary-General on the Situation of Human Rights Defenders highlighted the importance of observing protests so as to obtain an impartial and objective account of what transpires, including a description of the behavior of the participants as well as law enforcement agents. In this sense, she declared that “it is a valuable contribution to the effective enjoyment of the right to peaceful assembly. The presence of human rights observers in protests can dissuade human rights violations.”³³⁵ It is thus that these persons’ right to record a meeting is recognized, which includes recording the operation of the maintenance of order. Therefore, it has been established that the confiscation, seizure, and/or destruction of notes and recording material, whether audio or audiovisual, without due process

and Christof Heyns, respectively).

[334] *Ibid.*

[335] Special Representative of the Secretary-General on the Situation of Human Rights Defenders, *Informe de la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos* [Report of the Special Representative of the Secretary-General on the Situation of Human Rights Defenders Regarding the Situation of Human Rights Defenders], parag. 91, General Assembly, U.N. Doc. A/62/225 (August 13, 2007) (by Hina Jilani).

guarantees, should be prohibited and punished.³³⁶

207. The IACHR has noted that in order to hinder the free development of the work of independent journalists, “the Cuban State uses arbitrary detentions – in general, of short duration – internal deportations, summons to police stations, police raids of homes, pressure on relatives, travel restrictions, and seizure of work instruments.”³³⁷ The IACHR Special Rapporteur maintains that the “repression of independent journalists in Cuba constitutes a systematic, long-term practice.”³³⁸

208. Independent journalists in Cuba operate under high levels of harassment on the part of State Security due to their stance of not allying themselves with the message of the Revolution. They

are the targets of slander and oftentimes threatened with imprisonment if they continue their work of informing the public. In the months prior to the social eruption that triggered 11J, the independent press extensively covered the problems battering Cuban society: a failed economy, the treatment of political prisoners, the shortage of foodstuffs and medical products, and, of course, the outbreak of the COVID-19 pandemic which exacerbated the above-mentioned problems and served as the straw that broke the camel’s back and led the populace to take to the streets in protest.

209. Within this context, the independent journalists who covered the events related to 11J were subject to various forms of harassment on the part of State Security, including disappearances, arbitrary detention, threats with prison and/or fines, and house arrest.³³⁹ Independent journalists in the province of Guantánamo reported to Race and Equality that they were detained and fined 3,000 Cuban pesos for recording the protests and later released under house arrest.³⁴⁰ Similarly, the cases of Henry Constantin, Neife Rigau, and Iris

[336] Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association and Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, *Informe conjunto del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias acerca de la gestión adecuada de las manifestaciones* [Joint Report by the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association and Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions Regarding the Appropriate Management of Protests], para. 71, Human Rights Council, U.N. Doc. A/HRC/31/66 (February 4, 2016) (by Maina Kiai and Christof Heyns, respectively).

[337] IACHR, *Situación de los derechos humanos en Cuba* [Situation of Human Rights in Cuba], OEA/Ser.L/V/II. Doc. 2, para. 201, (February 3, 2020).

[338] IACHR Special Rapporteur for Freedom of Expression, *Libertad de expresión en Cuba* [Freedom of Expression in Cuba], OEA/Ser. L/V/II CIDH/RELE/INF. 21/18, para. 83 (December 31, 2018).

[339] ARTICLE 19. *A un mes, ARTICLE 19 denuncia agresiones contra 15 periodistas en el marco de las protestas del 11 de julio* [One Month Later, ARTICLE 19 Denounces Harassment against 15 Journalists Within Context of Protests of 11 July], August 11, 2021, available at <https://articulo19.org/a-un-mes-de-distancia-article-19-denuncia-agresiones-contra-15-periodistas-en-el-marco-de-las-protestas-del-11-de-julio/>

[340] Declarations made to Race and Equality, July 15, 2021.

Mariño, journalists at the independent media outlet *La Hora de Cuba* in the province of Camagüey, were arrested on 11 July and imprisoned and held incommunicado in the Second Police Unit of Camagüey. Days later they were tried and transferred to an investigation center in the Third Unit of the provincial capital,³⁴¹ where they remained several more days under torture, interrogation, and alimentary abuse,³⁴² before being released under the precautionary measure of home confinement and indicted for the crime of “disorderly conduct.”³⁴³ In the face of this response from the Cuban State, journalist Henry Constantín reflected on the reason he was the target of such treatment: “For the government, it is impossible to admit that the majority of Cubans don’t share their politics, that they want change in the country now.”³⁴⁴

[341] Yolanda Huerga, *Trasladan a cárceles a participantes de protestas del 11 de julio* [Participants of Protests on 11 July Transferred to Jails], RADIO TELEVISIÓN MARTÍ, July 18, 2021, available at <https://www.radiotelevisionmarti.com/a/trasladan-a-c%C3%A1rceles-a-participantes-de-protestas-del-11-de-julio/299619.html>

[342] Tomás Cardoso, *Henry Constantín denuncia “farsa judicial” contra miembros de La Hora de Cuba* [Henry Constantín Denounces “Judicial Farce” against Members of La Hora de Cuba], RADIO TELEVISIÓN MARTÍ, July 22, 2021, available at <https://www.radiotelevisionmarti.com/a/henry-constant%C3%ADn-denuncia-farsa-judicial-contra-miembros-de-la-hora-de-cuba/299907.html>

[343] *Liberan a periodistas de la Hora de Cuba* [Journalists from La Hora de Cuba Released], RADIO TELEVISIÓN MARTÍ, July 21, 2021, available at <https://www.radiotelevisionmarti.com/a/henry-constant%C3%ADn-denuncia-farsa-judicial-contra-miembros-de-la-hora-de-cuba/299907.html>

[344] Tomás Cardoso, *Henry Constantín denuncia*

210. Another such case is that of Vladimir Turró Páez of CubaNet, who was interrogated and threatened by State Security due to his independent activism.³⁴⁵ Several international organizations denounced these violations against independent journalists and demanded that regional and international human rights mechanisms take a stance against the abuse they had received. The IACHR requested precautionary measures in favor of the independent journalists of *La Hora de Cuba*.³⁴⁶ In addition, the *Sociedad Interamericana de Prensa* [Inter-American Press Society] (SIP) recently published a report on the situation of independent journalism

“farsa judicial” contra miembros de La Hora de Cuba [Henry Constantín Denounces “Judicial Farce” against Members of La Hora de Cuba], RADIO TELEVISIÓN MARTÍ, July 22, 2021, available at <https://www.radiotelevisionmarti.com/a/henry-constant%C3%ADn-denuncia-farsa-judicial-contra-miembros-de-la-hora-de-cuba/299907.html>

[345] Enrique Díaz Rodríguez, *Reportero de CubaNet: “Dejé bien claro que voy a seguir haciendo periodismo, le guste al régimen o no”* [Enrique Díaz Rodríguez, CubaNet Reporter: “I made it very clear that I will continue my work as a journalist, whether the regime likes it or not”], CUBANET, August 5, 2021, available at <https://www.cubanet.org/noticias/reportero-de-cubanet-vladimir-turro-deje-bien-claro-que-voy-a-seguir-haciendo-periodismo-le-guste-al-regimen-o-no/>

[346] *SIP pide a la Comisión Interamericana “medidas cautelares urgentes” a favor de periodistas cubanos detenidos el 11J* [SIP Asks the Inter-American Commission for “Urgent Precautionary Measures” for Cuban Journalists Detained on 11J], RADIO TELEVISIÓN MARTÍ, July 19, 2021, available at <https://www.radiotelevisionmarti.com/a/sip-pide-a-la-comisi%C3%B3n-interamericana-medidas-cautelares-urgentes-a-favor-de-periodistas-cubanos-detenidos-el-11j/299682.html>

in Cuba. Among its findings is that independent journalism “is traversing its most critical period in decades” due to its vulnerability in serving as a “driver of change”³⁴⁷ in the society, regarding which the Cuban State is fully informed.

- 211.** In the face of the repression meted out as a response to the work of independent journalists within the context of 11J, the IACHR and its Special Rapporteurs issued a communiqué condemning the State repression and use of force. Specifically, they stated therein that they have received a significant number of reports of attacks, detentions, and general harassment, and asked the Cuban government to “protect the right to record and disseminate any incident within the contexts of protests” through the Inter-American legal framework in the realm of freedom of expression,³⁴⁸ given that:

[347] Sociedad Interamericana de Prensa [Inter-American Press Society] (SIP), *Misión virtual de la SIP para evaluar la situación en la isla: Con apoyo popular, periodistas y artistas cubanos resisten la represión* [Virtual Mission of SIP to Evaluate the Situation on the Island: With Popular Support, Cuban Journalists and Artists Resist Repression], available at <https://media.sipiapa.org/adjuntos/185/documentos/001/841/0001841144.pdf>

[348] IACHR, press release: *La CIDH y sus Relatorías Especiales condenan la represión estatal y el uso de la fuerza en el marco de las protestas sociales pacíficas en Cuba, llamando al diálogo sobre los reclamos ciudadanos* [The IACHR and its Special Rapporteurs Condemn State Repression and the Use of Force Within the Context of the Peaceful Social Protests in Cuba and Call for Dialogue on Citizen Demands], IACHR, (July 15, 2021), available at <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/177.asp>

*journalists, cameraperso, photojournalists, and communicators who cover protests are fulfilling a crucial role of gathering and disseminating information of what transpires in social protests, including the actions of security forces, and as such, the authorities must grant them the maximum level of guarantees to enable them to perform their work freely and safely*³⁴⁹.

- 212.** Unfortunately, the response of the government to the 15N protests, which sought to prevent the world from bearing witness to streets filled with protesters and arbitrary detentions performed by the security forces, focused especially on the group comprised of persons who work as independent journalists on the island.
- 213.** Unlike what transpired on 11J, where the protests began spontaneously, because of the public announcement made to convene protests for 15N, the government was able to implement some measures beforehand, such as blocking the work of independent journalists. According to the information gathered by international media and the EFE agency itself, on 13 November those in charge of the *Centro de Prensa Internacional* [International Press Institute] (CPI) in Cuba urgently convened the EFE news agency’s team in Havana that at that time was accredited

[oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/177.asp](https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/177.asp)

[349] *Ibid.*

(three news writers, one photographer, and one TV cameraperson) to inform them that their credentials were being withdrawn, though without advising them whether this measure was temporary or permanent.³⁵⁰ Several hours later, the State decided to restore the credentials of two of the journalists, which the agency's president, Gabriela Cañas, deemed "insufficient," demanding the return of all of the credentials.³⁵¹

- 214.** The Spanish State and High Representative of the European Union for Foreign Affairs Josep Borrell have also demanded the return of the

EFEjournalists' credentials and called on Cuban authorities "to guarantee freedom of expression and freedom of the press," given that the withdrawal of credentials "is one more step toward stopping the flow of open and truthful news from the island," in light of the fact that "foreign correspondents play an important role in the promotion of international understanding and contribute to the openness of societies."³⁵² In this same vein did Pedro Vaca, the IACHR's Special Rapporteur for Freedom of Expression, describe as "capricious and arbitrary" the State's decision to withdraw [the credentials]³⁵³

[350] Cuba retira las credenciales de prensa a los periodistas de Efe en La Habana [Cuba Withdraws Press Credentials from EFE Journalists in Havana], EFE, December 14, 2021, available at <https://www.efe.com/efe/america/sociedad/cuba-retira-las-credenciales-de-prensa-a-los-periodistas-efe-en-la-habana/20000013-4675263>; and Mauricio Vicent, Cuba retira las credenciales de prensa a los periodistas de la agencia Efe en La Habana [Cuba Withdraws Press Credentials from EFE Agency Journalists in Havana], EFE, 13 November, available at <https://elpais.com/internacional/2021-11-14/cuba-retira-las-credenciales-de-prensa-a-los-periodistas-de-efe-en-la-habana.html>

[351] Cuba restituye la acreditación de prensa solo a dos periodistas de Efe [Cuba Restores Press Credentials to Two EFE Journalists], EFE, November 14, 2021, available at <https://www.efe.com/efe/america/mexico/cuba-restituye-la-acreditacion-de-prensa-solo-a-dos-periodistas-efe/50000545-4675540>; and Borrell asegura que la UE sigue trabajando para recuperar las credenciales de los periodistas de Efe [Borrell Assures that the EU Continues to Work on Recuperating Credentials for EFE Journalists], EFE, November 15, 2021, available at <https://www.efe.com/efe/america/mundo/borrell-asegura-que-la-ue-sigue-trabajando-para-recuperar-las-credenciales-de-los-periodistas-efe/20000012-4675864>

[352] La retirada de las acreditaciones a EFE en Cuba provoca una cascada de condenas [Withdrawal of EFE's Credentials in Cuba Provokes a Cascade of Denunciations], EFE, 14 November, available at <https://www.efe.com/efe/america/sociedad/la-retirada-de-las-acreditaciones-a-efe-en-cuba-provoca-una-cascada-condenas/20000013-4675525>; La UE pide aclaraciones a Cuba tras la retirada de credenciales a Efe [EU Requests Clarifications from Cuba Following the Withdrawal of EFE's Credentials], EFE, 14 November, available at <https://www.efe.com/efe/america/mundo/la-ue-pide-aclaraciones-a-cuba-tras-retirada-de-credenciales-efe/20000012-4675508>; El Gobierno, UE, partidos y organizaciones piden a Cuba que deje trabajar a EFE [Government, EU, Parties, and Organizations Ask Cuba to Permit EFE to Work], EFE, November 15, 2021, available at <https://www.efe.com/efe/america/mundo/el-gobierno-ue-partidos-y-organizaciones-piden-a-cuba-que-deje-trabajar-efe/20000012-4675908>; and Borrell asegura que la UE sigue trabajando para recuperar las credenciales de los periodistas de Efe [Borrell Assures that the EU Continues to Work on Recuperating Credentials for EFE Journalists], EFE, November 15, 2021, available at <https://www.efe.com/efe/america/mundo/borrell-asegura-que-la-ue-sigue-trabajando-para-recuperar-las-credenciales-de-los-periodistas-efe/20000012-4675864>

[353] El relator de prensa de la CIDH condena las

while José Miguel Vivanco noted the decision to withdraw the credentials was “consistent with the practices and policies of a dictatorship.”³⁵⁴ Lastly, the International Federation of Journalists (IFJ) and International Press Institute (IPI) demanded a stop to the harassment of the Spanish news agency³⁵⁵ and hostility against journalism in general.³⁵⁶

- 215.** Despite these complaints, by 15N only those two journalists had had their credentials returned to them. Even so, this was not the only maneuver the Cuban government employed to try to prevent the work of independent journalism.

medidas “arbitraria” contra Efe en Cuba [IACHR Press Rapporteur Condemns “Arbitrary” Measures against EFE in Cuba], EFE, November 14, 2021, available at <https://www.efe.com/efe/america/sociedad/el-relator-de-prensa-la-cidh-condena-las-medidas-arbitrarias-contras-efe-en-cuba/20000013-4675613>

[354] *Retirar credenciales a periodistas EFE es “consistente con dictadura”*: HRW [Withdrawing Credentials from EFE Journalists is “Consistent with a Dictatorship”]: HRW], EFE, November 13, 2021, available at <https://www.efe.com/efe/america/mexico/retirar-credenciales-a-periodistas-efe-es-consistente-con-dictadura-hrw/50000545-4675654>

[355] *La FIP pide a Cuba fin del “acoso” a Efe y devolver todas las credenciales* [IFJ Asks Cuba to Cease “Harassment” of EFE and Return All Credentials], EFE, November 14, 2021, available at <https://www.efe.com/efe/america/sociedad/la-fip-pide-a-cuba-fin-del-acoso-efe-y-devolver-todas-las-credenciales/20000013-4677821>

[356] *El IPI denuncia que la “hostilidad” de Cuba dificulta la labor de periodistas* [IPI Denounces the “Hostility” in Cuba that Hinders Journalists’ Work], EFE, November 17, 2021, available at <https://www.efe.com/efe/america/sociedad/el-ipi-denuncia-que-la-hostilidad-de-cuba-dificulta-labor-periodistas/20000013-4677862>

- 216.** The IACHR and its Special Rapporteur for Freedom of Expression expressed their concern regarding the repressive actions of the State and highlighted that journalists from various independent media outlets such as *14yMedio*, *ADN Cuba*, and *La Hora de Cuba* had been summoned to police interrogations during the previous days. The Special Rapporteur for Freedom of Expression noted “the persistent situation of siege by State Security agents of the homes of reporters who actively report on matters of public interest and question the government.”³⁵⁷ The *Instituto Cubano por la Libertad de Expresión y Prensa* [Cuban Institute for Freedom of Expression and the Press] (ICLEP) documented 182 violating acts committed against 69 journalists before, during, and after the “Civic March for Change” convened for 15N.³⁵⁸ Both *CubaNet* as well as *Diario de Cuba* denounced that several of their journalists had awoken on 15N to surveillance, home confinement, acts of harassment, threats, ‘acts of

[357] IACHR, *Comunicado de prensa: La CIDH y su RELE expresan preocupación por acciones represivas del Estado que impidieron realizar la marcha cívica convocada para el 15 de noviembre en Cuba* [Press release: The IACHR and its Special Rapporteur for Freedom of Expression Express Their Concern Regarding Repressive State Actions that Prevented the Civic March Convened for 15 November in Cuba From Being Held], November 29, 2021, available at <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/317.asp>

[358] *182 violaciones contra 69 periodistas por el 15N* [182 Violations against 69 Journalists Due to 15N], ICLEP, November 22, 2021, available at <https://iclep.org/post/182-violaciones-contras-69-periodistas-por-el-15n/>

repudiation,’ and in some cases their Internet connection had been cut.³⁵⁹

- 217.** In particular, reporter María Matienzo from *CubaNet* denounced that her Internet had been cut and that a young man she did not know and who did not live on her block remained on the corner where her house was located.³⁶⁰ Camila Acosta also denounced that she awoke to an operational guard from State Security outside her home.³⁶¹ Abraham Jiménez Enoa declared that he felt “besieged by police and plainclothes agents.”³⁶²

[359] *Actos de repudio, represión y vigilancia a opositores marcaron el 15N* [Acts of Repudiation, Repression, and Surveillance of Opponents Marked 15N], CUBANET, November 15, 2021, available at <https://www.cubanet.org/destacados/15n-vivo-marcha-civica-cambio-viene-llegando-14n-1/> and *Al menos una treintena de actos represivos contra periodistas a raíz del #15NCuba* [At Least 30 Repressive Acts against Journalists Due to #15NCuba], DIARIO DE CUBA, November 18, 2021, available at https://diariodecuba.com/derechos-humanos/1637247017_35633.html

[360] *Actos de repudio, represión y vigilancia a opositores marcaron el 15N*, CUBANET, 15 noviembre 2021, disponible en <https://www.cubanet.org/destacados/15n-vivo-marcha-civica-cambio-viene-llegando-14n-1/>

[361] *Actos de repudio, represión y vigilancia a opositores marcaron el 15N* [Acts of Repudiation, Repression, and Surveillance of Opponents Marked 15N], CUBANET, November 15, 2021, available at <https://www.cubanet.org/destacados/15n-vivo-marcha-civica-cambio-viene-llegando-14n-1/>

[362] Twitter, Abraham Jiménez Enoa, November 14, 2021, available at <https://twitter.com/JimenezEnoa/status/1459856002027855877?s=20> and Twitter, Abraham Jiménez Enoa, November 15, 2021, available at <https://twitter.com/JimenezEnoa/status/1460248787369213956?s=20>

- 218.** Journalist and Executive Director of ICLEP Alberto Corzo and Director of community media outlet *Cocodrilo Callejero* Martha Liset Sánchez remained nine consecutive days under police surveillance without being able to leave their homes, until 21 November.³⁶³ On 18 November, the political police had subjected them to handwriting analysis because of the appearance of posters with the logo ‘*Patria y Vida*’ [Homeland and Life] in the locality where they live, even though they had been constantly surveilled by combined forces from the PNR, political police, and paramilitaries.³⁶⁴ In the same manner, ICLEP denounced that Duznaikis Hernández remained under home confinement and surveillance through 20 November and Ariosmi Ramos through 21 November without being able to leave their homes.³⁶⁵

- 219.** Niober García Fournier and Orelvys Cabrera were threatened as way to dissuade them from participating by fulfilling their work on 15N. In the case of Niober García Fournier, he was threatened by State Security with being tried for “disobedience” if he were to leave his home on 15 November. The

[363] *Actualizado: Represión y asedio contra la prensa en Cuba por el 15N* [Update: Repression and Harassment against the Press in Cuba Due to 15N], ICLEP, November 21, 2021, available at <https://iclep.org/post/represion-contra-la-prensa-en-cuba-por-el-15n/>

[364] *Ibid.*

[365] *Ibid.*

reporter's home is being surveilled.³⁶⁶ Orelvys Cabrera was summoned on 27 October by the National Revolutionary Police to an "interview" to inform him that he would be surveilled by the sector chief 24 hours per day and that they would investigate his block to see what that might turn up about his "social behavior."³⁶⁷ On the night of 11 November they once again summoned him to appear the next day at 10 a.m. at the Provincial State Security headquarters, the Operations Center in the neighborhood [*barriada*] of Versalles, which is the same place where they had held him prisoner following the 11J protests.³⁶⁸ Similar threats were received by Frank Correa and Iliana Hernández.³⁶⁹

220. Diario de Cuba journalist Jorge Enrique Rodríguez Camejo left to go report on the situation in the streets on 15N and, according to his colleagues, from that afternoon he was considered to be disappeared for around five hours.³⁷⁰ Journalist Héctor Luis Valdés Cocho was arbitrarily detained for a few hours on 24 November.³⁷¹

e. Artists

221. For more than three decades the IACHR has declared the existence in Cuba of a practice of close control on the part of governmental authorities that demonstrates "noticeable intolerance of artistic manifestations that might call into question the benefits of the political system or wisdom of the decisions made by the ruling group."³⁷² In its 1983 country report, the IACHR

[366] *Actos de repudio, represión y vigilancia a opositores marcaron el 15N* [Acts of Repudiation, Repression, and Surveillance of Opponents Marked 15N], CUBANET, November 15, 2021, available at <https://www.cubanet.org/destacados/15n-vivo-marcha-civica-cambio-viene-llegando-14n-1/>

[367] *Periodista de CubaNet Orelvys Cabrera es citado por la Seguridad del Estado* [CubaNet Journalist Orelvys Cabrera Summoned by State Security], CUBANET, November 12, 2021, available at <https://www.cubanet.org/noticias/periodista-de-cubanet-orelvys-cabrera-es-citado-por-la-seguridad-del-estado/>

[368] *Ibid.*

[369] *Amenazan a tres periodistas por su presunta participación en las protestas del 15 de noviembre* [Three Journalists Threatened for Their Supposed Participation in the Protests of 15 November], ICLEP, October 29, 2021, available at <https://iclep.org/post/interrogan-y-amenazan-a-tres-periodistas-cubanos/>

[370] *María Matienzo Puerto, Jorge Enrique Rodríguez Camejo: periodista desaparecido* [Jorge Enrique Rodríguez Camejo: Disappeared Journalist], CUBANET, November 15, 2021, available at <https://www.cubanet.org/noticias/jorge-enriquez-rodriguez-camejo-periodista-desaparecido/> and Twitter, María Matienzo Puerto, November 15, 2021, available at <https://twitter.com/menosveinte/status/1460423396769079302?s=21>

[371] *Arrestan a periodista independiente Héctor Luis Valdés en La Habana* [Independent Journalist Héctor Luis Valdés Arrested], ICLEP, November 24, 2021, available at <https://iclep.org/post/arrestan-a-periodista-hector-luis-valdes-cocho/>; and Facebook, Raúl Soublett López, November 24, 2021, available at <https://www.facebook.com/100009386749166/posts/3120207811635413/?d=n>

[372] IACHR, *Situación de los derechos humanos en Cuba* [Situation of Human Rights in Cuba], OEA/Ser.L/V/I. Doc. 2, parag. 211, (February 3, 2020).

revealed it had learned that large numbers of artists had been pressured in various ways (among others, prison, prohibited from leaving the country, [and] refused the ability to perform certain types of work appropriate to their capacities and skills) in order to prevent them from expressing their legitimate social and political concerns through art.³⁷³ Furthermore, in that same report the IACHR noted that the “result of this practice of intolerance is the fact of having removed all traces of criticism of the government or system from Cuban artistic culture.”³⁷⁴

- 222.** As the IACHR warned, Decree No. 349 of the Council of Ministers, dated April 20, 2018, lays out sanctions for “incompliance with cultural policy.”³⁷⁵ This regulation establishes, in general terms, that in order to work professionally, Cuban artists must be qualified by the State. For the IACHR, in this manner:

only artists who are registered with the Registro del Creador de las Artes Plásticas y Aplicadas [Registry of Creators of Plastic and Applied Arts] can

*make presentations, provide services in public, or have sales locations; it forces artists to establish linkages with a State institution and for the latter to authorize the content of events. The State civil servants are the ones in charge of deciding when an artistic work does not comply with ethical [or] cultural values or other broad criteria.*³⁷⁶

- 223.** Artists and musicians, many of them Afro-descendants who practice art and music as an Afro-Latin inheritance such as hip-hop, fulfill a key role in human rights activism and democracy in Cuba and are some of the most well-known figures in political opposition. The Cuban State inflicts significant repression specifically against artists and their organizations. After the events of 11 July, several artists and musicians were detained, tried, and sentenced as retaliation for their role in encouraging the protests and to remove them from the public eye.

- 224.** Photographer Anyelo Troya, known for his collaboration in the video *Patria y Vida* [Homeland and Life], was sentenced to a year in prison for disorderly conduct in a summary trial wherein 12 other persons were tried and received the same sentence.³⁷⁷ During

[373] [Chapter V. Right to Freedom of Opinion, Expression, Dissemination, and Investigation] IACHR. *Situación de los derechos humanos en Cuba* [Situation of Human Rights in Cuba]. Seventh Report, OEA/Ser.L/V/II.61. Doc. 29 rev. 1, para. 34, (October 4, 1983).

[374] *Ibid.*, para. 35.

[375] [Chap. IV. B: Cuba], IACHR, *Informe Anual de la Comisión Interamericana de Derechos Humanos 2018* [2018 Annual Report of the Inter-American Commission on Human Rights], OEA/Ser.L/V/II. Doc. 30, para. 75, (March 17, 2019).

[376] *Ibid.*

[377] *Condenado a un año de prisión el fotógrafo Anyelo Troya por “desorden público”* [Photographer Anyelo Troya Sentenced to One Year in Prison for “Disorderly Conduct”], 14YMEDIO, July 21, 2021, available at https://www.14ymedio.com/cuba/Condenado-fotografo-Anyelo-Troya-desorden-publico-Cuba_0_3134686509.html

his trial, Troya was not permitted direct communication with his lawyer, one of the many violations to due process that have been documented.³⁷⁸ In another summary trial executed without the presence of defense lawyers, the artist, actor, and poet Alexander Diego Gil was sentenced to 10 months in prison.³⁷⁹ Diego Gil and Troya have been released from prison during the appeals processes, though their unjust sentences remain in effect.³⁸⁰

225. Musician and DJ Omar Planos was detained on 11 July and although the

[378] *Valoración de Cubalex sobre el caso de Anyelo Troya, realizador condenado a un año de cárcel* [Cubalex Assessment of the Case of Anyelo Troya, Producer Sentenced to One Year in Prison], CUBALEX, July 23, 2021, available at <https://cubalex.org/2021/07/23/valoracion-de-cubalex-sobre-el-caso-de-anyelo-troya-realizador-condenado-a-un-ano-de-carcel/>

[379] *Condenan a 10 meses de cárcel al poeta y actor Alexander Diego Gil, detenido en las protestas del 11J en Cuba* [Poet and Actor Alexander Diego Gil Sentenced to 10 Months in Jail, After Being Detained in the 11J Protests in Cuba], CIBERCUBA, July 23, 2021, available at <https://www.cibercuba.com/noticias/2021-07-23-u1-e199894-s27061-condenan-10-meses-carcel-al-poeta-actor-alexander-diego-gil>

[380] Paula Gamboa, *Liberan al artista Alexander Diego Gil, en espera de proceso de apelación* [Artist Alexander Diego Gil Released As He Awaits Appeals Process], ADN CUBA, July 25, 2021, available at <https://adncuba.com/noticias-de-cuba/actualidad/liberan-al-artista-alexander-diego-gil>; and *Liberan a fotógrafo cubano Anyelo Troya tras haber sido condenado a un año por participar en protestas* [Cuban Photographer Anyelo Troya Released After Being Sentenced to One Year for Participating in Protests], CIBERCUBA, July 25, 2021, available at <https://www.cibercuba.com/noticias/2021-07-25-u207888-e207888-s27061-liberan-fotografo-cubano-anyelo-troya-tras-haber-sido>

authorities told his family he “was well,” they refused to reveal his whereabouts or permit him to communicate with his family for several days. For this reason, independent sources considered him a victim of forced disappearance.³⁸¹ Planos has since been released from prison.³⁸²

226. Artist Luis Manuel Otero Alcántara was detained on 11 July and charged with “threatening/attacking” [*atentado*], “resistance,” and “contempt of authority” [*desacato*], despite testimonies given that he was detained prior to arriving at the protests.³⁸³ Otero Alcántara was transferred to a maximum-security prison, where his contact with the outside world is very limited.³⁸⁴ He has been detained for

[381] Katia Monteagudo, *Rubén Blades exige libertad para el músico Omar Planos, desaparecido tras las protestas en Cuba* [Rubén Blades Urges Release of Musician Omar Planos, Disappeared Following Protests in Cuba], CIBERCUBA, July 15, 2021, available at <https://www.cibercuba.com/noticias/2021-07-16-u208227-e208227-s27061-ruben-blades-exige-libertad-musico-omar-planos>

[382] Profile: Omar Odin Planos Cordovi, CUBAMISSING.COM, available at <https://cubamissing.com/>

[383] *Régimen procesará a Luis Manuel Otero por atentado, resistencia y desacato* [Regime Will Try Luis Manuel Otero for Threats/Attacks, Resistance, and Contempt of Authority], CUBANET, July 16, 2021, available at <https://www.cubanet.org/noticias/regimen-procesara-a-luis-manuel-otero-por-atentado-resistencia-y-desacato/>. See also: *In Cuba, Hundreds Remain Behind Bars After July Protests*, REUTERS, August 13, 2021, available at <https://www.nbcnews.com/news/latino/cuba-hundreds-remain-bars-july-protests-rcna1669>

[384] *El artista cubano Luis Manuel Otero Alcántara,*

more than four months.³⁸⁵

227. Poet and activist Amaury Pacheco Ruiz, another prominent member of MSI, was also detained on 11 July. He was released after approximately 24 hours.³⁸⁶

228. Richard Adrián Zamora Brito, a rapper known as “El Radikal,” was arrested on 12 July and charged with “disorderly conduct,” “armed robbery,” and “disturbances” for his peaceful participation in the protests the previous day.³⁸⁷ During his more than

40 days in prison, he caught COVID-19; his family was never informed by the authorities, even though he ran the risk of being tried in a military court.³⁸⁸ Nor did his family receive written or confirmed information regarding his legal situation.³⁸⁹ Zamora was released from prison on 10 August.³⁹⁰

f. Young People

229. Young people played a leading role in the protests on 11 July. It was young people from different political [and] religious positions [and] ethnic and racial identities who took to the streets to demonstrate their displeasure with the way in which the government has managed matters that affect them and their families.³⁹¹ They want change: they are not only thinking about

enviado a una prisión de máxima seguridad fuera de La Habana [Cuban Artist Luis Manuel Otero Alcántara Sent to a Maximum-Security Prison Outside of Havana], DIARIO DE CUBA, July 22, 2021, available at https://diariodecuba.com/derechos-humanos/1626866772_32821.html; and *Kaite Monteagudo, Exigen fe de vida de Luis Manuel Otero, en prisión de máxima seguridad en Guanajay* [Proof of Life Sought for Luis Manuel Otero, In a Maximum-Security Prison in Guanajay], CIBERCUBA, July 26, 2021, available at <https://www.cibercuba.com/noticias/2021-07-26-u208227-e208227-s27061-exigen-fe-vida-luis-manuel-otero-prision-maxima-seguridad>

[385] Mónica Baró Sánchez, *Luis Manuel Otero recibe visita de su familia en prisión de máxima seguridad* [Luis Manuel Otero Visited by His Family in Maximum-Security Prison], CIBERCUBA, November 20, 2021, available at <https://www.cibercuba.com/noticias/2021-11-20-u199955-e199955-s27061-luis-manuel-otero-recibe-visita-su-familia-prision-maxima>

[386] Craig Melvin, *Cuban Activist Describes Being Detained Nearly 24 Hours During Protests*, MSNBC, August 2, 2021, available at <https://www.msnbc.com/craig-melvin/watch/cuban-activist-describes-being-detained-nearly-24-hours-during-protests-117773381773>

[387] Maykel González, *Liberan al rapero cubano El Radikal, preso por participar en protestas el 11J*

[Cuban Rapper El Radikal Released From Prison for Participating in 11J Protests], CIBERCUBA, August 20, 2021, available at <https://www.cibercuba.com/noticias/2021-08-21-u185759-e185759-s27061-liberan-al-rapero-cubano-radikal-presos-participar>

[388] *Ibid.*

[389] *El rapero ‘El Radikal’ continúa en prisión bajo una investigación de la Fiscalía Militar* [The Rapper ‘El Radikal’ Still Imprisoned Under Investigation by Office of the Military Prosecutor], DIARIO DE CUBA, August 10, 2021, available at https://diariodecuba.com/derechos-humanos/1628607671_33297.html

[390] Cuban Rapper El Radikal Released On Bail, PEN INTERNATIONAL, August 26, 2021, available at <https://pen.org/press-release/cuban-rapper-el-radikal-released-on-bail/>

[391] *Testimonio de Yúnior García Aguilera* [Testimony of Yúnior García Aguilera], PERIODISMO DE BARRIO, July 16, 2021, available at <https://www.facebook.com/930334450364889/posts/4443952459003053/?app=fbl>

immediate needs, such as access to foodstuffs and medicine, but are also calling for changes in the system so as to permit them to have better life plans for themselves and their communities.³⁹² This protest space where young people from various origins and beliefs converged. There were even young people who identified in the protests as socialists and even so, were captured and their rights violated. Their proclamation is “socialism yes, repression no.”³⁹³

- 230.** A new generation of people were seen in the streets who do not feel the same commitment to the Revolution. Some young people mentioned in interviews,³⁹⁴ “my grandmother belongs to another generation. She suffers from the same shortages as everyone, but to some degree she is still committed. But we aren’t.” A 20-year-old woman who shall remain anonymous explains that she does not fear expressing what she feels and thinks about the Cuban government: “Our parents taught us to speak in hushed voices, but that’s over now.” She considers herself to be part

of a generation that is “nonbelievers, disappointed, battered by the crisis, that doesn’t feel we owe anything to the Revolution,” or that they can have a decent life in their country through the fruit of their labor. Another young woman who shall also remain anonymous says that what they have known in recent years in her country is poverty, inequality, and a desire to leave their country ever faster. All of these young people feel they owe nothing to the Revolution and are in urgent need of change.

- 231.** Young people played a leading role, not only through their participation in the protests, but also because they were essential in the transmission of information over social media in both protests,³⁹⁵ which enabled people to know what was happening and report on persons who were detained and disappeared.

- 232.** The protests had important effects on the young people who took to the streets to protest. Young people were the target of the violence that took place in the streets. They were beaten because they were in the protests, though also because they were near the places where people were converging. According to Cubalex, 44 people under the age of 18 were arrested during the 11J protests.³⁹⁶ They and many others were

[392] *Los detenidos del 11J en Cuba* [The 11J Detainees in Cuba], PERIODISMO DE BARRIO, July 16, 2021, available at <https://www.periodismodebarrio.org/2021/07/los-detenidos-del-11j-en-cuba/>

[393] Interview with an anonymous activist on the island.

[394] Mauricio Vicent, *La juventud cubana toma la palabra* [Cuban Youth Speak], EL PAÍS, August 2, 2021, available at <https://elpais.com/internacional/2021-08-01/la-juventud-cubana-toma-la-palabra.html>

[395] *Ibid.*

[396] Cubalex, *Listado de desaparecidos Cuba* [List of the Disappeared in Cuba], available at

taken to jails where the treatment they received was inhumane and degrading, including beatings, overcrowding, [and] being deprived of water, food, and medicine.³⁹⁷ It took several days for their families to receive news regarding their whereabouts; as such, anguish prevailed in those young people's homes.³⁹⁸ By 18 November, according to the information gathered by *Justicia 11J* [11J Justice], 15 people under the age of 18 were still detained.³⁹⁹

233. The legal proceedings were performed without any form of guarantees, and in most cases without the accompaniment of legal counsel.⁴⁰⁰ The pressure exerted by the populace enabled several of the young people to be released, while others received sentences for propagating an epidemic, disorderly conduct, contempt of authority, and

vandalism.⁴⁰¹ According to the data contributed by *Justicia 11J*, 29 of the minors who were detained have been released from prison.⁴⁰²

234. Amanda Hernández Celaya, Gabriela Zequeira, and Katherine Martín, all 17 years old, were tried in summary trials; the former was acquitted, while the other two were sentenced to one year in prison, a measure that was

<https://docs.google.com/spreadsheets/d/1-38omFpJdDiKTSBoUOg19tv2nJxtNRS3-2HfVUUwtSw/edit#gid=0>

[397] *Se ha hecho caso omiso a nuestros reclamos: un universitario el 11 de julio* [Our Demands Have Been Ignored: A University Student on 11 July], LA JOVEN CUBA, August 11, 2021, available at <https://joventucuba.com/caso-omiso-reclamos-11-de-julio/amp/>

[398] *Ibid.*

[399] Facebook, *Justicia 11J*, November 18, 2021, available at <https://www.facebook.com/justicia11j/posts/193188609634182>

[400] *Protestas en Cuba: condenan a una adolescente de 17 años a 8 meses de prisión por las manifestaciones en la isla* [Protests in Cuba: A 17-year-old Adolescent Sentenced to 8 Months in Prison for Protests on the Island], BBC NEWS, July 24, 2021, available at <https://www.bbc.com/mundo/noticias-america-latina-57952376>

[401] Cynthia de la Cantera Toranzo, *Régimen encarcela a menor de 17 años y le niega medicamentos* [Regime Imprisons 17-Year-Old Minor and Refuses Him Medicine], CUBANET, August 22, 2021, available at <https://www.cubanet.org/noticias/regimen-encarcela-a-menor-de-17-anos-jonathan-y-le-niega-medicamentos/>; Paula Gamboa, *Tribunal Supremo rechaza petición a favor de hermanas detenidas luego del 11J* [Supreme Court Rejects Petition On Behalf of Sisters Detained Following 11J], ADNCUBA, August 22, 2021, available at <https://adncuba.com/noticias-de-cuba/derechos-humanos/rechazan-peticion-favor-de-detenidas>; Claudia Montero, *Tribunal Provincial de La Habana ratifica la condena de Gabriela Zequeira Hernández* [Provincial Court of Havana Ratifies the Sentence of Gabriela Zequeira Hernández], CUBANET, August 18, 2021, available at <https://www.cubanet.org/destacados/tribunal-provincial-de-la-habana-ratifica-la-condena-de-gabriela-zequeira-hernandez>; [and] Lázaro Javier Chirino, *Adolescente de 17 años condenada a un año de cárcel en Cuba por las protestas del 11J* [17-Year-Old Adolescent Sentenced to One Year in Prison in Cuba for 11J Protests], CIBERCUBA, August 10, 2021, available at <https://www.cibercuba.com/noticias/2021-08-10-u199482-e199482-s27061-adolescente-17-anos-condenada-ano-carcel-cuba-protestas> See also: <https://www.youtube.com/watch?v=K4GC35dvTlw> and <https://twitter.com/menosveinte/status/1427040531771805701/photo/1> and <https://twitter.com/menosveinte/status/1427040531771805701/photo/1>

[402] Facebook, *Justicia 11J*, November 18, 2021, available at <https://www.facebook.com/justicia11j/posts/193188609634182>

changed on appeal to prison labor.⁴⁰³ In addition, nine young people await trial under precautionary measures of freedom on bail or home confinement with prosecutor petitions of between four and 18 years imprisonment.⁴⁰⁴

and did not have the chance to prove their innocence. After the protests, some young people continued being harassed by the police in their homes and constantly pursued and surveilled.

235. Furthermore, there were also denunciations that several young people were recruited to join the army and repress the protesters.⁴⁰⁵

236. On November 19, 2021, the United Nations Children's Fund, better known as UNICEF, declared its concern regarding the cases of detained boys and girls reported in Cuba and called on Cuban authorities to provide additional verified information.⁴⁰⁶

237. The acts described above entail the violation of young people's human rights, given they were subjected to inhumane treatment during the protests and detention. They were detained arbitrarily and not assured due judicial process. They were tried without the existence of any proof that they had committed any crime

[403] *Ibid.*

[404] *Ibid.*

[405] *El gobierno cubano obliga a jóvenes a sumarse a los grupos de represión* [Cuban Government Forces Young People to Join Repression Groups], CUBALEX, July 13, 2021, available at <https://cubalex.org/2021/07/13/el-gobierno-cubano-obliga-a-jovenes-a-sumarse-a-los-grupos-de-represion/>

[406] Twitter, UNICEF, 19 noviembre 2021, available at <https://twitter.com/uniceflac/status/1461790800371765248>

06.

Conclusions



Photograph: "Detained" - Daniel González Oliva

There is a systematic and generalized pattern in Cuba of arbitrary detentions followed by forced disappearances of short duration, torture, and abuse that are employed as methods for intimidating persons who criticize the government. This pattern became more acute during the protests that began on 11 July, where a large number of people were imprisoned for deciding to exercise their right to peacefully protest.

The mass detentions of persons during the protests that began on 11 July, together with the pattern of forced disappearances, torture, and abuse, reflect an inobservance with the international obligations assumed by Cuba in the area of human rights. According to international human rights law, States must be the guarantors of persons under their custody, which entails adopting the necessary measures for guaranteeing their rights to life and personal integrity, including the obligation to prevent arbitrary detentions, forced disappearances, and torture.

By refusing to provide information to relatives and persons with a legitimate interest in the whereabouts of imprisoned persons, in addition to making communication with them impossible, the Cuban State violates rights 1, 2, 18, and 20 of the International Convention for the Protection of All Persons against Enforced Disappearance and incurs in conduct that violates internationally protected human rights such as personal integrity.

Due to the inefficacy of the judicial system and regulatory barriers to filing a habeas corpus appeal, the authorities contravene Article 12 of the International Convention for the Protection of All Persons against Enforced Disappearance. In the same manner, the lack of information regarding the places where persons are imprisoned and lack of records regarding their detention violate Article 17 of the aforementioned international instrument, of which Cuba is a State Party.

07.

Recommendations



Photograph: "Protesters" - Mauricio Mendoza

To the State of Cuba

Ratify the International Covenant on Civil and Political Rights and its Optional Protocol, the American Convention on Human Rights, and all other international human rights protection instruments, both within the purview of the United Nations as well as the Inter-American System.

Adapt criminal legislation to international human rights standards, including classifying forced disappearance as an autonomous crime.

Adopt the necessary measures for incorporating the recommendations made by United Nations Treaty Bodies, including the Observations of the Committee on Enforced Disappearance (2017 Final Observations) and Committee against Torture (2012 Final Observations).

Abstain from arbitrarily imprisoning persons who exercise their rights to freedom of expression, association, assembly, and peaceful protest.

Guarantee the rights of imprisoned persons, including the rights to life, personal integrity, judicial guarantees, and communication with relatives and technical defense counsel in compliance with international human rights standards.

Guarantee the independence and impartiality of Cuban authorities in all processes in which decisions are made regarding the rights of persons.

Investigate and punish human rights violations perpetrated by national authorities.

Adopt measures for preventing human rights violations in Cuba, including regulatory adjustment and adoption of inclusive, transparent, and participatory public policies.

Immediately and unconditionally release persons who have been imprisoned for exercising their rights to freedom of expression, association, assembly, and peaceful protest.

Facilitate a visit to the country by the United Nations Special Procedures.

Cease the constant repression, intimidation, and harassment of journalists, camerapersons, reporters, and communicators who perform the work of covering events and disseminating information freely, according to regional and international principles of freedom of expression.

Provide training on LGBTI+ standards to the security and penitentiary forces.

Urge the security and penitentiary forces to respect the gender identity of trans and non-binary persons and address them using their 'social names' [as opposed to their legal names].

Respect and guarantee the right to protest, assembly, and freedom of expression and opinion, in particular for young people, Afro-Cubans, women, and the LGBTI+ community, including on social media and new technologies.

Take measures to eradicate physical, symbolic, and psychological violence against women, especially women who are mothers.

Provide detailed information regarding the whereabouts of persons detained within the context of 11J and detained women who are mothers.

Release all persons who have been detained for having exercised their rights to protest and freedom of expression.

Guarantee fair trials for persons who were detained for exercising their right to protest within the context of 11J.

Respect and listen to the requests of the Cuban people, especially those of women.

Cease the practice of surveillance and harassment against peaceful activists and opponents.

Amend the Law on Criminal Procedure so as to ensure that all persons charged with a crime have access to a defense lawyer from the moment they are detained.

Do not proceed with trials when the defendants are not represented by a defense lawyer.

Permit defendants and their defense lawyers to have access to the defendants' criminal file with sufficient time in advance of the trial.

Cease harassing the lawyers who represent persons who express opinions against the government.

To the United Nations System

Safeguard compliance with the recommendations made by Treaty Bodies within the framework of the Periodic Reviews of Cuba and Special Procedures.

Provide technical assistance to the State in the formulation of laws and public policies, with an eye to guaranteeing compliance with international human rights standards.

Foster dialogue with the Cuban State to coordinate visits to the country by United Nations Special Procedures.

Press the Cuban government to cease its repression and harassment against independent journalists.

To the Inter-American Commission on Human Rights

Monitor the situation of human rights in Cuba and include the country in Chapter IV of its Annual Report.

Provide the necessary monitoring of cases of human rights violations committed against independent journalists and grant protective measures in the event their lives are in danger.

To Cuban Civil Society

Systematically provide detailed documentation on violations committed by the Cuban State of the rights of persons charged with crimes and share information on these violations with the outside world.

Continue denouncing violations of the right to an impartial trial and the right to defense before regional and international human rights mechanisms.

Continue accompanying and denouncing cases of violence against women within the context of protests.

Come together, especially women, in a solidary effort to protect and accompany women who have been victims of repression at the hands of the Cuban police.

To the International Community

Continue to monitor independent media on the island to ensure that information on what transpires in Cuba continues to leave the country.

International organizations that defend boys', girls', and young people's human rights should strictly monitor their detention in Cuba.

Furthermore, they should take a more leading role in sanctioning and condemning these acts by the Cuban government.

Strengthen social organizations on the island to enable strict reporting on the registration and monitoring of boys, girls, and young people detained in Cuba.

Urge the Cuban State to respect differential due process for minors.

Describe and condemn the various forms of gender-based violence which the Cuban State employs against women.

Accompany the cases of emotional and psychological gender-based violence against women who are mothers within the context of the 11J protests.

Evaluate in what manners the Cuban State has failed to comply with treaties such as CEDAW by physically and psychologically abusing women who protest or who have relatives who have protested.

Regional women's organizations should provide solidary support to Cuban women's protests, so as to make internationally known their realities and demands of the State.

Continue providing international attention to persons charged in summary trials and exerting pressure on the Cuban State to respect the right to defense.

Strengthen the capacity of independent Cuban civil society organizations to defend Cubans' human rights.

Denounce the human rights violations perpetrated by the State to human rights protection bodies.

HOW TO UNDERSTAND JULY 11 AND NOVEMBER 15 IN LIGHT OF INTERNATIONAL HUMAN RIGHTS STANDARDS

An Intersectional Focus

