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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 57/04; Petitions 771/03, 841/03
Session: Hundred Twenty-First Regular Session (11 – 29 October 2004)
Title/Style of Cause: Oscar Elias Biscet, Jose Daniel Ferrer Garcia, Jose Luis Gonzalez Tanquero, Jose Luis Garcia Paneque, Juan Roberto de Miranda Hernandez, Oscar Manuel Espinosa Chepe, Martha Beatriz Roque Cabello, Raul Ramon Rivero Castaneda, Jose Gabriel Ramon Castillo, Pablo Pacheco Avila, Ricardo Severino Gonzalez Alonso, Carmelo Agustin Diaz Fernandez, Horacio Julio Pina Borrego, Osvaldo Alfonso Valdes, Pedro Pablo Álvarez Ramos, Julio Cesar Galvez Rodriguez, Edel Jose Garcia Diaz, Marcelo Cano Rodriguez, Ángel Moya Acosta, Manuel Vazquez Portal, Juan Adolfo Fernandez Sainz, Nelson Moline Espino, Eduardo Diaz Fleitas, Fidel Suarez Cruz, Jorge Olivera Castillo, Orlando Fundora Alvarez, Efren Fernandez Fernandez, Victor Rolando Arroyo Carmona, Hector Maseda Gutierrez, Mijail Barzaga Lugo, Nelson Alberto Aguiar Ramirez, Antonio Ramon Diaz Sanchez, Regis Iglesias Ramirez, Hector Palacios Ruiz, Marcelo Lopez Banobre, Alfredo Felipe Fuentes, Hector Raul Valle Hernandez, Guido Sigler Amaya, Ariel Sigler Amaya, Felix Navarro Rodriguez, Librado Linares Garcia, Lester Gonzalez Penton, Omar Pernet Hernandez, Antonio A. Villareal Acosta, Pedro Argüelles Moran, Alejandro Gonzalez Raga, Mario Enrique Mayo Hernandez, Alfredo Rodolfo Dominguez Batista, Reynaldo Miguel Labrada Pena, Julio Antonio Valdes Guevara, Luis Milan Fernandez, Alexis Rodriguez Fernandez, Leonel Grave de Peralta, Juan Carlos Herrera Acosta, Arnaldo Ramos Lauzerique, Miguel Valdes Tamayo, Miguel Galvan Gutierrez, Jose Miguel Martinez Hernandez, Jose Ubaldo Izquierdo Hernandez, Ivan Fernandez Carrillo, Diosdado Gonzalez Marrero, Margarito Broche Espinosa, Arturo Perez de Alejo Rodriguez, Omar Ruiz Hernandez, Blas Giraldo Reyes Rodriguez, Alfredo Manuel Pulido Lopez, Normando Hernandez Gonzalez, Luis Enrique Ferrer Garcia, Prospero Gainza Agüero, Claro Sanchez Altarriba, Ricardo Enrique Silva Gual, Jesus Mustafa Felipe, Manuel Ubals Gonzalez, Fabio Prieto Llorente, Omar Rodriguez Saludes, Orlando Zapata Tamayo, Rafael Mollet Leyva, Miguel Sigler Amaya and Cruz Delia Aguilar Mora v. Cuba

Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez Trejo, Florentin Melendez.

Dated: 14 October 2004
Citation: Elias Biscet v. Cuba, Petition 771/03, Inter-Am. C.H.R., Report No. 57/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)

Represented by: APPLICANTS: the Cuban American Bar Association and the Cuban Democratic Board

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I. SUMMARY

1. On September 22, 2003 and October 9, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission,” the “Inter-American Commission,” or the “IACHR”) received two petitions filed by the Cuban American Bar Association and the Cuban Democratic Board (hereinafter “the petitioners”). In these petitions, the Republic of Cuba (hereinafter “Cuba” or the “State”) is held liable as a result of the State’s failure to comply with its obligations as set forth in Article I (Right to life, liberty and personal security), Article II (Right to equality before law), Article V (Right to protection of honor, personal reputation and private and family life), Article VI (Right to a family and to protection thereof), Article IX (Right to inviolability of the home), Article XI (Right to the preservation of health and to well-being), Article XVII (Right to recognition of juridical personality and civil rights), Article XVIII (Right to a fair trial), Article XXI (Right of assembly), Article XXV (Right to protection from arbitrary arrest), Article XXVI (Right to due process of law) of the American Declaration of the Rights and Duties of Man[FN1] (hereinafter “the Declaration” or “American Declaration”) to the detriment of a group of dissidents and opponents of the Cuban government (hereinafter the “dissidents” or the “alleged victims”).

[FN1] Approved by the Ninth International Conference of American States in Bogotá, Colombia, 1948.

2. In the course of the internal processing of the petitions, the Commission, exercising the power vested in it by Article 29(1)(d) of its Rules of Procedure in force, proceeded to bring together and process these petitions in one single case file. The petitioners were apprised of this decision, in conformity with Article 29(1)(e) of the above-mentioned Rules of Procedure.

3. From the start of the processing of the present case, the State has not responded to the requests for information made by the Commission regarding the admissibility of the matter. Therefore, the Commission, on the basis of an exhaustive review of the case’s justification in fact and law, and in accordance with Article 39 of its Rules of Procedure,[FN2] considers that the petition complies with the formal requirements of admissibility as stipulated in Articles 28 and 37 of its Rules of Procedure, and it concludes that the present case is admissible. The Commission likewise resolves to publish the present report in the Annual Report of the General Assembly of the OAS and to notify both parties.

[FN2] Article 39 provides that “[t]he facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the maximum period set by the Commission under the provisions of Article 38 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion.”

II. PROCEEDINGS BEFORE THE COMMISSION

4. On February 18, 2004, the IACHR began processing the petition identified as No. 771/2003, pursuant to provisions of the Rules of Procedure in force since May 1, 2001, and forwarded the relevant parts of the denunciation to the State, with a time-limit of two months to submit relevant observations and information on the facts that were the subject of said communication. To date, the State has not presented any of the observations requested by the Commission.

III. POSITION OF THE PARTIES

A. Position of the petitioners

1. Regarding the facts

5. The petitioners claim that between March and April 2003, the Cuban Government conducted a wave of repression against human rights activists and independent journalists. More than 75 dissidents and opponents of the government were arrested and jailed. They point out that the alleged victims were the targets of violent arrests by authorities and that, in many cases, these arrests took place in the presence of their families. They also add that those arrested were subjected to humiliating searches of their homes for the purpose of intimidating their families.

6. The petitioners argue that those arrested were charged with “subversive activities,” “counter-revolutionary activities” and “activities against the State,” as well as with the dissemination of illicit propaganda and information, without specifying the constituent elements of each alleged infringement of the law.

7. The petitioners point out that, 48 hours before their trials started, the State announced that those arrested would be given summary trials that would take place between April 3 and 6, 2003. The alleged victims would therefore have had only hours to prepare their defense; moreover, they were not assisted by defense attorneys of their choice, because their attorneys were appointed by the State and were prevented from communicating freely and confidentially with them.

8. The petitioners indicate that, for a five-day period, from April 3 to 7, 2003, the summary trials were held and that, in the course of these trials, reporters, diplomats, and the general public were barred from entering. Only the closest relatives of those being tried and members of the Communist Party were allowed to attend the trials. No trial lasted more than one day.

9. The petitioners add that every single trial led to a conviction, with sentences ranging from 6 to 28 years imprisonment. After the sentences were given, the convicted were sent to prisons far from their place of residence so as to make it difficult for their relatives to visit them. They point out that most of the convicted are in solitary confinement and that prison authorities are denying them access to visits and medical care. Many of those arrested suffer from illnesses that

require special care, which has been denied to them by the authorities. At present, dissidents are being subject to what is referred to as “regime of maximum harshness” which consists of punishment cells, visits by relatives every three months, and in many cases the denial of medical and religious care.

i. Specific situation of the alleged victims

10. On the basis of the information supplied by the petitioners, the following can said:

Oscar Elías Biscet. Sentenced to 25 years imprisonment. Physician. Born on July 20, 1961. President of the Lawton Association of Human Rights (Asociación Lawton de Derechos Humanos). Held in the prison at kilometer 5½ in Pinar del Río. Regarding the conditions of his imprisonment and health, the petitioners indicate that at present he is suffering from high blood pressure and gastrointestinal disorders. He has lost several teeth. He has been in solitary confinement since April 23, 2003 because he refuses to wear the prison’s uniform.

José Daniel Ferrer García. Date of arrest: March 2003. Sentenced to 25 years imprisonment on April 7, 2003. Member of the Christian Liberation Movement (Movimiento Cristiano de Liberación) in Santiago de Cuba. Born on July 29, 1970. He is being held in the prison at kilometer 5½ in Pinar del Río, which is at the opposite end of the island of Cuba from where his family lives. As for his prison and health conditions, the petitioners claim that at present he is in solitary confinement and that he has been suffering from amebic dysentery because of the poor health conditions of his cell. Authorities have denied him medical care.

José Luis González Tanquero. Date of arrest: March 19, 2003. Sentenced to 20 years imprisonment on April 4, 2003. President of the Carlos Manuel de Céspedes Independentist Movement (Movimiento Independentista Carlos Manuel de Céspedes) in Las Tunas. Born on June 3, 1970. Mr. González Tanquero, before his trial, only met once with his defense attorney, who at the time had not yet seen his case file. Under Cuban legislation, in a similar case, the defense attorney should have at least 10 days to examine the case file. In the present case, the defense attorney was only allowed to have access to the case file the night before the trial started. He is held in solitary confinement in the prison of Guanajay, in the province of Havana.

José Luis García Paneque. Date of arrest: March 18, 2003. Sentenced to 24 years imprisonment on April 4, 2003, although the prosecutor had requested a 20-year penalty. Member of the Freedom Press Agency (Agencia de Prensa Libertad) and a physician by profession. Born on July 24, 1965. He is held in solitary confinement in the prison of the Central Highway at kilometer 2½ in Villa Clara. Dr. García Paneque, before his trial, only met once with his defense attorney, who at the time of the meeting still had not seen his case file. Under Cuban legislation, in a similar case, the defense attorney should have at least 10 days to study the case file. In the present case, the defense attorney was only allowed access to the case file the night before the trial began. He suffers from asthma and high blood pressure, and he has been denied adequate medical care.

Juan Roberto de Miranda Hernández. Sentenced to 20 years imprisonment on April 5, 2003. Member of the Independent Teachers Association (Colegio de Pedagogos Independientes). Born

on March 30, 1946. He is held in the prison of Agüica in Matanzas. Since his trial, he has had a clinical pattern of high blood pressure and had to be taken to hospital. It was only several days later that his family was able to talk to him for 15 minutes. After being transferred to prison, without the knowledge of his family, he suffered a heart attack, after acute chest pains.

Oscar Manuel Espinosa Chepe. Date of arrest: March 2003. Sentenced to 20 years imprisonment on April 6, 2003. This sentence was upheld by the Supreme Court of Justice on June 23, 2003. Independent economist. Born on November 29, 1940. Held in the Ward of Convicts of the Carlos J. Finlay Army Hospital. Since his arrest, his health has declined, and his liver disease, hernia, and high blood pressure have worsened. Even when he is in the hospital, he is denied adequate medical care and is not entitled to visits by his family.

Martha Beatriz Roque Cabello. Date of arrest: March 20, 2003. Sentenced to 20 years imprisonment on April 4, 2003. Member of the Independent Economists Institute (Instituto de Economistas Independientes). Born on May 16, 1945. At present, she has been released for health reasons. She was held in the women's prison of Occidente and then admitted to the Carlos J. Finlay Army Hospital.

Raúl Ramón Rivero Castañeda. Date of arrest: March 20, 2003. Sentenced to 20 years imprisonment on April 5, 2003. This sentence was upheld by the Supreme Court on May 29, 2003. Poet, independent journalist, and Director of Cuba Press in Havana. Born on November 23, 1945. He is held in the prison of the Sanguily highway, at kilometer 1½ in Canaleta, Ciego de Ávila. At present he is in solitary confinement in this prison.

José Gabriel Ramón Castillo. Date of arrest: March 18, 2003. Sentenced to 20 years imprisonment on April 3, 2003. Member of the Independent Culture and Democracy Institute (Instituto Independiente Cultura y Democracia). Born on April 3, 1957. He is being held in solitary confinement in the prison of the central highway at kilometer 2½ in Villa Clara.

Pablo Pacheco Ávila. Sentenced to 20 years imprisonment on April 4, 2003. Member of the Avila Cooperative of Independent Journalists (Cooperativa Avileña de Periodistas Independientes) in Ciego de Ávila. Born on April 4, 1970. He is being held in the Boniato prison in Santiago de Cuba. He is confined in a special punishment area known as "Boniatico."

Ricardo Severino González Alonso. Sentenced to 20 years imprisonment on April 5, 2003. This sentence was upheld by the Supreme Court on May 29, 2003. Member of the Manuel Márquez Sterling Association of Journalists (Sociedad de Periodistas "Manuel Márquez Sterling"). Born on February 18, 1950. He is being held at the Kilo 8 prison in Camagüey.

Carmelo Agustín Díaz Fernández. Sentenced to 18 years imprisonment on April 5, 2003. This sentence was upheld by the Supreme Court on June 5, 2003. He is member of the Unitary Council of Cuban Workers (Consejo Unitario de Trabajadores Cubanos). Born on May 11, 1937. He is being held in the prison of Guanajay in the province of Havana.

Horacio Julio Piña Borrego. Sentenced to 20 years imprisonment on April 5, 2003. Human rights activist. Born on November 19, 1966. He is being held at the Kilo 8 prison in Camagüey.

Oswaldo Alfonso Valdés. Sentenced to 18 years imprisonment on April 6, 2003. Member of the Cuban Liberal Party (Partido Liberal Cubano). Born on February 12, 1965. He is being held in the Guanajay prison in the province of Havana.

Pedro Pablo Álvarez Ramos. Sentenced to 25 years imprisonment on April 5, 2003. Member of the Unitary Council of Cuban Workers (Consejo Unitario de Trabajadores). Born on January 25, 1948. He is being held in the provincial prison of Canaleta in Ciego de Ávila.

Julio César Gálvez Rodríguez. Sentenced to 15 years imprisonment on April 5, 2003. Independent journalist. Born on August 22, 1944. He is being held in the prison of La Pendiente in Santa Clara.

Edel José García Díaz. Sentenced to 16 years imprisonment on April 5, 2003. Member of the Central North Press (Norte Centro Press). Born on February 10, 1948. He is being held in the prison of Boniato in Santiago de Cuba.

Marcelo Cano Rodríguez. Sentenced to 18 years imprisonment on April 6, 2003. President of the Independent Medical Association (Colegio Médico Independiente). Born on January 20, 1965. He is being held in the Canaleta Provincial prison in Ciego de Ávila.

Ángel Moya Acosta. Sentenced to 20 years imprisonment. Member of the Democratic Freedom for Cuba Movement (Movimiento Libertad Democrática para Cuba). Born on September 20, 1964. He is being held in the Provincial Prison of Holguín in Holguín.

Manuel Vázquez Portal. Sentenced to 18 years imprisonment on April 5, 2003. Independent journalist. Born on October 9, 1950. He is being held in the prison of Aguadores in Santiago de Cuba.

Juan Adolfo Fernández Saíenz. Sentenced to 15 years imprisonment on April 4, 2003. Independent journalist. Born on November 30, 1948. He is being held in Provincial Prison of Holguín in Holguín.

Nelson Moliné Espino. Sentenced to 20 years imprisonment on April 4, 2003. Member of the November 30 Democratic Party (Partido Democrático 30 de Noviembre). Born on September 27, 1964. He is being held in the prison at kilometer 5½ in Pinar del Río.

Eduardo Díaz Fleitas. Sentenced to 21 years imprisonment on April 5, 2003. Member of the August 5 Movement (Movimiento 5 de Agosto). Born on October 13, 1951. He is being held in the Kilo 8 prison in Camagüey.

Fidel Suárez Cruz. Sentenced to 20 years imprisonment on April 5, 2003. Human rights activist. Born on November 13, 1970. He is being held in the prison of Canaletas in Matanzas.

Jorge Olivera Castillo. Sentenced to 18 years imprisonment on April 5, 2003. Independent journalist and Director of the Havana Press Agency (Agencia Habana Press). Born on September 18, 1961. He is being held in the provincial prison of Guantánamo.

Orlando Fundora Álvarez. Sentenced to 20 years imprisonment. Member of the Pedro Luis Boitel Association (Asociación Pedro Luis Boitel). Born on July 6, 1955. He is being held in the Combinado del Este prison in Havana.

Efrén Fernández Fernández. Sentenced to 12 years imprisonment on April 5, 2003. Member of the Christian Liberation Movement (Movimiento Cristiano Liberación). Born on January 21, 1963. He is being held in the Guanajay prison in the province of Havana.

Víctor Rolando Arroyo Carmona. Sentenced to 26 years imprisonment on April 5, 2003. Member of the Forum for Reform (Foro por la Reforma). Born on December 23, 1952. He is being held in the provincial prison of Guantánamo.

Héctor Maseda Gutiérrez. Sentenced to 20 years imprisonment on April 6, 2003. Member of the Cuban Liberal Party (Partido Liberal Cubano). Born on January 19, 1943. He is being held in the Central Highway prison at kilometer 2½.

Mijail Bárzaga Lugo. Sentenced to 15 years imprisonment on April 4, 2003. Independent journalist and member of the Cuban News Agency (Agencia Noticiosa Cubana). Born on April 25, 1967. He is being held in the provincial prison of Las Villas in Santa Clara.

Nelson Alberto Aguiar Ramírez. Sentenced to 13 years imprisonment on April 4, 2003. Member of the Orthodox Party of Cuba (Partido Ortodoxo de Cuba). Born on August 12, 1945. He is being held in the prison of the El Salvador highway at kilometer 2½.

Antonio Ramón Díaz Sánchez. Sentenced to 20 years imprisonment on April 5, 2003. Member of the Christian Liberation Movement (Movimiento Cristiano Liberación). Born on June 14, 1962. He is being held in the provincial prison of Holguín.

Regis Iglesias Ramírez. Sentenced to 18 years imprisonment on April 5, 2003. Member of the Christian Liberation Movement (Movimiento Cristiano de Liberación). Born on September 18, 1969. He is being held in the Kilo 8 prison in Camagüey.

Héctor Palacios Ruiz. Sentenced to 25 years imprisonment on April 6, 2003. Member of Social Studies Center (Centro de Estudios Sociales). Born on June 22, 1941. He is being held in the prison at kilometer 5½ in Pinar del Río.

Marcelo López Bañobre. Sentenced to 15 years imprisonment on April 6, 2003. Member of the Cuban Human Rights and National Reconciliation Commission (Comisión Cubana de Derechos Humanos y Reconciliación Nacional). Born on January 26, 1964. He is being held in the prison of Guanajay in the province of Havana.

Alfredo Felipe Fuentes. Sentenced to 26 years imprisonment on April 7, 2003. Promoter of the Varela Project (Proyecto Varela). Born on May 26, 1949. He is being held in the prison of Guamajal in Santa Clara.

Héctor Raúl Valle Hernández. Sentenced to 12 years imprisonment on April 7, 2003. This sentence was upheld by the Supreme Court on June 3, 2003. Born on May 29, 1967. He is being held in the provincial prison of Guantánamo.

Guido Sigler Amaya. Sentenced to 20 years imprisonment on April 5, 2003. Member of the Alternative Option Movement (Movimiento Opción Alternativa). Born on June 9, 1953. He is being held in the Combinado del Este prison.

Ariel Sigler Amaya. Sentenced to 20 years imprisonment on April 5, 2003. Member of the Alternative Option Movement (Movimiento Opción Alternativa). Born on November 2, 1964. He is being held in the Kilo 7 prison in Camagüey.

Félix Navarro Rodríguez. Sentenced to 25 years imprisonment on April 4, 2003. Member of the Pedro Luis Boitel Party for Democracy (Partido por la Democracia Pedro Luis Boitel). Born on July 10, 1953. He is being held in the provincial prison of Guantánamo.

Librado Linares García. Sentenced to 20 years imprisonment on April 7, 2003. Member of the Cuban Reflection Movement (Movimiento Cubano Reflexión). Born on June 9, 1960. He is being held in the Combinado del Este prison.

Léster Gonzalez Pentón. Sentenced to 20 years imprisonment on April 7, 2003. Member of the Reason, Truth, and Freedom Movement for Human Rights (Movimiento Pro Derechos Humanos Razón, Verdad y Libertad). Born on March 22, 1977. He is being held in the prison of maximum harshness, La 26, in Camagüey.

Omar Pernet Hernández. Sentenced to 25 years imprisonment on April 7, 2003. Member of the Mario Manuel de la Peña National Human Rights Movement (Movimiento Nacional de Derechos Humanos Mario Manuel de la Peña). Born on August 15, 1945. He is being held in the Guanajay prison in the province of Havana.

Antonio A. Villareal Acosta. Sentenced to 15 years imprisonment. Promoter of the Valera Project (Proyecto Valera). Born on September 1, 1950. He is being held in the Boniato prison in Santiago de Cuba.

Pedro Argüelles Morán. Sentenced to 20 years imprisonment. Member of la Avila Cooperative of Independent Journalists (Cooperativa Avileña de Periodistas Independientes). Born on February 23, 1948. He is being held in the Combinado del Este prison in Havana.

Alejandro González Raga. Sentenced to 14 years imprisonment on April 4, 2003. Member of the Christian Liberation Committee (Comité Cristiano Liberación). Born on January 29, 1959. He is being held in the provincial prison of Canaleta in Ciego de Ávila.

Mario Enrique Mayo Hernández. Sentenced to 20 years imprisonment on April 4, 2003. Member of the Félix Varela Independent Press Agency (Agencia de Prensa Independiente Félix Varela). Born on September 23, 1963. He is being held in the provincial prison of Holguín.

Alfredo Rodolfo Domínguez Batista. Sentenced to 14 years imprisonment on April 4, 2003. Member of the Christian Liberation Movement (Movimiento Cristiano de Liberación). Born on November 15, 1961. He is being held in the main street prison in Las Tunas.

Reynaldo Miguel Labrada Peña. Sentenced to 6 years imprisonment on April 4, 2003. Human rights activist. Born on May 8, 1962. He is being held in the provincial prison of Guantánamo.

Julio Antonio Valdés Guevara. Sentenced to 20 years imprisonment on April 5, 2003. Member of the Guacanayabo Gulf Human Rights Movement (Movimiento de Derechos Humanos Golfo de Guacanayabo). He is being held in the provincial prison of Canaleta in Ciego de Ávila.

Luis Milán Fernández. Sentenced to 13 years imprisonment on April 4, 2003. Member of the Independent Medical Association (Colegio Médico Independiente) in Santiago de Cuba. Promoter of the Varela Project (Proyecto Varela) and member of the Christian Liberation Movement (Movimiento Cristiano Liberación). Born on February 21, 1970. He is being held in the provincial prison of Canaleta in Ciego de Ávila.

Alexis Rodríguez Fernández. Sentenced to 15 years imprisonment on April 7, 2003. Member of the Christian Liberation School (Colegio Cristiano de Liberación) in Palma Soriano. Born on December 7, 1969. He is being held in the Agüica Penitentiary Center in Matanzas.

Leonel Grave de Peralta. Sentenced to 20 years imprisonment on April 7, 2003. Member of the Christian Liberation Movement (Movimiento Cristiano de Liberación) in Palma Soriano. Born on May 30, 1976. He is being held in the prison at kilometer 5½ in Pinar del Río.

Juan Carlos Herrera Acosta. Sentenced to 20 years imprisonment on April 3, 2003. Member of the Cuban Movement of Young People for Democracy (Movimiento Cubano de Jóvenes por la Democracia) in Guantánamo. Born on August 6, 1966. He is being held in the Boniato prison in Santiago de Cuba.

Arnaldo Ramos Lauzerique. Sentenced to 18 years imprisonment on April 4, 2003. Member of the Independent Economists Institute (Instituto de Economistas Independientes) in Havana. Born on May 27, 1942. He is being held in the provincial prison of Holguín.

Miguel Valdés Tamayo. Sentenced to 15 years imprisonment. Member of Brothers for Dignity (Hermanos Paternales por la Dignidad) in Havana. Born on December 20, 1959. He is being held in the prison of maximum harshness, La 26, in Camagüey.

Miguel Galván Gutiérrez. Sentenced to 26 years imprisonment on April 7, 2003. This sentence was upheld by the Supreme Court on June 3, 2003. Independent journalist of the Havana Agency (Agencia Habana). Born on January 12, 1965. He is being held in the provincial prison of Agüica in Matanzas.

José Miguel Martínez Hernández. Sentenced to 13 years imprisonment on April 7, 2003. Promoter of the Varela Project (Proyecto Varela) and the Juan Bruno Zayas Independent Library (Biblioteca Independiente Juan Bruno Zayas) in Havana. Born on August 4, 1963. He is being held in the prison of maximum harshness, La 26, in Camagüey.

José Ubaldo Izquierdo Hernández. Sentenced to 16 years imprisonment on April 7, 2003. This sentence was upheld by the Supreme Court on June 3, 2003. Independent journalist of the Decorum Group (Grupo Decoro). Born on November 6, 1965. He is being held in the prison at kilometer 5½ in Pinar del Río.

Iván Fernández Carrillo. Sentenced to 25 years imprisonment on April 4, 2003. Member of the Pedro Luis Boitel Party for Democracy (Partido por la Democracia Pedro Luis Boitel) in Matanzas. Born on May 24, 1971. He is being held in the Central Highway prison on the Bayazo Road in Holguín.

Diosdado Gonzalez Marrero. Sentenced to 20 years imprisonment on April 7, 2003. Member of the Peace, Democracy, and Freedom Party (Partido Paz, Democracia y Libertad) in Perico Matanzas. Born on August 10, 1962. He is being held in the prison at kilometer 5½ in Pinar del Río.

Margarito Broche Espinosa. Sentenced to 25 years imprisonment on April 7, 2003. Member of the National Boat People's Peace, Democracy and Freedom Association (Asociación Nacional de Balseros Paz, Democracia y Libertad). Born on March 30, 1957. He is being held in the Guanajay prison in the province of Havana.

Arturo Pérez de Alejo Rodríguez. Sentenced to 20 years imprisonment. Member of the Escambray Human Rights Organization (Organización de Derechos Humanos Escambray) in Villa Clara. Born on May 23, 1952. He is being held in the prison at kilometer 5½ in Pinar del Río.

Omar Ruiz Hernández. Sentenced to 18 years imprisonment on April 7, 2003. Independent journalist in Villa Clara. Born on November 16, 1947. He is being held in the prison at kilometer 2½ on the El Salvador Highway in Guantánamo.

Blas Giraldo Reyes Rodríguez. Sentenced to 25 years imprisonment on April 5, 2003. Promoter of the Holy Spirit Project (Proyecto Sancti Spiritus). Born on August 7, 1955. He is being held in the provincial prison of Agüica in Matanzas.

Alfredo Manuel Pulido López. Sentenced to 14 years imprisonment on April 4, 2003. Member of the Christian Liberation Movement (Movimiento Cristiano de Liberación) in Camagüey. Born on May 14, 1960. He is being held in the Comando del Este prison in Havana.

Normando Hernández Gonzalez. Sentenced to 25 years imprisonment on April 4, 2003. Member of the Association of Independent Journalists (Colegio de Periodistas Independientes) in

Camagüey. Born on October 21, 1969. He is being held in the prison at kilometer 5½ in Pinar del Río.

Luis Enrique Ferrer García. Sentenced to 28 years imprisonment on April 4, 2003. Member of the Christian Liberation Movement (Movimiento Cristiano de Liberación) in Las Tunas. Born on August 1, 1972. He is being held in the Combinado del Este prison in Havana.

Próspero Gaínza Agüero. Sentenced to 25 years imprisonment on April 4, 2003. Member of the National Civil Resistance Movement (Movimiento Nacional de Resistencia Cívica) in Holguín. Born on March 18, 1957. He is being held in the Boniato prison in Santiago de Cuba.

Claro Sánchez Altarriba. Sentenced to 15 years imprisonment on April 4, 2003. Member of the Cuban Movement of Young People for Democracy (Movimiento Cubano de Jóvenes por la Democracia) in Santiago de Cuba. Born on August 13, 1953. He is being held in the Kilo 8 prison in Camagüey.

Ricardo Enrique Silva Gual. Sentenced to 10 years imprisonment on April 7, 2003. Member of the Christian Liberation Movement (Movimiento Cristiano de Liberación) in Santiago de Cuba. Born on April 19, 1973. He is being held in the provincial prison of Guantánamo.

Jesús Mustafá Felipe. Sentenced to 25 years imprisonment on April 7, 2003. Member of the Christian Liberation Movement (Movimiento Cristiano Liberación) in Palma Soriano, Santiago de Cuba. Born on April 6, 1944. He is being held in the Combinado del Este prison in Havana.

Manuel Ubals González. Sentenced to 20 years imprisonment on April 3, 2003. Activist in Guantánamo. Born on November 17, 1968. He is being held in the provincial prison of Agüica in Matanzas.

Fabio Prieto Llorente. Sentenced to 20 years imprisonment on April 5, 2003. Independent journalist in Isla de Pinos. Born on March 11, 1963. He is being held in the Guanajay prison in the province of Havana.

Omar Rodríguez Saludes. Sentenced to 27 years imprisonment on April 5, 2003. Independent journalist in Havana. Born on June 11, 1965. He is being held in the Kilo 8 prison in Camagüey.

Regarding the alleged victims Orlando Zapata Tamayo, Rafael Mollet Leyva, Miguel Sigler Amaya, and Cruz Delia Aguilar Mora, who were included in the petition, the claimants did not provide any further information.

2. Regarding the law

11. Regarding the admissibility of the petition, the petitioners, referring to positions taken by the present Inter-American Commission,^[FN3] contend that the IACHR has jurisdiction to examine petitions that point out alleged violations of the human rights enshrined in the American Declaration by Cuba. They point out that this jurisdiction comes from the OAS Charter, duly ratified by Cuba, and by the Rules of Procedure of the Inter-American Commission.

[FN3] IACHR, Annual Report 2001, Chapter IV, Cuba, paragraph 3. IACHR, Seventh Report on the Situation of Human Rights in Cuba, OEA/Ser.L/V/II.61 Doc.29 rev. 1, October 4, 1983, paragraph 34.

12. The petitioners divided the alleged victims into two groups. For the first group, the petitioners claim that the petition is in conformity with the rule of Article 31 of the Commission's Rules of Procedure stipulating that remedies under domestic law must have been previously pursued and exhausted. For the second group, the petitioners argue, that in any case the petition falls within the purview of one of the exceptions to this rule enshrined in Article 31(2)(a) of the IACHR Rules of Procedure. Regarding this, they point out that "[the domestic legislation of Cuba does not afford] due process of law for protection of the right or rights that have allegedly been violated." [FN4]

[FN4] Cuban American Bar Association, Report of September 17, 2003, paragraph 127, referring to the Commission's Rules of Procedure, Article 31(2)(a).

13. Likewise, the petitioners point out that the petition is not pending settlement pursuant to another procedure before an international government organization of which Cuba is a member, which meets the requirement set forth by Article 33(1)(a) of the Commission's Rules of Procedure.

14. The petitioners allege that "numerous arrests, summary trials and imprisonment of dissidents violate the rights guaranteed to all persons, as enshrined in the articles of the American Declaration [...]." [FN5] Likewise, they add that "arbitrary arrest and imprisonment of dissidents for expressing their beliefs and opposing the government do not observe the principles set forth by the Declaration." [FN6]

[FN5] Cuban American Bar Association, Report of September 17, paragraph 73.

[FN6] Cuban American Bar Association, Report of September 17, 2003, paragraph 77.

15. In the view of the petitioners, "the conditions of incarceration, especially solitary confinement, lack of physical exercise, adequate food, extremely poor sanitary conditions [...]" violate the rights enshrined in Article XI of the American Declaration.

16. As expressed by the petitioners, the State has violated the right to the freedom of investigation, opinion, expression and dissemination of dissidents because it has "persecuted them, arrested them, convicted them in summary trials, and imprisoned them for expressing their beliefs or publishing their points of view, which criticize the régime." [FN7]

[FN7] Cuban American Bar Association, Report of September 17, 2003, paragraph 92.

B. Position of the State

17. Cuba did not respond to the request for information from the Inter-American Commission sent to it by means of a note on February 18, 2004, which also requested its observations regarding the admissibility of the petition. The Commission confirms that the time-limits established by the Commission's Rules of Procedure for the State to provide information on the present petition has fully expired and that Cuba has not disputed the facts set forth in the petition.

IV. REVIEW OF JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

18. Cuba is a member State of the Organization of American States (hereinafter OAS) since July 16, 1952, the date on which it deposited its instrument ratifying the OAS Charter. The Commission has stated that the Cuban State "is juridically answerable to the Inter-American Commission in matters that concern human rights" because "it is party to the first international instruments established in the American hemisphere to protect human rights" and because Resolution VI of the Eighth Meeting of Consultation[FN8] "excluded the Government of Cuba and not the Cuban State, from participation in the Inter-American system." [FN9] Regarding this, the IACHR explained that its

[...] consistent position has been that when it excluded the Cuban Government from the inter-American system, it was not the intention of the Organization of American States to leave the Cuban people without protection. That Government's exclusion from the regional system in no way means that it is no longer bound by its international human rights obligations.

[FN8] The complete text of Resolution VI can be found in the "Eighth Meeting of Consultation of the Ministers of Foreign Affairs to serve as Consultative Body in the application of the Inter-American Treaty of Reciprocal Assistance, Punta del Este, Uruguay, January 22-31, 1962, Meeting Documents," Organization of the American States, OEA/Ser.F/II.8, doc. 68, pages 17-19.

[FN9] IACHR, Annual Report 2002, Chapter IV, Cuba, paragraphs 3-7. See also IACHR, Annual Report 2001, Chapter IV, Cuba, paragraphs 3-7. IACHR, Seventh Report on the Situation of Human Rights in Cuba, 1983, paragraphs 16-46.

19. The Commission's jurisdiction stems from the terms of the OAS Charter, its Statute, and its Rules of Procedure. According to the Charter, all member States pledge to observe the fundamental rights of individuals who, in the case of States that are not party to the Convention, are those set forth in the American Declaration, which is a source of international obligations.[FN10] Its Statute instructs the Commission to focus special attention on the task of

observing the human rights recognized in Article I (Right to life, liberty and personal security), Article II (Right to equality before law), Article III (Right to freedom of religion and worship), Article IV (Right to freedom of investigation, opinion, expression and dissemination), Article XVIII (Right to a fair trial), Article XXV (Right to protection from arbitrary arrest), and Article XXVI (Right to due process of law) of the Declaration when it exercises its jurisdiction with respect to countries that are not parties.[FN11] Finally, pursuant to Article 49 of the Commission's Rules of Procedure, the Commission shall receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration in relation to Member States that are not parties to the American Convention on Human Rights (hereinafter the American Convention). As a result, the IACHR has jurisdiction *ratione materiae*, because the petition reports violations of human rights recognized by the American Declaration of March 2, 1948.[FN12]

[FN10] I/A Court H.R., Consultative Opinion OC-10/89, July 14, 1989, Interpretation of the American Declaration of the Rights and Duties of Man in the framework of Article 64 of the American Convention on Human Rights, Ser. A, No. 10, paragraphs 43-46.

[FN11] Statute of the IACHR, Article 20(a).

[FN12] See, i.e., IACHR, Gary T. Graham, at present known as Shaka Sankofa, Report No. 97/03, Case 11.193, United States, December 29, 2003. IACHR, Statehood Solidarity Committee, Report No. 98/03, Case 11.204, United States, December 29, 2003. IACHR, Armando Alejandro Jr., Carlos Costa, Mario De La Peña, and Pablo Morales, Report No. 86/99, Case 11.589, Cuba, September 29, 1999. IACHR, Victims of the towboat "13 de Marzo", Report No. 47/96, Case 11.436, Cuba, October 16, 1996.

20. Because of the above, the Commission considers it has jurisdiction *ratione loci* to consider the petition, because it alleges violations of rights protected in the American Declaration that took place within Cuban territory; the Commission concludes that it is competent to admit it.

21. The Commission also has jurisdiction *ratione temporis* to examine the petition. The petition is based on facts that supposedly occurred after 1997, when the obligations taken up by the State in accordance with the OAS Charter and the American Declaration were in force.

22. The Commission has jurisdiction *ratione personae* to examine the petition. The petitioners are empowered by Article 23 of the Commission's Rules of Procedure to file complaints with the IACRH. The petition identifies individual persons as alleged victims, whose individual rights are enshrined in the American Declaration.

B. Admissibility Requirements

1. Exhaustion of remedies under domestic law

23. The Rules of Procedure of the Inter-American Commission provide that "[i]n order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the

domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law.”[FN13]

[FN13] Rules of Procedure of the Inter-American Commission, Article 31(1).

24. As for the requirement of admissibility, the Inter-American Court has already ruled that it involves a mechanism that “permits the State to resolve the problem in accordance with its domestic law before facing an international proceeding, which is especially valid in the international jurisdiction of human rights [...]”[FN14] Likewise,

Generally recognized principles of international law indicate, first, that this is a rule that may be waived, either expressly or by implication, by the State having the right to invoke it, as this Court has already recognized (see Viviana Gallardo et al., Judgment of November 13, 1981, No. G 101/81. Series A, paragraph 26). Second, the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed.[FN15]

[FN14] I/A Court H.R., Velásquez Rodríguez Case, Sentence of July 29, 1988, Series C, No. 4, paragraph 61.

[FN15] I/A Court H.R., Herrera Ulloa Case. Sentence of July 2, 2004. Series C, No. 107, paragraph 81; I/A Court H.R., Case of the Mayagna (Sumo) Awas Tigni Community. Preliminary Objections. Sentence of February 1, 2000. Series C, No. 66, paragraph 53; I/A Court H.R., Loayza Tamayo Case. Preliminary Objections. Sentence of January 31, 1996. Series C, No. 25, paragraph 40; and Castillo Páez Case. Preliminary Objections. Sentence of January 30, 1996. Series C, No. 24, paragraph 40; I/A Court H.R., Velásquez Rodríguez Case, Sentence on Preliminary Objections, June 26, 1987, Series C, No. 1, paragraph 88.

25. Likewise, the Inter-American Court, when referring to the early stages of the proceedings, has ruled that they consist of “the stage of admissibility of the proceedings before the Commission, in other words, before any consideration of their substance [...]”[FN16]

[FN16] I/A Court H.R., Herrera Ulloa Case. Sentence of July 2, 2004. Series C, No. 107, paragraph 81.

26. In the present case, the State has not proceeded to respond to the allegations of the petitioners regarding the prior exhaustion of remedies under domestic law. Because of this, the Commission considers that, in the present case, the State has tacitly declined to file an objection that claims that remedies under domestic law have not been exhausted. The Commission takes note of the allegations by the petitioners that the People’s Supreme Court, in the appeal filed with this Court, had upheld the convictions that were being appealed and that a group of alleged

victims had abstained from appealing their convictions, arguing that this Court would not guarantee them an adequate and effective appeal.

27. For the reasons indicated above, the Commission rules that, in the present case, the requirement set forth in Article 31(1) of its current Rules of Procedure has been met.

2. Time-limits for submittal

28. The Commission's Rules of Procedure provide that consideration shall be given to "those petitions that are lodged within a period of six-months following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies." [FN17] In the petition being examined, the IACHR has determined that Cuba has tacitly waived its right to object that remedies under domestic law have not been exhausted, and therefore the requirement of Article 32(1) of the Commission's Rules of Procedure is not applicable. In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case. [FN18]

[FN17] Rules of Procedure of the Inter-American Commission, Article 32(1).

[FN18] Id., Article 32(2).

29. In the present case, the petitions were filed on September 22, 2003 and October 9, 2003, which the IACHR considers to be a reasonable period of time for them to be examined. Consequently, the Commission considers that the requirement of Article 32(2) of its Rules of Procedure is covered in the present case because the petition was submitted within reasonable time-limits.

3. Duplication of international proceedings and res judicata

30. The case file does not indicate that, in the matter of the petition, another international proceeding is pending or that it reproduces a petition already examined by this or another international body. Because of this, it is accepted that the requirements set forth in Article 33 of the Commission's Rules of Procedure have been met.

4. Characterization of the facts alleged

31. The Commission considers that the allegations of the petitioners regarding the alleged violation of the right to life, liberty and personal security, equality before law, freedom of investigation, opinion, expression and dissemination, to a family and to protection thereof, to protection of honor, personal reputation, and private and family life, to due process of law, to the preservation of health and to well-being, the right to recognition of juridical personality and civil rights, the right to a fair trial, the right to assembly, the right to protection from arbitrary arrest, and the right to inviolability of the home, if confirmed, could characterize a violation of the

rights guaranteed in Articles I, II, IV, V, VI, XXVI, XI, XVII, XVIII, XXI, XXV, and IX of the American Declaration.

V. CONCLUSIONS

32. The Commission concludes that the case is admissible and that it is competent to examine the petition filed by the petitioners on the alleged violation of Articles I, II, IV, V, VI, XXVI, XI, XVII, XVIII, XXI, XXV, and IX of the American Declaration, pursuant to Articles 28 to 37 and 39 of the Commission's Rules of Procedure.

33. On the basis of the above-mentioned arguments of fact and law and without detriment to the substance of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the admissibility of the petition being examined pertaining to Articles I, II, IV, V, VI, XXVI, XI, XVII, XVIII, XXI, XXV, and IX of the American Declaration.
2. To notify this decision to the State and to the petitioners.
3. To file proceedings on the substance of the matter.
4. To publish the present decision and include it in the Annual Report to be presented to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C. on the fourteenth day of October, 2004. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice -President; Commissioners Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutierrez Trejo and Florentín Meléndez.

Washington, D.C., October 19, 2004

Dissenting and reasoned vote

Petition 844/03

Admissibility

Freddy Gutiérrez

I hereby declare and explain my dissenting vote regarding the decision by the Inter-American Commission on Human Rights to admit petitions 771/03 and 841/03, which refers to occurrences that apparently took place in the Republic of Cuba.

It is unconceivable that deeds expounded in an abstract, general, and vague manner, recounted by one side only and expressing a single, exclusive point of view, with no possibility, past or

present, of being contested, for which the sources are dubious, and which are, one should add, taken from media that systematically oppose the right of the Republic of Cuba freely to determine its own destiny as well as its right not to accept outside interference, should induce the Commission to declare a case admissible without it meeting the requirements stipulated in the American Convention.

The legal basis on which the description of the deeds rests is flimsy and insubstantial, particularly since it invokes the American Declaration of 1948 and the Rules of Procedure of the IACHR. There is no universally accepted doctrine nor peaceful jurisprudence regarding the Declaration, given that, by definition, it involves adherence to certain values and general principles, which are important but contained in imperfect norms that establish no punishments, which therefore relativizes the greater or lesser commitment of states in accepting the enunciation of the rights enshrined therein. The Declaration has played an enormously valuable part in the history of civilization, and its contents have to concur with the American Convention, but it is not licit to use it circumstantially against a state that has even been denied the possibility of accounting for its departure from or approximation to the values it once ratified.

Moreover, as I have consistently stated, the operating Rules of Procedure of the Commission constitute by their nature a sub-legal act, which is binding upon the Commissioners in the performance of their tasks and functions, but which may never be construed as an international norm based on *pacta sunt servanda* and therefore to be applied obligatorily by the states parties to the American Convention. Indeed, it is inexplicable and incomprehensible in the interpretation of law that rules of procedure, resolutions, or instructions of a sub-legal nature could create duties, rights, and even punishments for states that have not agreed to their contents. It is necessary to emphasize that the states are parties to the American Convention and to the Commission's Statute, and are therefore bound by what they agreed to, but they cannot be bound by what they legitimately did not agree to. This is the case of the Rules of Procedure, the contents of which were not examined, discussed, or ratified by the member states of the hemispheric Organization. This applies with even greater force to the Republic of Cuba, which was not allowed to be a state party to the Convention, or to discuss the Statute, and has no inkling of the existence of Rules of Procedure that might, apparently, be the basis for some sanction against it.

Perhaps the most serious misapprehension is the failure to refer to the expulsion of the Republic of Cuba agreed upon by the Organization of American States in 1962. Since then, Cuba cannot validly nominate anyone to a position of responsibility within the hemispheric Organization, have either voice or vote, elect or be elected, or exercise any right at all. It is therefore an aberration in fact and in law to seek to scrutinize and even condemn the acts of one who has been denied the exercise of his basic powers, of the rights that are intrinsic to a people, and the rights that are also intrinsic to the man and women who constitute that people.

It is also contrary to any sound interpretation of the law to seek to initiate, pursue, and issue a condemnation of someone who cannot defend himself. It is contrary to the rules of due process contained in the American Convention, the pillar upon which the Commission stands, that the Republic of Cuba, which is not cognizant of the contents of any notification, cannot make itself heard, cannot argue in its defense, cannot contradict the statements of someone calling himself a party, and which has even been denied the right to be a counterparty, should be condemned. I

should not omit the fact that this act of the Commission concerns admissibility or inadmissibility of a complaint. The necessary condition for admitting it or not is that the complaint exists or may exist, and in this case the Republic of Cuba cannot even be a complainant; ergo, there cannot strictly be a complaint in the instant case, nor any admission or rejection of admission.

The foregoing arguments explain my dissenting vote in the matter at hand.