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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 67/06; Case 12.476
Session: Hundred Twenty-Sixth Regular Session (16 – 27 October 2006)
Title/Style of Cause: Oscar Elias Biscet Gonzalez, Nelson Alberto Aguiar Ramirez, Osvaldo Alfonso Valdes, Pedro Pablo Alvarez Ramos, Pedro Arguelles Moran, Victor Rolando Arroyo Carmona, Mijail Barzaga Lugo, Margarito Broche Espinosa, Marcelo Cano Rodriguez, Juan Roberto de Miranda Hernandez, Carmelo Agustin Diaz Fernandez, Eduardo Diaz Fleitas, Oscar Manuel Espinosa Chepe, Alfredo Felipe Fuentes, Efren Fernandez Fernandez, Juan Adolfo Fernandez Sainz, Jose Daniel Ferrer Garcia, Luis Enrique Ferrer Garcia, Orlando Fundora Alvarez, Prospero Gainza Agüero, Miguel Galban Gutierrez, Julio Cesar Galvez Rodriguez, Edel Jose Garcia Diaz, Jose Luis Garcia Paneque, Ricardo Severino Gonzalez Alfonso, Diosdado Gonzalez Marrero, Lester Gonzalez Penton, Alejandro Gonzalez Raga, Jorge Luis Gonzalez Tanquero, Leonel Grave de Peralta, Ivan Hernandez Carrillo, Normando Hernandez Gonzalez, Juan Carlos Herrera Acosta, Regis Iglesias Ramirez, Jose Ubaldo Izquierdo Hernandez, Reynaldo Miguel Labrada Pena, Martha Beatriz Roque Cabello, Raul Ramon Rivero Castaneda, Jose Gabriel Ramon Castillo, Pablo Pacheco Avila, Horacio Julio Pina Borrego, Angel Moya Acosta, Manuel Vazquez Portal, Nelson Molinet Espino, Antonio Ramon Diaz Sanchez, Alfredo Rodolfo Dominguez Batista, Fidel Suarez Cruz, Jorge Olivera Castillo, Hector Maseda Gutierrez, Hector Palacios Ruiz, Marcelo Manuel Lopez Banobre, Hector Raul Valle Hernandez, Guido Sigler Amaya, Ariel Sigler Amaya, Felix Navarro Rodriguez, Librado Linares Garcia, Omar Pernet Hernandez, Antonio Augusto Villareal Acosta, Mario Enrique Mayo Hernandez, Julio Antonio Valdes Guevara, Luis Milan Fernandez, Alexis Rodriguez Fernandez, Arnaldo Ramos Lauzurique, Miguel Valdes Tamayo, Jose Miguel Martinez Hernandez, Arturo Perez de Alejo Rodriguez, Omar Moises Ruiz Hernandez, Blas Giraldo Reyes Rodriguez, Alfredo Manuel Pulido Lopez, Claro Sanchez Altarriba, Ricardo Enrique Silva Gual, Jesus Mustafa Felipe, Manuel Ubals Gonzalez, Fabio Prieto Llorente, Omar Rodriguez Saludes, Rafael Millet Leyva, Miguel Sigler Amaya and Orlando Zapata Tamayo v. Cuba

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Decided by: President: Evelio Fernandez Arevalos;
First Vice-President: Paulo Sergio Pinheiro;
Second Vice-President: Florentin Melendez;
Commissioners: Clare K. Roberts, Freddy Gutierrez Trejo, Paolo G. Carozza, Victor E. Abramovich.
Commissioner Freddy Gutierrez has adopted a dissenting and reasoned vote, which follows the instant report.

Dated: 21 October 2006
Citation: Elias Biscet v. Cuba, Case 12.476, Inter-Am. C.H.R., Report No. 67/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by: APPLICANTS: the Cuban American Bar Association and Directorio Democratico Cubano

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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 lodged, respectively, by the Cuban American Bar Association and Directorio Democrático Cubano (hereinafter “the petitioners”). The allegations in both petitions is that the international responsibility of the Republic of Cuba (hereinafter “Cuba,” “the Cuban State”, or “the State”) has been engaged by its violation of Articles I (right to life, liberty and personal security), II (right to equality before the law), IV (right to freedom of investigation, opinion, expression and dissemination), V (right to protection of honor, personal reputation, and private and family life), VI (right to a family and to protection thereof), IX (right to inviolability of the home), X (right to the inviolability and transmission of correspondence), XI (right to the preservation of health and to well-being), XVII (right to recognition of juridical personality and civil rights), XVIII (right to a fair trial), XX (right to vote and to participate in government), XXI (right of assembly), XXII (right of association), XXV (right of protection from arbitrary detention) and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man (hereinafter the “Declaration” or the “American Declaration”), to the detriment of a group of 79 dissidents and members of the opposition to the Cuban government.

2. The Commission decided to join the two petitions and process them as a single case, in exercise of its authority under Article 29(1)(d) of its Rules of Procedure. It then proceeded to open the case, which was classified as Case No. 12,476. Subsequently, during its 121st regular session, the Commission approved Report No. 57/04, in which it concluded that the case was admissible and decided to continue with its analysis of the merits.

3. The State responded to the requests for information, which the Commission made through the Cuban Interests Section in Washington, D.C. In its communications, the State asserted that the Inter-American Commission did not have legal jurisdiction and the Organization of American States did not have the moral authority to pass judgment on the exercise of human rights in Cuba. The Commission therefore considers that the time periods prescribed in its Rules of Procedure for a State to contest the facts reported in a petition have long since expired.

4. In the present report, after examining the arguments as to the merits, the Commission concludes that the State’s international responsibility has been engaged for violation of Articles I (right to life, liberty and personal security), II (right to equality before law), IV (right to freedom of investigation, opinion, expression and dissemination), V (right to protection of honor, personal reputation, and private and family life), VI (right to a family and to protection thereof), IX (right to inviolability of the home), X (right to the inviolability and transmission of correspondence), XI (right to the preservation of health and to well-being), XVIII (right to a fair trial), XX (right to vote and to participate in government), XXI (right of assembly), XXII (right of association),

XXV (right of protection from arbitrary detention) and XXVI (right to due process of law) of the American Declaration, to the detriment of Nelson Alberto Aguiar Ramírez, Osvaldo Alfonso Valdés, Pedro Pablo Álvarez Ramos, Pedro Argüelles Morán, Víctor Rolando Arroyo Carmona, Mijail Bárzaga Lugo, Oscar Elías Biscet González, Margarito Broche Espinosa, Marcelo Cano Rodríguez, Juan Roberto de Miranda Hernández, Carmelo Agustín Díaz Fernández, Eduardo Díaz Fleitas,[FN1] Oscar Manuel Espinosa Chepe, Alfredo Felipe Fuentes, Efrén Fernández Fernández, Juan Adolfo Fernández Saínez,[FN2] José Daniel Ferrer García, Luís Enrique Ferrer García, Orlando Fundora Álvarez, Próspero Gaínza Agüero, Miguel Galbán Gutiérrez,[FN3] Julio César Gálvez Rodríguez, Edel José García Díaz, José Luís García Paneque, Ricardo Severino González Alfonso,[FN4] Diosdado González Marrero, Léster González Pentón, Alejandro González Raga, Jorge Luís González Tanquero,[FN5] Leonel Grave de Peralta, Iván Hernández Carrillo,[FN6] Normando Hernández González, Juan Carlos Herrera Acosta, Regis Iglesias Ramírez, José Ubaldo Izquierdo Hernández, Reynaldo Miguel Labrada Peña,[FN7] Martha Beatriz Roque Cabello, Raúl Ramón Rivero Castañeda, José Gabriel Ramón Castillo, Pablo Pacheco Ávila, Horacio Julio Piña Borrego, Ángel Moya Acosta, Manuel Vázquez Portal, Nelson Molinet Espino, Antonio Ramón Díaz Sánchez, Alfredo Rodolfo Domínguez Batista, Fidel Suárez Cruz, Jorge Olivera Castillo, Héctor Maseda Gutiérrez, Héctor Palacios Ruiz, Marcelo Manuel López Bañobre, Héctor Raúl Valle Hernández, Guido Sigler Amaya, Ariel Sigler Amaya, Félix Navarro Rodríguez, Librado Linares García, Omar Pernet Hernández, Antonio Augusto Villareal Acosta, Mario Enrique Mayo Hernández, Julio Antonio Valdés Guevara, Luís Milán Fernández, Alexis Rodríguez Fernández, Arnaldo Ramos Lauzurique, Miguel Valdés Tamayo, José Miguel Martínez Hernández, Arturo Pérez de Alejo Rodríguez, Omar Moisés Ruiz Hernández, Blas Giraldo Reyes Rodríguez, Alfredo Manuel Pulido López, Claro Sánchez Altarriba, Ricardo Enrique Silva Gual, Jesús Mustafá Felipe, Manuel Ubals González, Fabio Prieto Llorente, Omar Rodríguez Saludes, Rafael Millet Leyva,[FN8] Miguel Sigler Amaya, and Orlando Zapata Tamayo (hereinafter the “alleged victims” or “victims”). In this report, the Commission also makes a number of recommendations to the State.

[FN1] Information on this individual also appears under the name Eduardo Díaz Fleites.

[FN2] Information on this individual also appears under the name Adolfo Fernández Saínez.

[FN3] Identified in Report No.57/04 as Miguel Galvan Gutiérrez.

[FN4] Identified in Report No. 57/04 as Ricardo Severino González Alonso.

[FN5] Identified in Report No. 57/04 as José Luís González Tanquero.

[FN6] Identified in Report No. 57/04 as Iván Fernández Carrillo.

[FN7] Information on this individual also appears under the name Reinaldo Labrado Peña.

[FN8] Identified in Report No. 57/04 as Rafael Mollet Leyva.

II. PROCESSING WITH THE COMMISSION

5. On September 22, 2003, the Cuban American Bar Association lodged petition 771/03 with the IACHR. The Commission initiated the processing of the petition on February 8, 2004, and forwarded the pertinent parts thereof to the State, giving it two months to submit its response. The State did not reply to that communication. On October 9, 2003, the Directorio Democrático Cubano lodged petition 841/03 with the Commission. Then, on January 21, 2004,

the Directorio Democrático Cubano supplied the Commission with additional information pertinent to the petition it had lodged.

6. On September 30, 2004, the Commission decided to join petitions 771/03 and 841/04, pursuant to Article 29(1)(d) of its Rules of Procedure. On October 14, 2004, during its 121st regular session, the Commission issued Report No. 57/04 in which it declared the petitions admissible and opened the case as number 12,476. On November 8, 2004, the IACHR forwarded the report to the parties and, in accordance with the provisions of Article 38(1) of its Rules of Procedure, gave the parties two months in which to submit their observations on the merits.

7. On December 6, 2004, the Chief of the Cuban Interests Section in Washington, D.C. sent the Commission a letter stating that the IACHR “does not have legal jurisdiction, and the Organization of American States does not have the moral authority to pass judgment on the exercise of human rights in Cuba.”

8. On January 7, 2005, the petitioners sent the Commission their observations on the merits. Those observations were forwarded to the State that same day. In the letter of transmittal, the State was informed that it had two months in which to present its additional observations on the merits.

9. On February 11, 2005, the IACHR received a note from the Chief of the Cuban Interests Section in Washington, D.C. in which he advised that “the Inter-American Commission on Human Rights does not have jurisdiction and the OAS does not have the moral authority to examine this or any other matter pertaining to Cuba.”

10. On February 28, 2005, the Commission held a hearing in which the petitioners participated. They introduced their witnesses, who testified as to the situation of the alleged victims.

11. On February 22, 2006 the petitioners sent additional information to the Commission, updating the individual situation of the victims. On February 24, 2006 this information was transmitted to the State.

III. POSITION OF THE PARTIES

A. The petitioners

1. As to the facts

12. The petitioners allege that during March 2003 the State unleashed a crackdown against a succession of human rights activists and independent journalists. The result was that a number of dissidents and members of the opposition were detained and arrested, among them Nelson Alberto Aguiar Ramírez, Cruz Delia Aguilar Mora[FN9], Osvaldo Alfonso Valdés, Pedro Pablo Álvarez Ramo, Pedro Argüelles Morán, Víctor Rolando Arroyo Carmona, Mijail Bárzaga Lugo, Oscar Elías Biscet González, Margarito Broche Espinosa, Marcelo Cano Rodríguez, Juan Roberto de Miranda Hernández, Carmelo Agustín Díaz Fernández, Eduardo Díaz Fleitas,

Antonio Ramón Díaz Sánchez, Alfredo Rodolfo Domínguez Batista, Oscar Manuel Espinosa Chepe, Alfredo Felipe Fuentes, Efrén Fernández Fernández, Juan Adolfo Fernández Saínz, José Daniel Ferrer García, Luís Enrique Ferrer García, Orlando Fundora Álvarez, Próspero Gaínza Agüero, Miguel Galbán Gutiérrez, José Miguel Martínez, Julio César Gálvez Rodríguez, Edel José García Díaz, José Luís García Paneque, Ricardo Severino González Alfonso, Diosdado González Marrero, Léster González Pentón, Alejandro González Raga, Jorge Luís González Tanquero, Leonel Grave de Peralta, Iván Hernández Carrillo, Normando Hernández González, Juan Carlos Herrera Acosta, Regis Iglesias Ramírez, José Ubaldo Izquierdo Hernández, Reynaldo Miguel Labrada Peña, Librado Ricardo Linares García, Marcelo Manuel López Bañobre, José Miguel Martínez Hernández, Héctor Maseda Gutiérrez, Mario Enrique Mayo Hernández, Luís Milán Fernández, Rafael Millet Leyva, Nelson Moline Espino, Ángel Moya Acosta, Jesús Mustafá Felipe, Félix Navarro Rodríguez, Jorge Olivera Castillo, Pablo Pacheco Ávila, Héctor Palacios Ruiz, Arturo Pérez de Alejo Rodríguez, Omar Pernet Hernández, Horacio Julio Piña Borrego, Fabio Prieto Llorente, Alfredo Manuel Pulido López, José Gabriel Ramón Castillo, Arnaldo Ramos Lauzurique, Blas Giraldo Reyes Rodríguez, Raúl Ramón Rivero Castañeda, Alexis Rodríguez Fernández, Omar Rodríguez Saludes, Martha Beatriz Roque Cabello, Omar Moisés Ruiz Hernández, Claro Sánchez Altarriba, Ariel Sigler Amaya, Guido Sigler Amaya, Miguel Sigler Amaya, Ricardo Enrique Silva Gual, Fidel Suárez Cruz, Manuel Ubals González, Julio Antonio Valdés Guevara, Miguel Valdés Tamayo, Héctor Raúl Valle Hernández, Manuel Vázquez Portal, Antonio Augusto Villareal Acosta y Orlando Zapata Tamayo.

[FN9] The Commission observes that the petitioners have not provided any information regarding the situation of Mrs. Cruz Delia Aguilar Mora that would allow the Commission to find that the State had violated, to her detriment, any of the rights protected under the American Declaration.

13. The petitioners point out that the alleged victims were detained for having engaged in “subversive activities,” “counter-revolutionary activities” and “activities against the State,” as well as for “dissemination of illegal propaganda and information.” However, the specifics of the alleged violations of the law were not spelled out in the course of the legal proceedings against them.

14. The petitioners state that the detentions of the alleged victims were violent, that their homes were searched, in many cases in the presence of family as an intimidation tactic.

15. The petitioners allege that up until March 31, 2003, no charge had been filed against any of those detained. The petition states that it was not until April 1, 2003 that next of kin began to be notified of the judicial proceedings, all of which were scheduled for the period between April 3 and 7, 2003. The alleged victims, therefore, had but a matter of hours to prepare their defense. The alleged victims were not assisted by counsel of their choosing; instead, they were represented by attorneys of the State, who were not permitted to confer freely and in private with the alleged victims.

16. The petitioners indicate that the proceedings against the detainees were conducted between April 3 and 7, 2003. Not one of the very summary proceedings lasted more than a day. They further allege that reporters, diplomats and the general public were barred from the proceedings. Only the defendants' next of kin and members of the Cuban Communist Party were permitted to be present.

17. The petitioners add that the prison sentences given to the alleged victims ranged from six months to 28 years. According to the information supplied to the Commission, the alleged victims were convicted –except in the case of Mr. Rafael Millet Leyva- for acts criminalized under Article 91 of the Criminal Code[FN10] and Law No. 88 -the Law for the Protection of Cuban National Independence and the Cuban Economy- (hereinafter “Law No. 88”).[FN11] In that connection, the petitioners observe that the alleged victims were convicted for engaging in activities such as publication of opinion pieces on Cuban economic and social affairs, participation in groups regarded by the authorities as “counter-revolutionary,” or having contact with individuals viewed as “hostile” to the Cuban government interests.

[FN10] Cuban Criminal Code. Law No. 62. Passed by the National Assembly of the People's Power on December 23, 1987.

Article 91 of the Criminal Code comes under the section that criminalizes “Acts against the Independence or the Territorial Integrity of the State” in the chapter titled “Crimes against the Foreign Security of the State.” It provides that “Anyone who, in the interests of a foreign State, commits an act with the intent of harming the independence of the Cuban State or the integrity of its territory shall be punished with imprisonment for a period of ten to twenty years or death.”

[FN11] Law No. 88, Law for the Protection of Cuban National Independence and the Cuban Economy. Published in the Official Gazette of the Republic of Cuba, Special Edition, Number 1, dated March 15, 1999.

Article 1 of Law No. 88 states that its “purpose is to criminalize and punish those acts intended to support, enable, or further the ends of the Helms-Burton Act, the blockade and the economic war being waged against [the Cuban people] to undermine internal order, destabilize the country and do away with the Socialist State and the independence of Cuba.”

The crimes to which reference is made are described in Articles 4 through 12 of Law No. 8, which read as follows:

Article 4.

1. Any person who, either directly or through a third party, provides the Government of the United States, its agencies, departments, representatives or officials with information that is instrumental in furthering the objectives of the Helms-Burton Act, the blockade and the economic war being waged against our country to disrupt internal order, destabilize the country and do away with both the Socialist State and Cuban independence, shall face imprisonment for a period of seven to fifteen years.

2. When one or more of the following conditions is also present, the penalty shall be eight to twenty years' imprisonment: a) two or more persons are complicit in the commission of the deed; b) the deed is done for profit, reward, payment, compensation or on promise of any advantage of benefit; c) the offender came to have knowledge of or had information surreptitiously or by any other unlawful means; d) the offender learned or had possession of the information by virtue of his or her job; e) the national economy is severely affected as a

consequence of the deed; f) the Government of the United States of America, its agencies or departments take reprisals against industrial, business, financial or firms of other types, whether Cuban or foreign, or against any of their executives and families as a consequence of the deed

Article 5

1. Any person who looks for classified information to use in the application of the "Helms-Burton" Act, the blockade and the economic war being waged being against our people to undermine internal order, destabilize the country and do away with the Socialist State and Cuban independence, shall face a penalty of three to eight years' imprisonment or a fine ranging from three to five thousand 'quotas' [one quota = one day's minimum wage], or both.

2. When any of the following conditions is also present, the penalty shall be five to twelve years' imprisonment:

a) the offender learned of or obtained the information surreptitiously or by any other unlawful means;

b) two or more persons are complicit in the commission of the deed.

3. The penalty shall be seven to fifteen years' imprisonment when, because of its nature, the information obtained causes serious harm to the national economy.

Article 6

1. Any person who compiles, copies or distributes subversive materials from the Government of the United States, its agencies, departments, representatives, officials, or from any foreign entity in order to support the objectives of the "Helms-Burton" Act, the blockade and the economic war being waged against our people to disrupt internal order, destabilize the country and do away with the Socialist State and Cuban independence, shall face a penalty ranging from three to eight years' imprisonment or a fine ranging from three thousand to five thousand 'quotas' [one quota = one day's minimum wage] or both.

2. Any person who, for those same purposes, brings into the country the materials referred to in the preceding paragraph shall face the same penalty.

3. When one or more of the following conditions is present in the commission of the acts referred to in the preceding paragraph, the penalty shall range from four to ten years' imprisonment:

a) Two or more persons are complicit in the commission of the deed.

b) The deed is done for profit, reward, payment, compensation or to reap any benefit or advantage.

4. The penalty shall be seven to fifteen years' imprisonment when, because of their nature, the materials cause serious harm to the national economy.

Article 7

1. Any person who, in order to accomplish the purposes of the "Helms-Burton" Act, the blockade and the economic war being waged against our people to disrupt internal order, destabilize the country and do away with the Socialist State and Cuban independence, cooperates in any way with radio or television stations, newspapers, magazines or other kinds of foreign media, shall face a penalty ranging from two to five years' imprisonment or a fine of from one to three thousand 'quotas' [one quota = one day's minimum wage] or both.

2. Anyone who uses the means described in the preceding paragraphs shall be held criminally liable, but not so the foreign reporters accredited in the country who are the means through which the perpetrators accomplish their ends

3. When the deed is done for profit, reward, payment, compensation or to reap any benefit or advantage, the penalty shall range from three to eight years' imprisonment or fines ranging from three thousand to five thousand 'quotas' [one quota = one day's minimum wage].

Article 8

1. Any person who disrupts public order to further the ends of the "Helms-Burton" Act, the blockade and the economic war being waged against our people to disrupt internal order, destabilize the country and do away with the Socialist State and Cuban independence, shall face a penalty ranging from two to five years' imprisonment or a fine ranging from one thousand to three thousand 'quotas' [one quota = one day's minimum wage] or both

2. Any person who promotes, organizes or instigates the disruptions of public order referred to in the preceding paragraph shall face a penalty of from three to eight years' imprisonment, a fine ranging from three thousand to five thousand 'quotas' [one quota = one day's minimum wage] or both.

Article 9

1. Anyone who, in order to accomplish the objectives of the "Helms-Burton" Act, the blockade and the economic war being waged against our people to disrupt internal order, destabilize the country and do away with the Socialist State and Cuban independence, commits an act intended to thwart or impair the economic relations of the Cuban State or of industrial, commercial, financial or other firms, whether foreign or domestic, state-owned or privately held, shall face a penalty ranging from seven to fifteen years' imprisonment, or a fine ranging from three thousand to five thousand 'quotas' [one quota = one day's minimum wage] or both.

2. When one or more of the following conditions is present, penalties shall range from eight to twenty years:

- a) Violence, intimidation, blackmail or any other unlawful means is used in the commission of the deed;
- b) The deed is done for profit, reward, payment, compensation or to reap some benefit or advantage.
- c) The Government of the United States of America, its agencies or departments take reprisals against industrial, commercial, financial or other firms, whether foreign or domestic, their executives and their families as a consequence of the deed.

Article 10

The penalty for the following shall be two to five years' imprisonment, a fine ranging from one thousand to three thousand 'quotas' [one quota = one day's minimum wage] or both:

- a) proposing to or inciting others, by any means or in any way, to commit any of the offenses proscribed by this law;
- b) plotting with other persons to carry out any of the offenses proscribed by this law.

Article 11

Anyone who, either directly or through third parties, receives, distributes or takes part in the distribution of financial, material or other means coming from the Government of the United States of America, its agencies, departments, representatives, officials or private firms, and intended for the commission of the offenses proscribed by this law, shall face a sentence ranging from three to eight years' imprisonment, or a fine of one thousand to three thousand 'quotas' [one quota = one day's minimum wage] or both.

Article 12

Anyone who, with the cooperation of a third State whose purpose is to further the aforementioned objectives of the United States Government, commits the offenses proscribed by this law shall be deemed deserving the penalties herein established.

18. The petitioners also argue that one factor contributing to repression of the dissidents is the lack of an independent judiciary in Cuba.

19. As for the conditions under which the alleged victims were held, the petitioners contend that once convicted the alleged victims were sent to prisons far from their places of residence, in order to make it difficult for family members to visit. They assert that most of the convicted are being held in isolation and that prison officials refuse to allow them to have visitors or medical care. The petitioners allege that many of those imprisoned are suffering from health conditions that require special treatment that the authorities frequently refuse to provide. The petitioners add that in some cases, the health of the alleged victims has deteriorated irreversibly because they have received little or no medical attention in prison.

20. The petitioners further contend that a number of the alleged victims have been mistreated by prison staff because the former protested conditions at the prison and insisted on being recognized and treated as “political prisoners or prisoners of conscience.” Because of this, the petitioners argue, many of the alleged victims are being subjected to “the harshest regime,” which means that they are being confined in punishment cells, are allowed fewer visits from family members, and are denied medical care and religious ministrations.

21. Lastly, the petitioners argue that some of the alleged victims are currently out of prison, having been granted the so-called “licencia extrapenal” (conditional release amounting to house arrest). Nevertheless, the petitioners point out that the licencia extrapenal does not set the beneficiary free, since it is only given for medical reasons. The petitioners argue that the authorities have the discretionary power to return anyone on “conditional release” to prison at any time.

2. As to the law

22. The petitioners contend that the State has been violating its citizens’ rights for decades and that the jailing of the alleged victims in this case is one of the more recent episodes in this pattern. According to the petitioners, the policy of eradicating any and all dissent in Cuba is contrary to the values embodied in the American Declaration, which upholds the free exercise of rights that are also contained in other international human rights instruments. The petitioners argue that Cuba has violated Articles I (right to life, liberty and personal security), II (right to equality before law), IV (right to freedom of investigation, opinion, expression and dissemination), V (right to protection of honor, personal reputation, and private and family life), VI (right to a family and to protection thereof), IX (right to inviolability of the home), X (right to the inviolability and transmission of correspondence), XI (right to the preservation of health and to well-being), XVII (right to recognition of juridical personality and civil rights), XVIII (right to a fair trial), XX (right to vote and to participate in government), XXI (right of assembly), XXII

(right of association), XXV (right of protection from arbitrary detention) and XXVI (right to due process of law) of the American Declaration.

23. As for the right to liberty and to protection from arbitrary detention, the petitioners make the case that everyone has the right not to be deprived of his liberty and that anyone who has been so deprived has the right to have the lawfulness of his detention examined by a judge without delay. The petitioners contend that the arbitrary arrest and detention of the alleged victims was done in application of Law No. 88, which imposes “unjustifiable constraints on the right to freedom of expression, association and assembly.”

24. The petitioners argue that the rights to freedom of expression, assembly and association are protected under Article 54 of the Cuban Constitution, which provides that “the rights of assembly, demonstration and association are exercised by workers, both manual and intellectual, peasants, women, students and other sectors of the working people, and they have the necessary means for this. The social and mass organizations have everything needed to enable them to engage in those activities, for which members have full freedom of speech and opinion based on the unlimited right of initiative and criticism.”[FN12] However, in practice Cuba’s laws and regulations on association allow the State to violate this right since organizations independent and separate from the Cuban Communist Party have no legal standing.

[FN12] Political Constitution of Cuba, enacted February 24, 1976, and amended in 1992.

25. The petitioners observe that in the alleged victims’ convictions, the weekly meetings that dissidents held to discuss magazines, documents and bulletins were regarded as hostile to the Cuban socialist model and therefore criminal in nature, as was the alleged victims’ participation in public demonstrations with counter-revolutionary placards and their meetings with the United States Interests Section in Cuba.

26. According to the petitioners, the sentences imposed do not detail the specific activities, acts of violence or damage to public or private property that the alleged victims were accused of having committed. The petitioners observe that the alleged victims were convicted for the content of their thoughts or statements and for their decision to associate with each other and assemble peacefully. They further allege that by punishing the alleged victims for sharing their ideas on democracy and human rights, the State violated the rights recognized in Articles XXI and XXII of the American Declaration.

27. The petitioners contend that the State violated the alleged victims’ right to a fair trial when it conducted judicial proceedings that were so-called “summary trials”. They further allege that the government controls the judiciary in Cuba, which makes a fair and impartial trial impossible and restricts the right of defense and due process. They point out that in the aforementioned proceedings the alleged victims were not permitted to see their attorneys until just as their trials were getting underway. The petitioners also allege that the trials were not conducted in public, as the proceedings were closed to the press.

28. The petitioners note further that the sentences given to the alleged victims were excessive and in some cases exceeded the maximum sentence allowed under the very laws that criminalized the conduct for which they were convicted. They point out that some 40% of the alleged victims were sentenced to up to 24 years, that 29% were sentenced to between 15 and 19 years, and that 22% received the harshest sentences of all, amounting to 25 years or more in prison.

29. According to the petitioners, the prison conditions that the alleged victims have to endure, particularly the solitary confinement, the lack of exercise and adequate food, and the appalling health and sanitation conditions, constitute a violation of the rights protected under Articles V and XI of the American Declaration.

30. The petitioners also note that by its actions, the State has violated Articles V and IX of the American Declaration, which recognize every person's right to the protection of the law against abusive attacks upon one's honor, reputation, and private and family life and the right to the inviolability of the home. They observe that the searches done of the alleged victims' homes—many of which were conducted in the presence of their families— and the restriction of family members' visits to the prison, constitute violations of those two rights.

31. Finally, the petitioners contend that the alleged victims' right to vote and to participate in government has also been violated.

B. Position of the State

32. In the present case, the State has answered the Commission's requests for information and observations via two communications sent by way of the Cuban Interests Section in Washington, D.C.

33. On December 6, 2004, the Chief of the Cuban Interests Section in Washington, D.C. sent the Commission a communication to the following effect: "I hereby return to you the three documents sent to this Interests Section on November 8, 2004. As I have told you on previous occasions, the Inter-American Commission on Human Rights does not have legal jurisdiction and the Organization of American States does not have the moral authority to pass judgment on the exercise of human rights in Cuba, a country that has done more than any other in this hemisphere to guarantee its citizens' rights, despite the genocidal policy of blockade imposed by the United States, which is indeed a massive and flagrant violation of the most elementary human rights."

34. On February 11, 2005, the Commission received a communication in which the Chief of the Cuban Interests Section in Washington, D.C. advised the following: "I am returning to you the attached report, dated January 7, 2005, which you sent to us and which concerns studies that the OAS' Inter-American Commission on Human Rights is doing with regard to Cuba. The Inter-American Commission on Human Rights does not have the jurisdiction and the OAS does not have the moral authority to analyze this or any other matter pertaining to Cuba."

35. The Commission notes that the time periods established in its Rules of Procedure for the State to provide information have long since expired, yet Cuba has done nothing to dispute the allegations that the petitioners make in this case.

IV. CONSIDERATION OF THE MERITS

A. Preliminary

36. The Commission reiterates that it is competent to take cognizance of the facts of this case which alleges the responsibility of the Cuban State.[FN13] Such competence is derived from the OAS Charter and the Statute and Rules of Procedure of the Commission. Pursuant to the OAS Charter, all member States pledge to respect the human rights of individuals that, in the case of States that are not parties to the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention), are established in the American Declaration. In accordance with Article 20(a) of its Statute, the Commission should pay particular attention to the observance of human rights referred to in Articles I, II, III, IX, XVIII, XXV, and XXVI of the American Declaration when it exercises its jurisdiction with respect to States that are not parties to the American Convention. According to Article 49 of its Rules of Procedure, the Commission may receive and examine any petition that contains a denunciation of alleged violations of the human rights set out in the American Declaration in relation to member States of the Organization that are not parties to the American Convention.

[FN13] The Commission has sustained repeatedly that the Cuban State “is juridically responsible 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 “excluded the present government of Cuba, not the State, from participation in the Inter-American system.” In this regard, the IACHR stated that “[...] its consistent position has been that when the Organization of American States excluded the Cuban Government from the inter-American system, it was not the intention 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.” See IACHR, Annual Report 2004, Volume II, Chapter IV, paragraph 56. Furthermore, the IACHR’s competence to take cognizance of individual petitions concerning human rights violations in Cuba has been consistently reaffirmed in its reports No. 56/04, 57/04, 58/04 and 86/99.

37. Cuba deposited the instrument of ratification of the OAS Charter on July 16, 1952, and has been a member State of the Organization of American States ever since.

38. Based on this, the Commission decided in its Report No. 57/04 that it is competent to examine the violations alleged in this case.

B. Application and interpretation of the American Declaration of the Rights and Duties of Man

39. The petitioners have alleged that the Cuban State is responsible for the violation of the rights established in Articles I (right to life, liberty and personal security), II (right to equality before the law), IV (right to freedom of investigation, opinion, expression and dissemination), V (right to protection of honor, personal reputation, and private and family life), VI (right to a family and to protection thereof), IX (right to inviolability of the home), X (right to the inviolability and transmission of correspondence), XI (right to the preservation of health and to well-being), XVII (right to recognition of juridical personality and civil rights), XVIII (right to a fair trial), XX (right to vote and to participate in government), XXI (right of assembly), XXII (right of association), XXV (right of protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration, to the detriment of a group of 79 dissidents and members of the opposition to the Cuban government.

40. As the Commission has stated on repeated occasions, the American Declaration is a source of binding international obligations for all member States of the Organization of American States, including Cuba. The OAS Charter and the Statute and Rules of Procedure of the Commission give the latter the authority to take cognizance of the facts that are the subject of this case. Under the OAS Charter, member States undertake to respect individuals' fundamental rights which, in the case of States that are not parties to the Convention, are the rights established in the American Declaration of the Rights and Duties of Man. Under Article 20 of its Statute and Articles 49 and 50 of its Rules of Procedure, the Commission may receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration of the Rights and Duties of Man in relation to the Member States of the Organization that are not parties to the American Convention on Human Rights.[FN14]

[FN14] See also IACtHR, Interpretation of the American Declaration of the Rights and Duties of Man

Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89 of 14 July 1989, paragraphs 35-45.

41. In accordance with the jurisprudence of the inter-American human rights system, the provisions of its instruments, including the American Declaration, should be interpreted and applied within the context of the inter-American and international human rights systems and, in the broader sense, in the light of the evolution of international human rights law.[FN15] Thus, when examining a petition lodged against the Cuban State alleging violation of human rights, the Commission must pay attention to the other relevant norms of international law that apply to the member States[FN16] and to the evolution of the corpus juris gentium of international human rights law over the course of time.[FN17]

[FN15] Ibid., supra note 14, paragraph 37.

[FN16] The Inter-American Court of Human Rights has approved the Commission's practice of applying sources of international law other than the American Convention:

“The Commission has properly invoked in some of its reports and resolutions other treaties concerning the protection of human rights in the American States, regardless of their bilateral or multilateral character, or whether they have been adopted within the framework or under the auspices of the Inter-American system.”

See I/A Court H.R., "Other Treaties" Subject to the Advisory Jurisdiction of the Court (Article 64 of the American Convention on Human Rights, Advisory Opinion OC-1/82 of 24 September 1982, paragraph 43).

[FN17] IACtHR, The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Advisory Opinion OC-16/99 of 1 October 1999, paragraph 114.

42. In particular, the organs of the inter-American system have sustained that the evolution of the body of international human rights law relevant to the interpretation and application of the American Declaration can be extracted from other international and regional instruments on human rights.[FN18] This includes the American Convention which, in many cases, can be considered representative of the basic principles established in the American Declaration,[FN19] and its respective protocols, such as the one regarding abolition of the death penalty. Another relevant development has also been derived from the provisions of other multilateral agreements approved both within and outside the inter-American system, including the Geneva Convention of 1949, and the International Covenant on Civil and Political Rights.

[FN18] See IACtHR, Advisory Opinion OC-10/89, *supra* note 14, paragraph 37; Advisory Opinion OC-16/99, *supra* note 17, paragraph 115.

[FN19] See IACHR, Report on the Situation Of Human Rights of Asylum Seekers within the Canadian Refugee Determination System (28 February 2000), paragraph 38.

43. In its analysis of the instant case, the Commission will interpret and apply the relevant provisions of the American Declaration –as appropriate– in light of the evolution that international law of human rights has undergone, as set out in the treaties, custom, and other relevant sources of international law.

44. It is in the light of these principles that the Commission will consider and apply the pertinent provisions of the American Declaration to decide whether the Cuban State has violated the rights recognized in Articles I (right to life, liberty and personal security), II (right to equality before law), IV (right to freedom of investigation, opinion, expression and dissemination), V (right to protection of honor, personal reputation, and private and family life), VI (right to a family and to protection thereof), IX (right to inviolability of the home), XI (right to the preservation of health and to well-being), XVII (right to recognition of juridical personality and civil rights), XVIII (right to a fair trial), XXI (right of assembly), XXV (right of protection from arbitrary arrest) and XXVI (right to due process of law) of the American Declaration, according to Report No. 57/04.

45. The Commission observes that throughout the processing of this case, and particularly during the arguments on the merits, the petitioners have also made legal arguments from which one could infer a possible violations of Articles X (right to the inviolability and transmission of correspondence), XX (right to vote and to participate in government) and XXII (right of association) of the American Declaration. Accordingly, exercising its authority by virtue of the principle of *iura novit curia*, the Commission decides to examine whether the facts denounced could also constitute a violation of Articles X, XX and XXII of the American Declaration.

C. The Facts

46. The Commission notes that, despite its repeated requests, the State has not provided, in its successive replies to date, observations, information, or evidence related to the allegations of the petitioners. The Commission also observes that the facts alleged by the petitioners specifically describe the situation of the victims, and that these have been corroborated by proof documented in other sources. Nonetheless, the Commission also takes into consideration that many of the facts alleged by the petitioners have not been updated because of the difficulty of gaining access to Cuban prisons, and because of the constraints on many of the prisoners for communicating with their relatives and the petitioners.

47. On the basis of these considerations and given the absence of evidence leading to a different conclusion, the Commission decides to apply Article 39 of its Rules of Procedure, which states:

The 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.

48. Without detriment to the foregoing, the Commission will also examine information from other sources, such as the testimonies of the relatives of the alleged victims, official documents of Cuban legal authorities, and updated information from different media sources.

49. Thus, the Commission considers that the facts described in the following paragraphs on the alleged victims are well established:

50. Nelson Alberto Aguiar Ramírez. The petitioners report that Mr. Aguiar Ramírez is a member of the Partido Ortodoxo de Cuba. According to the records supplied to the Commission he was arrested on March 20, 2003 as he was fasting with other activists for the release of political prisoners. He was tried for acts criminalized under Articles 6 and 11 of Law No. 88, for having “compiled subversive materials from the United States government, its agencies, departments, representatives and officials to support the objectives of the Helms-Burton Act.” He was convicted and sentenced to 13 years in prison.[FN20] It is also reported that he was held in solitary confinement until September 2004, whereupon he was incorporated into the general population at the prison. The petitioners allege that at the present time, he is suffering from multiple complications, such as high blood pressure, hypoglycemia and diabetes and that he has no access to medical care of any kind. The petitioners also report that in October 2004, he was

severely beaten by a prison officer after asking for medical attention. According to the petitioners, he is also being denied access to the telephone and other ways of communicating with his wife and family. The Commission has been informed that in January 2006, his next of kin sent a letter to Mr. Fidel Castro asking that he be granted “licencia extrapenal” [conditional release].

[FN20] Verdict No. 7 delivered by the People’s Provincial Tribunal of the City of Havana, April 4, 2003.

51. Osvaldo Alfonso Valdés. The petitioners report that Mr. Valdés is a member of the Cuban Liberal Party [Partido Liberal Cubano]. According to the records supplied to the Commission he was arrested on March 18, 2003, after which his residence was searched and books were confiscated, along with a video camera, a still camera, a portable computer, and family photos. Reports are that he was tried for “Acts against the independence or territorial integrity of the State and criminal offenses,” under Law No. 88, for having allegedly “committed acts intended to be detrimental to the independence or territorial integrity of the Cuban State; [...] supplied information to the United States government to further the ends of the Helms-Burton Act; [...] compiled, copied and circulated subversive materials from foreign entities and agencies and departments of the United States Government in support of the purposes of the Helms-Burton Act; and [...] collaborated with radio stations, newspapers, magazines, and other foreign media in exchange for remuneration, thus disturbing the public order.” He was sentenced to prison for 18 years.[FN21] According to the information received, he was given a “licencia extrapenal” [conditional release] and released on November 29, 2004.

[FN21] Verdict No. 6 delivered by the People’s Provincial Tribunal of the City of Havana, April 6, 2003.

52. Pedro Pablo Álvarez Ramos. The petitioners report that Mr. Álvarez Ramos is a member of the Consejo Unitario de Trabajadores. According to the records supplied to the Commission he was arrested on March 19, 2003. His residence was searched and books from the “Emilio Máspero” Union Library were confiscated, as were papers belonging to the Consejo Unitario de Trabajadores. He was tried for “Acts against the independence or territorial integrity of the State,” proscribed under Article 91 of the Criminal Code, for having “rallied counter-revolutionary organizations to fight for the interests of the United States, which included making speeches on counter-revolutionary stations that were critical of the Cuban Government and the Cuban State.” He was sentenced to 25 years’ imprisonment,[FN22] a sentence that the Supreme Tribunal confirmed on June 5, 2003. The petitioners report that Mr. Álvarez Ramos is suffering from glaucoma, an enlarged prostate and arterial hypertension. He was denied a special permit to visit his terminally ill mother.

[FN22] Verdict No. 10 delivered by the People's Provincial Tribunal of the City of Havana, April 5, 2003.

53. Pedro Argüelles Morán. The petitioners report that Mr. Argüelles Morán is a member of the Cooperativa Avileña de Periodistas Independientes. According to the records supplied to the Commission he was arrested on March 18, 2003 at his home, where a search was conducted. He was prosecuted under Articles 6, 7, 1, 3 and 11 of Law No. 88, for having "compiled and circulated subversive materials from the United States government, its agencies, departments, representatives and officials or from any foreign entity, for the purpose of supporting the objectives of the Helms-Burton Act, and [...] cooperated with radio stations, newspapers, magazines and other media circulated abroad, all for profit." He was convicted and sentenced to 20 years in prison.[FN23] The petitioners state that he has for months been denied visits from family members, medications and religious objects, and that his health is frail.

[FN23] Verdict No. 2 delivered by the Ciego de Avila People's Provincial Tribunal, April 4, 2003

54. Víctor Rolando Arroyo Carmona. The petitioners report that Mr. Arroyo Carmona is a member of the Foro por la Reforma. According to the records supplied to the Commission, he was arrested on March 18, 2003. Reports indicate that his residence was searched and that close to 1000 books were confiscated, along with magazines and journals, a fax machine, a telephone answering device, a tape recorder, and his debit cards. He was prosecuted for "Acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Criminal Code, for having "committed acts in the interest of a foreign State, which in this case was the United States, by providing misinformation, encouraging civil contempt, promoting what he called "independent" plans that were in fact reactionary and competed with State-established plans, receiving in exchange clear economic dividends in cash and personal property for his counter-revolutionary activities, all intended to be detrimental to the independence of the Cuban State or its territorial integrity." He was convicted and sentenced to 26 years in prison.[FN24] Since his incarceration, he has reportedly been held in solitary confinement and his health condition is critical. It is also reported that he staged a hunger strike and then called it off after securing promises that his conditions of incarceration would improve.

[FN24] Verdict No. 1 delivered by the People's Provincial Tribunal of Pinar del Río, April 5, 2003.

55. Mijail Bárzaga Lugo. The petitioners report that Bárzaga Lugo is an independent journalist and member of the Agencia Noticiosa Cubana. According to the records supplied to the Commission he was arrested on March 20, 2003 at his home in Havana. The records indicate that he was tried for acts criminalized under Articles 4, 7, and 3 of Law No. 88, for having "supplied the United States government, its agencies, departments, representatives or officials

with information to further the ends of the Helms-Burton Act, and [...] committed the deed for profit, by cooperating with Radio Martí and other stations in Southern Florida, as well as foreign magazines and other media.” He was convicted and sentenced to 15 years in prison.[FN25] According to the information furnished by the petitioners, he is being held in solitary confinement and his health is critical.

[FN25] Verdict No. 7 delivered by the People’s Provincial Tribunal of the City of Havana, April 4, 2003.

56. Oscar Elías Biscet González. The petitioners report that Mr. Biscet González is a physician by profession and president of the Lawton Human Rights Foundation [Fundación Lawton de Derechos Humanos] in Havana. According to the records supplied to the Commission, he was detained in March 2003. It is alleged that on March 30, 2003, the following was seized at his residence: a printer, a facsimile machine, a portable computer, compact discs, a radio receiver, an antenna cable, six video tapes, a plastic case containing medications, books and diverse print materials. He was tried for “acts against the independence or territorial integrity of the State” criminalized under Article 91 of the Criminal Code, for having “circulated biased information misrepresenting Cuba’s economic and socio-political reality, to further the interests of the United States Government. He was sentenced to prison for 25 years.[FN26] On November 12, 2003, he was transferred to another prison, where he was kept in a windowless cell, in solitary confinement for two months, with stringent restrictions as to his rations and visits with family members. On October 14, 2004, he began a fast to protest the bad conditions at the prison and because he was denied any visitors in 2004. Mr. Biscet was convicted again on February 26, 2005, and sentenced to three years in prison for “insulting and failing to show proper respect for patriotic symbols,” “public disorder,” and “incitement to commit crime,” for having waved a Cuban flag upside down to protest human rights violations in Cuba. On November 3, 2005, it was reported that since August 2005, he has been held under the “Harshes Regime Phase 1” and that as long as he refused to wear prison garb, he would receive no benefits of any kind. He is said to be in frail health. His family and conjugal visits are being restricted. Only on those occasions is he permitted to tend to his personal grooming and to receive some food.

[FN26] Verdict No. 16, delivered by the People’s Provincial Tribunal of the City of Havana, April 8, 2003.

57. Margarito Broche Espinosa. The petitioners report that Ms. Broche Espinosa is a member of the Asociación Nacional de Balseiros Paz, Democracia y Libertad. According to the records supplied to the Commission she was arrested at her home on March 18, 2003, and tried for “Acts against the independence or territorial integrity of the State” criminalized and punishable under Article 91 of the Criminal Code, for having “committed acts intended to be detrimental to the independence of the Cuban State or its territorial integrity, [having] associated and had contact with counter-revolutionary groups and [...] been active in various organizations conspiring against the Cuban Revolution, periodically visiting the United States Interests Section,

contacting its staff and receiving materials, bibliography, cash and other means to support subversive activities, sending complaints of supposed human rights violations in Cuba to counter-revolutionary stations within the territory of the United States.” She was convicted and sentenced to 25 years in prison.[FN27] The petitioners report that she was in such poor health that she was granted “licencia extrapenal” [conditional release] and released on November 29, 2004.

[FN27] Verdict No. 3 delivered by the People’s Provincial Tribunal of Villa Clara, April 7, 2003.

58. Marcelo Cano Rodríguez. The petitioners report that Mr. Rodríguez is president of the Colegio Médico Independiente. The information indicates that he was arrested in Havana on March 19, 2003, and then tried for “Acts against the independence or territorial integrity of the State and criminal offenses,” criminalized under Law No. 88 on Protection of Cuba’s National Independence and Economy. He was charged with having “committed acts intended to be detrimental to the independence or integrity of the Cuban State; for having supplied information to the United States government to further the ends of the Helms-Burton Act; [...] gathered, copied and distributed subversive materials from foreign entities and agencies and departments of the United States government in support of the ends of the Helms-Burton Act; and [...] collaborated with radio stations, newspapers, magazines and other foreign media, in exchange for remuneration, thereby disturbing the public order.” He was sentenced to 18 years’ imprisonment.[FN28] The petitioners alleged that he is being denied visitors, that correspondence from family members is being withheld, and he is not receiving proper medical care. In addition, they report that in November 2005 he was severely punished by prison guards.

[FN28] Verdict No. 6 delivered by the People’s Provincial Tribunal of the City of Havana, April 6, 2003.

59. Juan Roberto de Miranda Hernández. The petitioners report that Mr. Miranda Hernández is president of the Association of Independent Teachers [Colegio de Pedagogos Independientes]. According to the records supplied to the Commission, he was arrested on March 18, 2003, at his home, where books and documents were confiscated. Reports are that he was tried for “Acts against the independence or territorial integrity of the State” criminalized under Article 91 of the Criminal Code, for having “supplied information to various outlets and agencies of the foreign press.” He was sentenced to 20 years.[FN29] It is said that since the day of his trial, he has been suffering from arterial hypertension, and was taken to a hospital. It was not until some days later that his next of kin were able to speak with him, and then only for 15 minutes. The reports add that he was later taken away to prison, without his family’s knowledge; while in prison he suffered a heart attack, preceded by acute angina pains in the chest. The petitioners report that he was granted “special conditional release” and then released on June 24, 2004, because his health condition was critical.

[FN29] Verdict No. 8 delivered by the People's Provincial Tribunal of the City of Havana, April 5, 2003.

60. Carmelo Agustín Díaz Fernández. The petitioners report that Mr. Díaz Fernández is a member of the Unified Cuban Workers Council [Consejo Unitario de Trabajadores Cubanos]. According to the records supplied to the Commission, he was arrested on March 19, 2003. He was tried for "acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Criminal Code, for having "rallied counter-revolutionary organizations to fight for the interests of the United States, including making comments on counter-revolutionary stations against the Cuban Government and the Cuban State." He was sentenced to prison for 16 years,[FN30] a sentence confirmed by the Supreme Tribunal on June 5, 2003. According to the information supplied by the petitioners, his health condition was so grave that he was given a "licencia extrapenal" [conditional release] and released on June 18, 2004.

[FN30] Verdict No. 10 delivered by the People's Provincial Tribunal of the City of Havana, April 5, 2003.

61. Eduardo Díaz Fleitas. The petitioners report that Mr. Díaz Fleitas is a member of the Movimiento 5 de agosto. According to the records supplied to the Commission he was arrested at his home on March 19, 2003. He was tried for acts criminalized under Articles 4, 6, 7 and 11 of Law No. 88, for having "provided [...] Articles, chronicles and other materials that misrepresent the Cuban reality." He was convicted and sentenced to 21 years' imprisonment. [FN31] Mr. Díaz Fleitas was kept in solitary confinement for the first months following his conviction. According to the information supplied by the petitioners, his health is gradually failing, as he is suffering from high blood pressure, headaches, hypoglycemia and gastritis. In July 2005 he began a hunger strike in protest against his solitary confinement and that in reprisal he was transferred to the maximum security prison in Camagüey in October 2005.

[FN31] Verdict No. 1 delivered by the People's Provincial Tribunal of Pinar del Río, April 5, 2003.

62. Antonio Ramón Díaz Sánchez. The petitioners report that Mr. Díaz Sánchez is a member of the Movimiento Cristiano Liberación. According to the records supplied to the Commission, police arrested him on March 19, 2003, searched his home and seized books and documents. He was tried for "Acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Criminal Code, for having "provided information to a number of stations and foreign press agencies." He was convicted and sentenced to 20 years in prison.[FN32] He reportedly spent 6 months in a cell without drinking water or light, and visits from family members were restricted.

[FN32] Verdict No. 8 delivered by the Santiago de Cuba People's Provincial Tribunal of Las Tunas, April 4, 2003.

63. Alfredo Rodolfo Domínguez Batista. The petitioners report that Mr. Domínguez Batista is a member of the Movimiento Cristiano de Liberación. According to the records supplied to the Commission he was arrested on March 19, 2003. He was tried for the act criminalized under Article 6 of Law No. 88 and for "Acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Criminal Code, for having "committed acts intended to be detrimental to the Cuban State's independence or territorial integrity." He was convicted and sentenced to 14 years in prison.[FN33] It is alleged that on November 11, 2004, he and other inmates declared a hunger strike and that on October 20, 2005 he drove a nail into his hand so as not to be taken from the cell where he was being held. According to the information received, after spending a number of days in a punishment cell, on November 9, 2005 he was put back into the cubicle he shared with 57 prisoners convicted of common crimes.

[FN33] Verdict No. 6 delivered by the People's Provincial Tribunal of the city of Havana, April 6, 2003.

64. Oscar Manuel Espinosa Chepe. The petitioners report that Mr. Espinosa Chepe is an economist and journalist. According to the records supplied to the Commission, he was arrested on March 18, 2003, and tried for "Acts against the independence or territorial integrity of the State and criminal violations," criminalized in Law No. 88, charged with having committed acts intended to be detrimental to the Cuban State's independence or integrity. He was alleged to have supplied information to the United States Government to further the ends of the Helms-Burton Act; to have gathered, copied and circulated subversive materials from foreign entities and agencies and departments of the United States Government to support the objectives of the Helms-Burton Act; and to have collaborated with foreign radio stations, newspapers, magazines and other media circulated abroad, in exchange for remuneration, thereby disturbing the public order." He was sentenced to 20 years.[FN34] The Supreme Tribunal upheld the verdict on June 23, 2003. Reports are that his health has deteriorated since his incarceration, as his cirrhosis has become worse and he now suffers from a hernia and hypertension. The petitioners point out that he was not allowed to see his family when he was undergoing medical treatment. The petitioners report that he was granted the "licencia extrapenal" (a conditional release) and released on November 29, 2004. In February 2006, he was summoned to appear before the Playa Municipal Court in the city of Havana, where he was informed that, if it was determined that his health had improved, he would be returned to prison, and that he could not leave Havana without legal authorization. The Commission has also been informed that Mr. Espinoza Chepe is purportedly being surveiled by the so-called "neighborhood political factors," who are responsible for periodically reporting on his "social attitude," and whose testimony could lead to "a revocation of his conditional release."

[FN34] Verdict No. 14 delivered by the People's Provincial Tribunal of the City of Havana, April 7, 2003.

65. Alfredo Felipe Fuentes. The petitioners report that Mr. Fuentes is a proponent of the Varela Project. According to the records supplied to the Commission he was arrested on March 20, 2003 at his home, which was searched. It is also reported that he was tried for "Acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Criminal Code, for having "rallied illegal organizations and for having engaged in conspiracy, incitement, misrepresentation of the Cuban reality, defamation of government institutions and officials." He was convicted and sentenced to 26 years' imprisonment.[FN35] It is also reported that his wife sent a letter to Mr. Fidel Castro requesting his release, as his poor health has required repeated hospitalizations.

[FN35] Verdict No. 8 delivered by the People's Provincial Tribunal of the City of Havana, April 5, 2003.

66. Efrén Fernández Fernández. The petitioners report that Mr. Fernández Fernández is a member of the Movimiento Cristiano Liberación. According to the records supplied to the Commission, he was arrested on March 18, 2003 at his home. He was prosecuted for "Acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Criminal Code, for having "provided information to a number of foreign stations and agencies." He was convicted and sentenced to 12 years in prison.[FN36] It is further noted that on October 16, 2004, he joined other prisoners in the same facility to protest the fact that the authorities were not allowing them to telephone their families on the grounds that the prisoners were using those phone calls to report the human rights violations occurring in prisons. It has also been reported that he has serious health problems, that he has lost 15 kilos (approximately 33 pounds), and that he has been denied medical care.

[FN36] Verdict No. 7 delivered by the People's Provincial Tribunal of the City of Havana, April 4, 2003.

67. Juan Adolfo Fernández Saínz. The petitioners report that Mr. Fernández Saínz is a journalist with the Agencia Independiente Patria. According to the records supplied to the Commission he was arrested on March 18, 2003 at his home. The records indicate that Mr. Fernández Sainz was tried for acts criminalized under Articles 4, 7 and 3 of Law No. 88, for having "supplied the United States government, its agencies, departments, representatives or officials with information to further the ends of the Helms-Burton Act and [...] having done so for profit, in cooperation with Radio Martí and other radio stations in southern Florida, as well as foreign magazines and other foreign media." He was convicted and sentenced to 15 years' imprisonment.[FN37] According to the information supplied by the petitioners, Mr. Fernández Saínz was kept in solitary confinement from the time he was convicted until November 2003.

They also report that on December 6, 2003, another inmate beat him to the point of unconsciousness. Mr. Fernández Saínz has participated in several hunger strikes to protest the terrible conditions at the prison. According to the information provided by the petitioners, on January 9, 2006, during a visit, his relatives were taken to an office where a military man checked the already empty suitcases that they were taking back home. He told them that a “body check” was also required, which his relatives refused to allow. Mr. Fernández Saínz is reportedly in very poor health.

[FN37] Verdict No. 8, delivered by the People’s Provincial Tribunal of La Habana, April 4, 2003.

68. José Daniel Ferrer García. According to information supplied by the petitioners, Mr. Ferrer García is a member of the Christian Liberation Movement [Movimiento Cristiano de Liberación]. The records turned over to the Commission show that Mr. Ferrer Garcia was detained on March 19, 2003. During the investigative process, the following was seized: two cameras, fifteen computer discs, six compact discs, one computer microphone, sixteen rolls of film, one typewriter, one copying machine and medications. He was prosecuted for “Acts against the independence or territorial integrity of the State” criminalized under Article 91 of the Criminal Code, specifically for “threatening the integrity of the Cuban State, working in the service of the United States Government, and receiving from members of known counter-revolutionary organizations technical resources, equipment, propaganda, financial resources and medical products, and for having engaged in seditious activities against the country, upsetting public order, and copying, receiving, distributing and circulating misinformation about Cuba and its authorities.” He was convicted and sentenced to 25 years’ imprisonment.[FN38] The latest reports indicate that he is in solitary confinement, amid terrible sanitary conditions. Despite his health condition, the authorities are refusing to provide medical treatment. The petitioners also report that prison guards gave Mr. Ferrer García a severe beating on October 20, 2004. Since January 2005, his family and conjugal visits have been restricted.

[FN38] Verdict No. 7, delivered by the People’s Provincial Tribunal of Santiago de Cuba, April 7, 2003.

69. Luís Enrique Ferrer García. The petitioners report that Mr. Ferrer García is a member of the Movimiento Cristiano de Liberación. According to the records supplied to the Commission he was arrested on March 19, 2003. He was tried for “Acts against the independence or territorial integrity of the State,” convicted and sentenced to 28 years in prison.[FN39] The petitioners add that in August 2004 he was severely beaten by prison staff and that his health was very poor. They also report that in May 2005, he went on a hunger strike.

[FN39] Verdict No. 8 delivered by the People’s Provincial Tribunal of Las Tunas, April 4, 2003.

70. Orlando Fundora Álvarez. The petitioners report that Mr. Fundora Álvarez is a member of the Asociación Pedro Luis Boitel. According to the records supplied to the Commission, he was arrested on March 18, 2003 and then tried for committing “Acts against the independence or territorial integrity of the State” criminalized under Article 91 of the Criminal Code, for having “disseminated biased information that misrepresents the Cuban economic and sociopolitical reality.” He was sentenced to 18 years’ imprisonment.[FN40] The petitioners report that he was granted licencia extrapenal [conditional release] and released on June 18, 2004.

[FN40] Verdict No. 16 delivered by the People’s Provincial Tribunal of the City of Havana, April 8, 2003.

71. Próspero Gaínza Agüero. The petitioners report that Mr. Gaínza Agüero is a member of the Movimiento Nacional de Resistencia Cívica. According to the records supplied to the Commission he was arrested at his mother’s home on March 18, 2003. Cameras used to record and photograph papers, books, personal letters, Cubanet bulletins, copies of the Universal Declaration of Human Rights, photographs and other documents were confiscated. The record shows that Mr. Gaínza Agüero was tried for “Crimes against Cuba’s National Independence and Economy” criminalized under Articles 7, 8 10 and 6 of Law No. 88, for having “collaborated with a radio station and other foreign media, receiving remuneration for his work; [...] promoting and organizing public disturbances and [...] compiling subversive material from the United States government and other foreign departments or entities, all for the supposed purpose of achieving the objectives of the Helms-Burton Act.” He was convicted and sentenced to 25 years in prison.[FN41] In April 2004, his wife complained of the unsafe conditions of her husband’s incarceration, including poor diet. It is also reported that in June 2004, he sewed up his mouth to protest the prison authorities’ decision not to provide the inmates with food sent to them by their families.

[FN41] Verdict No. 4 delivered by the Holguín People’s Provincial Tribunal of Holguín, April 4, 2003.

72. Miguel Galván Gutiérrez. The petitioners report that Mr. Galván Gutiérrez is an independent journalist with the Agencia Habana. According to the records supplied to the Commission he was arrested on March 18, 2003. The records indicate that he was tried for “Acts against the Independence or Territorial Integrity of the State” criminalized under Article 91 of the Criminal Code, for having “rallied, been a member of and created various unlawful organizations in which he engaged in conspiracy, incitement to civil disobedience and misrepresentation of the Cuban reality, all for the supposed purpose of enabling United States influence.” He was convicted and sentenced to 26 years in prison,[FN42] a verdict upheld by the Supreme Tribunal on June 3, 2003. On September 29, 2004, he complained that his correspondence had been intercepted in the period from January to July 2004 and that he was

transferred to another prison and held in solitary confinement in retaliation for the hunger strike he had started. His health is reportedly very bad.

[FN42] Verdict No. 12 delivered by the People's Provincial Tribunal of the City of Havana, April 7, 2003.

73. Julio César Gálvez Rodríguez. The petitioners report that Mr. Gálvez Rodríguez is an independent journalist. According to the records supplied to the Commission he was arrested on March 19, 2003. Reports are that he was tried for the acts criminalized and punished under Articles 4, 6, 7 and 11 of Law No. 88, for having "released subversive information, information that was then reported in magazines, on Web pages and on Radio Martí to further the ends of the Helms-Burton Act." He was sentenced to 15 years' imprisonment.[FN43] The petitioners report that on July 9, 2004, Mr. Gálvez Rodríguez was tortured by a re-educator at the hospital, in the presence of other patients. The torture left him with a severe hematoma on the left thigh, kidney pains and bruises on his shoulders. On March 14, 2005, it was reported that he was suffering severe pain in his osteo-muscular system caused by generalized arthritis; his arterial hypertension has also worsened.

[FN43] Verdict No. 5 delivered by the People's Provincial Tribunal of the City of Havana, April 5, 2003.

74. Edel José García Díaz. The petitioners report that Mr. García Díaz is a member of the Norte Centro Press. According to the records supplied to the Commission, he was arrested on March 18, 2003 and tried for the acts criminalized under Articles 4, 6, 7 and 11 of Law No. 88, for having "released subversive information that was then published in magazines, at Web sites and broadcast on Radio Martí, in furtherance of the ends of the Helms-Burton Act." He was sentenced to 15 years' imprisonment.[FN44] According to the information supplied by the petitioners, he was granted "licencia extrapenal" [conditional release] owing to his grave state of health. He was released on November 29, 2004.

[FN44] Verdict No. 5 delivered by the People's Provincial Tribunal of the City of Havana, April 5, 2003.

75. José Luís García Paneque. The petitioners report that Mr. García Paneque is a physician and a member of the board of the Movimiento Todos Unidos. According to the records supplied to the Commission, he was arrested on March 18, 2003, and then tried on charges of being an independent journalist operating a "nongovernmental bookstore" and of belonging to a "nongovernmental medical association," in violation of Law No. 88. He was sentenced to prison for 24 years.[FN45] It was also reported that Mr. García Paneque met with his defense attorney only once prior to trial. According to the petitioners, Cuban law requires that defense attorneys

are to have at least 10 days in which to study the case file. As for his state of health, Mr. García Paneque is said to be suffering from asthma and hypertension, but has been denied proper medical attention. He has lost 80 pounds since his arrest due to the intestinal absorption syndrome he suffers from. His relatives have lodged complaints for having being victims of acts of repudiation by the State.

[FN45] Verdict No. 8 delivered by the People’s Provincial Tribunal of Las Tunas, April 4, 2003.

76. Ricardo Severino González Alfonso. The petitioners report that Mr. González Alfonso is a member of the “Manuel Márquez Sterling” Journalists Association [Sociedad de Periodistas “Manuel Márquez Sterling”] and director of the magazine De Cuba. According to the records supplied to the Commission, Mr. González Alfonso was arrested on March 18, 2003 because of newspaper Articles he had published in various countries, among them the United States. He was tried for “Acts against the independence or territorial integrity of the State” criminalized under Article 91 of the Criminal Code, because he had allegedly “created subversive associations and magazines that were supplied to the United States.” He was sentenced to 20 years.[FN46] The verdict and sentence were upheld by the Supreme Tribunal on May 29, 2003.[FN47] He has had to undergo surgery a number of times because of his deteriorating health.

[FN46] Verdict No. 4 delivered by the People’s Provincial Tribunal of the City of Havana, April 5, 2003.

[FN47] Verdict No. 21 delivered by the People’s Supreme Tribunal, May 29, 2003.

77. Diosdado González Marrero. The petitioners report that Mr. González Marrero is a member of the Partido Paz, Democracia y Libertad. According to the records supplied to the Commission he was arrested on March 19, 2003, and tried for violations of Law No. 88, for having “collaborated by sending news and Articles via telephone to Radio Martí and for [having] organized, promoted and staged public disturbances on public streets that involved walking with his hands in chain and with the Cuban flag with the star inverted, shouting slogans such as “Down with Fidel,” “Freedom for Political Prisoners;” he was also accused of assembling in parks and cemeteries to stage events hostile to the revolutionary process.” He was convicted and sentenced to 20 years in prison.[FN48] The petitioners add that family visits are restricted to two hours every three months, that he is exposed to sunlight for only one hour each day and that he is being held in solitary confinement. It is also reported that he was confined to a punishment cell from June 24, 2004 until March 2005, where he was incommunicado and received no medical care.

[FN48] Verdict No. 9 delivered by the People’s Provincial Tribunal of Matanzas, April 7, 2003.

78. Léster González Pentón. The petitioners report that Mr. González Pentón is a member of the Movimiento Pro Derechos Humanos Razón, Verdad y Libertad. According to the records supplied to the Commission he was arrested on March 18, 2003. He was tried for “Acts against the Independence or Territorial Integrity of the State” criminalized under Article 91 of the Criminal Code, for having “committed acts intended to be detrimental to the Cuban State’s independence or its territorial integrity, [...] joined and had contact with counter-revolutionary groups and having been active in various organizations conspiring against the Cuban Revolution, periodically visiting the United States Interests Section, contacting its staff and receiving materials, bibliography, cash and other means to support subversive activities, sending complaints of supposed human rights violations in Cuba to counter-revolutionary stations within United States territory.” He was convicted and sentenced to 20 years in prison.[FN49] According to the information supplied by the petitioners, he is being held in solitary confinement and is allowed contact with his relatives every 45 days. They add that he has been moved to different prisons on a number of occasions and that his health has severely deteriorated.

[FN49] Verdict No. 3 delivered by the Villa Clara People’s Provincial Tribunal, April 7, 2003.

79. Alejandro González Raga. The petitioners report that Mr. González Raga is a member of the Comité Cristiano Liberación. According to the records supplied to the Commission he was arrested on March 18, 2003 and his residence was searched. He was tried for “Acts against the independence or territorial integrity of the State” criminalized under Article 91 of the Criminal Code, for having “committed acts intended to be detrimental to the independence of the Cuban State or its territorial integrity.” He was convicted and sentenced to 14 years in prison.[FN50] According to information supplied by the petitioners, he has been denied the proper treatment for his bronchial condition.

[FN50] Verdict No. 1 delivered by the Camagüey People’s Provincial Tribunal, April 4, 2003.

80. Jorge Luís González Tanquero. According to the information supplied by the petitioners, Mr. González Tanquero is president of the Carlos Manuel de Céspedes Independence Movement [Movimiento Independentista Carlos Manuel de Céspedes]. The records supplied to the Commission indicate that he was detained on March 19, 2003, whereupon his residence was searched for four hours. Reports also indicate that he was tried for acts criminalized under Law No. 88 and sentenced to 20 years.[FN51] The information also reports that Mr. González Tanquero met with his defense counsel only once prior to trial. The petitioners allege that the prison doctor is accusing him of lying about his condition, and as a result he has been denied medical care. Mr. González Tanquero is also said to be suffering from generalized arthritis, causing him severe bone pain. He is also said to be suffering from arterial hypertension and that he has lost his hearing because he did not receive proper treatment for infections, all of which has generated a state of depression in him.

[FN51] Verdict No. 8 delivered by the People's Provincial Tribunal of Santiago de Cuba, April 4, 2003.

81. Leonel Grave de Peralta. The petitioners report that Mr. Grave de Peralta is a member of the Movimiento Cristiano de Liberación Palma Soriano. According to the records supplied to the Commission he was arrested at his home on March 18, 2003. It is alleged that a radio receiver was confiscated during the investigative process. The record indicates that he was tried for "Acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Criminal Code, for having "worked against the territorial integrity of the Cuban State, serving the interests of the United States government, and receiving technical resources, equipment, propaganda, financial resources, and medical products from members of known counter-revolutionary organizations, and for engaging in seditious activities against the nation, disrupting civic order, reproducing, receiving, distributing and circulating false information about the Cuban reality and its officials." He was convicted and sentenced to 20 years in prison.[FN52] The petitioners report that Mr. Grave de Peralta was placed in solitary confinement for no apparent reason.

[FN52] Verdict No. 7 delivered by the People's Provincial Tribunal of Santiago de Cuba, April 7, 2003.

82. Iván Hernández Carrillo. The petitioners report that Mr. Hernández Carrillo is a member of the Partido por la Democracia Pedro Luís Boitel. According to the records supplied to the Commission he was arrested at his home on March 18, 2003, and tried for "Acts inimical to the protection of Cuba's National independence and its economy" criminalized under Articles 4, 6, 7 and 8 of Law No. 88, for having "promoted, organized and incited third parties to engage in public disturbances in the community in which he lives; [...] read documents aloud to stir up the emotions of the persons he assembled; [...] personally sent information on his counter-revolutionary activities to the highest-ranking representative of the United States government in Cuba; and [...] compiled subversive material of the United States government, all in exchange for money." He was convicted and sentenced to 25 years in prison.[FN53] It is further alleged that he is being denied medical treatment.

[FN53] Verdict No. 2 delivered by the People's Provincial Tribunal of Matanzas, April 4, 2003.

83. Normando Hernández González. The petitioners report that Mr. Hernández González is a member of the Colegio de Periodistas Independientes. According to the records supplied to the Commission he was arrested at his home on March 18, 2003. The records also show that he was tried for "Acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Criminal Code, for having "committed acts intended to be detrimental to the Cuban State's independence or territorial integrity." He was convicted and sentenced to 25 years in prison.[FN54] The petitioners add that despite his frail health, he has been denied access to

any medical care and to the medicines that his family has sent him. His correspondence is being intercepted and his family and conjugal visits are restricted.

[FN54] Verdict No. 1 delivered by the Camagüey People's Provincial Tribunal, April 4, 2003.

84. Juan Carlos Herrera Acosta. The petitioners report that Mr. Herrera Acosta is a member of the Movimiento Cubano de Jóvenes por la Democracia in Guantánamo. According to the records supplied to the Commission he was arrested on March 18, 2003, at his mother's residence, where a search was conducted. The records also indicated that he was tried for the acts criminalized under Articles 4, 6, 7, 10 and 11 of Law No. 88, for having "supplied information to the United States government, its agencies, departments, representatives or personnel, to enable realization of the objectives of the Helms-Burton Act, receiving in exchange cash remuneration for his services; having compiled, reproduced and distributed subversive material from the United States; and [...] cooperated with radio stations, newspapers, magazines and other foreign media." He was convicted and sentenced to 20 years in prison.[FN55] The petitioners also provided information to the effect that on August 11, 2004, he ended a hunger strike that he started on July 26, 2004 to protest the terrible food supplied by the prison authorities. The records indicate that he was in a punishment cell, was severely beaten by prison staff, is not permitted to phone his family, and is receiving absolutely no medical care for his serious health condition.

[FN55] Verdict No. 2 delivered by the People's Provincial Tribunal of Guantanamo, April 3, 2003.

85. Regis Iglesias Ramírez. The petitioners report that Mr. Iglesias Ramírez is a member of the Movimiento Cristiano de Liberación. According to the records supplied to the Commission he was arrested on March 19, 2003, and tried for "Acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Criminal Code, for allegedly having "supplied information to various foreign stations and news agencies." He was convicted and sentenced to 18 years in prison.[FN56]

[FN56] Verdict No. 8 delivered by the People's Provincial Tribunal of the city of Havana, April 5, 2003.

86. José Ubaldo Izquierdo Hernández. The petitioners report that Mr. Izquierdo Hernández is an independent journalist with the Grupo Decoro. According to the records supplied to the Commission he was arrested at his home on March 18, 2003. The record shows that he was tried for "Acts against the Independence or Territorial Integrity of the State" criminalized under Article 91 of the Criminal Code, for having "rallied, belonged to and created various unlawful organizations in which he engaged in conspiracy, incitement to civil disobedience and

misrepresentation of the Cuban reality for the supposed purpose of enabling United States influence.” He was convicted and sentenced to 16 years in prison.[FN57] The verdict was confirmed by the Supreme Tribunal on June 3, 2003. It is alleged that he is not allowed access to radio, television or newspapers, and can only exercise for four hours each week. It is also reported that his correspondence is intercepted and that he is not receiving medical care. The most recent information on the condition of his health indicates that he is suffering from disorders that cause him constant stomach pain and acidity and have only gotten worse with the lack of a proper medical diet and the scarcity of medications at the prison.

[FN57] Verdict No. 12 delivered by the People’s Provincial Tribunal of the City of Havana, April 7, 2003.

87. Reynaldo Miguel Labrada Peña. The petitioners report that Mr. Labrada Peña is a human rights activist. According to the records supplied to the Commission he was arrested on March 18, 2003 at his home, which was searched. The shoemaking tools he used in his work were confiscated. The record indicates that Mr. Labrada Peña was tried for “Acts against the independence or territorial integrity of the Cuban State and criminal offenses against Cuba’s national independence.” He was convicted and sentenced to 6 years in prison.[FN58] The petitioners reported that in July 2004, his family reported that he had attempted suicide, suffering from the depression induced by solitary confinement.

[FN58] Verdict No. 8 delivered by the Santiago de Cuba People’s Provincial Tribunal, April 4, 2003.

88. Librado Ricardo Linares García. The petitioners report that Mr. Linares García is a member of the Movimiento Cubano Reflexión. According to the records supplied to the Commission he was arrested on March 18, 2003 on a public thoroughfare, as his residence was being searched. He was reportedly tried for “Acts against the independence or territorial integrity of the State” criminalized under Article 91 of the Criminal Code, for having “engaged in acts intended to be detrimental to the Cuban State’s independence or its territorial integrity; [...] having been a member of or had contact with counter-revolutionary groups and having been active in various organizations conspiring against the Cuban Revolution, making periodic visits to the United States Interests Office, contacting officials there and receiving materials, bibliography, cash and other means to support his subversive activities, sending complaints of alleged human rights violations to counter-revolutionary broadcasting stations located within United States territory.” He was convicted and sentenced to 20 years in prison.[FN59] According to the information supplied by the petitioners, he has not been allowed visits from his family or correspondence from the time he was first incarcerated. They also note that he has been taken to the hospital on numerous occasions. The most recent news is that his health continues to deteriorate.

[FN59] Verdict No. 3 delivered by the Villa Clara People's Provincial Tribunal, April 7, 2003.

89. Marcelo Manuel López Bañobre. The petitioners report that Mr. López Bañobre is a member of the Comisión Cubana de Derechos Humanos y Reconciliación Nacional. According to the records supplied to the Commission, he was arrested on March 25, 2003, in Havana. He was tried for "Acts against the Independence or territorial integrity of the State and criminal offenses," criminalized under Law No. 88, for having "committed acts intended to be detrimental to the independence or integrity of the Cuban State; [...] supplied information to the United States government to further the ends of the Helms-Burton Act; [...] compiled, copied and circulated subversive materials from foreign entities, and agencies and departments of the United States government to support the objectives of the Helms-Burton Act; and [...] collaborated with foreign radio stations, magazines and other foreign media, in exchange for remuneration, thereby disturbing the public order." He was convicted and sentenced to 15 years in prison.[FN60] The petitioners have reported that because his state of health was so critical, Mr. López Bañobre was granted a "licencia extrapenal" [conditional release] and released on November 29, 2004.

[FN60] Verdict No. 6 delivered by the People's Provincial Tribunal of the City of Havana, April 6, 2003.

90. José Miguel Martínez Hernández. The petitioners report that Mr. Martínez Hernández is a proponent of the Varela Project and of the Biblioteca Independiente Juan Bruno Zayas in Havana. According to the records supplied to the Commission he was arrested on March 19, 2003. More than a thousand books were removed from his independent library. The record indicates that he was tried under Articles 6, 7 and 11 of Law No. 88, for having "compiled and disseminated subversive materials from the United States government, its agencies, departments, representatives, officials or any other foreign entity to support the objectives of the Helms-Burton Act, and because he allegedly collaborated with foreign radio stations, magazines, newspapers and other media circulated abroad." He was convicted and sentenced to 13 years in prison.[FN61] It is further alleged that Mr. Martínez Hernández has been moved to another prison where he is being denied religious counsel.

[FN61] Verdict No. 13 delivered by the People's Provincial Tribunal of the City of Havana, April 7, 2003.

91. Héctor Maseda Gutiérrez. The petitioners report that Mr. Maseda Gutiérrez is a member of the Cuban Liberal Party [Partido Liberal Cubano]. According to the records supplied to the Commission, he was arrested at his home on March 19, 2003, by security agents who conducted a search in partnership with a heavy police contingent. The record indicates that he was tried for "Acts against the independence or territorial integrity of the State" criminalized under Law No. 88, for having "committed acts intended to be detrimental to the independence or territorial integrity of the Cuban State; [...] provided information to the United States government to further

the ends of the Helms-Burton Act; [...] compiled, copied and disseminated subversive materials from foreign entities and agencies and departments of the United States government, to support the objectives of the Helms-Burton Act; and [...] collaborated with radio stations, newspapers, magazines and other foreign media in exchange for remuneration, disturbing public order.” He was convicted and sentenced to 20 years’ imprisonment.[FN62] According to information furnished by the petitioners, he was in a solitary confinement cell for the first 17 months of his incarceration, and was then transferred to another zone where he is denied access to a telephone and medical attention. It is alleged that after 16 months of being denied family and conjugal visits, his wife was finally able to see him.

[FN62] Verdict No. 6 delivered by the People’s Provincial Tribunal of the City of Havana, April 6, 2003.

92. Mario Enrique Mayo Hernández. The petitioners report that Mr. Mayo Hernández is a member of the Agencia de Prensa Independiente Félix Varela. According to the records supplied to the Commission he was arrested on March 19, 2003. The records indicate that he was tried for “Acts against the Independence or Territorial Integrity of the State” criminalized under Article 91 of the Criminal Code, for having “committed acts intended to be detrimental to the Cuban State’s independence or its territorial integrity.” He was convicted and sentenced to 20 years in prison.[FN63] The petitioners report that in November 2004 he went on a hunger strike to protest the fact that he was not receiving medical treatment for his arterial hypertension. His wife reported that the warden at the prison threatened to suspend the alleged victim’s visits if he continued the hunger strike. Reports are that he was taken to the hospital several times because of his health condition and that he embarked on a new hunger strike on July 19, 2005, saying that he would allow himself to die if not released. According to the reports received on November 25, 2005, he is suffering from severe depression and has twice attempted suicide.[FN64]

[FN63] Verdict No. 1 delivered by the Camagüey People’s Provincial Tribunal, April 4, 2003.

[FN64] The Payolibre Web site (<http://www.payolibre.com/presos.htm>) reports that this alleged victim was granted “licencia extrapenal” [conditional release]. However, the petitioners in this case with the IACHR have not been able to confirm this report.

93. Luís Milán Fernández. The petitioners report that Mr. Milán Fernández is a member of the Colegio Médico Independiente in Santiago de Cuba, a proponent of the Varela Project and member of the Movimiento Cristiano Liberación. According to the records supplied to the Commission he was arrested on March 18, 2003, at his home, which was searched. The record indicates that he was tried under Articles 6, 7, and 11 of Law No. 88, for having “compiled and circulated subversive materials from the United States government, to support the objectives of the Helms-Burton Act and, to that same end, [...] collaborated with Radio Martí and other foreign media working for the dissident movement at home and abroad, a movement that opposes the Cuban socialist system.” He was convicted and sentenced to 13 years in prison.[FN65] The petitioners also report that for a long time, Mr. Milán Fernández was forced

to sleep under plastic covers because of a leak in the sewer pipes that crossed over his cell. There are also reports that his correspondence has been intercepted and that on February 18, 2004, he was moved to the psychiatric section of the prison, even though he is not suffering from any mental disorder, but that he is now back in prison.

[FN65] Verdict No. 5 delivered by the Santiago de Cuba People's Provincial Tribunal, April 4, 2003.

94. Rafael Millet Leyva. The petitioners report that Mr. Millet Leyva is president of the Movimiento de Resistencia Cívica "Martin Luther King". According to the records supplied to the Commission he was arrested on March 21, 2003. During a search of his home, police confiscated the Universal Declaration of Human Rights. The information compiled as of November 27, 2005, indicates that he has still not been accused of any crime, but is nonetheless being held in preventive custody on charges of "contempt" and "possession of enemy propaganda."

95. Nelson Moline Espino. The petitioners report that Mr. Moline Espino is a member of the 30 de noviembre political movement. According to the records supplied to the Commission police arrested him on March 20, 2003 and searched his home. He was tried for "Acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Criminal Code, for having "divulged biased information that misrepresents the Cuban economy and sociopolitical reality, thereby aiding in the campaigns that aim to discredit and thereby harm the integrity of the Cuban State." He was sentenced to 20 years in prison.[FN66] The petitioners report that he has lost over 70 pounds since his arrest.

[FN66] Verdict No. 7 delivered by the People's Provincial Tribunal of the City of Havana, April 4, 2003.

96. Ángel Moya Acosta. The petitioners report that Mr. Moya Acosta is a member of the Movimiento Libertad Democrática para Cuba. According to the records supplied to the Commission, he was arrested on March 18, 2003. The records show that he was tried for "Acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Criminal Code, for having "disseminated biased information that misrepresented the Cuban economy and socio-politics." He was sentenced to 20 years' imprisonment.[FN67] Since being jailed, he has taken part in a number of protests and hunger strikes in solidarity with other inmates. On May 15, 2003, he was put in solitary confinement as part of the "Special High Severity Program" that is used, the petitioners contend, with most "political prisoners." On October 17, 2005, his wife reported on the conditions in the cell that he shares with 13 common criminals.

[FN67] Verdict No. 16 delivered by the People's Provincial Tribunal of the City of Havana, April 8, 2003.

97. Jesús Mustafá Felipe. The petitioners report that Mr. Mustafá Felipe is a member of the Movimiento Cristiano Liberación and proponent of the Varela Project. In the course of the investigation, the authorities confiscated five audio tapes, data storage devices, a radio receiver and a camera. The record shows that he was tried for "Acts against the Independence or Territorial Integrity of the State" criminalized and punishable under Article 91 of the Criminal Code, for "engaging in activities intended to be detrimental to the integrity of the Cuban State, working in the interests of the United States government and receiving, from members of known counter-revolutionary organizations, technical resources, equipment, propaganda, financial resources and medical products, and having engaged in seditious activities, disturbing order among the citizenry, and copying, receiving, distributing and circulating misinformation about the Cuban reality and its authorities." He was convicted and sentenced to 25 years in prison.[FN68] It is reported that at the time these charges were filed, he was already serving 18 months in prison for the crimes of "contempt" and "defiance of authority." At trial the prosecutor who formally charged him sought the death penalty. The conviction ordered that all confiscated literature and documents be burned and destroyed. The information supplied to the Commission also describes the deplorable conditions of his incarceration, including the fact that he is denied access to sunlight and family visits.

[FN68] Verdict No. 7 delivered by the People's Provincial Tribunal of Santiago de Cuba, April 7, 2003.

98. Félix Navarro Rodríguez. The petitioners report that Mr. Navarro Rodríguez is a member of the Partido por la Democracia Pedro Luis Boitel. According to the records supplied to the Commission, he was arrested on November 18, 2003, on a public thoroughfare, and then taken to his home where a search was conducted. He was tried for "Acts detrimental to the Protection of National Independence and the Cuban economy," criminalized under Articles 8, 4, 6 and 7 of Law No. 88, for having "encouraged, organized and incited third parties to stage public disturbances in the community where he lives; [...] read documents aloud to incite the people he had assembled; [...] personally reported information on his counter-revolutionary activities to the highest-ranking representative of the United States government in Cuba; and [...] compiled subversive material from the United States Government, all of which was done in exchange for money." He was convicted and sentenced to 25 years in prison.[FN69] The petitioners report that Mr. Navarro Rodríguez has been denied access to the news and his correspondence. He staged a 23-day hunger strike for better prison conditions.

[FN69] Verdict No. 2 delivered by the People's Provincial Tribunal of Matanzas, April 4, 2003.

99. Jorge Olivera Castillo. The petitioners report that Mr. Olivera Castillo is an independent journalist and director of the agency Habana Press. According to the records supplied to the Commission, he was arrested on March 18, 2003, by a group of officers who told him that a search warrant would be drawn up. It was reported that they confiscated his books, documents, two typewriters and a video camera. Mr. Olivera Castillo was tried for acts criminalized under Articles 4.1, 4.2.b, 6.1, 6.3.b, 7.1, 7.3 and 11 of Law No. 88, for having “released subversive information that was then published in magazines, at Web pages and broadcast on Radio Martí, thereby furthering the ends of the Helms-Burton Act.” He was convicted and sentenced to 18 years’ imprisonment.[FN70] According to the information supplied by the petitioners, he is being held in a cell with a hole in the floor that is to be used as a lavatory. According to information received by the Commission, on December 6, 2004 he was given a conditional release due to the serious state of his health. It is also reported that on February 21, 2006, the Municipal Court of Old Havana ruled that Mr. Olivera Castillo could not leave the city limits without legal authorization, and that if he ever wrote again for the foreign media, his conditional release would be immediately revoked.

[FN70] Verdict No. 5 delivered by the People’s Provincial Tribunal of the City of Havana, April 5, 2003.

100. Pablo Pacheco Ávila. The petitioners report that Mr. Pacheco Avila is a member of the Avila Cooperative of Independent Journalists [Cooperativa Avileña de Periodistas Independientes]. According to the records supplied to the Commission, he was arrested on March 18, 2003, after a search of his home during which a typewriter, journalism books and documents were confiscated. Reports are that he was tried under Articles 6, 7, 1, 3 and 11 of Law No. 88, for having “compiled and disseminated subversive materials from the United States Government, its agencies, departments, representatives and officials or from any foreign entity, to further the ends of the Helms-Burton Act,” and for allegedly having cooperated with radio stations, newspapers, magazines and other foreign media, purportedly for profit.” He was sentenced to prison for 20 years.[FN71] Reports are that his cell gets no sunlight and he is being denied access to a priest. It is also reported that since his arrest he has lost more than 11 kilograms and is suffering from anemia and migraine headaches, despite which he has been denied medical care.

[FN71] Verdict No. 2, delivered by the People’s Provincial Tribunal of Ciego de Avila, April 4, 2003.

101. Héctor Palacios Ruiz. The petitioners report that Mr. Palacios Ruíz is a member of the Centro de Estudios Sociales. According to the records supplied to the Commission he was arrested on March 20, 2003, after 30 police officers conducted a search that lasted several hours and confiscated hundreds of books and documents. He was tried for acts criminalized under Article 91 of the Criminal Code and Artículos 4.1, 4.2.a, 4.2.b, 6.1, 6.2.a, 6.2.b, 7.1, 7.2, 7.3, 8.1, 8.2, 9.1, 9.2, 10 y 11 of Law No. 88 for having “committed acts intended to be detrimental to the

Cuban State's independence or integrity; [...] supplied information to the United States government to further the ends of the Helms-Burton Act; [...] compiled, copied and circulated subversive materials from foreign entities and agencies and departments of the United States government to support the objectives of the Helms-Burton Act; and [...] cooperated with foreign radio stations, newspapers, magazines and other foreign media, in exchange for remuneration, thereby disturbing the public order." He was convicted and sentenced to 25 years' imprisonment.[FN72] As of May 31, 2005, Mr. Palacios was reported to be suffering from ischemia, arterial hypertension, cardiopathy, arthritis and digestive problems. Reports are that letters have been sent to Mr. Fidel Castro requesting that Mr. Palacios Ruíz be granted "licencia extrapenal" [conditional release].

[FN72] Verdict No. 6 delivered by the People's Provincial Tribunal of the City of Havana, April 6, 2003.

102. Arturo Pérez de Alejo Rodríguez. The petitioners report that Mr. Pérez de Alejo Rodríguez is a member of the Organización de Derechos Humanos Escambray. According to the records supplied to the Commission, he was arrested on March 17, 2003, and then tried for "Acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Criminal Code. He was convicted and sentenced to 20 years in prison.[FN73] It is further reported that Mr. Pérez de Alejo Rodríguez' visits are restricted and he is in frail health.

[FN73] Verdict No. 2 delivered by the Villa Clara People's Provincial Tribunal, April 4, 2003

103. Omar Pernet Hernández. The petitioners report that Mr. Pernet Hernández is a member of the Movimiento Nacional de Derechos Humanos Mario Manuel de la Peña. According to the records supplied to the Commission he was arrested on March 19, 2003. He was tried for "Acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Criminal Code, for having "engaged in activities intended to be detrimental to the Cuban State's independence or its territorial integrity; [...] joined or had contact with counter-revolutionary groups and been active in various organizations conspiring against the Cuban Revolution, periodically visiting the United States Interests Section, contacting its staff and receiving materials, bibliography, cash and other means to support subversive activities, sending complaints of supposed human rights violations in Cuba to counter-revolutionary stations within United States territory." He was convicted and sentenced to 25 years in prison.[FN74] The petitioners report that during his incarceration he has suffered from hypertension, ulcers and tuberculosis, yet has no access to medical treatment. On October 10, 2005, he went on a hunger strike in the hospital where he was undergoing physiotherapy to treat the injuries he sustained in an accident while being transported in an official vehicle.

[FN74] Verdict No. 3 delivered by the Villa Clara People's Provincial Tribunal, April 7, 2003.

104. Horacio Julio Piña Borrego. The petitioners report that Mr. Piña Borrego is a human rights activist. According to the records supplied to the Commission, he was arrested on March 19, 2003 and then prosecuted for the acts criminalized under Articles 4, 6, 7 and 11 of Law No. 88, for having “provided [...] Articles, chronicles and other writings that distort the Cuban reality.” He was sentenced to prison for 20 years.[FN75] Reports are that his health has been gradually deteriorating and that on December 19, 2005, he started a hunger strike at the hospital where he was a patient.

[FN75] Verdict No. 1 delivered by the People’s Provincial Tribunal of Pinar del Río, April 5, 2003.

105. Fabio Prieto Llorente. The petitioners report that Mr. Prieto Llorente is an independent journalist. According to the records supplied to the Commission he was arrested on March 19, 2003. The record indicates that he was tried for “Acts against the independence or territorial integrity of the State” criminalized under Article 91 of the Criminal Code, for “engaging in activities intended to be detrimental to the independence of the Cuban State and its territorial integrity, inasmuch as he was alleged to have created an independent press agency through which he provided information on economic and social life in Cuba, news that he relayed to other agencies for circulation; [and having] also created an independent library in his home.” He was convicted and sentenced to 20 years in prison.[FN76] In August 2004 he participated in a hunger strike to protest conditions at the prison. He has allegedly been subjected to psychological torture and is suffering from emphysema and joint pain. It was also reported that on November 28, 2005, he sent a letter to the Central Committee of the Cuban Communist Party to make public his failing health, caused by the fact that he is confined to a very small cell that is dark, damp and poorly ventilated. These conditions have brought on a chronic pulmonary condition. Yet he has not thus far received proper medical treatment. The most recent report indicates that he was transferred to another prison on January 18, 2006.

[FN76] Verdict No. 3 delivered by the Isla de Juventud People’s Provincial Tribunal, April 5, 2003.

106. Alfredo Manuel Pulido López. The petitioners report that Mr. Pulido López is a member of the Movimiento Cristiano de Liberación. According to the records supplied to the Commission he was arrested on March 18, 2003. The records show that he was tried for “Acts against the Independence or Territorial Integrity of the State” criminalized under Article 91 of the Criminal Code, for having “committed acts intended to be detrimental to the Cuban State’s independence or its territorial integrity.” Mr. Pulido López was convicted and sentenced to 14 years in prison.[FN77] His health is frail.

[FN77] Verdict No. 1 delivered by the Camagüey People’s Provincial Tribunal, April 4, 2003.

107. José Gabriel Ramón Castillo. According to the information that the petitioners provided, Mr. Ramón Castillo is a member of the Independent Institute of Culture and Democracy [Instituto independiente Cultura y Democracia]. According to the records supplied to the Commission, he was arrested on March 18, 2003, along with seven other activists, after his home and his parent's home were searched. Boxes of books were confiscated, as were documents, work materials and instruments and a television. His home was also confiscated, as the Prosecutor's Office suspected it of being a "hideout for counter-revolutionaries." Reports indicate that he was tried for violation of Articles 4, 6 and 7 of Law No. 88, for having "provided information to the United States government, its agencies, departments, representatives and officials, and for having obtained subversive materials from these and other foreign entities, materials that he compiled, copied and circulated to further the ends of the Helms-Burton Act" and for having "collaborated with Radio Martí for the same purpose." He was sentenced to 20 years.[FN78] In December 2003 Mr. Castillo was beaten by prison staff. The petitioners point out that in June 2004 the prison authorities confiscated his personal diary and other Articles that he had written in prison. Then, in October 2004, prison authorities took away the medications he was taking for hypertension after he made comments about a fall that Mr. Fidel Castro had sustained. The petitioners also report that on November 7, 2004, he announced that he would be participating in a hunger strike. The petitioners also reported that in December 2004, Mr. Castillo was taken to Carlos J. Finlay Hospital in Havana, suffering from arterial hypertension, an enlargement of the wall of the left ventricle and a chronic circulatory problem in his lower extremities. He was transferred back to prison on February 16, 2005. According to the most recent reports received by the Commission, his health has deteriorated.

[FN78] Verdict No. 1 delivered by the People's Provincial Tribunal of Santiago de Cuba, April 3, 2003.

108. Arnaldo Ramos Lauzurique. The petitioners report that Mr. Ramos Lauzurique is a member of the Instituto de Economistas Independientes in Havana. According to the records supplied to the Commission he was arrested on March 19, 2003. He was tried for the crime of "Acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Criminal Code, for having "disseminated biased information misrepresenting the Cuban economic and sociopolitical reality, thereby aiding the defamatory campaigns intended to be detrimental to the integrity of the Cuban State." He was convicted and sentenced to 18 years in prison.[FN79] On September 28, 2004, his wife filed a complaint that he had been beaten by two prison guards and then placed in solitary confinement for five days. The Commission has also been informed that on August 17, 2005, he was beaten by a guard wielding a club and then locked in a punishment cell.

[FN79] Verdict No. 7 delivered by the People's Provincial Tribunal of the City of Havana, April 4, 2003.

109. Blas Giraldo Reyes Rodríguez. The petitioners report that Mr. Reyes Rodríguez is a proponent of the Proyecto Sancti Spíritus. According to the records supplied to the Commission, he was arrested on March 19, 2003. The records show that he was tried for “Acts inimical to the protection of the national independence and the Cuban economy,” for having “supplied information to agencies of the United States government, which was then circulated by Radio Marti to further the ends of the Helms-Burton Act; [...] compiled subversive materials for those same ends; [...] cooperated with a foreign radio station, Radio Martí, by providing information to a reporter from that station concerning the measures he was taking in the province of Sancti Spíritus to collect signatures in support of the so-called Varela Project; and [...] staged public disturbances and organized public disturbances aimed at destroying the Cuban Socialist State and Cuban independence, using language offensive to the revolutionary process and its leaders.” He was convicted and sentenced to 25 years in prison.[FN80] In July 2004, his wife complained that his state of health was serious and that he has been diagnosed with a kidney infection. She said that he was not being provided with adequate medical attention, nor is he allowed to use medicines provided by his family and that his rations, exposure to sunlight and telephone calls were all being restricted.

[FN80] Verdict No. 4 delivered by the Santi Spíritus People’s Provincial Tribunal, April 5, 2003.

110. Raúl Ramón Rivero Castañeda. The petitioners report that Mr. Rivero Castañeda is a poet, an independent journalist and director of Cuba Press in Havana. According to the records turned over to the Commission, Rivero Castañeda was arrested on March 20, 2003, following a search of his home. The records indicate that he was tried for “Acts against the independence or territorial Integrity of the State” criminalized under Article 91 of the Criminal Code, for having “formed subversive associations and created subversive magazines that were supplied to the United States.” He was sentenced to prison for 20 years.[FN81] The verdict and sentence were upheld by the Supreme Tribunal on May 29, 2003.[FN82] Reports are that in October 2004, medical examinations discovered a cyst in his left kidney and hearing loss in his right ear. He was therefore given a licencia extrapenal [conditional release] and released on November 30, 2004.

[FN81] Verdict No. 4 delivered by the People’s Provincial Tribunal of the city of Havana, April 5, 2003.

[FN82] Verdict No. 21 delivered by the People’s Supreme Tribunal, May 29, 2003.

111. Alexis Rodríguez Fernández. The petitioners report that Mr. Rodríguez Fernández is a member of the Colegio Cristiano de Liberación Palma Soriano. According to the records supplied to the Commission he was arrested on March 18, 2003. It is alleged that during the investigative process, his telephone was confiscated, as was a transformer, portable radio, battery charger, a personal digital assistant, and a camera. He was tried for “Acts against the independence or territorial integrity of the State” criminalized under Article 91 of the Criminal

Code, for having “worked against the territorial integrity of the Cuban State, serving the interests of the United States government, and receiving technical resources, equipment, propaganda, financial resources and medical products from members of known counter-revolutionary organizations, and for engaging in seditious activities against the country, upsetting public order, reproducing, receiving, distributing and circulating false information about the Cuban reality and its officials.” He was convicted and sentenced to 15 years in prison.[FN83] The petitioners add that Mr. Rodríguez Fernández had neither sunlight nor religious services for one year and four months.

[FN83] Verdict No. 7 delivered by the People’s Provincial Tribunal of Santiago de Cuba, April 7, 2003.

112. Omar Rodríguez Saludes. The petitioners report that Mr. Rodríguez Saludes is an independent journalist in Havana. According to the records supplied to the Commission he was arrested on March 20, 2003 when police searched his home and confiscated books, a typewriter, white paper, medications, clothing, electronic devices and money. The record indicates that he was tried for “Acts against the independence or territorial integrity of the State” criminalized under Article 91 of the Criminal Code, for having “provided information to various foreign stations and news agencies.” He was convicted and sentenced to 27 years in prison.[FN84] The petitioners add that during July and September 2004 he was held incommunicado and was not given the reading material that his wife had brought to the prison for him.

[FN84] Verdict No. 8 delivered by the People’s Provincial Tribunal of the city of Havana, April 5, 2003.

113. Martha Roque Cabello. The petitioners report that Martha Roque Cabello is a member of the Institute of Independent Economists [Instituto de Economistas Independientes]. The records supplied to the Commission indicate that she was arrested on March 19, 2003, while she and other activists were on a fast to appeal for the release of political prisoners. She was tried for “Acts against the independence or territorial integrity of the State” criminalized under Article 91 of the Criminal Code, for having “circulated biased information that misrepresents the Cuban economy and socio-politics, thereby aiding in the defamatory campaigns intended to harm the integrity of the Cuban State.” Ms. Roque Cabello was sentenced to prison for 20 years.[FN85] It is alleged that while in prison, she was not treated for her diabetes, as a result of which she lost more than 40 pounds. She also suffered from arterial hypertension and facial paralysis. The petitioners report that she was granted the licencia extrapenal (a conditional release) and finally released on July 22, 2004. The most recent reports indicate that between January 25 and 27, 2006, acts of repudiation or censure against her were staged in front of her home in Havana.

[FN85] Verdict No. 7 delivered by the People’s Provincial Tribunal of the city of Havana, April 4, 2003.

114. Omar Moisés Ruíz Hernández. The petitioners report that Mr. Ruíz Hernández is an independent journalist. According to the records supplied to the Commission, he was arrested in Havana on March 19, 2003. He was reportedly tried for “Acts against the Independence or Territorial Integrity of the State” criminalized under Article 91 of the Criminal Code, for having “committed acts intended to be detrimental to the independence of the Cuban State or its territorial integrity, [having] joined and had contacts with counter-revolutionary groups, and [...] been active in various organizations conspiring against the Cuban Revolution, periodically visiting the United States Interests Section, making contacts with its personnel and receiving materials, literature, cash and other means to support subversive activities, while also sending complaints of alleged human rights violations in Cuba to counter-revolutionary stations located within United States territory.” He was convicted and sentenced to 18 years in prison.[FN86] The petitioners report that Mr. Ruíz Hernández is being held in an isolation cell separate from the prison’s main building, and is not permitted to make telephone calls to his relatives or have any correspondence with them. In addition, it has been reported that his health is poor and that he has been denied medical attention. It was reported that in September 2005 he was placed in a closed room with three prisoners who had tuberculosis, but that in November 2005 he was transferred to another prison.

[FN86] Verdict No. 3 delivered by the Villa Clara People’s Provincial Tribunal, April 7, 2003.

115. Claro Sánchez Altarriba. The petitioners report that Mr. Sánchez Altarriba is a member of the Movimiento Cubano de Jóvenes por la Democracia. According to the records supplied to the Commission he was arrested on March 18, 2003. The records also show that a search was done of his home, and a typewriter was confiscated, along with flyers, reports, letters, pamphlets from the magazine Cubanet, from the magazine Disidentes, pamphlets titled “Cuban Youth-for-Democracy Movement” [“Movimiento Cubano para Jóvenes para la Democracia”] and other documents of a similar ilk. The record indicates that he was tried for “Acts inimical to the protection and independence of the Nation and the Cuban economy” criminalized under Articles 4, 6 and 7 of Law No. 88, for having “twice visited the United States Interests Section; [...] participated in organizational meetings that had frequently caused disturbances; [...] and sent information to Radio Martí and other media.” He was convicted and sentenced to 15 years in prison.[FN87] In November 2004, his wife reported that he was being held under dreadful conditions and that the authorities were monitoring his correspondence with his relatives.

[FN87] Verdict No. 3 delivered by the People’s Provincial Tribunal of Santiago de Cuba, April 4, 2003.

116. Ariel Sigler Amaya. The petitioners report that Ariel Sigler Amaya is a member of the Movimiento Opción Alternativa. According to the records supplied to the Commission he was arrested on March 18, 2003. Reports are that he was tried for “Acts detrimental to the protection

of national independence and the Cuban economy,” criminalized under Articles 4, 6, 7, 8 and 11 of Law No. 88, for having “delivered to the highest-ranking diplomatic representative of the United States Government in Cuba, information regarding the formation of small, counter-revolutionary groups; [...] compiled subversive printed literature; [...] circulated that material among his followers, creating a mini library; [...] sent information to the mass media used by the United States government to further the ends of the Helms-Burton Act; [...] incited public disturbances and called for the staging of public activities in open places; and [...] received remuneration in exchange for having served the interests of the United States government.” He was convicted and sentenced to 20 years in prison.[FN88] The information furnished by the petitioners indicates that he is in an isolated cell, without proper nutrition and without access to medications and religious items. The most recent information indicates that on January 22, and February 24, 2006, acts of repudiation or censure were staged against him.

[FN88] Verdict No. 9 delivered by the People’s Provincial Tribunal of Matanzas, April 5, 2003.

117. Guido Sigler Amaya. The petitioners report that Mr. Sigler Amaya is a member of the Movimiento Opción Alternativa. According to the records supplied to the Commission he was arrested on March 18, 2003, when the independent medical clinic sponsored by the Movimiento Opción Alternativa was searched. He was tried for “Acts inimical to the protection of the national independence and economy of Cuba,” criminalized in Articles 4, 6, 7, 8 and 11 of Law No. 88, for having “delivered to the highest-ranking diplomatic representative of the United States Government in Cuba, information regarding the formation of small, counter-revolutionary groups; [...] compiled subversive printed literature; [...] circulated that material among his followers, creating a mini library; [...] sent information to the mass media used by the United States government to further the ends of the Helms-Burton Act; [...] incited public disturbances and called for the staging of public activities in open places; and [...] received remuneration in exchange for serving the interests of the United States government.” He was convicted and sentenced to 20 years in prison.[FN89] His family members have reported that because he was held in solitary confinement without food or water, he now weights some 90 pounds. Reports are that he has been taken to the hospital on numerous occasions because of his frail health. The most recent report indicates that on January 22, 2006, acts of repudiation or censure were staged against him.

[FN89] Verdict No. 9 delivered by the People’s Provincial Tribunal of Matanzas, April 5, 2003.

118. Miguel Sigler Amaya. The petitioners report that Mr. Sigler Amaya is the founder of the Movimiento Independiente Opción Alternativa. According to the records supplied to the Commission he was arrested on March 18, 2003, following a search of his residence in which items of value and personal documents were taken. The records indicate that Mr. Sigler Amaya was tried for “Acts inimical to the protection of Cuba’s National Independence and Economy,” under Law No. 88, for “facilitating the objectives intended by the United States Government with passage of the Helms-Burton Act, the blockade and economic war being waged against the

Cuban people to undermine internal order, destabilize the country and do away with the Cuban Socialist State and Cuban independence; he was alleged to have delivered, directly to the highest ranking diplomatic representative of the United States government in Cuba, information on the membership of counter-revolutionary groups within Cuban territory and on the activities and readiness of lackeys willing to serve United States interests in the war that country is waging against the Cuban State's political, economic and social plan." On March 26, 2003, he was convicted and sentenced to six months in prison, for contempt and resistance of authority. Within a matter of weeks he was sentenced to another 20 months on similar charges. He was released on January 11, 2005, as he had served his sentence. However, his wife reported that he was waiting to stand trial for a third time and could be sentenced to another 15 to 20 years. Also, on January 23, 2006, he was the target of an act of repudiation or censure in which he was insulted, harassed and directly threatened with death by members of the Cuban Communist Party, all in the presence of his colleagues at work.

119. Ricardo Enrique Silva Gual. According to the information supplied by the petitioners, Mr. Silva Gual is a member of the Movimiento Cristiano de Liberación and a proponent of the Varela Project. According to the records supplied to the Commission, he was arrested on March 20, 2003. It is alleged that during the investigation, a radio receiver was confiscated, along with an audio recorder, a telephone, accessories, video camera tapes, medications of various kinds and a fax. The record indicates that he was tried for "Acts against the independence or territorial integrity of the State" criminalized under Article 91 of the Penal Code, for having "worked to harm the Cuban State's integrity by serving the interests of the United States government and receiving technical resources, equipment, propaganda, financial resources and medical products from members of known counter-revolutionary organizations and for having engaged in seditious activities against the country, disrupting order and reproducing, receiving, distributing and circulating misinformation concerning the Cuban reality and its authorities." He was convicted and sentenced to 10 years in prison.[FN90] The petitioners also report that he went on a hunger strike to protest the relentless cruel and degrading treatment in prison.

[FN90] Verdict No. 7 delivered by the People's Provincial Tribunal of Santiago de Cuba, April 7, 2003.

120. Fidel Suárez Cruz. The petitioners report that Mr. Suárez Cruz is a human rights activist. According to the records supplied to the Commission he was arrested on March 18, 2003. He was reportedly tried for acts criminalized under Articles 4, 6, 7 and 11 of Law No. 88, for having "provided [...] Articles, chronicles and other materials that misrepresent the Cuban reality." He was convicted and sentenced to 20 years in prison.[FN91] On November 15, 2005, he was transferred to another prison where he is being held in a closed cell measuring one square meter. On November 21, 2005, his wife went to visit him but was told she could not. No reasons were given.

[FN91] Verdict No. 1 delivered by the People's Provincial Tribunal of Pinar del Río, April 5, 2003.

121. Manuel Ubals González. The petitioners report that Mr. Ubals González is a human rights activist in Guantánamo. According to the records supplied to the Commission he was arrested on March 18, 2003. Those records show that he was tried under Articles 4, 6, 7, 10 and 11 of Law No. 88, for having “supplied information to the United States government, its agencies, departments, representatives or personnel to enable the realization of the objectives of the Helms-Burton Act, while receiving a cash remuneration in exchange for his services; [...] compiling, copying and circulating subversive material from the United States government; [...] collaborating with radio stations, newspapers, magazines and other foreign media.” He was convicted and sentenced to 20 years in prison.[FN92] The report indicates that he spent two years in an isolation cell, and his family visits were restricted. On December 10, 2005, he sent a document signed by other political prisoners and protesting the lack of medical care, the beatings, blackmail, threats and the psychological torture that they endured in the prison.

[FN92] Verdict No. 2 delivered by the Guantánamo People’s Provincial Tribunal, April 3, 2003.

122. Julio Antonio Valdés Guevara. The petitioners report that Mr. Valdés Guevara is a member of the Movimiento de Derechos Humanos Golfo de Guacanayabo. According to the records supplied to the Commission he was arrested on March 19, 2003 at his home. He was tried for “Crimes against Cuba’s National Independence and Economy,” criminalized under Articles 6, 7 and 4 of Law No. 88, for having “had in his possession, extensive amounts of subversive literature, [...] cooperated continually with a foreign station, and [...] provided information to officials and representatives of the United States government.” He was convicted and sentenced to 20 years in prison.[FN93] The petitioners also report that his health is gradually declining and that he is in need of a kidney transplant. The petitioners add that his wife complained that as a result of government censure, an act of repudiation had been staged in which she was insulted and her husband was burned in effigy. Reports are that owing to his health condition, he was granted a “licencia extrapenal” [conditional release] and released in April 2004.

[FN93] Verdict No. 6 delivered by the Santiago de Cuba People’s Provincial Tribunal, April 5, 2003.

123. Miguel Valdés Tamayo. The petitioners report that Mr. Valdés Tamayo is a member of the organization Hermanos Fraternales por la Dignidad in Havana. According to the records supplied to the Commission he was arrested on March 19, 2003. The records indicate that he was tried for “Acts against the independence or territorial integrity of the State” criminalized under Article 91 of the Criminal Code, for having “disseminated biased information misrepresenting the Cuban economic and sociopolitical reality.” He was convicted and sentenced to 15 years in prison.[FN94]. The petitioners add that Mr. Valdés Tamayo was granted “licencia extrapenal” [conditional release] and released on June 9, 2004. However, on June 11, 2004, he was the

victim of an act of repudiation or censure in which government authorities identified him as a “mercenary in the employ of the United States.”

[FN94] Verdict No. 16 delivered by the People’s Provincial Tribunal of the City of Havana, April 8, 2003.

124. Héctor Raúl Valle Hernández. The petitioners report that Mr. Valle Hernández is vice president of the Confederación de Trabajadores Democráticos de Cuba. According to the records supplied to the Commission, he was arrested on March 18, 2003. He was reported to have been tried for “Acts against the independence or territorial integrity of the State” criminalized under Article 91 of the Criminal Code, for having “rallied, been a member of and created various illegal organizations that were vehicles for conspiracy, incitement to civil disobedience and misrepresentation of the Cuban reality for the supposed purpose of enabling United States influence.” He was convicted and sentenced to 12 years in prison,[FN95] a conviction and sentence upheld by the Supreme Tribunal on June 3, 2003. According to information supplied by the petitioners, Mr. Valle Hernández was initially placed in solitary confinement, with no light, only contaminated water and very meager rations. It was also reported that his correspondence has been intercepted, that he has been denied family visits, and that he has been denied appropriate medical attention despite his poor state of health.

[FN95] Verdict No. 12 delivered by the People’s Provincial Tribunal of the City of Havana, April 7, 2003.

125. Manuel Vázquez Portal. The petitioners report that Mr. Vázquez Portal is an independent journalist. According to the records supplied to the Commission, he was arrested on March 19, 2003, at his home in Havana. The records also show that he was tried for acts criminalized under Articles 4, 6, 7 and 11 of Law No. 88, for allegedly having “released subversive information that was then published in magazines, at Web pages and broadcast on Radio Martí, thus furthering the ends of the Helms-Burton Act.” He was convicted and sentenced to 18 years’ imprisonment.[FN96] The petitioners report that he was granted “licencia extrapenal” [conditional release] and released on June 23, 2004.

[FN96] Verdict No. 5 delivered by the People’s Provincial Tribunal of the City of Havana, April 5, 2003.

126. Antonio Augusto Villareal Acosta. The petitioners report that Mr. Villareal Acosta is a proponent of the Varela Project. According to the records supplied to the Commission he was arrested on March 19, 2003, and sentenced to 15 years in prison.[FN97] According to information furnished by the petitioners, Mr. Villareal Acosta has lost over 20 pounds as a result of his declining health and is suffering from anemia and malnutrition. In November 2005, after

requesting medical attention for four months, he was transferred to a hospital for a hernia operation.

[FN97] The Commission has been informed that this person was convicted in Verdict No. 3 delivered by the Villa Clara People's Provincial Tribunal on April 3, 2003. However, it has not access to copies of that court verdict.

127. Orlando Zapata Tamayo. The petitioners report that Mr. Zapata Tamayo is a member of the Movimiento Republicano Alternativo. According to the information supplied to the Commission, he was arrested while he and other activists were fasting to win the release of political prisoners. He was sentenced to 3 years in prison.[FN98] His mother filed complaints that he had been beaten on a number of occasions and that they were refusing to allow her to visit him because of the complaints she had filed concerning his mistreatment. It has been reported that he was denied medical assistance despite his poor state of health. It was also reported that in November 2005 he was charged with being rebellious and resistant, due to his nonviolent activism in prison, for which the authorities requested that three more years be added to his sentence.

[FN98] The Commission has not had access to copies of that court verdict.

D. The Law

1. Right of protection against arbitrary detention (Article XXV)

128. Article XXV of the American Declaration provides that “[n]o person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law. No person may be deprived of liberty for non fulfillment of obligations of a purely civil character. Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.”

129. In the instant case, the facts indicate that the State conducted crackdowns during which it detained a group of human rights activists, independent journalists, politicians and opponents of the government. To determine whether these detentions were violations of Article XXV of the American Declaration, the Commission will examine whether, at the time of the detentions, the State complied with the minimum conditions that domestic and international law establish to be able to deprive a person of his right to liberty.

130. To conduct that analysis, the Commission will strictly follow the language of Article XXV, according to which the right to protection from arbitrary detention covers the following:

the principle of legality, legal guarantees, the right to appear before a judge, to be tried without undue delay, and to humane treatment while in custody.

131. Additionally, for this analysis, the Commission will take into consideration the criteria adopted by the United Nations Working Group on Arbitrary Detention.[FN99] By these criteria, a detention is considered arbitrary if it falls into one or more of the following three categories:

1. Cases in which the deprivation of freedom is arbitrary as it manifestly cannot be linked to any legal basis;
2. Cases of deprivation of freedom when the facts giving rise to the prosecution or conviction concern the exercise of certain fundamental freedoms which are protected by Articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights (UDHR) and Articles 12, 18, 19, 21, 22, 15, 26 and 27 of the International Covenant on Civil and Political Rights (for States Parties),[FN100] and in particular
3. Cases in which non-observance of all or part of the international provisions relating to the right to a fair trial is such that it confers on the deprivation of freedom, of whatever kind, an arbitrary character.

[FN99] See http://www.unhchr.ch/html/menu2/7/b/arb_det/ardintro.htm.

[FN100] Cuba is not a State Party to the International Covenant on Civil and Political Rights.

132. The first part of Article XXV of the Declaration establishes that no person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.

133. The inference that can be drawn from the first criterion established by the Working Group is that the detention must have a basis in pre-existing law. Correspondingly, Article XXV of the Declaration provides that no person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law. The language of Article XXV makes it clear that the limitation has two aspects. The first is that the deprivation of freedom can only occur in the cases previously established by law, i.e., in compliance with the principle of legality. The second aspect is that certain procedures have to be observed when detaining a person; in other words, certain guarantees, previously established by law, must be followed.[FN101] The Commission will take both dimensions into account in determining whether the State violated Article XXV of the Declaration.

[FN101] The Inter-American Court of Human Rights referenced this dual dimension in the Gangaram Panday case, where it wrote that no person may be deprived of his or her freedom except for reasons, cases or circumstances expressly defined by law (material aspect), and, furthermore, subject to strict adherence to the procedures objectively set forth in that law (formal aspect). See, Gangaram Panday Case, Judgment of January 21, 1994, paragraph 47.

134. As for the first dimension, the Commission observes that the alleged victims were detained in application of Article 91 of the Criminal Code and Law No. 88. This means that the facts that presumably prompted the detentions were cases previously described or defined by a domestic law. However, the requirement that the reasons, cases or circumstances must be defined by a pre-existing law is there so that the law makes it possible to know what acts could be construed as being contrary to or in violation of the law. In the instant case, the Commission observes that the laws under which the alleged victims were convicted do not enable an individual to know beforehand whether his acts fit the definition of the crime.

135. The provisions of Law No. 88 criminalize and establish penalties for such acts as supplying, seeking, compiling or disseminating information and collaborating with foreign media, provided these acts are intended to further the objectives of the Helms-Burton Act[FN102], support the blockade and economic war being waged against the Cuban people, disrupting domestic order, destabilizing the country or doing away with the Cuban socialist State and Cuban independence. This means that the acts defined by the law as crimes are otherwise lawful acts that only become unlawful when performed for specific purposes. The question of whether those lawful acts are being performed for illicit purposes is for the court to determine, which means that the person for whom the law was written cannot foresee what that determination will be. Similarly, Article 91 of the Criminal Code criminalizes actions carried out in the interest of a foreign State with the intent of causing harm to the independence of the Cuban State or its territorial integrity. In other words, the determination as to what acts are performed with that intent is entirely up to the court, and cannot be linked to any legal basis that those for whom the law was written can foresee.

[FN102] U.S.C. Title 22, sections 6021-6091. "Cuban Liberty and Democratic Solidarity Act (Libertad Act) of 1996"

" In accordance with section 3 of the Law, its purposes are:

- 1) to assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democratic countries that are flourishing in the Western Hemisphere;
- 2) to strengthen international sanctions against the Castro government;
- 3) to provide for the continued national security of the United States in the face of continuing threats from the Castro government of terrorism, theft of property from United States nationals by the Castro government, and the political manipulation by the Castro government of the desire of Cubans to escape that results in mass migration to the United States;
- 4) to encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers;
- 5) to provide a policy framework for United States support to the Cuban people in response to the formation of a transition government or a democratically elected government in Cuba; and
- 6) to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.

136. The Commission considers that when the consequences of the laws invoked to detain the alleged victims are not foreseeable and when laws give more than reasonable discretion to the court, those laws are arbitrary.

137. The Commission further observes that the alleged victims were detained and tried for exercising fundamental rights such as freedom of thought, conscience, and expression, and the right to peaceful assembly and association. This circumstance fits the second criterion of the United Nations Working Group for qualifying the alleged victims' detention as arbitrary. The Commission underscores the fact that the detention of the alleged victims on the grounds of the domestic law contained in Law No. 88 and Article 91 of the Criminal Code is per se incompatible with their right not to be arbitrarily deprived of liberty, recognized in Article XXV of the American Declaration.

138. The Commission thus concludes that the laws invoked to detain each of the alleged victims do not constitute valid grounds for depriving an individual of his or her liberty; by applying those laws the State violated Article XXV of the American Declaration, to the detriment of each of the alleged victims.

139. As for the second aspect pointed by the Working Group, domestic laws must provide a number of guarantees that police and court authorities have to observe when detaining someone or ordering his or her detention. It must be determined, therefore, what procedures are established under pre-existing law, whether those procedures are consistent with the principles of the American Declaration, and finally whether those procedures were observed in the instant case.

140. The Commission will proceed to examine what the established procedures are under Cuban law to carry out a detention. Article 59 of the Cuban Constitution states only that "[n]o one may be detained except in the cases, by the procedure and with the guarantees that the law prescribes." This necessitates an examination of Cuba's laws, which in this case is the Criminal Procedure Law.[FN103] Article 242 of this law speaks of crimes in flagrante, while Article 243 provides that the police authority or agent is obligated to detain a person accused of a crime against the security of the State. Even in these cases, however, Article 244 of Cuba's Criminal Procedure Law provides that at the time of detention, a record must be made showing the time, date and reason for the detention, which must then be signed by the person being detained. In the instant case, the alleged victims did not know the reasons for their detention until hours or even minutes before trial; many were held incommunicado, unable to speak to an attorney or family members. Thus, the formalities prescribed by Cuban law when detaining an individual were not observed, which is in violation of Article XXV of the American Declaration.

[FN103] Cuban Law on Criminal Procedure. Law No. 5. Approved by the National Assembly of the People's Power of the Republic of Cuba on July 14, 1977.

141. The Commission therefore concludes that the State violated Article XXV of the American Declaration, to the detriment of each and every one of the alleged victims.

142. Article XXV of the Declaration also provides that anyone who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court. This principle is also recognized in Article 245 of Cuba's Criminal Procedure Law.

143. Nothing in the facts reported in this case indicates that the alleged victims were detained in flagrante. Therefore, their detentions were to have been made on the basis of an order issued by a competent authority. Yet no facts have been introduced in this case to show either that the alleged victims were detained by virtue of an order issued by a competent judge or that the legality of their detention was ascertained without delay by a court.

144. The Commission considers that the detention of the alleged victims in the present case is also arbitrary because of the non-observance of their right to an impartial trial. This circumstance, which falls under the third criterion adopted by the United Nations Working Group, will be analyzed at greater length in the section of this report that pertains to Article XXVI of the American Declaration, which recognizes the right to an impartial trial.

145. Given that the victims were not tried without delay by a competent judge to ascertain the legality of their detention, the Commission concludes that the State violated Article XXV of the American Declaration to the detriment of each and every one of the alleged victims.

146. Article XXV of the American Declaration also provides that anyone who has been deprived of his liberty has the right to be tried without undue delay. The information that the Commission received in November 2005 concerning the situation of Mr. Rafael Millet Leyva indicates that he has not yet been tried and convicted; rather, he is being held in preventive custody since March 21, 2003, on charges of contempt and possession of enemy propaganda. The Commission notes that for almost three years, he has been held in preventive custody, without a reasonable explanation as to why his treatment should be any different from that accorded to the other alleged victims. The Commission considers that in the case of Mr. Millet Leyva, preventive detention has become a substitute for a prison sentence and is not justified by relevant and sufficient criteria that pre-existing law establishes objectively and within reason.[FN104]

[FN104] IACHR, Report No. 12/96, Case No. 11.245, Argentina, paragraphs 76-78.

147. The Commission thus concludes that Mr. Millet Leyva's detention has become arbitrary and that the State has thereby violated Article XXV of the American Declaration to his detriment.

148. Finally, Article XXV of the American Declaration provides that every individual who has been deprived of his liberty has the right to humane treatment.

149. The Commission considers that the responsibility of the State with regard to the integrity of the persons in its custody is not limited to the negative obligation of abstaining from torturing or mistreating such persons. Because prisons are places where the State has total control over the

lives of the inmates, its obligations toward them include, among other things, to protect them from acts of violence from any source.

150. The duty of the State to guarantee detainees' right to personal integrity and to live in custody in conditions compatible with their personal dignity has been reaffirmed by the Inter-American Court of Human Rights in several rulings.[FN105] In addition, in the Loayza Tamayo case, the Court indicated that "[a]ll use of force not strictly warranted by the behavior of the detained person constitutes a violation of human dignity." [FN106]

[FN105] IACtHR. *García Asto and Ramírez Rojas Case*, Verdict of November 25, 2005, paragraph 221; *Raxcacó Reyes Case*, Verdict of September 15, 2005, paragraph 95; *Fermín Ramírez Case*. Verdict of June 20, 2005, paragraph 118.

[FN106] IACtHR, *Loayza Tamayo Case*. Verdict of September 17, 1997, paragraph 57.

151. In the instant case, the facts alleged indicate that during their incarceration, some of the alleged victims have been subjected to inhumane and degrading treatment; some have been mistreated and even subjected to physical and psychological torture.[FN107] In a number of cases, the facts reported indicate that the alleged victims have had their rations and exposure to sunlight restricted and that the general conditions in their cells are unfit for humans.[FN108]

[FN107] See, in particular, the cases of Julio César Gálvez Rodríguez, Léster González Pentón, Manuel Ubals González, Fabio Prieto Llorente, Osvaldo Alfonso Valdes, José Gabriel Ramón Castillo, Diosdado González Marrero, Arnaldo Ramos Lauzurique, Alfredo Rodolfo Domínguez Batista, Víctor Rolando Arroyo Carmona, Arturo Pérez de Alejo Rodríguez, José Daniel Ferrer García, Julio César Gálvez Rodríguez, Juan Adolfo Fernández Saínz, Nelson Molinet Espino, Eduardo Díaz Fleitas, Jorge Olivera Castillo, Víctor Rolando Arroyo Carmona, Léster González Pentón, Omar Pernet Hernández, Mario Enrique Mayo Hernández, Julio Antonio Valdés Guevara, Juan Carlos Herrera Acosta, Arnaldo Ramos Lauzurique, Miguel Valdés Tamayo, José Ubaldo Izquierdo Hernández, Ricardo Enrique Silva Gual, Luís Enrique Ferrer García, Nelson Alberto Aguiar Ramírez and Orlando Zapata Tamayo.

[FN108] See, in particular, the cases of José Daniel Ferrer García, José Gabriel Ramón Castillo, Pablo Pacheco Ávila, Ángel Moya Acosta, Fidel Suárez Cruz, Antonio Ramón Díaz Sánchez, Ariel Sigler Amaya, Félix Navarro Rodríguez, Alfredo Rodolfo Domínguez Batista, José Miguel Martínez Hernández, Próspero Gaínza Agüero, Jesús Mustafá Felipe, Claro Sánchez Altarriba, Fabio Prieto Llorente, Librado Linares García, Miguel Galván Gutiérrez, José Ubaldo Izquierdo Hernández, Diosdado González Marrero, Arturo Pérez de Alejo Rodríguez, Blas Giraldo Reyes Rodríguez, Próspero Gaínza Agüero, Claro Sánchez Altarriba, Ricardo Enrique Silva Gual, Fabio Prieto Llorente, Omar Rodríguez Saludes and Orlando Zapata Tamayo.

152. In this connection, the United Nations' Standard Minimum Rules for the Treatment of Prisoners[FN109] state that:

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodations shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work, a) the windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; and b) artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

20. 1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. 2) Drinking water shall be available to every prisoner whenever he needs it.

21. 1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits. 2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment shall be provided.

[FN109] The Inter-American Commission has repeatedly indicated that the United Nations' Standard Minimum Rules for the Treatment of Prisoners should be understood as a suitable international reference for standard minimum rules for the humane treatment of prisoners, including basic rules relating to cell and sanitary conditions, medical attention, and physical exercise. See IACHR, report No. 27/01, case 12.183, Jamaica, paragraph 133; report No. 47/01, case No. 12.028, Grenada, paragraph 127; report No. 48/01, case 12.067, Bahamas, paragraph 195; report No. 38/00, case No. 11.743, Grenada, paragraph 136.

153. Furthermore, a number of the prisoners are being held in solitary confinement and are suffering from all the serious physical and psychological effects that such confinement can cause.[FN110] Regarding the use of solitary confinement, the United Nations' Standard Minimum Rules for the Treatment of Prisoners establish that:

32. 1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

32. 3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

[FN110] The Commission has been informed that the following prisoners have been held in solitary confinement, some for months at a time: Raúl Ramón Rivero Castañeda, José Gabriel Ramón Castillo, Pablo Pacheco Ávila, José Daniel Ferrer García, Ángel Moya Acosta, Juan Adolfo Fernández Saínz, Nelson Molinet Espino, Fidel Suárez Cruz, Víctor Rolando Arroyo Carmona, Héctor Maseda Gutiérrez, Nelson Alberto Aguiar Ramírez, Léster González Pentón, Leonel Grave de Peralta, Juan Carlos Herrera Acosta, Arnaldo Ramos Lauzurique, Diosdado

González Marrero Arturo Pérez de Alejo Rodríguez, Omar Moisés Ruiz Hernández, and Omar Rodríguez Saludes.

154. The Inter-American Court has held that solitary confinement is itself a form of cruel and inhuman treatment.[FN111] The Court has held that “one of the reasons that incommunicado detention is considered to be an exceptional instrument is the grave effects it has on the detained person. Indeed, isolation from the outside world produces moral and psychological suffering in any person, [and] places him in a particularly vulnerable position...”[FN112] Thus, incommunicado detention is an exceptional measure intended to thwart the investigation into the facts. The conclusion drawn from an examination of the facts in this case is that isolation was not an exceptional measure; in fact, in a number of cases, it has become a form of added punishment that could even last indefinitely, that does not even meet the provisions of the United Nations’ Minimum Rules for the Treatment of Prisoners.

[FN111] IACtHR, Suárez Rosero Case. Judgment of November 12, 1997, paragraph 91.

[FN112] IACtHR, Suárez Rosero Case, supra note 111, paragraph 90.

155. Moreover, the Commission considers that when the State deprives a person of liberty, it assumes the obligation of providing each prisoner with the necessary medical attention.

156. The scope and content of the rights of persons deprived of their freedom to medical attention is defined by the United Nations Standard Minimum Rules for the Treatment of Prisoners in the following provisions:

22. 1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality. 2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. 3) The services of a qualified dental officer shall be available to every prisoner.

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

25. 1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed. 2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

26. 1) The medical officer shall regularly inspect and advise the director upon: (a) The quantity, quality, preparation and service of food; (b) The hygiene and cleanliness of the institution and the prisoners; (c) The sanitation, heating, lighting and ventilation of the institution; (d) The suitability and cleanliness of the prisoners' clothing and bedding; (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

157. The facts in the present case indicate that a number of the alleged victims are suffering from health problems that either surfaced or have worsened since their imprisonment, yet those very same alleged victims are not receiving proper medical care. In a number of these cases, medical care has been denied, even in the case of very grave conditions, causing the alleged victims' health to decline.[FN113] In this regard, the State has not observed the principles established by the United Nations' Minimum Rules.

[FN113] See especially the cases of Nelson Alberto Aguiar Ramírez, Osvaldo Alfonso Valdés, Pedro Argüelles Morán, Pedro Pablo Álvarez Ramos, Víctor Rolando Arroyo Carmona, Mijail Bárzaga Lugo, Oscar Elías Biscet González, Margarito Broche Espinosa, Marcelo Cano Rodríguez, Juan Roberto de Miranda Hernández, Carmelo Agustín Díaz Fernández, Oscar Manuel Espinosa Chepe, Orlando Fundora Álvarez, Próspero Gaínza Agüero, Jorge Efrén Fernández Fernández, Juan Adolfo Fernández Saíenz, Luís Enrique Ferrer García, Miguel Galbán Gutiérrez, Julio César Gálvez Rodríguez, Edel José García Díaz, José Luís García Paneque, Ricardo Severino González Alfonso, Alejandro González Raga, Léster González Pentón, Luís González Tanquero, Juan Carlos Herrera Acosta, Iván Hernández Carrillo, Normando Hernández González, José Ubaldo Izquierdo Hernández, Reynaldo Miguel Labrada Peña, Librado Ricardo Linares García, Marcelo Manuel López Bañobre, José Miguel Martínez Hernández, Mario Enrique Mayo Hernández, Luís Milán Fernández, Nelson Moline Espino, Ángel Moya Acosta, Jorge Olivera Castillo, Pablo Pacheco Ávila, Héctor Palacios Ruiz, Omar Pernet Hernández, Horacio Julio Piña Borrego, Alfredo Manuel Pulido López, Blas Giraldo Reyes Rodríguez, Raúl Ramón Rivero Castañeda, Martha Beatriz Roque Cabello, Omar Moisés Ruiz Hernández, Claro Sánchez Altarriba, Guido Sigler Amaya, Ricardo Enrique Silva Gual, Fidel Suárez Cruz, Julio Antonio Valdés Guevara, Miguel Valdés Tamayo, Héctor Raúl Valle Hernández, Manuel Vázquez Portal, Antonio Augusto Villareal Acosta and Orlando Zapata Tamayo.

158. Given the foregoing, the Commission concludes that the State has violated the right to humane treatment during deprivation of liberty, recognized in Article XXV of the American Declaration, to the detriment of each of the alleged victims.

2. Right to life, liberty and personal security (Article I)

159. Article I of the American Declaration provides that “[e]very human being has the right to life, liberty and the security of his person.”

160. The Commission further observes that the violation of the right to protection against arbitrary detention constitute as well a violation of Article I of the Declaration in detriment of every one of the victims.

161. The Commission further observes that the violation of Article I of the Declaration in detriment of each victim include those who were granted conditional release.[FN114] Here the Commission notes that a number of the alleged victims have been granted special leave, a kind of conditional release that, for health reasons, allows them to serve the remainder of their sentences outside of prison. However, the special leave does not mean that its beneficiaries have been cleared of any crime or their sentences stayed.[FN115] The Commission notes in this regard that their release is still conditional and the authorities could at any time decide to jail them again.

[FN114] Such is the case with Raúl Ramón Rivero Castañeda, Oscar Manuel Espinosa Chepe, Martha Beatriz Roque Cabello, Juan Roberto de Miranda Hernández, Osvaldo Alfonso Valdés, Carmelo Agustín Díaz Fernández, Edel José García Díaz, Manuel Vázquez Portal, Orlando Fundora Álvarez, Marcelo Manuel López Bañobre, Julio Antonio Valdés Guevara, Miguel Valdés Tamayo and Margarito Broche Espinosa.

[FN115] The Cuban Criminal Code provides the following in this regard:

Article 31

[...]

2. For justified cause and upon request, the sentencing court may grant licencia extrapenal [special leave to serve time outside the prison walls] for the time the court deems necessary. The Minister of the Interior may grant the special leave for extraordinary reasons, and is to so advise the President of the People's Supreme Tribunal.

[...]

4. The length of the special leave and of the merits to leave the prison establishment is credited toward the length of the prison sentence, provided that the prisoner has observed good conduct while on special leave or on a permit to leave the prison establishment. Reductions in sentences awarded to the prisoner while serving his or her time shall also be credited toward the length of the sentence.

162. The Commission therefore concludes that the State violated the right to liberty, security and personal integrity recognized in Article I of the Declaration, to the detriment of each of the alleged victims.

3. Right to due process of law (Article XXVI)

163. Under Article XXVI of the American Declaration, “[e]very accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.”

164. The right to due process as established in Article XXVI of the American Declaration includes the right to be presumed innocent, and the right to an impartial and public hearing. It is in light of this that the Commission will ascertain whether the facts of the case constitute a violation of Article XXVI of the Declaration.

165. First, Article XXVI encompasses the right to the presumption of innocence. Presumption of innocence implies that, if the accused must be jailed during trial, he or she is still innocent from the legal standpoint. The principle of presumption of innocence has been examined at length by the Inter-American Court, which has written that “the principle of the presumption of innocence –inasmuch as it lays down that a person is innocent until proven guilty- is founded upon the existence of judicial guarantees.”[FN116] The State bears the burden of finding sufficient evidence to prove a person’s criminal liability, since as the Court has written “the right to presumption of innocence is essential to effective enjoyment of the right to defense and is the accused’ right throughout the proceedings until a guilty verdict becomes final. This right implies that an accused does not have to prove that he or she did not commit the crime with which he or she is charged, since the accuser bears the onus probandi.”[FN117]

[FN116] IACtHR, Ricardo Canese Case. Judgment of August 31, 2004, paragraph 153; IACtHR, Suárez Rosero Case, supra note 111, paragraph 77.

[FN117] IACtHR, Ricardo Canese Case, supra note 116, paragraph 154.

166. The facts in this case indicate that the alleged victims were not told the reasons for their detention and were not informed of the charges against them sufficiently in advance to prepare their defense. Moreover, the alleged victims did not have the right to counsel of their choosing and in most cases did not have sufficient time to meet with their attorneys. Many were denied access to the case file and to the means necessary to prepare their defense, such as paper and writing materials. It has also been reported that they were not allowed to introduce witnesses or essential rebuttal evidence, whereas the prosecution was not fettered in any way. The conclusion, then, is that the conduct of the trials against the alleged victims did not afford them the opportunity to defend themselves properly of the charges against them, in violation of the principle of the presumption of innocence.

167. The Commission therefore concludes that the State violated Article XXVI of the American Declaration with respect to each of the alleged victims.

168. Secondly, with regard to the right to an impartial hearing, the Commission reasserts that impartiality assumes that the judge should not have preconceived opinions regarding the case under study and, in particular, not presume that the accused is guilty.[FN118]

[FN118] IACHR, Report No. 5/96, Case 10.970, Peru, page 209.

169. Time and time again, the Commission has maintained that Cuba lacks the separation of powers that ensures an administration of justice free of interference from other branches of government[FN119]. In effect, Article 121 of the Political Constitution of Cuba stipulates that “[t]he courts comprise a system of government organs, set up with functional independence from any other and hierarchically subordinate to the National Assembly of Popular Power and the Council of State.” The Commission believes that the subordination of the courts to the Council of State, presided over by the Chief of State, means that the Judiciary is directly answerable to directives from the Executive branch.

[FN119] IACHR, 2004 Annual Report, Volume II, Chapter IV, paragraph 93.

170. Given the foregoing, the Commission concludes that the State has violated Article XXVI of the American Declaration, to the detriment of each of the victims.

171. Thirdly, regarding every person’s right to a public trial, which is also contained in the Article XXVI of the American Declaration, the Commission notes that restrictions on the principle of public proceedings are exceptional in nature and must be objectively justified by the courts on a case-by-case basis. Article 8(5) of the American Convention recognizes the right to public proceedings, “except insofar as may be necessary to protect the interests of justice.”

172. The facts in this case indicate that the only persons who had access to the alleged victims’ trials were their next of kin and members of the Community Party; reporters, diplomats, and the general public were not allowed to be present. The Commission confirms that given the particular characteristics of these trials, no exceptional circumstances were present to justify the need for restrictions. The proceedings could have been public without adversely affecting the interests of justice.

173. The Commission reiterates that the State violated Article XXVI of the American Declaration, to the detriment of each and every one of the victims.

4. Right to a fair trial (Article XVIII)

174. Article XVIII of the American Declaration provides that “[e]very person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.”

175. The Commission observes that every person who is detained must have access to a proper judicial proceeding, carried out within a reasonable period of time, where the corresponding arguments and evidence can be seriously examined.

176. On a number of occasions the Commission has stressed the fact that the right to trial within a reasonable period is based, *inter alia*, on the need to avoid undue delays that have the effect of denying justice. Nevertheless, the right to a trial within a reasonable period is also based

on the need to provide judges with the necessary time to enable them to properly assess the allegations of both parties, form a conviction as to the facts, and arrive at a decision through sound reasoning.

177. According to the petitioners, the right to justice was violated by the State when it conducted judicial proceedings in accordance with the so-called “juicio sumarísimo” (very summary proceedings). Moreover, information provided by the petitioners indicates that none of the trials held against the victims lasted more than one day.

178. A review of the facts of this case reveals that the alleged victims were tried in very summary proceedings.[FN120] Although Articles 479 and 480 of the Cuban Criminal Code offer the possibility of making use of very summary proceedings, that very law stipulates that these procedures may only be used in exceptional circumstances that warrant it.

[FN120] The procedimiento sumarísimo (very summary procedure) in Cuba is established by Articles 479 and 480 of the Criminal Code, according to which, in exceptional circumstances that so warrant it, the President of the People’s Supreme Court may decide that the unlawful acts be tried with the procedimiento sumarísimo by the competent court of law. In addition, it provides that, in a procedimiento sumarísimo, the terms established in the Criminal Code for processing preliminary proceedings, oral judgment and appeals, may be reduced to the extent deemed necessary by the competent court.

179. According to Articles 479 and 480 of the Criminal Code, the decision to apply an exceptional procedure is made at the discretion of the persons judging the given case. The judge also has authority to set the terms of each of the elements of the trial, including preliminary proceedings, oral proceedings, and the terms of the remedies.

180. In this connection, the Commission observes with concern that none of the convictions that it had access to establish the exceptional grounds that justify the use of very summary proceedings.

181. In this regard, the Commission wishes to recall that, although summary proceedings per se are not contrary to the right to a fair trial, the requirement of a brief and simple procedure established in Article XVIII of the American Declaration cannot be protected in a process that does not afford the accused all the guarantees of due process, especially when the possible penalty is irreversible, i.e., death. In particular, the right to be judged in a reasonable period cannot affect fundamental procedural protections of due process, especially the right to suitable time and means to prepare a defense.

182. On this point, the Commission emphasizes that, in order to protect the essential rights of the victims, even in very summary proceedings they must be ensured sufficient time to prepare their defense. This includes, at the least, the time needed to review the file, to be informed in advance of the charges against them, the possibility of identifying, subpoenaing, and summoning witnesses, and the opportunity to meet personally and privately with the defense counsel of their

choice for a sufficient amount of time. In addition, judicial guarantees require that victims be judged through processes that afford the court the possibility of carefully weighing the evidence and the arguments of fact and law of the parties on the basis of sound reasoning. Accordingly, convictions should state the foundations of fact and law on the basis of which the decisions were made. In general, the reasoning should state why the complaint is accepted or rejected, and why the plaintiff's claim is either accepted, totally dismissed, or partially dismissed.

183. In the instant case, the Commission notes that the convictions do not show suitable justification for the conclusions arrived at by the judges. Moreover, the Commission observes with concern that the convictions do not rely on strictly legal arguments to arrive at very complex conclusions, such as that the intent of the victims was to subvert the domestic order of society or to eliminate the Cuban State.

184. The Commission confirms that in many of the verdicts, the courts make complex and serious decisions without showing a clear or founded relationship between the facts and the legal appraisal of their nature. For example, one judgment concludes that a manual explaining individuals' right to protection from arbitrary detention "is evident proof of the marked reactionary nature of the pamphlet and of its clear intent to prepare people for civil disobedience in order to generate social unrest and destabilize the country." [FN121] Similarly, another judgment concluded, on the basis of an expert opinion, that the pamphlets, books, and journals of a library "are published in order to provide information on: "Transition toward Democracy," "Human Rights," and "Market Economy," with the aim of subverting the domestic order of the country. [FN122]

[FN121] Verdict No. 1 delivered by the People's Provincial Tribunal of Pinar del Río, April 5, 2003. Second Finding.

[FN122] Verdict No. 3 delivered by the People's Provincial Tribunal of Villa Clara, April 7, 2003. Second Finding.

185. Based on these considerations, the Commission considers that the proceedings in which the State convicted the alleged victims violated the right to fair trial recognized in Article XVIII of the American Declaration. In light of the foregoing, the Commission concludes that in the present case, the processing of the victims through very summary trials (juicio sumarísimo) did not take into account the complexity of the cases. Accordingly, the State violated the right to fair trial established in Article XVIII of the American Declaration to the detriment of Nelson Alberto Aguiar Ramírez, Osvaldo Alfonso Valdés, Pedro Pablo Álvarez Ramo, Pedro Argüelles Morán, Víctor Rolando Arroyo Carmona Mijail Bárzaga Lugo, Oscar Elías Biscet González, Margarito Broche Espinosa, Marcelo Cano Rodríguez, Juan Roberto de Miranda Hernández, Carmelo Agustín Díaz Fernández, Eduardo Díaz Fleitas, Antonio Ramón Díaz Sánchez, Alfredo Rodolfo Domínguez Batista, Oscar Manuel Espinosa Chepe Alfredo Felipe Fuentes, Efrén Fernández Fernández, Juan Adolfo Fernández Sañz, José Daniel Ferrer García, Luís Enrique Ferrer García, Orlando Fundora Álvarez, Próspero Gaínza Agüero, Miguel Galbán Gutiérrez, Julio César Gálvez Rodríguez, Edel José García Díaz, José Luís García Paneque, Ricardo Severino González Alfonso, Diosdado González Marrero, Léster González Pentón, Alejandro González Raga, Jorge

Luís González Tanquero, Leonel Grave de Peralta, Iván Hernández Carrillo, Normando Hernández González, Juan Carlos Herrera Acosta, Regis Iglesias Ramírez, José Ubaldo Izquierdo Hernández, Reynaldo Miguel Labrada Peña, Librado Ricardo Linares García, Marcelo Manuel López Bañobre, José Miguel Martínez Hernández, Héctor Maseda Gutiérrez, Mario Enrique Mayo Hernández, Luís Milán Fernández, Nelson Moline Espino, Ángel Moya Acosta, Jesús Mustafá Felipe, Félix Navarro Rodríguez, Jorge Olivera Castillo, Pablo Pacheco Ávila, Héctor Palacios Ruiz, Arturo Pérez de Alejo Rodríguez, Omar Pernet Hernández, Horacio Julio Piña Borrego, Fabio Prieto Llorente, Alfredo Manuel Pulido López, José Gabriel Ramón Castillo, Arnaldo Ramos Lauzurique, Blas Giraldo Reyes Rodríguez, Raúl Ramón Rivero Castañeda, Alexis Rodríguez Fernández, Omar Rodríguez Saludes, Martha Beatriz Roque Cabello, Omar Moisés Ruiz Hernández, Claro Sánchez Altarriba, Ariel Sigler Amaya, Guido Sigler Amaya, Miguel Sigler Amaya, Ricardo Enrique Silva Gual, Fidel Suárez Cruz, Manuel Ubals González, Julio Antonio Valdés Guevara, Miguel Valdés Tamayo, Héctor Raúl Valle Hernández, Manuel Vázquez Portal, Antonio Augusto Villareal Acosta and Orlando Zapata Tamayo.

5. Right to freedom of investigation, opinion, expression and dissemination
(Article IV)

186. Article IV of the American Declaration provides that “[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.”

187. This is echoed in Principle 1 of the IACHR’s Declaration of Principles on Freedom of Expression, which provides that “[f]reedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals.”

188. In the instant case, the petitioners allege that the State has violated Article IV of the American Declaration to the detriment of the victims inasmuch as they were tried and judged for engaging in activities such as the publication of Articles on economic and social issues in Cuba, participating in groups considered by authorities to be “counterrevolutionary,” or having contact with individuals considered to be “hostile” to the interests of the Cuban government.

189. The Commission has repeatedly maintained that Cuba is the only country in the hemisphere where it can be categorically asserted that freedom of expression does not exist. This assertion is made again in its Annual Report for 2004, which reports mistreatment of imprisoned journalists, pre-publication censorship, acts of intimidation against journalists, the application of contempt laws, and indirect violations of freedom of expression.”[FN123]

[FN123] IACHR, Annual Report of the Inter-American Commission on Human Rights 2004, Volume II, Chapter IV, paragraph 84.

190. In examining this section of the report, the Commission must initially determine whether in the present case the criminal offenses described in Article 91 of the Criminal Code and in

Articles 4, 6, 7, 8, 9, 10 and 11 of Law 88 are incompatible with the exercise of the freedom of expression established in Article IV of the American Declaration.

191. Legal proceedings were initiated against the victims –except in the cases of Miguel Sigler Amaya and Rafael Miller Leyva– for infringement of the conduct described in Article 91 of the Criminal Code and in Law 88, generically classified as “Acts against the Independence or Territorial Integrity of the State.”

192. Article 91 of the Cuban Criminal Code provides that “anyone who, in the interests of a foreign State, commits an act with the intent of harming the independence of the Cuban State or the integrity of its territory shall be punished with imprisonment for a period of ten to twenty years or death.”

193. Furthermore, Articles 4, 6, 7, 8, 9, 10 and 11 of Law 88 describe a series of conducts that are sanctioned with penalties involving personal restraint. Articles 4, 6, 7, 8, 9, 10 and 11 of Law 88 state:

Article 4(1). Whoever [...] supplies, directly or through a third party, [...] in order to facilitate the objectives of the "Helms-Burton" Law, the blockade, and the economic war against our people, with the aim of destroying the domestic order, destabilizing the country and breaking up the Socialist State and the independence of Cuba, shall incur the penalty of personal restraint for seven to fifteen years.

[...]

Article 6(1). Whoever [...] accumulates, reproduces or disseminates, material of a subversive nature [...] in order to support the objectives of the “Helms-Burton” Law, the blockade, and the economic war against our people, with the aim of destroying the domestic order, destabilizing the country and breaking up the Socialist State and the independence of Cuba, [or] introduces into the country [such] material, shall incur the penalty of personal restraint for three to eight years or a fine of three thousand to five thousand quotas [one quota = one day’s minimum wage], or both.

[...]

Article 7(1). Whoever “[...] in order to achieve the objectives of the “Helms-Burton” Law, the blockade and the economic war against our people, with the aim of destroying the domestic order, destabilizing the country and breaking up the Socialist State and the independence of Cuba, collaborates in any way with foreign radio or television broadcasting stations, newspapers, magazines or other media, shall incur the penalty of personal restraint for two to five years or a fine of one thousand to three thousand quotas [one quota = one day’s minimum wage], or both.

[...]

Article 8(1). Whoever “[...] disturbs the public order in order to cooperate with the objectives of the "Helms-Burton” Law, the blockade, and the economic war against our people, with the

aim of destroying the domestic order, destabilizing the country and breaking up the Socialist State and the independence of Cuba, [or] promotes, organizes or incites disturbances of the public order, shall incur the penalty of personal restraint for two to five years or a fine of one thousand to three thousand quotas [one quota = one day's minimum wage], or both.

[...]

Article 9(1). Whoever, in order to support the objectives of the "Helms-Burton" Law, the blockade and the economic war against our people, with the aim of destroying the domestic order, destabilizing the country and breaking up the Socialist State and the independence of Cuba, performs any act to impede or harm the economic relations of the Cuban State, or of industrial, commercial, financial or other type of entities, national or foreign, State and private, shall incur the penalty of personal restraint for seven to fifteen years or a fine of three thousand to five thousand quotas [one quota = one day's minimum wage], or both.

[...]

Article 10(1). The penalty of personal restraint for two to five years or a fine of one thousand to three thousand quotas [one quota = one day's minimum wage] or both, shall be incurred by whoever a) proposes or incites others, by any means or way, to engage in any of the offenses covered by this Law; or b) arranges with other people to execute any of the offenses covered by this Law .

Article 11. Whoever, in order to carry out any of the actions covered by this Law, either directly or through a third party, receives, distributes or participates in the distribution of financial, material or other type of means from the Government of the United States of America, its agencies, departments, representatives, officials or private entities, shall incur the penalty of personal restraint for three to eight years or a fine of one thousand to three thousand quotas [one quota = one day's minimum wage], or both.

194. In some of the cases the courts also applied the aggravating circumstances referred to in Law 88[FN124] and Article 53[FN125] of the Criminal Code, which resulted in an increase in the penalties. Moreover, because of the concurrence of these aggravating circumstances, Article 54(2) of the Criminal Code was applied in some cases, whereby "should several aggravating circumstances concur or should any of them be manifested very intensely, the court may increase by up to half the ceiling of the punishment established for the offense."

[FN124] The aggravating circumstances referred to in the criminal offenses covered by Law 88 can be summarized as follows: a) if the deed is committed with the collaboration of two or more people; b) if the deed is carried out for material gain, reward, payment, compensation or to reap some advantage or benefit; c) if the guilty party found out or obtained the information surreptitiously or by any other illegal means; d) if the guilty party found out or obtained the information as a result of his position; e) if, as a consequence of the deed, serious damage was caused to the domestic economy; or f) if, as a consequence of the deed, the Government of the United States of America, its agencies or departments, takes reprisals against industrial,

commercial, financial or other firms, whether Cuban or foreign, or against any of their executives and their families.

[FN125] Article 53 of the Criminal Code specifies that the following are aggravating circumstances: a) to commit the act as part of a group of three or more people; b) to commit the act for material gain or for other vile motives, or for futile reasons; c) to cause serious consequences; ch) to commit the act with the participation of minors; d) to commit the crime with cruelty or with brutal perversity; e) to commit the act by taking advantage of the circumstance of a public calamity, imminent danger, or other special situation; f) to commit the act using a means that causes common danger; g) to commit the crime with an abuse of power, of authority, or of confidence; h) to commit the act at night, or in an unpopulated area, or in a dark place with limited traffic, choosing these circumstances expressly or to take advantage of them; i) to commit the crime by taking advantage of the defenselessness of the victim, or of the victim's dependence on or subordination to the offender; j) the relationship between the offender and the victim is of spouse or relative to the fourth degree of consanguinity or to the second degree of affinity. This aggravating circumstance is only taken into account in crimes against life and bodily integrity, against the normal development of sexual relations, the family, childhood, and youth; k) to commit the act regardless of the friendship or intimate affection existing between the offender and the victim; l) to commit the crime under the effects of alcoholic beverages and provided the agent has placed himself voluntarily in such situation with a view to breaking the law, or provided the intoxication is habitual; ll) to commit the crime under the effects of having ingested, absorbed or injected toxic drugs or hallucinogenic, hypnotic, or narcotic substances or others having similar effects and provided the agent has placed himself voluntarily in this situation with a view to breaking the law, or that he is a habitual drug addict; m) (repealed); n) to commit the act after having received an official warning from a competent authority; ñ) to commit the offense against any person acting reasonably in compliance with a legal or social duty, or in revenge or reprisal for his action; and o) to commit the act against people or goods associated with activities prioritized for the economic and social development of the country.

195. The Inter-American Court of Human Rights has repeatedly observed that those who enjoy the right to freedom of expression “have not only the right and freedom to express their own thoughts, but also the right and freedom to seek, receive and disseminate information and ideas of all types.”[FN126]

[FN126] IACtHR, Ricardo Canese Case, *supra* note 116, paragraph 77; IACtHR, Herrera Ulloa Case, Judgment of July 2, 2004, paragraph 108; IACtHR, Ivcher Bronstein Case, Judgment of February 6, 2001, paragraph 146; IACtHR, “The Last Temptation of Christ” Case (Olmedo Bustos et al.). Judgment of February 5, 2001, paragraph 64; and IACtHR, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights) Advisory Opinion OC-5/85 of November 13, 1985, paragraph 30.

196. The Inter-American Court has also indicated that freedom of expression has two dimensions, individual and collective, which must be simultaneously guaranteed by the States.[FN127] It is important to note that freedom of expression has an individual dimension that “is not exhausted in the theoretical recognition of the right to speak or write, but also includes, inseparably, the right to use any appropriate method to disseminate thought and allow it to reach the greatest number of persons.”[FN128] Freedom of expression also has a social dimension, as it constitutes “a medium for the exchange of ideas and information between persons; it includes the right to try and communicate one’s points of view to others, but it implies also everyone’s right to know opinions, reports and news.” [FN129]

[FN127] IACtHR, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, supra note 126, paragraph 33.

[FN128] IACtHR, *Ricardo Canese Case*, supra note 1116, paragraph 78; *Herrera Ulloa Case*, supra note 121, paragraph 109; *Ivcher Bronstein Case*, supra note 121, paragraph 147; “*The Last Temptation of Christ*” (Olmedo Bustos et al.), supra note 121, paragraph 65; and “*Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, supra note 121, paragraph 31.

[FN129] IACtHR, *Ricardo Canese Case*, supra note 116, paragraph 79; *Herrera Ulloa Case*, supra note 121, paragraph 109; *Ivcher Bronstein Case*, supra note 121, paragraph 148; “*The Last Temptation of Christ*” (Olmedo Bustos et al.), supra note 121, paragraph 65; and “*Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*,” supra note 121, paragraph 32.

197. Principle 2 of the Declaration of Principles on Freedom of Expression provides that “[e]very person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”

198. Accordingly, when Article IV of the Declaration proclaims that “[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas” by any means, it is indicating that the expression and dissemination of ideas is indivisible, so that a restriction of the possibility to impart thoughts represents directly, and to the same degree, a restriction of the right to express oneself freely.[FN130]

[FN130] IACtHR, *Ricardo Canese Case*, supra note 116, paragraph 78; *Herrera Ulloa Case*, supra note 126, paragraph 109; *Ivcher Bronstein Case*, supra note 126, paragraph 147; “*The Last Temptation of Christ*” (Olmedo Bustos et al.), supra note 126, paragraph 65; and “*Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*,” supra note 126, paragraph 36.

199. Nevertheless, the Commission considers it important to clarify that the right to freedom of expression is not an absolute right and may be subject to constraints. As the Inter-American Court has pointed out, restrictions on the freedom of expression should be established in a law and aim to protect legitimate objectives. Moreover, the constraints should be necessary to ensure such protection, and may not be applied before an idea or information is imparted, only afterwards.[FN131]

[FN131] IACtHR, Palamara Iribarne Case. Verdict of November 22, 2005, paragraph 79; Ricardo Canese, *supra* note 116, paragraph 78; Herrera Ulloa Case, *supra* note 126, paragraph 120; and Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, *supra* note 126, paragraph 39.

200. Accordingly, on this point the Commission considers it important to reiterate that the States should abstain from undertaking any act to control information or ideas before they have been imparted, as this constrains individuals and society as a whole from exercising their right to freedom of expression.

201. The Commission is therefore concerned that both Article 91 of the Criminal Code of Cuba and Law 88 criminally penalize –even with death penalty– conducts that constrain the expression of thought itself and the right and freedom to seek, receive and impart information and ideas.

202. Likewise, the Commission has noted that in several passages of the convictions the judges make legal appraisals that openly contradict the aforementioned principles. The following paragraphs transcribe fragments of some of those rulings.

203. For example, the Commission has confirmed that one judgment describes the dissemination of information and ideas by radio as “unlawful practice,” considering that it transmits “false news and complaints criticizing our Revolution.”[FN132]

[FN132] Verdict No. 2 delivered issued by the People’s Provincial Tribunal of Villa Clara, April 4, 2003. First Finding.

204. Another verdict penalizes two of the victims “for imparting and distributing literature whose content fosters a disruption of our revolutionary process [...], [collecting] books and pamphlets for a so-called independent library [...]; receiving [...] a variety of printed materials and documents from counterrevolutionary organizations, electronic bulletins from Internet sites devoted in such activity, other texts of similar content, as well as others, [...] and for having [...] several copies of the Universal Declaration of Human Rights.”[FN133]

[FN133] Verdict No. 9 delivered by the People’s Provincial Tribunal of Matanzas, April 5, 2003. First Finding.

205. In another verdict, one of the victims is condemned for “preparing briefs and complaints of alleged human rights violations in Cuba [...] for foreign radio stations and the printed media, basically those known for their hostile pressure on the Cuban Revolution [...], receiving economic remuneration for this vile service.”[FN134] The same verdict described as an act “of extreme social danger,” the sending of information by one of the victims “to radio stations and counterrevolutionary magazines in southern Florida, for the purpose of discrediting the institutions of the Cuban Government.”[FN135]

[FN134] Verdict No. 2 delivered by the People’s Provincial Tribunal of Ciego de Ávila, April 4, 2003. First Finding, section two.

[FN135] Verdict No. 2 delivered by the People’s Provincial Tribunal of Ciego de Ávila, April 4, 2003. Fifth preambular paragraph.

206. Similarly, one of the judgments condemns a victim for distributing “pamphlets containing Articles and observations written by him and other collaborators, which question domestic policy in all spheres of social, economic, and political life, [...] [creating] study groups and [holding] competitions, workshops and conferences with the intention of disseminating them, revealing once again his complicity [...] in subverting domestic order, carrying out provocative actions, and contributing to creating an environment of conflict and civil disobedience.”[FN136]

[FN136] Verdict No. 1 delivered by the People’s Provincial Tribunal of Santiago de Cuba, April 3, 2003. First Finding.

207. Another verdict sanctions one of the victims because, “in order to engage in his subversive activities, he had access to the United States Interest Section, where he was able to surf the Internet in order to obtain information related to his activities, and also to confirm that his Articles had been posted on the network.”[FN137]

[FN137] Verdict No. 5 delivered by the People’s Provincial Tribunal of Havana city, April 5, 2003. First Finding, section b.

208. Further, the Commission considers it pertinent to observe that –based on the provisions of Article 91 of the Criminal Code and Law 88– some of the convictions make references such as the following:

[B]ut what cannot be permitted in this country is that individuals who have been determined to be counterrevolutionaries, as in the case of the accused, by pretending to be pacifists and simply defending human rights, seek to crush the revolution, to destroy the unity of the Cuban people, and to expose Cuba internationally with defamatory campaigns , [...] this conduct must indeed be repressed with all the severity permitted under the law [...], in Cuba it is not a crime to have a radio and to listen to a subversive station, nor to express civic opinions, but it is not permitted to make false charges, to violate the sovereignty of a State, to meet unlawfully to conspire against the established order, and to serve a foreign power or State, because that does indeed endanger domestic stability and order in the country and it should be penalized [...] such conduct cannot be accepted under any circumstances and without receiving the greatest repression allowed under the law.[FN138]

[FN138] Verdict No. 3 delivered by the People's Provincial Tribunal of Villa Clara, April 7, 2003. Fifth preambular paragraph.

209. Based on the foregoing considerations, it can certainly be established that in the instant case, the criminal offenses described in Article 91 of the Criminal Code and Law 88 are a means to silence ideas and opinions because they discourage any type of criticism for fear of the aforementioned penalties. In opinion of the Commission, a regulation of this nature impairs the essence of the right of freedom of investigation, opinion, expression, and dissemination established in Article IV of the American Declaration. Moreover, the Commission emphasizes that, in view of the collective dimension of this right, these rules affect not only the individuals punished with their application by the Cuban courts, but also the entire Cuban society.

210. Accordingly, the Commission concludes that the criminal offenses covered by Article 91 of the Cuban Criminal Code and Law 88 are incompatible with Article IV of the American Declaration. Furthermore, to the extent that victims have been tried and condemned with the application of laws that are incompatible with the exercise of the right to freedom of investigation, opinion, expression, and dissemination, the Commission also concludes that Article IV of the American Declaration has been violated to the detriment of each of the victims.

211. The Commission has also confirmed that the State ordered the confiscation of typewriters and computers,[FN139] books,[FN140] personal documents and files,[FN141] still and video cameras, and radio equipment[FN142] used by the alleged victims in their journalistic pursuits and research.

[FN139] See especially the cases of Oscar Elías Biscet González, José Daniel Ferrer García, Pablo Pacheco Ávila, Osvaldo Alfonso Valdés, Jorge Olivera Castillo, Omar Rodríguez Saludes and Clara Sánchez Altarriba.

[FN140] See especially the cases of Oscar Elías Biscet González, Juan Roberto de Miranda Hernández, José Gabriel Ramón Castillo, Pablo Pacheco Ávila, Osvaldo Alfonso Valdés, Pedro Pablo Álvarez Ramos, Jorge Olivera Castillo, Víctor Rolando Arroyo Carmona, Antonio Ramón

Díaz Sánchez, Héctor Palacios Ruiz, José Miguel Martínez Hernández and Próspero Gaínza Agüero.

[FN141] See especially the cases of Miguel Sigler Amaya, Jesús Mustafá Felipe, Claro Sánchez Altarriba, Próspero Gaínza Agüero, Héctor Palacios Ruiz, Antonio Ramón Díaz Sánchez, Jorge Olivera Castillo, José Gabriel Ramón Castillo and Juan Roberto de Miranda Hernández.

[FN142] See especially the cases of Osvaldo Alfonso Valdés, José Daniel Ferrer García, Jorge Olivera Castillo, Omar Rodríguez Saludes, Jesús Mustafá Felipe, Ricardo Enrique Silva Gual, Próspero Gaínza Agüero, Alexis Rodríguez Fernández and Manuel Vázquez Portal.

212. The Commission notes that one of the convictions justifies the confiscation of radio receivers belonging to one of the victims with an expert opinion that concludes “that the equipment investigated is not sold by any commercial network in our country, and their design enables them to receive broadcasts from abroad, and that the twenty frequencies used by the subversive “Radio Martí,” counterrevolutionary ham radio operators, and radio broadcasters in southern Florida against Cuba can be captured very clearly by these receivers.”[FN143]

[FN143] Verdict No. 16 delivered by the People’s Provincial Tribunal of Havana City, April 8, 2003. Second Finding.

213. In another verdict, the confiscation and destruction of books, pamphlets, and equipment are justified as follows:

See how four people, deeply ambitious and self-centered, put themselves at the service of Imperialism [...], [and] received financial assistance in support [...], as well as abundant literature, books and magazines whose subversive contents aim to undermine the ideological basis of the Revolution, organizing the so-called “Independent Libraries;” in turn they received modern communications equipment such as fax machines, computers, printers, and photocopiers, which they used to send distorted and false news overseas to the “Cubanet” Agency and to the “Radio Martí” and “Radio Mambi” broadcasting stations which then disseminated them. These attitudes and actions correspond directly to the political action [...] to subvert and destroy the Revolution from within, by strengthening the so-called “Civil Society” and promoting supposedly “Independent” activities.”[FN144]

[FN144] Verdict No. 1 delivered by the People’s Provincial Tribunal of Pinar del Río, April 5, 2003. Fifth preambular paragraph.

214. Similarly, another verdict justifies the confiscation of the books from a library as follows:

The professors of the University of Pinar del Río, all with a Master of Science degree and extensive professional experience [...] produced an innovative, interesting, and serious expert study, arriving at the conclusions set out in the document issued on this matter and that clarifies

the sensationalistic and opportunistic nature of the Articles [...] and the lack of professionalism and logical structure of their “works,” but the experts also clarified that this conduct by the accused, without scientific backing or falsely proven, would warrant criminal penalty in most courts of the world, because it is a means to control journalistic excess in the struggle for equilibrium and truthful reporting. The reactionary nature of most the texts available in this library was demonstrated, [...] with examples of passages from books that undermine the prestige of the history of the Cuban Nation, [...] being disrespectful and irreverent [...] to the detriment of the true history and development of democracy.[FN145]

[FN145] Verdict No. 1 delivered by the People’s Provincial Tribunal of Pinar del Río. April 5, 2003. Second Finding.

215. Lastly, the Commission has also received information to the effect that some of the alleged victims are unable to make telephone calls to family, on the grounds that they might be reporting human rights violations inside the prison.[FN146] The Commission has also been told that the alleged victims’ correspondence[FN147] is being intercepted by agents of the State.[FN148]

[FN146] The IACHR received this information from family members of Mr. Efrén Fernández Fernández.

[FN147] See especially the cases of Claro Sánchez Altarriba, Omar Moisés Ruiz Hernández, Miguel Galván Gutiérrez, Félix Navarro Rodríguez, Librado Linares García, Marcelo Cano Rodríguez and José Ubaldo Izquierdo Hernández.

[FN148] The petitioners’ allegations regarding the purported violation of Article X of the American Declaration (right to the inviolability and transmission of correspondence) will be examined in more detail in section IV.D.10 of this report.

216. Taking into account the facts described at paragraph 159 supra, the Commission also concludes that the State violated Article IV of the American Declaration to the detriment of Osvaldo Alfonso Valdés, Pedro Pablo Álvarez Ramos, Víctor Rolando Arroyo Carmona, Oscar Elías Biscet González, Marcelo Cano Rodríguez, Juan Roberto de Miranda Hernández, Antonio Ramón Díaz Sánchez, José Daniel Ferrer García, Próspero Gaínza Agüero, Miguel Galbán Gutiérrez, José Ubaldo Izquierdo Hernández, Librado Ricardo Linares García, José Miguel Martínez Hernández, Félix Navarro Rodríguez, Jorge Olivera Castillo, Pablo Pacheco Ávila, Héctor Palacios Ruiz, José Gabriel Ramón Castillo, Omar Rodríguez Saludes, Omar Moisés Ruiz Hernández, Claro Sánchez Altarriba and Miguel Sigler Amaya.

6. Right of assembly (Article XXI) and right of association (Article XXII)

217. Article XXI of the American Declaration provides that “[e]very person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.” Article XXII, for its part, provides

that “[e]very person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.”

218. The Commission has repeatedly pointed out that the right of assembly and the right of association are interlinked. The right of association gives the individual the right to associate with whomever he or she chooses, without having the exercise of one’s other civil, political, economic and social rights in any way restricted as a consequence of that association. This includes the right to form associations, and the right to join existing associations. It encompasses all facets of life in modern society. The right of assembly, for its part, is every person’s right to assemble in groups, either publicly or privately, to discuss or defend his or her ideas. Exercise of these rights cannot be subject to any arbitrary restrictions.[FN149]

[FN149] IACHR, Annual Report 2002, Volume II, Chapter IV, paragraphs 17-29. See also IACtHR, *Huilca Tecse v. Peru Case*, Judgment of March 3, 2005, paragraphs 69-72.

219. The Commission observes that the rights of association and assembly are recognized in Article 54 of the Cuban Constitution, which provides that “The rights to assembly, demonstration and association are exercised by workers, both manual and intellectual, peasants, women, students and other sectors of the working people, who have the means necessary to achieve those ends. The social and mass organizations have all the authorities they require to engage in such activities. Their members have complete freedom of speech and opinion, based on the unlimited right of initiative and criticism.”

220. These rights, however, are subordinated to the provisions of Article 62 of the Cuban Constitution, which states that “[n]o freedom given to the citizenry shall be exercised against the provisions of the Constitution and the laws, or against the existence and purposes of the Socialist State, or against the Cuban people’s decision to build socialism and communism. Any violation of this principle shall be punishable.”

221. In the present case, a number of the alleged victims were convicted for having promoted or organized public demonstrations to protest the regime, even though there is nothing in the records to indicate that these were not peaceful demonstrations. Moreover, a number of them were detained while on peaceful fasts on behalf of the so-called “political prisoners.” In many other cases, the alleged victims were criminally convicted for merely having met with representatives of the United States Interests Section in Cuba. Others still were convicted for having held meetings in their homes with other activists, or for having conducted organized labor activities.

222. The Commission considers that the Cuban authorities’ intolerance of any form of political opposition is the principal cause of the constraints placed on freedom of assembly and association. This is evident in the convictions of the victims.

223. For example, one conviction defines as a “consummate offense of acts against the independence or the territorial integrity of the State” the fact that the victims had associated “with the purpose of paying tribute to missing or repatriated rafters, holding vigils in their memory.”[FN150]

[FN150] Verdict No. 3 delivered by the People’s Provincial Tribunal of Villa Clara, April 7, 2003. First preambular paragraph.

224. Another verdict declares that one of the victims committed the “consummate offense of acts against the independence or the territorial integrity of the State [because] he collected signatures in support of the “Varela Project,” participated in vigils for counterrevolutionary prisoners, held meetings at his home with members of anti-Cuban organizations, [and] created the Escambray independent library with subversive books, magazines and pamphlets.”[FN151]

[FN151] Verdict No. 1 delivered by the People’s Provincial Tribunal of Pinar del Río, April 5, 2003. Second Finding.

225. In another conviction, the court mentions that “it is especially repugnant to observe how [the accused] was able to surround himself by young professionals who had been trained by the unparalleled educational work of the Revolution, who call him godfather and protector, which warrants a differentiated and rigorous criminal treatment.”[FN152]

[FN152] Verdict No. 1 delivered by the People’s Provincial Tribunal of Pinar del Río, April 5, 2003. Fifth preambular paragraph.

226. Based on these considerations, the Commission concludes that by convicting the alleged victims for having exercised their rights of assembly and association, the State violated Articles XXI and XXII of the American Declaration, to the detriment of each of the alleged victims.

7. Right to equality before the law (Article II)

227. Article II of the American Declaration provides that “[a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.”

228. The right to equality before the law is also regulated in a number of international instruments,[FN153] which signals an international consensus regarding the States’ prohibition of any discriminatory treatment. The Inter-American Court of Human Rights has held that “it is a fundamental principle that permeates all laws. Nowadays, no legal act that is in conflict with this fundamental principle is acceptable, and discriminatory treatment of any person, owing to

gender, race, color, language, religion or belief, political or other opinion, national, ethnic or social origin, nationality, age, economic situation, property, civil status, birth or any other status is unacceptable.”[FN154]

[FN153] The following are some of those international instruments: the OAS Charter (Article 3.1); the American Convention on Human Rights (Articles 1 and 24); the American Declaration of the Rights and Duties of Man (Article 2); the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador “ (Article 3.1); the United Nations Charter (Article 1.3); the Universal Declaration of Human Rights (Articles 2 and 7); the International Covenant on Economic, Social and Cultural Rights (Articles 2.2 and 3); the International Covenant of Civil and Political Rights (Articles 2 and 26); the Inter-American Convention on the Elimination of All Forms of Racial Discrimination (Article 2); the Convention on the Rights of the Child (Article 2); Declaration of the Rights of the Child (Principle 1); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Articles 1, 7, 18.1, 25, 27, 28, 43, 45.1, 48, 55 and 70); Convention on the Elimination of All Forms of Discrimination against Women (Articles 2, 3, 5 to 16); the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (Articles 2 and 4); the Declaration of the International Labour Organisation (ILO) on the Fundamental Principles and Rights at Work and its Follow-up (2.d); ILO Convention No. 97, Migration for Employment Convention (revised) (Article 6); ILO Convention No. 111, Discrimination (Employment and Occupation) Convention (Articles 1 to 3); ILO Convention No. 143, Migrant Workers (Supplementary Provisions) Convention (Articles 8 and 10); ILO Convention No. 168, Employment Promotion and Protection against Unemployment Convention (Article 6); Proclamation of Teheran, International Conference on Human Rights at Teheran, May 13, 1968 (paragraphs 1, 2, 5, 8 and 11); Vienna Declaration and Programme of Action, World Conference on Human Rights, June 14 to 25, 1993 (I.15; I.19; I.27; I.30; II.B.1, Articles 19 to 24; II.B.2, Articles 25 to 27); Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (Articles 2, 3, 4.1 and 5); World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Programme of Action (paragraphs of the Declaration: 1, 2, 7, 9, 10, 16, 25, 38, 47, 48, 51, 66 and 104); Convention against Discrimination in Education (Article 3); Declaration on Race and Racial Prejudice (Articles 1, 2, 3, 4, 5, 6, 7, 8 and 9); Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live (Article 5.1.b and 5.1.c); Charter of Fundamental Rights of the European Union (Articles 20 and 21); European Convention for the Protection of Human Rights and Fundamental Freedoms (Articles 1 and 14); European Social Charter (Article 19.4, 19.5 and 19.7); Protocol No.12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 1); African Charter on Human and Peoples’ Rights “Banjul Charter” (Articles 2 and 3); Arab Charter on Human Rights (Article 2); and the Cairo Declaration on Human Rights in Islam (Article 1).

[FN154] IACtHR, Advisory Opinion OC-18/03 of September 17, 2003. “Juridical Condition and Rights of the Undocumented Migrants” (Ser. A), Number 18.

229. The American Declaration, for its part, prohibits discrimination by reason of race, gender, language, creed or any other factor, thereby disallowing any other form of discrimination, which would include discrimination based on political persuasion or some other factor.

230. Article II of the American Declaration establishes that every State has the obligation not to introduce discriminatory regulations into its legal framework. The Commission considers that the provisions contained in Law No. 88 and Article 91 of the Criminal Code, are themselves discriminatory, as they criminalize political opinion. The facts in this case reveal that the alleged victims were tried and convicted for their political opinions and their opposition to the government. This means that discrimination was present when the criminal law was enforced against the alleged victims.

231. Therefore, the Commission considers that the Cuban State has violated Article II of the American Declaration, to the detriment of each and every one of the alleged victims, both by enacting discriminatory laws and by engaging in the discriminatory practices that occur when those laws are enforced against those whose opinions differ from the governments.

8. Right to protection of honor, personal reputation, and private and family life (Article V)

232. Article V of the American Declaration provides that “[e]very person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.”

233. In the present case, some of the alleged victims and their family members have reportedly been the targets of the so-called *actos de repudio* [acts of repudiation or censure]. From the descriptions, these episodes involve insults, harassment and threats by State agents against those who oppose the government and are staged in the presence of family members, friends or colleagues. The purpose of these so-called *actos de repudio* is to publicize the names and addresses of the alleged victims, branding them as counter-revolutionaries and encouraging other citizens to disown them and even fight them. The Commission has confirmed that these acts of harassment are calculated to discredit the victims and damage their reputations and good name vis-à-vis the public.

234. In that respect, the Commission concludes that these *actos de repudio*, as described, are a violation of the right to protection of honor and personal reputation, and that the State has thus violated Article V, to the detriment of Julio Antonio Valdés Guevara, Martha Beatriz Roque Cabello, Miguel Valdés Tamayo, Miguel Sigler Amaya, Guido Sigler Amaya and Ariel Sigler Amaya.

9. Right to a family and to protection thereof (Article VI)

235. The American Declaration in its article VI states that “[e]very person has the right to establish a family, the basic element of society, and to receive protection therefore.”

236. The Commission has already pointed out that the right to establish and protect the family is so basic that it is a right that cannot be derogated, no matter how extreme the

circumstances.[FN155] The right to establish and protect the family may, however, be somehow limited by circumstances such as imprisonment and military service. While the right is never altogether suspended, such situations do not allow the right to be fully enjoyed.

[FN155] IACHR, Report No. 38/96, Case 10,506, Argentina, paragraph 96.

237. The Commission notes that although imprisonment necessarily separates family members, the State is obligated to facilitate and regulate contact between the prisoner and his or her family.[FN156] Because of the exceptional circumstances that imprisonment creates, the State is obligated to take steps to effectively ensure the right to maintain and cultivate family relationships. The need for any measures that restrict this right must fit the usual and reasonable requirements of incarceration. When the State regulates the manner in which inmates and their families exercise the right to establish and protect a family, no conditions can be imposed or procedures enforced that violate the rights recognized in the American Declaration.

[FN156] IACHR, Report No. 38/96, supra note 136, paragraph 98.

238. Article 37 of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides that “[p]risoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.”[FN157] For its part, Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of the United Nations Office of the High Commissioner for Human Rights provides that “[a] detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions, as specified by law or lawful regulation.” Principle 20 adds that “[i]f a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.”

[FN157] Standard Minimum Rules for the Treatment of Prisoners, adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

239. In the present case, the Commission observes that most of the victims are being kept in prisons located far from family. The petitioners even allege that the authorities deliberately incarcerated the victims in remote prisons to make communications with the families, attorneys and the media difficult. Furthermore, it has been reported that in most cases the prison authorities have restricted family and conjugal visits for no apparent reason.

240. The Commission finds that the State has not complied with its obligation to facilitate contacts between inmates and their families. Given these facts, the Commission concludes that the State has violated Article VI of the American Declaration, to the detriment of all the victims.

10. Right to the inviolability and transmission of correspondence (Article X)

241. Article X of the American Declaration provides that “[e]very person has the right to the inviolability and transmission of his correspondence.”

242. The facts presented in the case indicate that the State has withheld or intercepted the correspondence and telephone communications between some of the victims and their relatives or attorneys. In these cases, the Commission considers that the State has violated the right to the inviolability of correspondence.

243. The Commission therefore concludes that the State violated Article X of the American Declaration, to the detriment of Claro Sánchez Altarriba, Omar Moisés Ruiz Hernández, Miguel Galván Gutiérrez, Félix Navarro Rodríguez, Librado Linares García, Marcelo Cano Rodríguez, José Ubaldo Izquierdo Hernández, Efrén Fernández Fernández, Normando Hernández González, Luís Milán Fernández, Prieto Llorente, Omar Rodríguez Saludes and Blas Giraldo Reyes Rodríguez.

11. Right to vote and to participate in government (Article XX)

244. Article XX of the American Declaration provides that “[e]very person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.”

245. The Commission considers that the right to vote and to participate in government includes the right to organize parties and political associations that, through the free exchange of ideas, prevent a monopoly on power by any single group or individual. Accordingly, the right to participate in government is broader than the right to associate for purely political reasons.

246. The Commission has already written that “governments have, in the face of political rights and the right to political participation, the obligation to permit and guarantee: the organization of all political parties and other associations, unless they are constituted to violate human rights; open debate of the principal themes of socioeconomic development; the celebration of general and free elections with all the necessary guarantees so that the results represent the popular will.”[FN158]

[FN158] IACHR, Annual Report 2002, *supra* note 133, paragraph 12.

247. The importance of political pluralism in legal systems is also confirmed in the Inter-American Democratic Charter, Article 3 of which provides that “Essential elements of

representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.”

248. In the present case, the Commission has confirmed that criminal sentences have been given to individuals who have associated with each other for the purpose of opposing the government or establishing forms of political organization other than the single constitutionally recognized political party.[FN159] In that respect, the Commission considers that the banning of political activities outside the single recognized political party is a violation of the right to participate in government.

[FN159] Constitution of Cuba, supra note 12, Article 5.

249. One verdict condemns one of the victims for participating in projects that aimed to “create expectations for political and social change.”[FN160] The same ruling states that, “in the early 1990s, {the} accused {...} broke his ties with the Cuban revolutionary process to which he belonged, betraying the principles he had defended, with the only and deliberate purpose of changing our socialist plan.”[FN161]

[FN160] Verdict No. 1 delivered by the People’s Provincial Tribunal of Pinar del Río, April 5, 2003. First Finding.

[FN161] Verdict No. 1 delivered by the People’s Provincial Tribunal of Pinar del Río, April 5, 2003. Second Finding.

250. Another ruling concludes that “{leading} an opposition group of the so-called “Human Rights” type, engaging in activities, meetings, using our national flag and hanging posters calling for the freedom of political prisoners and prisoners of conscience, in open challenge to the legal, political and social systems, {...} creates discomfort and repudiation in the inhabitants of the place, since this type of activity leads to the development of extreme situations in the social order and instigates those who reside nearby to engage in this type of activity, which may not be permitted or tolerated for any reason.”[FN162]

[FN162] Verdict No. 1 delivered by the People’s Provincial Tribunal of Pinar del Río, April 5, 2003. Second Finding.

251. The courts also described as “offensive unpatriotic activity” the fact that one of the victims “on two occasions appeared before officials of the People’s Power [...], in one case carrying printed documents with the names and signatures of people who, according to him,

represented the “Varela Project”; the other time was to request a meeting with the president of that body in order to deliver a type-written document criticizing the sales prices of some products.” [FN163]

[FN163] Verdict No. 2 delivered by the People’s Provincial Tribunal of Villa Clara, 4 April 2003. First Finding.

252. The verdicts show that several of the victims were punished for participating in or supporting the Varela Project.[FN164] The Commission observes that to sanction people who associate for the purpose of collecting signatures to convene a referendum to reform Cuban legislation, as well as those who support the Varela Project, is a way of violating the legitimate right of association for political purposes, which should be protected by every society that guarantees the right to participate in government. In its 2002 Annual Report,[FN165] the Commission mentioned the Varela Project, explaining that it brought together a group of Cuban citizens from more than 140 organizations under the name of “Todos Unidos” (All Together), and who presented 11,020 signatures to the General Assembly to the People’s Power to request that a referendum be called under Articles 63 and 88 of the Cuban Constitution. In accordance with Article 63, every citizen has the right to submit complaints and petitions to the authorities and to be attended suitably or receive a reply in a reasonable period of time. In accordance with Article 88 subparagraph g, citizens have the legal initiative, and a it is required that at least ten thousand voting citizens be involved in exercising the initiative. The Varela Project requested the Assembly to submit to consultation with the people, through a referendum, the necessary legal changes, with a view to preserving the common good and the respect for human rights. A few days after the Varela Project was presented, Cuban authorities responded with a nationwide mobilization that collected eight hundred thousand signatures to declare that both the Cuban Constitution and the socialist system were irrevocable. In addition, the authorities subsequently condemned the organizers to arbitrary detentions, confiscation of documents and personal belongings, and prohibited them from leaving the country temporarily.

[FN164] See especially the cases of Alfredo Felipe Fuentes, José Miguel Martínez Hernández, Luís Milán Fernández, Jesús Mustafá Felipe, Arturo Pérez de Alejo Rodríguez, Blas Giraldo Reyes Rodríguez, Ricardo Enrique Silva Gual and Antonio Augusto Villarreal Acosta.
[FN165] 2002 Annual Report, supra note 149, paragraph 14.

253. In the instant case, the Commission confirms that, for example, a verdict characterized the Varela Project as being “opposed to the Cuban revolutionary system;”[FN166] another described the Varela Project as being “directed against the country’s constitutionally established legal order, which under the apparently social guise of liberalization, seeks to create disruption, discredit the organs of the people’s authority, discredit the Cuban electoral system, and provoke instability and confusion among the people in order to thus achieve its end goal of undermining years of efforts and revolutionary achievements, and to guide our process along neo-liberal and submissive lines, showing a totally false concern for others and material and spiritual

cooperation.”[FN167] The Commission is convinced that curtailing and criminalizing the right to propose changes or legislative reform through mechanisms established in State’s own Constitution are illegitimate constraints of the right to participate in government.

[FN166] Verdict No. 4 delivered by the People’s Provincial Tribunal of Sancti Spíritus, April 5, 2003. First Finding, section C.

[FN167] Verdict No. 1 delivered by the People’s Provincial Tribunal of Pinar del Río, April 5, 2003. Second Finding.

254. Nor it is legitimate to restrict the right of every citizen to associate for the purpose of changing the political structure or political system of a country, provided that this association takes place with respect for the institutional framework. The Commission confirms that in the present case the victims were punished for their legitimate right to participate in government. For example, one conviction stated that “for several years the accused had joined counterrevolutionary organizations [...] with the purpose of subverting the domestic economic, political and social orders; moreover, the petitions they presented reflected their desire to see the Cuban Revolution destroyed, which means that the acts carried out had the final goal of changing the political order, [...] which is classified as an aggravated crime.”[FN168]

[FN168] Verdict No. 10 delivered by the People’s Provincial Tribunal of Havana City, April 5, 2003. First preambular paragraph.

255. This same verdict indicates that “[t]he acts they committed are highly dangerous to the social structure since they sought to change the prevailing political-social system in Cuba, a system chosen by the Cuban people, and that a small group of people, including the accused, want to change [...], accordingly, [...] we understand that the reeducation of the accused can only be achieved by depriving them of their liberty.”[FN169]

[FN169] Verdict No. 10 delivered by the People’s Provincial Tribunal of Havana City, April 5, 2003. Fifth preambular paragraph.

256. Moreover, in the Commission’s opinion, free exercise of the right to participate in government also requires respect for other human rights, especially liberty and personal security. Full exercise of freedom of expression and the rights of association and assembly are essential to having a direct role in shaping the decisions that affect the community. In the present case, the Commission confirms that the absence of an atmosphere of tolerance, in which ideas contrary to the form of government can be expressed, is also a violation of the right to participate in government.

257. The Commission therefore concludes that the commission of acts of aggression and intimidation and the imposition of criminal sentences against members of dissident organizations are a violation of Article XX of the American Declaration, to the detriment of the victims.

12. Right to inviolability of the home (Article IX)

258. For its part, Article IX of the American Declaration provides that “[e]very person has the right to the inviolability of his home.”

259. The Commission observes that the right to the inviolability of the home is a fundamental right established to guarantee its privacy. The home should not be subject to any outside intrusion, either by third parties or the authorities.

260. However, the right to the inviolability of the home is not an absolute and can be restricted provided an order from a competent authority exists.

261. The facts in the present case indicate that the authorities conducted searches without a court order, and employed unnecessary force. Furthermore, according to the information available, in a number of cases, family members of the alleged victims were purportedly threatened during the searches.

262. Indeed, the Commission observes that the convictions confirm that, in every case, raids were conducted of the homes of the alleged victims and their family members. However, in the present case, the petitioners have not alleged nor proven that the raids were conducted without court order from a competent authority.

263. Accordingly, based on the facts alleged by the petitioners, the Commission does not find that there has been a violation of the right to inviolability of the home established in Article IX of the American Declaration.

13. Right to the preservation of health and to well-being (Article XI)

264. Under Article XI of the American Declaration, “[e]very person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community.”

265. In this regard, the arguments of the petitioners regarding the medical care of persons deprived of their liberty were examined by the Commission in Section IV-D-1 of the instant report in connection with Article XXV of the American Declaration, which establishes that every individual “[has] the right to humane treatment during the time he is in custody.”

14. Right to recognition of juridical personality and civil rights (Article XVII)

266. Article XVII of the American Declaration provides that “[e]very person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.”

267. The Commission does not find in this case facts that would tend to establish a violation of the right to recognition of juridical personality and civil rights under Article XVII of the American Declaration.

V. ACTIONS SUBSEQUENT TO REPORT No. 51/06

268. On March 28, 2006, during its 124th regular session, the IACHR adopted Report No. 51/06, pursuant to Article 43 of its Rules of Procedure, with the dissenting vote of Commissioner Freddy Gutiérrez.

1. Report No. 51/06 was transmitted to the State via a note dated April 12, 2006, with the request that the State provide information within two months regarding the measures it had adopted to comply with the recommendations contained in the report, in accordance with Article 43.2 of the Commission's Rules of Procedure. The petitioners were also notified on the same date, in accordance with Article 43.3 of the Commission's Rules of Procedure that the report had been approved.

2. The Cuban State did not reply to the communication sent by the IACHR.

3. Consequently, in light of the absence of a response from the Cuban State, the Commission has decided to ratify its conclusions and reiterate its recommendations in this case, as indicated below.

VI. CONCLUSIONS

269. Based on the preceding considerations of fact and of law and inasmuch as the Cuban State did not respond, the Commission concludes the following:

1. That the State is responsible for violations of Articles I, II, IV, VI, XX, XXI, XXII, XXV and XXVI of the American Declaration, to the detriment of Oscar Elías Biscet González, José Daniel Ferrer García, Jorge Luís González Tanquero, José Luís García Paneque, Juan Roberto de Miranda Hernández, Oscar Manuel Espinosa Chepe, Martha Beatriz Roque Cabello, Raúl Ramón Rivero Castañeda, José Gabriel Ramón Castillo, Pablo Pacheco Ávila, Ricardo Severino González Alfonso, Carmelo Agustín Díaz Fernández, Horacio Julio Piña Borrego, Osvaldo Alfonso Valdés, Pedro Pablo Álvarez Ramos, Julio César Gálvez Rodríguez, Edel José García Díaz, Marcelo Cano Rodríguez, Ángel Moya Acosta, Manuel Vázquez Portal, Juan Adolfo Fernández Saínez, Nelson Molinet Espino, Eduardo Díaz Fleitas, Fidel Suárez Cruz, Jorge Olivera Castillo, Orlando Fundora Álvarez, Efrén Fernández Fernández, Víctor Rolando Arroyo Carmona, Héctor Maseda Gutiérrez, Mijail Bárzaga Lugo, Nelson Alberto Aguiar Ramírez, Antonio Ramón Díaz Sánchez, Regis Iglesias Ramírez, Héctor Palacios Ruiz, Marcelo Manuel López Bañobre, Alfredo Felipe Fuentes, Héctor Raúl Valle Hernández, Guido Sigler Amaya, Ariel Sigler Amaya, Félix Navarro Rodríguez, Librado Linares García, Léster González Pentón, Omar Pernet Hernández, Antonio Augusto Villareal Acosta, Pedro Argüelles Morán, Alejandro González Raga, Mario Enrique Mayo Hernández, Alfredo Rodolfo Domínguez Batista, Reynaldo Miguel Labrada Peña, Julio Antonio Valdés Guevara, Luís Milán Fernández, Alexis Rodríguez Fernández, Leonel Grave de Peralta, Juan Carlos Herrera Acosta, Arnaldo Ramos Lauzurique, Miguel Valdés Tamayo, Miguel Galván Gutiérrez, José Miguel Martínez

Hernández, José Ubaldo Izquierdo Hernández, Iván Hernández Carrillo, Diosdado González Marrero, Margarito Broche Espinosa, Arturo Pérez de Alejo Rodríguez, Omar Moisés Ruiz Hernández, Blas Giraldo Reyes Rodríguez, Alfredo Manuel Pulido López, Normando Hernández González, Luís Enrique Ferrer García, Próspero Gaínza Agüero, Claro Sánchez Altarriba, Ricardo Enrique Silva Gual, Jesús Mustafá Felipe, Manuel Ubals González, Fabio Prieto Llorente, Omar Rodríguez Saludes, Rafael Millet Leyva, Miguel Sigler Amaya and Orlando Zapata Tamayo;

2. That the State violated Article V of the American Declaration, to the detriment of Nelson Alberto Aguiar Ramírez, Martha Beatriz Roque Cabello, José Luis García Paneque, Miguel Sigler Amaya, Guido Sigler Amaya, Ariel Sigler Amaya, Julio Antonio Valdés Guevara and Miguel Valdés Tamayo.

3. That the State violated Article X of the American Declaration, to the detriment of Marcelo Cano Rodríguez, Efrén Fernández Fernández, Miguel Galván Gutiérrez, Normando Hernández González, José Ubaldo Izquierdo Hernández, Librado Ricardo Linares García, Luís Milán Fernández, Fabio Prieto Llorente, Félix Navarro Rodríguez, Blas Giraldo Reyes Rodríguez, Omar Rodríguez Saludes, Omar Moisés Ruiz Hernández, Claro Sánchez Altarriba and Héctor Raúl Valle Hernández.

4. That the State violated Article XVIII of the American Declaration, to the detriment of Nelson Alberto Aguiar Ramírez, Osvaldo Alfonso Valdés, Pedro Pablo Álvarez Ramo, Pedro Argüelles Morán, Víctor Rolando Arroyo Carmona Mijail Bázaga Lugo, Oscar Elías Biscet González, Margarito Broche Espinosa, Marcelo Cano Rodríguez, Juan Roberto de Miranda Hernández, Carmelo Agustín Díaz Fernández, Eduardo Díaz Fleitas, Antonio Ramón Díaz Sánchez, Alfredo Rodolfo Domínguez Batista, Oscar Manuel Espinosa Chepe Alfredo Felipe Fuentes, Efrén Fernández Fernández, Juan Adolfo Fernández Saínz, José Daniel Ferrer García, Luís Enrique Ferrer García, Orlando Fundora Álvarez, Próspero Gaínza Agüero, Miguel Galbán Gutiérrez, Julio César Gálvez Rodríguez, Edel José García Díaz, José Luís García Paneque, Ricardo Severino González Alfonso, Diosdado González Marrero, Léster González Pentón, Alejandro González Raga, Jorge Luís González Tanquero, Leonel Grave de Peralta, Iván Hernández Carrillo, Normando Hernández González, Juan Carlos Herrera Acosta, Regis Iglesias Ramírez, José Ubaldo Izquierdo Hernández, Reynaldo Miguel Labrada Peña, Librado Ricardo Linares García, Marcelo Manuel López Bañobre, José Miguel Martínez Hernández, Héctor Maseda Gutiérrez, Mario Enrique Mayo Hernández, Luís Milán Fernández, Nelson Moline Espino, Ángel Moya Acosta, Jesús Mustafá Felipe, Félix Navarro Rodríguez, Jorge Olivera Castillo, Pablo Pacheco Ávila, Héctor Palacios Ruiz, Arturo Pérez de Alejo Rodríguez, Omar Pernet Hernández, Horacio Julio Piña Borrego, Fabio Prieto Llorente, Alfredo Manuel Pulido López, José Gabriel Ramón Castillo, Arnaldo Ramos Lauzurique, Blas Giraldo Reyes Rodríguez, Raúl Ramón Rivero Castañeda, Alexis Rodríguez Fernández, Omar Rodríguez Saludes, Martha Beatriz Roque Cabello, Omar Moisés Ruiz Hernández, Claro Sánchez Altarriba, Ariel Sigler Amaya, Guido Sigler Amaya, Miguel Sigler Amaya, Ricardo Enrique Silva Gual, Fidel Suárez Cruz, Manuel Ubals González, Julio Antonio Valdés Guevara, Miguel Valdés Tamayo, Héctor Raúl Valle Hernández, Manuel Vázquez Portal, Antonio Augusto Villareal Acosta and Orlando Zapata Tamayo.

5. That the State did not violate Articles IX, XI and XVII, of the American Declaration.

VI. RECOMMENDATIONS

270. Based on the analysis and conclusions that appear in the present report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATIONS TO THE STATE OF CUBA:

1. Order the immediate and unconditional release of the victims in this case, while overturning their convictions inasmuch as they were based on laws that impose unlawful restrictions on their human rights.
2. Adopt the measures necessary to adapt its laws, procedures and practices to international human rights laws. In particular, the Commission is recommending to the Cuban State that it repeal Law No. 88 and Article 91 of its Criminal Code, and that it initiate a process to amend its Constitution to ensure the independence of the judicial branch of government and the right to participate in government.
4. Redress the victims and their next of kin for the pecuniary and non-pecuniary damages suffered as a result of the violations of the American Declaration herein established.
5. Adopt the measures necessary to prevent a recurrence of similar acts, in keeping with the State's duty to respect and ensure human rights.

VII. NOTIFICATION AND PUBLICATION

1. In light of the above, and given the exceptional circumstances of the instant case, as well as the absence of a reply by the State to Report 51/06, the Commission has decided, pursuant to Article 45.2 and 45.3 of its Rules of Procedure, not to allow the parties more time prior to publication of the report to submit information on compliance with the recommendations, to transmit the Report to the State and to the representatives of the petitioners, to publish the Report, and to include it in its Annual Report to the General Assembly of the Organization of American States. In accordance with the provisions of the instruments governing its activities, the Commission will continue to evaluate the measures adopted by the State of Cuba with respect to the aforementioned recommendations until that country complies with them.

Done and signed in the city of Washington, D.C., on the 21st day of the month of October, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez Trejo, Paolo G. Carozza and Víctor E. Abramovich Commissioners. Commissioner Freddy Gutiérrez has adopted a dissenting and reasoned vote, which follows the instant report.

Washington, D.C., October 21st of 2006

Dissenting and reasoned vote

Case 12.476

Freddy Gutiérrez

I hereby declare and explain my dissenting vote regarding the Report on the Merits adopted by the Inter-American Commission on Human Rights in relation to Case 12.476, 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.