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CASE 12.127

MERITS (PUBLICATION)

VLADIMIRO ROCA ANTUNEZ AND OTHERS
CUBA

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I. SUMMARY

1. On March 25, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition submitted by the Cuban Committee for Human Rights (*Comité Cubano Pro Derechos Humanos*) and the Working Group for Internal Dissidence (*Grupo de Trabajo de la Disidencia Interna*) (hereinafter “the petitioners”) alleging the international responsibility of Cuba (hereinafter “the State” or “the Cuban State”) for the violation of their right to freedom of expression. The petitioners argue that the events that gave rise to the petition are in violation of Articles I (Right to life, liberty and personal security), IV (Right to freedom of investigation, opinion, expression and dissemination), XXV (Right of protection from arbitrary arrest), and XXVI (Right to due process of law) of the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration” or “the Declaration”), to the detriment of Vladimiro Roca Antúnez, Rene Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés (hereinafter “the alleged victims”).

2. The petitioners claimed that the alleged victims were arbitrarily deprived of their liberty and sentenced to long prison sentences on charges of sedition, for the mere act of having created an organization called the “Working Group for Internal Dissidence,” to study Cuba’s socioeconomic problems and disseminate documents and bulletins critical of the State. The petitioners stated that the alleged victims were detained by police on July 16, 1997, and that they remained in pretrial custody for one year and five months with no effective judicial oversight. They asserted that on March 4, 1999, the Division for Crimes against State Security of the People’s Provincial Court of Havana found them guilty of the offense of sedition, based on arguments that violated democratic principles and the right to freedom of expression. Marta Beatriz Roque Cabello was sentenced to three and a half years in prison, René Gómez Manzano and Félix Bonne Carcassés to four years, and Vladimiro Roca Antúnez to five years. The petitioners claimed that during those years the alleged victims were subjected to inhumane conditions of detention.

3. The State neither presented observations nor replied to the Inter-American Commission’s requests for information.

4. On October 14, 2004, the Inter-American Commission approved Admissibility Report No. 56/04, in which it decided to declare the petition admissible based on the alleged violation of the rights enshrined in Articles I, IV, XXV, and XXVI of the American Declaration, to the detriment of Vladimiro Roca Antúnez, Rene Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés.

5. Upon examining the merits, the IACHR concluded that Cuba violated, to the detriment of Vladimiro Roca Antúnez, Rene Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés, the rights enshrined in Articles I (Right to life, liberty and personal security), IV (Right to freedom of investigation, opinion, expression and dissemination), XXII (Right of association), XXV (Right of protection from arbitrary arrest), and XXVI (Right to due process of law) of the American Declaration.

II. PROCESSING SUBSEQUENT TO THE REPORT ON ADMISSIBILITY

6. On October 14, 2004, the Inter-American Commission adopted Admissibility Report No. 56/04. The report was forwarded to the parties in a communication dated November 8, 2004. The processing

of the case up to that time is detailed in that report.¹ In that communication, the IACHR asked the petitioners to present their additional observations on the merits in accordance with Article 38.1 of its Rules of Procedure. In addition, the Commission made itself available to the parties for purposes of reaching a friendly settlement of the matter pursuant to Article 48.1(f) of the American Convention.

7. To date, the Cuban State has not replied to any of the Commission's requests for information, despite having been properly notified. On December 2, 2004, the Chief of the Cuban Interests Section in Washington, D.C. sent a communication to the IACHR, stating: "I am returning the three documents sent to this Interests Section on November 8, 2004. As I have stated on previous occasions, the Inter-American Commission on Human Rights does not have legal jurisdiction, nor does the Organization of American States have the moral authority, to pass judgment on the enjoyment of human rights in Cuba (...)."

8. On July 26, 2011, the IACHR requested updated information about the petitioners' case. On March 20, 2015, the petitioners sent a communication to the IACHR reporting that they had no other information to add to the case, and that the alleged victims "were awaiting the final decision of the Inter-American Commission regarding their case."

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

9. The petitioners alleged that in August 1996 Félix Antonio Bonne Carcassés, René de Jesús Gómez Manzano, Vladimiro Roca Antúnez, and Marta Beatriz Roque Cabello established the Working Group for Internal Dissidence to study the socioeconomic situation in Cuba. They indicated that the Working Group published a number of documents expressing their opinion on Cuba's economic, social and human rights situation.

10. The petitioners alleged that on July 16, 1997, the alleged victims were detained in an operation carried out at four o'clock in the morning, and taken to the State Security Agency's "Villa Marista" prison, in the city of Havana. They stated that the alleged victims were not allowed to contact their relatives at "Villa Marista" until July 30, 14 days after their arrest. They also claimed that the alleged victims were deprived of access to fresh air until August 22, 1997, 36 days after their arrest.

11. They stated that between October 23 and 30, 1997 the alleged victims were transferred to maximum security prisons. They asserted that on July 30, 1998, the alleged victims' relatives filed a writ of *habeas corpus* with the Division for Crimes against State Security, and that on July 31, 1998 they were informed that the writ was inadmissible. At the hearing held before the IACHR in 1999, the petitioners stated that the alleged victims' relatives sent numerous letters to judicial officials requesting the release of the detainees, but did not receive an answer. On September 24, 1998, the prosecutor's preliminary indictment was published, accusing the alleged victims of committing "other acts against the security of the State, related to the offense of sedition".

12. The petitioners stated that on October 14, 1998, the alleged victims' relatives filed another writ of *habeas corpus* with the Supreme People's Court for the city of Havana, which was denied outright because "their imprisonment was pursuant to a provisional detention order."

13. They stated that the trial against the defendants was held in closed proceedings on March 1, 1998. They stated that on March 4, 1999, the Division for Crimes against State Security of the People's Provincial Court of Havana found the alleged victims guilty of "other acts against the security of the State, related to the offense of sedition." Marta Beatriz Roque Cabello was sentenced to three and a half years in prison; René Gómez Manzano and Félix Bonne Carcassés were sentenced to four years, and Vladimiro Roca

¹¹ A hearing, which was attended by the petitioners, was held on September 30, 1999, during the 104th regular session of the Commission.

Antúnez was sentenced to four years. René Gómez Manzano was also barred from practicing law for five years, based on Article 39.1 of the Cuban Criminal Code, which allows a court to prohibit the practice of a profession, post, or trade “in cases in which the agent commits an offense by abusing his position or by negligence in the performance of his duties.”

14. The petitioners argued that the alleged victims were exercising their lawful rights to freedom of expression, and to participate in national political life, expressing their points of view honestly. They alleged that the conviction of the alleged victims amounted to the criminalization of freedom of expression and dissidence in Cuba.

15. The petitioners further alleged a lack of impartiality and independence in the justice system. They asserted that the trial was held in closed proceedings and that, although the alleged victims had lawyers, they were unable to communicate with them in private because they were under constant surveillance. They alleged that the defense attorneys were not given the necessary documents in a timely manner, as they were provided only moments before the trial proceedings, that the court used evidence that was not timely submitted by the prosecutor, and that certain facts were considered to have been established even though they were inconsistent with the evidence examined. They stated that in the case of René Gómez Manzano, the court imposed the prohibition against practicing law—a penalty that had not been requested by the prosecutor’s office.

16. The petitioners alleged that Marta Beatriz Roque Cabello was held in a cell measuring 3 x 4 meters, which she shared with other individuals; that she was deprived of natural light, as the windows were sealed with a metal sheet and the lighting was from a white fluorescent light that remained on constantly; that the food was inadequate, and that she remained in the cell’s bed the entire time. They additionally alleged that in October 1997, Roque Cabello found a number of masses in her breasts, which reportedly became infected after being treated by prison staff. According to the petitioners, this led to mammary dysplasia. They also stated that she experienced stomach and kidney problems after a 52-day hunger strike in which she lost more than 9 kilos.

17. The petitioners reported at the hearing held on September 30, 1999, that Félix Bonne Carcassés was asthmatic and diabetic and that he was held in a small, damp cell where he had to stand on his feet for extended periods and was given no opportunity to exercise. They also alleged that he was denied medical attention when he had health problems. Finally, they alleged that René Gomez Manzano was held in an isolation cell after being beaten by other inmates.

B. Position of the State

18. To date, the Cuban State has not replied to any of the Commission’s requests for information, in spite of having been properly notified.

19. On December 2, 2004, the Chief of the Cuban Interests Section in Washington, D.C. sent a communication to the IACHR stating: “I am returning the three documents sent to this Interests Section on November 8, 2004. As I have stated on previous occasions, the Inter-American Commission on Human Rights does not have legal jurisdiction, nor does the Organization of American States have the moral authority, to pass judgment on the enjoyment of human rights in Cuba (...).”

20. The Commission observes that the deadlines established in its Rules of Procedure for the State to provide information have long expired without Cuba having disputed the allegations of the petitioners set forth in this case.

IV. FACTUAL ANALYSIS

21. The Commission notes that despite its repeated requests, the State thus far in its successive replies has not provided observations, information, or evidence regarding the petitioners’ allegations. The Commission additionally observes that the facts alleged by the petitioners specifically describe the situation

of the alleged victims, which is also corroborated by official documents submitted in the case, and documented in other sources.

22. Based on these considerations, and given the absence of evidence leading to a different conclusion, the Commission has decided in this case to apply, when pertinent, Article 38 of its Rules of Procedure, which establishes that:

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 period set by the Commission under the provisions of Article 37 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion.

23. The IACHR considered in its analysis the information contained in the Prosecutor's preliminary indictment dated September 16, 1998,² judgment No. 2.999 of the Division for Crimes against State Security of the Provincial Court of Havana handed down on March 4, 1999,³ and cassation judgment No. 4 of the Supreme People's Court issued on February 9, 2000,⁴ in relation to the facts of this case.

24. Therefore, the Commission finds that the facts described in the following paragraphs with respect to the alleged victims have been proven:

A. The Working Group for Internal Dissidence⁵

25. Vladimiro Roca Antúnez was born on December 21, 1942 in Havana. He is the son of communist leader Blas Roca Calderio, one of the founders of the Cuban Communist Party. Vladimiro Roca studied aviation in the former Soviet Union and served as a pilot in the Cuban Air Force for ten years. He also studied International Economic Relations at Cuba's Advanced Institute of International Relations and worked as a government specialist on the State Economic Cooperation Committee. In 1991 he founded a movement called the Popular Socialist Current (*Corriente Socialista Popular*). At the time of the events, Roca Antúnez was the president of the Managing Committee of the Democratic Socialist Party of Cuba. He is the author of several analytical essays on the country's socioeconomic situation.

26. René Gómez Manzano was born in Havana on December 19, 1943. He studied law at the University of Havana and obtained a specialization in international law from the Patrice Lumumba University in Moscow. In 1968, he began working at collective law firms, having been elected by his fellow delegates to the General Assembly of the National Organization of Collective Law Firms. He specialized in the criminal defense of individuals accused of crimes against the security of the State. He took on the defense of dissidents and human rights activists. He founded the organization "*Corriente Agramontista*," a group of independent lawyers dedicated to the restoration of democracy on the island. He wrote critical works on current law, as well as briefs advocating legislative reform and demanding the restoration of the free practice of law and the independence of the justice system.

27. Marta Beatriz Roque Cabello was born on May 16, 1945 in Havana. She studied economics at the University of Havana, and was an economics professor at that same university. At the time of the events at issue in this case, Roque Cabello was the director of the Cuban Institute of Independent Economists, a Cuban non-governmental organization dedicated to studying the country's economy. She served as the coordinator

² Office of the Prosecutor General. Prosecutor's Preliminary Indictment. Pretrial phase file No. 39-97. D.S.E (Defendants: Vladimiro Roca Antúnez, René Gómez Manzano, Felix Antonio Bonne Carcassés, and Beatriz Roque Cabello). September 16, 1998.

³ Division for Crimes against State Security of the Provincial Court of Havana. Judgment No. 2.999. March 4, 1999.

⁴ People's Supreme Court. Division for Crimes against State Security. Judgment No. 4. February 9, 2000.

⁵ Inter-American Commission on Human Rights. Hearing in case 12.127 Vladimiro Roca Antúnez et al. Cuba. September 30, 1999; and Working Group for Internal Dissidence. A Cuban trial. 1999. Annex to the communication of the petitioners dated March 25, 1999.

of the Working Group for Internal Dissidence and was responsible for the production and dissemination of the group's bulletin. She has authored various articles on the Cuban economy published in international journals.⁶

28. Félix Bonne Carcassés was born on June 13, 1939 in Santiago de Cuba. He studied electrical engineering at the Technological University of Havana, José Antonio Echeverría (CUJAE). He was an associate professor of engineering at CUJAE and a physics professor at the University of Havana. He was one of the founders of the organization "Cuban Civic Current" [*Corriente Cívica Cubana*], which brought together various university professors who had addressed an "Open Letter to Castro," demanding a democratic opening in the country. He was expelled from the University of Havana for this action. The IACHR learned that Bonne Carcassés died on January 6, 2017, as the result of a heart attack.⁷

29. In August 1996, Vladimiro Roca Antúnez, René Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés formed the "Working Group for Internal Dissidence" dedicated to studying Cuba's socioeconomic situation and disseminating documents and bulletins that promoted ideas for a peaceful transition to democracy in Cuba.

30. The first document prepared by the Working Group was the "Platform for Transition."⁸ It stated that "Only the rule of law will allow for a sociopolitical scenario that creates the conditions for the improved well-being of the Cuban nation." The Working Group asserted that, "The lack of access to any source of outside financing, scarce production, erroneous macroeconomic policies based on state centralization, the domestic financial imbalance, and a dependence on imports, among many other problems, make it difficult to foresee a rapid exit from the crisis in this country." "Day by day, civil disobedience arises spontaneously in different sectors of the population as an outlet for their disagreement with the general crisis we are experiencing, while the State strengthens its laws to maintain power."

31. They stated that "The path that the small, visible opposition has chosen is peaceful struggle as the principal expression of its desire for change," and proposed the "Platform described below":

- I. Freedom for Political Prisoners
- II. Strengthening of the rule of law with a fully active civil society and democratic institutions
- III. Economic independence that includes the opportunity for Cubans to also invest abroad, taking account of the Arcos Principles declared some time ago.
- IV. Legalization of dissident groups.
- V. Within the framework of acknowledging other organized ideological currents in Cuba or abroad, convene a Constitutional Convention first and foremost to replace the current constitution, with the objective of being able to hold multiparty elections later.
- VI. Full enjoyment of human rights⁹.

32. On April 12, 1997, they published a "Letter to Investors," urging foreign investors to respect and adhere to human rights and fair hiring and employment practices in Cuba, in keeping with the "Principles

⁶ In addition to the facts addressed in this petition, Marta Roque Cabello was later arrested on March 19, 2003, tried in a very summary proceeding, and sentenced to 20 years in prison for having "disclosed incomplete and distorted information about Cuba's economic and sociopolitical reality, contributing to discrediting campaigns reportedly affecting the integrity of the Cuban State." The IACHR issued a decision on this matter in Report No. 67/06 of October 21, 2006, in Case 12.476, Oscar Elías Biscet et al. v. Cuba. Available at: <https://www.cidh.oas.org/annualrep/2006eng/CUBA.12476eng.htm>

⁷ Cubanet. January 7, 2017. *Fallece el opositor cubano Félix Bonne Carcassés*; Martí Noticias. January 7, 2017. *Falleció de un infarto el disidente cubano Félix Bonne Carcassés*; 14 y medio. January 7, 2017. *Fallece el disidente Félix Bonne Carcassés, firmante de 'La Patria es de Todos'*.

⁸ Working Group for Internal Dissidence. Platform for Transition. Havana, Cuba. August 1996. Annex to the communication of the petitioners dated March 25, 1999.

⁹ Working Group for Internal Dissidence. Platform for Transition. Havana, Cuba. August 1996. Annex to the communication of the petitioners dated March 25, 1999.

for Foreign Investment in Cuba” (“Arcos Principles”)¹⁰ crafted under the auspices of the Cuban Committee for Human Rights (CCPDH). In the letter, they stated that:

[...] The inevitable democratic transition in our country will take place soon, and this is to address the need to take measures to prevent a situation where foreign investors may be seen in the future as accomplices to the ills afflicting the Cuban people today. The Arcos Principles were adopted to this end.

For the reasons stated, we cannot get involved in the debate on whether or not it is appropriate to invest in Cuba. However, it is clear that failing to observe the standards of equality and cooperation in labor relations, as well as respect for the Cuban people, on the part of those who wish to invest in the island, is best for all. Any other business strategy will only lead to future conflicts. Therefore, support for the implementation of the Arcos Principles can both improve current conditions for Cuban workers and protect the interests of investors¹¹.

33. On April 18, 1997, they published another document entitled “Call to Exile,” stating that:

The debate on whether it is appropriate to send assistance to friends and relatives on the island is vigorous. Without wishing to involve ourselves in that argument—which you yourselves must resolve—we intend to speak out about the effect that these remittances can have on silencing the voices of many people in Cuba who are in disagreement with the communist regime. In most cases, the people sending the assistance who went into exile because they were opposed to the system and those who receive it here have similar opinions. Nevertheless, the fact that they receive this additional income has in practice led many of the recipients to assume a stance of apparent indifference to the national crisis. In view of this reality, we want to address those who, in spite of the criticism, provide economic support to their loved ones who reside in Cuba. We would like to call their attention to the fact that if the money they sent was accompanied by firm appeals for the recipients to join the peaceful struggle for change, it would lead to a dramatic increase in the number of people in Cuba who have taken that path. If a portion of those recipients of assistance would leave the so-called mass organizations, stop pretending to support the regime when they in fact do not, stop attending the public events convened by the government, and refuse to participate in communist elections in which no one is actually elected (although voting is not mandatory), it would lend support to the peaceful struggle that is underway in our country to achieve change. In short, it would be a specific way for that money—which in any case is entering Cuba—to help the country overcome the crisis. It is incumbent upon our exiled brothers and sisters who send this assistance to influence their friends and family, so that they will understand that simple reality and consequently take action. We reiterate that, above all, this must be done within the same peaceful framework within which we carry out our activities¹².

34. On May 15, 1997, the Group published a document entitled “Call for Electoral Abstention,” asking voters to “make use of their right not to vote, which is a form of peaceful protest.” In this document, they asserted that, “going to the polls means legitimizing a process that—because it is not pluralistic—is only

¹⁰ Arcos Principles. Joint Project by Gustavo Arcos Bergnes on behalf of the Cuban Committee for Human Rights, the international society for human rights and solidarity for Cuban workers. Authors: Rolando H. Castañeda and George Plinio Moltalván. January 31, 1995. Annex to the communication of the petitioners dated March 25, 1999.

¹¹ Working Group for Internal Dissidence. Letter to Investors. April 12, 1997. Annex to the communication of the petitioners dated March 25, 1999.

¹² Working Group for Internal Dissidence. Call to Exile. April 18, 1997. Annex to the communication of the petitioners dated March 25, 1999.

legitimate for the communist system, and we would be extremely naïve to compare it to the elections held in truly democratic countries.”¹³

35. On June 27, 1997, the Working Group published a nine-page document entitled “Our Country belongs to us All.” It was a critique of the Draft Document of the Fifth Congress of the Cuban Communist Party, which would be submitted for approval during that event in October 1997. The Group stated that “Since it is not possible for us to issue public critiques here with respect to the matter (given that all media outlets are in the hands of the State), we have decided to express them herein in order to reach Cubans on and off the island in some way, thereby defending our right to opine, because we are convinced that OUR COUNTRY BELONGS TO US ALL.”¹⁴ They stated:

[...] The Party, claiming to be the people’s representative, drafted a document demanding that citizens participate in meetings to support the Party. The people, subjected to the pressures of totalitarian power, attend, and this fact is then presented to the world as a referendum by Cuban society. It is claimed to be the clearest and most irrefutable proof that the Party represents all the people. [...] What does the Communist Party offer the people? *We will have only that which we are capable of creating*, it tells them. More than a promise, it sounds like a grim threat, given the proverbial inefficiency of the production system and the traditional limitations this imposes upon the citizenry. *The list of problems is enormous*. Nevertheless, only some of the material problems are noted; there is no reference to the spiritual deprivation of our people, much less the absence of freedoms of all kinds. In the opinion of the Party, the specific tasks are clear. What it does not make clear to the people are the solutions to the problems, the time limits, the perspectives. [...] The document prepared by the Communist Party is not that alternative, because it offers nothing concrete to the Cuban people. [...]

No one wants to go back to the negative part of the 1950s, as the government would like people to believe. Realities in the world—and in our country—have changed significantly. The transition to democracy that we want to achieve is based on the fundamental principles of the Constitution of 1940, which establishes social rights that have nothing to do with the influence and spread of neoliberalism. In fact, the situation today, in which foreign corporations hire their employees through a state intermediary that exploits them and does not even offer them a stable employment relationship, could be called neo-totalitarian. The Party’s document does not allow for the rule of law to exist; nor does it allow for an independent and impartial judicial system that upholds individual rights and freedoms and political pluralism. [...]

It is said that the Party demands that its members think for themselves and freely express themselves within party organizations. That means there are 770,000 people who have license to think and speak—but everyone else, those who are not party-affiliated, those who make up the majority of the population, do not have the opportunity to express themselves freely. They need their space as well. [...] It would be novel for the opposition to be allowed to form part of the electoral process, with its own parties and the ability to nominate candidates and conduct political campaigns, and for international observers to be given access to supervise elections.

¹³ Working Group for Internal Dissidence. Call for Electoral Abstention. May 15, 1997. Annex to the communication of the petitioners dated March 25, 1999.

¹⁴ Working Group for Internal Dissidence. Our Country Belong to Us All. May 15, 1997. Annex to the communication of the petitioners dated March 25, 1999.

[...] The State is not at the service of the citizen. There is not even an equal relationship of reciprocal rights and obligations between the two. Rather, the citizen is at the service of the State. The laws do not respect the inherent rights of human beings, as demonstrated by the innumerable reports of the violation of those rights, as well as by the repeated censure of Cuba by United Nations for that reason.

The government should solve problems like the right of Cubans to freely enter and exit Cuban territory, and allow the United Nations Special Rapporteur on Human Rights and his or her team to enter Cuba. [...] ¹⁵

36. The petitioners disseminated the content of these documents through several programs on the *Radio Martí* radio station, and through interviews given to foreign media outlets like the newspaper *Nuevo Herald*. They also held meetings in their homes to disclose and share the content of the documents. In particular, on June 27, 1997, the four individuals from the Group held a press conference at the home of Marta Roque Cabello to disseminate the document “Our Country belongs to us All,” which was attended by members of the foreign press and foreign diplomats in Cuba. On June 30, Roca Antúnez and Roque Cabello gave interviews to *Radio Marti* and to *Nuevo Herald* about that document. ¹⁶

B. The arrest and criminal prosecution of the members of the Working Group for Internal Dissidence: Vladimiro Roca Antúnez, René Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés

37. On July 16, 1997, weeks after the dissemination of the last bulletin, “Our Country belongs to us All,” the four members of the Working Group for Internal Dissidence, Vladimiro Roca, René Gómez Manzano, Marta Roque Cabello, and Félix Bonne Carcassés, were arrested in Havana by the State Security Police and taken to the Villa Marista detention center, where they were held for fourteen days without contact with their relatives. Their relatives were not allowed to visit until July 30. Also, they were deprived of access to fresh air during 36 days during their arrest. ¹⁷

38. During this period, the Prosecutor’s Office reportedly issued a “Prosecution Order,” which could not be accessed by the detainees or their relatives. It reportedly ordered the pretrial detention of the Group’s members for the alleged offense of “enemy propaganda.” ¹⁸

39. In October 1997, the four detainees were transferred to different high-security penitentiary centers. Marta Beatriz Roque Cabello was taken to the Mato Negro Prison; Félix Bonne Carcassés was transferred to the Guanajay Jail, in the Province of Pinar del Rio; René Gómez Manzano went to the Agüica Jail, in the Province of Matanzas; and Vladimiro Roca Antúnez was transferred to the Ariza Jail, in the Province of Cienfuegos. ¹⁹

40. The relatives of the four detainees filed a writ of *habeas corpus* on July 30, 1998, with the Division for Crimes against State Security, pursuant to Article 467 of the criminal procedure law. They alleged

¹⁵ Working Group for Internal Dissidence. Our Country Belong to Us All. May 15, 1997. Annex to the communication of the petitioners dated March 25, 1999.

¹⁶ Division for Crimes against State Security of the Provincial Court of Havana. Judgment No. 2.999. March 4, 1999. Annex to the communication of the petitioners dated October 14, 1999.

¹⁷ Working Group for Internal Dissidence. A Cuban trial. 1999. Annex to the communication of the petitioners dated October 14, 1999.

¹⁸ Communication dated May 21, 1998 addressed to the Office of the General Prosecutor by Magaly de Armas and Jorge R. Gómez Manzano, relatives of the alleged victims. Annex to the communication of the petitioners dated October 14, 1999.

¹⁹ Working Group for Internal Dissidence. A Cuban trial. 1999. Annex to the communication of the petitioners dated October 14, 1999.

in the writ that “pretrial detention should never exceed the minimum sentence applicable to the offense,” and that the “offense of enemy propaganda, of which these four detainees are apparently accused, carries a minimum sentence of one year—a period of time that they have already served.” They stated that “These four peaceful intellectuals are being effectively deprived of their liberty by a provisional detention order,” but that “the effects of the provisional detention are not—and cannot be—infinite (which is why it is described as provisional); rather, they must be very well framed and defined by laws, lest they cease to be provisional.”²⁰ On July 31, 1998, the writ was ruled “inadmissible,” based on the existence of a prosecution order barring such remedy²¹.

41. On September 21, the relatives of the four detainees filed three requests with the Office of the Prosecutor General of the Republic for information on the status of the case and the charges on which the defendants remained in custody. They stated that, “Now that they have been in prison for fourteen months, it is essential for us to know, with complete certainty, officially and accurately, the specific crimes of which they are accused.” In addition, the relatives insisted that “They have already served more than the minimum sentence applicable to the offense of enemy propaganda, specified in the Prosecutor’s ORDER, [... and therefore] it is appropriate to lift the precautionary measure of pretrial detention BY OPERATION OF LAW.”²²

42. On September 24, 1998, the Prosecutor’s Office made public its preliminary indictment²³, requesting the Division for Crimes against State Security to bring the case to trial and accusing Vladimiro Roca Antúnez, Rene Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés of “other acts against the security of the State, related to the offense of sedition,” described in Articles 100 and 125 of the Criminal Code in force. The Prosecutor’s Office concluded that the defendants “decided by mutual agreement to prepare and disseminate a number of entreaties directed at different sectors of society within the country and abroad, expressly inviting them to subvert our socialist state order through a boycott of the 1997 elections and the violation of the provisions of the foreign investment law [...] These acts, without requiring the use of weapons or violence, were unequivocally meant to undermine the stability of the Cuban State.”²⁴

43. The Prosecutor’s Office stated that the defendants, “shielded by what they called the ‘Working Group for Internal Dissidence,’ drafted, approved, and signed” various documents with “destabilizing objectives” and as part of an “unlawful plan.” The Prosecutor’s Office cited the following texts: “Call to Exile,” “Letter to Investors,” “the Arcos Principles,” “Call for Electoral Abstention,” and “Our Country belongs to us All.” According to the prosecution, those publications invited others to act against the country’s existing laws. For instance, the Prosecutor’s Office stated that:

With the previously described criminal purpose, the four defendants drafted, approved, and signed [...] another document entitled “Call to Compatriots in Exile,” which invites Cubans living abroad to send, along with monetary remittances to their relatives in Cuba, “firm appeals” [...] to join in carrying out acts of civil disobedience, within supposedly peaceful frameworks, such as not joining the mass organizations created to defend and safeguard our social order, not attending public events, and not voting in the October 1997 elections,

²⁰ Writ of *habeas corpus* filed at the Division for Crimes against State Security by relatives of the four detainees. July 30, 1998. Annex to petitioners’ communication dated October 14, 1999.

²¹ Document titled “Court Proceedings, etc., by relatives of the four detainees, and replies thereto or absence thereof” [“Gestiones realizadas en Tribunales, etc., por familiares de los cuatro y sus respuestas o falta de ellas”]. Annex to petitioners’ communication dated October 14, 1999.

²² Communication dated September 21, 1998 to the Office of the General Prosecutor of the Republic by Magaly de Armas and Jorge R. Gómez Manzano, relatives of the detainees. Annex to petitioners’ communication dated October 14, 1999.

²³ Office of the Prosecutor General. Conclusiones Provisionales Acusatorias del Fiscal. Expediente de fase preparatoria No. 39-97. D.S.E (Acusados: Vladimiro Roca Antúnez, René Gómez Manzano, Felix Antonio Bonne Carcassés y Beatriz Roque Cabello). September 16, 1998. Annex to petitioners’ communication dated October 14, 1999.

²⁴ Office of the Prosecutor General. Conclusiones Provisionales Acusatorias del Fiscal. Expediente de fase preparatoria No. 39-97. D.S.E (Acusados: Vladimiro Roca Antúnez, René Gómez Manzano, Felix Antonio Bonne Carcassés y Beatriz Roque Cabello). September 16, 1998. Annex to petitioners’ communication dated October 14, 1999.

openly calling for the violation of the government provisions enacted for the transfer of such remittances.²⁵

44. The Prosecutor's Office stated that the defendants had also used *Radio Martí* on various occasions to disseminate the content of the documents. It further stated that, "For purposes of wider dissemination, and not satisfied with the use of the radio, the defendants held a press conference at the home of defendant Roca Antúnez [...] that was attended by numerous representatives of foreign agencies." The Prosecutor's Office indicated that in the different forums on *Radio Martí* in which the defendants had participated, as well as at the press conference with foreign media, they called for abstention from the elections scheduled for October 1997. These same accusations were made with respect to interviews, as well as a press conference organized for the dissemination of the document "Our Country belongs to us All."

45. The Prosecutor's Office asserted that "none of the defendants is associated with our mass organizations, and their principal relationships are with counter-revolutionaries, especially those residing outside Cuba, who supply them with materials and money to carry out their criminal acts and ensure that they enjoy a higher living standard than would otherwise be possible."

46. On October 9, 1998, the relatives asked the Division for Crimes against National Security of the Provincial Court of Havana for a "change in the pretrial measures applied to the detainees," in accordance with the legal provisions in force. In particular, they insisted that "Both the charge listed in the ORDER ('enemy propaganda') and the current charge of Sedition 'C' carried, and still carry, a minimum sentence of one year, which has already been served and exceeded."²⁶ These requests went unanswered.²⁷

47. On October 14, 1998, the detainees' relatives filed a new writ of *habeas corpus* with the Supreme People's Court, alleging the unlawfulness of prolonged detention without a trial²⁸. The writ was dismissed outright by the Court on October 16, on grounds of inadmissibility.²⁹

48. On November 24 and December 21, 1998, René Gómez Manzano asked to represent himself.³⁰ In addition, in a pleading dated December 21, 1998, the relatives reiterated their requests for the defendants' release, and once again challenged the legality of the detentions.³¹ These requests reportedly went unanswered.³²

²⁵ Office of the Prosecutor General. Conclusiones Provisionales Acusatorias del Fiscal. Expediente de fase preparatoria No. 39-97. D.S.E (Acusados: Vladimiro Roca Antúnez, René Gómez Manzano, Felix Antonio Bonne Carcassés y Beatriz Roque Cabello). September 16, 1998. Annex to petitioners' communication dated October 14, 1999.

²⁶ Communication dated October 9, 1998, to the Division for Crimes against State Security of the Provincial Court of Havana, by María Dominguez, Magaly de Armas and Jorge R. Gómez, relatives of the detainees. Annex to petitioners' communication dated October 14, 1999.

²⁷ Document titled "Court Proceedings, etc., by relatives of the four detainees, and replies thereto or absence thereof" ["Gestiones realizadas en Tribunales, etc., por familiares de los cuatro y sus respuestas o falta de ellas"]. Annex to petitioners' communication dated October 14, 1999.

²⁸ Writ of *habeas corpus* filed by relatives of the detainees at the People's Supreme Court, dated October 14, 1998. Annex to petitioners' communication dated October 14, 1999.

²⁹ Document titled "Court Proceedings, etc., by relatives of the four detainees, and replies thereto or absence thereof" ["Gestiones realizadas en Tribunales, etc., por familiares de los cuatro y sus respuestas o falta de ellas"] Annex to petitioners' communication dated October 14, 1999.

³⁰ Document dated December 21, 1998, addressed by Jorge R. Gómez Manzano to the president of the People's Supreme Court; and document "Court Proceedings, etc., by relatives of the four detainees, and replies thereto or absence thereof" ["Gestiones realizadas en Tribunales, etc., por familiares de los cuatro y sus respuestas o falta de ellas"]. Annex to petitioners' communication dated October 14, 1999.

³¹ Document addressed by the detainees' relatives to the Division for Crimes against State Security of the Provincial Court, dated December 21, 1998. Annex to petitioners' communication dated October 14, 1999.

³² Document titled "Court Proceedings, etc., by relatives of the four detainees, and replies thereto or absence thereof" ["Gestiones realizadas en Tribunales, etc., por familiares de los cuatro y sus respuestas o falta de ellas"] Annex to petitioners' communication dated October 14, 1999.

49. On February 23, 1999, the four detainees were transferred to the Cuban State Security headquarters, known as Villa Marista, in the city of Havana.³³

50. The defendants' trial took place on March 1, 1999 in closed proceedings. At that time, the Chief Judge verbally denied defendant René Gómez Manzano's request to represent himself, since Gómez Manzano had been "expelled from the National Organization of Collective Law Firms and from the National Union of Jurists of Cuba."³⁴

51. On March 4, 1999, the People's Provincial Court of Havana sentenced Vladimiro Roca to five years in prison; Félix Antonio Bonne and Rene de Jesús Gómez were sentenced to four years, and Marta Beatriz Roque was sentenced to three years, as the perpetrators of "other acts against the security of the State, related to the offense of sedition," provided for in Articles 100 and 125 of the Criminal Code³⁵.

52. The Court found evidence to support a finding that the defendants:

decided by mutual agreement in August, 1996, to form a counter-revolutionary group and call themselves the 'Working Group for Internal Dissidence.' Their objective was to engage in non-violent subversive work within Cuba to destabilize the domestic order, social discipline, and proper obedience to the laws in force, thereby placing the security of the Cuban State at risk. This group was backed and supported by officials from the United States Interests Section in Cuba [...] as well as by other members of North American anti-Cuban and terrorist organizations such as the National Cuban-American Foundation, Freedom House, and others. The defendants maintained relations and direct communication with some of the principal leaders of those organizations that oppose Cuba's current regime, [...] who provided the defendants with all of the material and public support needed for them to carry out their subversive activities in Cuba. Their purposes and relationships thus having been defined, they set out to prepare, draft, approve, print, distribute, and disseminate various documents that implored and incited different sectors of society in Cuba and abroad to provoke social disorder by boycotting the elections scheduled for 1997, as well as by violating the legal provisions governing foreign investments and financial contracting. These acts were designed to undermine the stability of the Cuban State³⁶.

53. The Court additionally found that the defendants used media outlets such as *Radio Martí*—which it referred to as "anti-Cuban"—as well as press conferences with the foreign press held in the defendants' homes, and the publication of articles in foreign newspapers such as the *Miami Herald*, to ensure the dissemination of the texts.

54. It stated that, "It has been established that the defendants always used non-violence and passive resistance—as they defined it—to conduct their activities, this being one of the tactical methods used and now well-defined by the United States in its current policy against Cuba."³⁷

³³ Working Group for Internal Dissidence [Grupo de Trabajo de la Disidencia Interna]. Un juicio cubano. 1999. Annex to petitioners' communication dated October 14, 1999.

³⁴ People's Supreme Court. Division for Crimes against State Security. Judgment No. 4. February 9, 2000. Annex to petitioners' communication dated April 8, 2000.

³⁵ Division for Crimes against State Security of the Provincial Court of Havana. Judgment No. 2.999. March 4, 1999. Annex to petitioners' communication dated April 8, 2000.

³⁶ Division for Crimes against State Security of the Provincial Court of Havana. Judgment No. 2.999. March 4, 1999. Annex to petitioners' communication dated April 8, 2000.

³⁷ Division for Crimes against State Security of the Provincial Court of Havana. Judgment No. 2.999. March 4, 1999. Annex to petitioners' communication dated April 8, 2000.

55. The Court determined that:

The incitement and urging was always general and broad in order for the defendants to ensure the materialization of their destabilizing intent. It was aimed at as many sectors of the population as they considered vulnerable, so as to have an effect both within the country and abroad, through the use of various methods. Therefore, it is sufficient to meet the elements of the aggravated offense, because sedition as a consummated act is not required; rather, the defendants carried out acts to incite others to commit crimes of sedition, for which the perpetrator must have the objective of disrupting the socialist order, disrupting elections, or preventing compliance with a legal provision issued by the government. It is precisely because this incitement to sedition in its two forms (oral and written) exists that it is aggravated by other acts against the security of the State as preparatory acts for the offense of sedition. The element of publicity has also been met.³⁸

56. The Court additionally held that the criminal conduct was aggravated because the defendants' actions were in the service of a foreign power. It found that, "In the case of Vladimiro Roca, his actions and role were more significant than those of the others. Defendant René, in his capacity as a lawyer who was educated in revolutionary law, used his profession to disparage that legal system from which he benefitted, which makes him unworthy to continue practicing that profession in Cuba. Defendant Félix outrageously and shamelessly wrote texts that denigrated Cuban children and distorted the country's social reality. In the case of Marta, the Court assessed the dangerousness of the acts she carried out as well as the fact that her health problems do not prevent her from complying with any penalty."³⁹

57. The Court imposed as an accessory penalty of the deprivation of public rights for the same period of time as the main penalty, as well as the seizure of all material confiscated. Additionally, the Court barred René Gómez from practicing law for five years.

58. In March 1999, the defendants filed petitions for cassation with the Supreme People's Court against the conviction handed down by the People's Provincial Court, alleging errors of law and procedure⁴⁰. With regard to the breach of procedure, they argued that (i) the lower court committed a procedural error by not allowing René de Jesús Gómez Manzano to represent himself in the case; (ii) the court issued its decision based solely on subjective assessments and contradicting its obligation to adjudicate the case based on objective criteria; (iii) the judgment was contradictory in its assessments of the defendants' conduct; (iv) the court included established facts not contained in the indictment from the Prosecutor's Office; (v) the court imposed a penalty that had not been requested by the prosecutor, in reference to barring René Gómez from practicing his profession; and (vi) the court erred in allowing the Prosecutor's Office to introduce last-minute evidence at the very beginning of the trial.

59. With respect to errors of law, they alleged that the Court erroneously found that the elements of the offense of sedition had been satisfied, in spite of the fact that the defendants at no time committed violent acts, and that their writings were only to express themselves, state their opinion on government policies, and invite others to not take part in activities that are not compulsory under the law, such as voting or participating in mass organizations. According to the appeal, the elements of sedition require the perpetrator's intent to act "tumultuously" and to use violence. They additionally alleged that the four defendants were merely making use of their constitutional rights.

³⁸ Division for Crimes against State Security of the Provincial Court of Havana. Judgment No. 2.999. March 4, 1999. Annex to petitioners' communication dated April 8, 2000.

³⁹ Division for Crimes against State Security of the Provincial Court of Havana. Judgment No. 2.999. March 4, 1999. Annex to petitioners' communication dated April 8, 2000.

⁴⁰ People's Supreme Court. Division for Crimes against State Security. Judgment No. 4. February 9, 2000; and Cassation Appeal [Judicial Review] filed by attorney René Jesús Gómez at the People's Supreme Court (via Division of Crimes against State Security of the Provincial Court of Havana). Annex to petitioners' communication dated April 8, 2000.

60. On December 16, 1999, the relatives of the four detainees filed a “complaint and petition” with the Supreme Court. The relatives complained of the delay in the processing of the petitions for cassation that had been filed seven months earlier and had still not been adjudicated. They asked the Court to issue its ruling as soon as possible⁴¹. On December 29, 1999, the Court replied, indicating that the criminal case “is pending and will be adjudicated shortly by the respective Special Division of this Court.”⁴²

61. On February 9, 2000, the Supreme People’s Court handed down the cassation judgment dismissing the appeals filed.⁴³ With respect to the breaches of procedure, the Supreme Court held that the decision to allow René Gómez Manzano to act as his own defense attorney “was entirely up to the trial court,” which determined that in his case “he lacked the moral, ethical, and legal principles that guide the practice of law in this country.” The Supreme Court affirmed that, in any case, Gómez Manzano was not unable to defend himself, because he was able to choose a lawyer from among those present at the trial. The Court also dismissed the allegations regarding the inclusion of new facts and evidence, finding that it did not change the initial charge, but rather supplemented it, and that in any case, the trial court can, “on its own motion, examine any evidence it deems necessary to establish the facts, circumstances, and other matters of interest in the case.” The Court allowed the appeal challenging the accessory penalty prohibiting René Gómez Manzano from practicing law, and ordered that “the court’s ruling with respect to the accessory penalty barring Gómez Manzano from practicing law” be set aside. With respect to the allegation that the defendants were improperly charged with the offense of sedition (error of law), the Supreme Court found that they had “counter-revolutionary purposes and annexationist aspirations,” and that the fact that they were “cut off in time undoubtedly prevented unrest or acts of violence from taking place.”

C. Conditions of Detention

62. During her three years in custody, Marta Beatriz Roque was housed with inmates convicted of common and violent crimes. Her cell at the Manto Negro women’s prison had no natural light. On the contrary, her cell only had an electric light that remained on 24 hours a day. She complained of the poor quality of the food and the restrictions on visits, which were limited to her niece. Due to the lack of adequate medical attention during her detention, Marta Beatriz Roque suffered from a breast infection.⁴⁴ In July 1999, she went on a 52-day hunger strike to demand a response to the petition for cassation filed in her case. The hunger strike weakened her health and caused her to lose more than 9 kilos, leading to her transfer from the women’s prison to the Carlos J. Finlay Military Hospital.⁴⁵

63. When Félix Bonne Carcassés was arrested at 59 years of age, he was suffering from asthma and diabetes. He did not receive adequate medical attention during his 4-year detention. The cell in which he was held was small and damp. He suffered from inflammation of the legs, which prevented him from being able to move. His health worsened due to the conditions of his detention, and he had to be transferred to a military hospital.⁴⁶

⁴¹ Communication dated December 16, 1999, addressed to the People’s Supreme Court by relatives of the detainees. Annex to petitioners’ communication dated April 8, 2000.

⁴² Communication dated December 29, 1999, addressed by the Director of Popular Assistance and Judicial Collaboration of the People’s Supreme Court to Mr. Jorge R. Gómez Manzano, brother of René Gómez Manzano. Division for Crimes against State Security of the Provincial Court of Havana. Judgment No. 2.999. March 4, 1999. Annex to petitioners’ communication dated April 8, 2000.

⁴³ People’s Supreme Court. Division for Crimes against State Security. Judgment No. 4. February 9, 2000. Annex to petitioners’ communication dated April 8, 2000.

⁴⁴ Working Group for Internal Dissidence. A Cuban trial. 1999; Martha Beatriz Roque Cabello. *Un día cualquiera*. February 1998.

⁴⁵ Inter-American Commission on Human Rights. Hearing in case 12.127 Vladimiro Roca Antúnez et al. Cuba. September 30, 1999; Working Group for Internal Dissidence. A Cuban trial. 1999. Annex to the communication of petitioners dated October 14, 1999.

⁴⁶ Inter-American Commission on Human Rights. Hearing in case 12.127 Vladimiro Roca Antúnez et al. Cuba. September 30, 1999; Working Group for Internal Dissidence. A Cuban trial. 1999. Annex to the communication of petitioners dated October 14, 1999.

64. Vladimiro Roca suffered from digestive health issues during his detention, and did not receive proper medical care. He was held at the Ariza Prison in the Province of Cienfuegos with individuals who had been convicted or accused of common crimes. René Gómez was held at the Agüica maximum security prison in the Province of Matanzas with general population inmates who beat him, and was later placed in solitary confinement due to health issues.⁴⁷

65. Félix Bonne Carcassés was released on May 12, 2000, Marta Beatriz Roque Cabello was released on May 15, 2000,⁴⁸ and René Gómez Manzano was released on May 23, 2000. All were released on parole. In addition, Vladimiro Roca Antúnez was reportedly released on May 6, 2002.

D. Regarding the context of politically-motivated discrimination in relation to the lack of freedom of expression, association, and assembly in Cuba

66. In its annual report for 1997, the IACHR evaluated the human rights situation in Cuba and paid particular attention to reports of politically-motivated discrimination in relation to the absence of freedom of expression, association, and assembly.⁴⁹ In that report, the Inter-American Commission expressed its concern over the fact that “allegations of discrimination for political reasons and systematic violations of the freedom of expression and association have not stopped.”⁵⁰ The Commission stated that:

Violations of this type have become institutionalized as policy of the Cuban state to stifle any position critical of the government or the situation of politics, labor, education and other areas.

This policy of the Cuban state has its foundation in the Constitution which guarantees freedom of expression and the rights of assembly, free speech and association, but at the same time, limits them severely. In fact, Article 62 of the [Cuban Constitution] states: “one of the freedoms extended to citizens may be exercised in opposition to the provisions of the Constitution and the laws, or against the existence and purposes of the socialist state, or against the decision of the Cuban people to build socialism and communism. Violation of this principle is punishable.”

The relevance of this provision lies in the fact that it regulates, at the highest level of law, the practical exercise of the rights and liberties extended by the Constitution to Cuban citizens in their relationships with state organs. It can be considered, therefore, that the provisions of this article pervade all political, economic, social and cultural affairs that take place in Cuba. [...]

Violations of human rights--committed by the Cuban state--are aimed especially at groups that seek to protect those rights, including labor rights, political activity, or against independent journalists. As was mentioned at the start of this report, the crime descriptions used by the Cuban authorities to assert that these violations have occurred are “*enemy propaganda*,” “*disrespect*,” “*illicit association*,” “*clandestine publications*,” “*dangerousness*,” “*rebellion*,” “*acts against state security*,” and others.

⁴⁷ Inter-American Commission on Human Rights. Hearing in case 12.127 Vladimiro Roca Antúnez et al. Cuba. September 30, 1999; Working Group for Internal Dissidence. A Cuban trial. 1999. Annex to the communication of petitioners dated October 14, 1999.

⁴⁸ Marta Beatriz Roque Cabello was arrested again in April, 2003, with 74 other opponents of the Cuban government and sentenced to 20 years in prison. Marta Beatriz Roque Cabello was reportedly held in detention for just over fifteen months when she was released on July 22, 2004, reportedly due to her serious health problems. Marta Beatriz Roque Cabello’s second arrest and the arrest of the other 74 individuals was examined by the IACHR in Merits Report 67/06, and she was the beneficiary of Precautionary Measures 528-03.

⁴⁹ IACHR. Annual Report 1997. Chapter V (Human Rights Developments in the Region: Cuba). OEA/Ser.L/V/II.98. Doc. 6. February 17, 1998. Paras. 5-17.

⁵⁰ IACHR. Annual Report 1997. Chapter V (Human Rights Developments in the Region: Cuba). OEA/Ser.L/V/II.98. Doc. 6. February 17, 1998. Paras. 5.

The Inter-American Commission on Human Rights has received information that during the period covered by this Annual Report the formation of human rights advocacy groups has continued, as have other political associations. The sole objective of these groups is to examine, in a peaceful manner, solutions or alternatives to the serious problems that Cuban society faces every day. As has been pointed out, the results of this examination are frequently brought to the attention of the Cuban state in order to encourage a dialogue. The response from the authorities, however, is frequently to repress such dialogue.⁵¹

67. In its 1998 report, the IACHR stated that it continued to receive numerous reports of "harassment, accusations, the adoption of disciplinary measures, acts of repudiation, cases in which the criminal provisions on state of danger have been applied, and penalties entailing the imprisonment of persons who peacefully expressed their disagreement with government policy."⁵² In particular, it stated that according to information provided to the Commission:

from March 1 to 15, 1999, Marta Beatriz Roque Cabello, Félix Bonne Carcassés, René Gómez Manzano, and Vladimiro Roca Antúnez, members of the *Grupo de Trabajo de la Disidencia Interna* (Internal Dissidents' Working Group), were tried and convicted on charges of sedition in case No. 4 of 1998, for making public a manifesto entitled "*La Patria es de Todos*" ("The homeland belongs to us all") in which they criticized the thesis of the Fifth Congress of the Cuban Communist Party (PCC). Vladimiro Roca Antúnez, a former Cuban Air Force pilot, was sentenced to five years imprisonment. Scholar Félix Bonne [Carcassés], 59 years of age, and attorney René Gómez Manzano, 55 years old, received a four-year prison sentence. Economist Marta Beatriz Roque Cabello, 53 years old, was sentenced to three-and-a-half years' imprisonment. These four persons were held in pre-trial detention since July 16, 1997. The Commission was also informed that the Cuban authorities severely restricted any publicity regarding these proceedings. [...]

The Commission must also express its concern over the fact that these four persons have been held in pre-trial detention for one year and five months without a judge having verified the legality of the arrest, and without being [tried] within a reasonable time. [...]

The Inter-American Commission was also informed that in the days leading up to the judicial proceedings, one hundred peaceful opponents of the Cuban regime were arrested en masse in a major police operation. The arrests occurred in Havana and other localities of the interior, and in many cases the persons affected were placed under house arrest. Nonetheless, other persons detained were transferred to police offices. Even though the Commission has been informed that these persons are being released gradually, at the same time it must state its concern, as these events clearly show the increased repression of the Cuban state against those who peacefully take issue with government policy.⁵³

⁵¹ IACHR. Annual Report 1997. Chapter V (Human Rights Developments in the Region: Cuba). OEA/Ser.L/V/II.98. Doc. 6. February 17, 1998. Paras. 5-7, 10 & 11.

⁵² IACHR. Annual Report 1998. Chapter IV (Human Rights Developments in the Region: Cuba). OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1998. Paras. 12.

⁵³ IACHR. Annual Report 1998. Chapter IV (Human Rights Developments in the Region: Cuba). OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1998. Paras. 12 -16.

V. LEGAL ANALYSIS

A. Preliminary Issue: application and interpretation of the American Declaration of the Rights and Duties of Man

68. The petitioners alleged that the Cuban State is responsible for the violation of the rights enshrined in Articles I (Right to life, liberty and personal security), IV (Right to freedom of investigation, opinion, expression and dissemination), XXV (Right of protection from arbitrary arrest), and XXVI (Right to due process of law) of the American Declaration to the detriment of Vladimiro Roca Antúnez, René Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés.

69. As the Commission has stated repeatedly,⁵⁴ the American Declaration creates an international legal obligation for the Member States of the Organization of American States, including Cuba. Furthermore, in relation to the OAS Member States that are not party to the American Convention, the Commission is authorized by Article 20 of its Statute and Articles 49 and 50 of its Rules of Procedure to receive and examine any petition that alleges violations of the human rights enshrined in the American Declaration.

70. According to the case law of the inter-American human rights system, the provisions of its instruments—including the American Declaration—must be interpreted and applied in the context of the inter-American and international human rights systems, and in the broadest sense, in light of the evolution of international human rights law.⁵⁵

71. In particular, the bodies of the inter-American system have maintained that the evolution of the body of international human rights law pertaining to the interpretation and application of the American Declaration can be extracted from the provisions of other regional and international human rights instruments. This includes the American Convention, which in many instances can be considered representative of the fundamental principles established in the American Declaration and its respective protocols. It also includes the provisions of other multilateral treaties adopted within and outside the framework of the inter-American system, including the International Covenant on Civil and Political Rights.⁵⁶

72. In its analysis of this case, the Commission—to the extent appropriate—will interpret and apply the pertinent provisions of the American Declaration in light of current developments in the field of international human rights law, as illustrated by treaties, custom, and other relevant sources of international law.⁵⁷

⁵⁴ IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet et al. (Cuba). October 21, 2006. Paras. 40-44; Report No. 68/06. Case 12.477. Merits. Lorenzo Enrique Copello Castillo et al. Cuba. October 21, 2006. Paras. 49 & 52; IACHR. Report on the Merits No. 47/96, Case 11.436, Victims of the Tugboat “13 de Marzo,” October 16, 1996; Report on the Merits No. 86/99, Case 11.589, Armando Alejandro Jr., Carlos Costa, Mario de la Peña and Pablo Morales, September 29, 1999. The Commission has held repeatedly that the Cuban State is “legally answerable to the Inter-American Commission in matters that concern human rights” since 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.” Accordingly, the IACHR stated that “It has always been the view that the purpose of the Organization of American States in excluding Cuba from the inter-American system was not to leave the Cuban people without protection. The exclusion of this government from the regional system in no way implies that it may cease to fulfill its international obligations with regard to human rights.” See IACHR. Annual Report 2016. Chapter IV.b (Situation of Human Rights in Cuba). Para. 12.

⁵⁵ IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet et al. (Cuba). October 21, 2006. Paras. 41; Report No. 68/06. Case 12.477. Merits. Lorenzo Enrique Copello Castillo et al. Cuba. October 21, 2006. Para. 50.

⁵⁶ IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet et al. (Cuba). October 21, 2006. Paras. 42; Report No. 68/06. Case 12.477. Merits. Lorenzo Enrique Copello Castillo et al. Cuba. October 21, 2006. Para. 51.

⁵⁷ IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet et al. (Cuba). October 21, 2006. Para. 43; Report No. 68/06. Case 12.477. Merits. Lorenzo Enrique Copello Castillo et al. Cuba. October 21, 2006. Para. 52.

73. In light of these principles, the Commission will consider and apply the pertinent provisions of the American Declaration in this case to determine whether the Cuban State has violated the rights enshrined in Articles I (Right to life, liberty and personal security), IV (Right to freedom of investigation, opinion, expression and dissemination), XXV (Right of protection from arbitrary arrest), and XXVI (Right to due process of law) of the American Declaration, consistent with the decision rendered in Admissibility Report No. 56/04 issued by the IACHR.

74. The Commission notes that, although it did not address the alleged violation of Article XXII (right of association) of the American Declaration in its admissibility report, and this right was not subsequently alleged by the petitioners, the facts at issue make it relevant to examine a possible violation in this regard. Therefore, availing itself of the powers derived from the principle of *iura novit curia*, the Commission has decided to examine whether the facts alleged in this case could also amount to a violation of that provision of the American Declaration.

B. Right to freedom of investigation, opinion, expression and dissemination (Article IV) and right of association (Article XXII) of the American Declaration

75. Article IV of the American Declaration states that:

Every person has the right to establish a family, the basic element of society, and to receive protection therefore.

76. In addition, Article XXII establishes that:

Every 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.

77. As reflected in the established facts, Vladimiro Roca Antúnez, René Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés were criminally prosecuted and convicted of the offense of sedition. The alleged victims were tried and convicted after they formed the so-called “Working Group for Internal Dissidence” and jointly published several documents about the current political system in Cuba.

78. In view of the allegations and facts set forth, it is incumbent upon the IACHR to establish whether the criminal conviction of the four members of the “Working Group for Internal Dissidence” constituted a violation of their right to freedom of expression and right of association. In other words, the Commission will decide whether there was a restriction of the exercise of the alleged victims’ right to freedom of expression and association, and if so, whether that restriction meets the requirements established under international human rights law. The Commission will therefore briefly address the scope and protection of the right to freedom of expression and association for political and ideological purposes, and will lay out its doctrine on the permissible limits to those rights. Based on these considerations, it will examine the specific case.

1. The right to freedom of expression and freedom of association

79. The IACHR has frequently acknowledged that the freedom to express ideas and disseminate information of all kinds, without consideration for borders, is a fundamental and inalienable right inherent to all persons. It is “one of the individual rights that most clearly reflects the virtue that marks – and characterizes – human beings: the unique and precious capacity to think about the world from our own perspective and communicate with one another in order to construct, through a deliberative process, not only the model of life that each one has a right to adopt, but the model of society in which we want to live.”⁵⁸

⁵⁸ IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 7.

80. It is, moreover, an indispensable prerequisite for the existence of a democratic society. The very objective of this right is to strengthen the workings of pluralistic and deliberative democratic systems, through the protection and encouragement of the free flow of information, ideas, and expressions.⁵⁹ Therefore, in its Advisory Opinion No. 5, the Inter-American Court held that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.⁶⁰

81. The IACHR has indicated that, “When Article IV of the 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.”⁶¹ Indeed, according to the doctrine and jurisprudence of the inter-American system, freedom of expression has an individual dimension and a social dimension, which must be fully and simultaneously guaranteed in order for the right to freedom of expression to be effective.⁶² Freedom of expression requires, first of all, that no one be arbitrarily frustrated or prevented from expressing his or her own thoughts and disseminating information of all kinds; but it also entails a collective right to receive any information and to know about the expression of other people’s thoughts.⁶³

82. Similarly, the freedom to associate with others is a fundamental right, closely tied to the existence of every democratic society. The UN Human Rights Committee has stated that “the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably received by the government or the majority of the population, is a cornerstone of a democratic society.”⁶⁴

83. The IACHR considers that the right of association enshrined in Article XXII of the American Declaration protects the freedom to associate *inter alia* for ideological and political purposes, without the intervention of government authorities that limit or hinder the exercise of that right, and not just the right to join a professional or trade union organization.⁶⁵ Indeed, the protection granted by this right not only guarantees the right to form and join an association but also extends to all of the activities that are essential

⁵⁹ IACHR, Report No. 103/13, Case 12.816. Merits. Adán Guillermo López Lone et al. Honduras. November 5, 2013. Para. 210; IACHR, Report No. 27/15, Case 12.795. Merits. Alfredo Lagos del Campo. Peru. July 21, 2015. Para. 75; IACHR. Arguments before the Inter-American Court in the Case of Ivcher Bronstein v. Peru. Reprinted in: I/A Court H.R., Case of Ivcher Bronstein v. Peru. Judgment of February 6, 2001. Series C No. 74, para. 143(d); IACHR. Arguments before the Inter-American Court in the Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Reprinted in: I/A Court H.R., Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Judgment of February 5, 2001. Series C No. 73, para. 61(b).

⁶⁰ I/A Court H.R. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85, of November 13, 1985. Series A No. 5, para. 70; I/A Court H.R. Case of Granier et al. (Radio Caracas Television) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C No. 293, para. 140.

⁶¹ IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet et al. (Cuba). October 21, 2006. Para. 198.

⁶² I/A Court H.R. Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Para. 67; I/A Court H.R. Case of Granier et al. (Radio Caracas Television) v. Venezuela. Para. 135.

⁶³ I/A Court H.R. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights), para. 30; I/A Court H.R. Case of Granier et al. (Radio Caracas Television) v. Venezuela, para. 136.

⁶⁴ United Nations. Human Rights Committee. Viktor Korneenko et al. CCPR/C/88/D/1274/2004. 10 November 2006. Para. 7.3.

⁶⁵ IACHR. Application lodged with the Inter-American Court of Human Rights. Case of Manuel Cepeda Vargas (Case 12.531) v. Republic of Colombia. November 14, 2008. Para. 93.

to its effective operation, including the opportunity to express opinions and disseminate information in furtherance of the group's aims.⁶⁶

84. The Commission has acknowledged the interdependent relationship between the right to freedom of expression and the right to freedom of association, and in particular the instrumental role that the right to freedom of expression plays in the exercise of other human rights.⁶⁷ The defense of human rights and the right to participate effectively in public affairs is only possible if individuals are able to organize around their common needs and interests and express themselves publicly with respect to those issues. Therefore, the IACHR emphatically affirms that the members of associations, particularly those engaged in defending human rights, must fully enjoy the right to freedom of expression and, in particular, the freedom to openly criticize government policies and practices.⁶⁸

85. In this way, and based on the consistent case law of the bodies of the inter-American system⁶⁹ and the universal system for the protection of human rights,⁷⁰ the right to freedom of expression of the members of an association cannot be subject to prior controls by the State and can only be subject to the subsequent imposition of liability, provided that it is not abusive or arbitrary; therefore, any such controls must be provided for by law, pursue a legitimate aim, and meet the requirements of suitability, necessity, and proportionality. In particular, with respect to restrictions to the right to freedom of expression recognized in the American Declaration, the Commission indicated that they "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."⁷¹

86. An examination of the validity of restrictions must take account of the fact that speech cannot be restricted simply because it is "political." The freedom to issue political opinions and disseminate political information is absolutely central to the right protected under Article IV of the American Declaration. The Commission has consistently maintained that "the test for the necessity of limitations must be applied more strictly whenever dealing with expressions concerning the State, matters of public interest, public officials in the performance of their duties, candidates for public office, private citizens involved voluntarily in public affairs, or political speech and debate."⁷²

87. The IACHR has also affirmed that when restrictions on the exercise of the right to freedom of expression are imposed through criminal law, the satisfaction of these conditions is subject to stricter

⁶⁶ IACHR, Report No. 27/15, Case 12.795. Merits. Alfredo Lagos del Campo. Peru. July 21, 2015. Para. 75.

⁶⁷ IACHR, Report No. 27/15, Case 12.795. Merits. Alfredo Lagos del Campo. Peru. July 21, 2015. Para. 75.

⁶⁸ See: IACHR. Press Release. September 17, 2015. UN and IACHR experts condemn moves to dissolve prominent organization in Ecuador. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2015/103.asp

⁶⁹ I/A Court H.R. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5; I/A Court H.R. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Judgment of February 5, 2001. Series C No. 73; I/A Court H.R. Case of Herrera Ulloa v. Costa Rica. Judgment of July 2, 2004. Series C No. 107; I/A Court H.R. Case of Kimel v. Argentina. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177; IACHR, Report on the Compatibility of "desacato" Laws with the American Convention on Human Rights. OEA/Ser.L/V/II.88, Doc.9 rev (1995), pp. 210-223. Annex D; IACHR. Arguments before the Inter-American Court in the Case of Herrera Ulloa v. Costa Rica. Reprinted in: I/A Court H.R. I/A Court H.R., Case of Herrera Ulloa v. Costa Rica. Judgment of July 2, 2004. Series C No. 107; IACHR, Report No. 103/13, Case 12.816. Merits. Adán Guillermo López Lone et al. Honduras. November 5, 2013; IACHR, Report No. 27/15, Case 12.795. Merits. Alfredo Lagos del Campo. Peru. July 21, 2015.

⁷⁰ United Nations. Human Rights Committee. General Comment No. 34: Article 19 Freedoms of opinion and expression. 12 September 2011.

⁷¹ IACHR. Report No. 67/06, adopted on October 21, 2006 in Case 12.476 Oscar Elías Biscet et al. (Cuba).

⁷² IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 101; IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of "desacato" Laws with the American Convention on Human Rights. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

scrutiny.⁷³ Under the consistent case law of the inter-American system, criminal law is the most restrictive and severe means of establishing liability for unlawful conduct, particularly when prison sentences are imposed. Therefore, the use of criminal law must adhere to the principle of minimum intervention, given the *ultima ratio* nature of criminal law. In a democratic society, the punitive power of the state can only be used to the extent strictly necessary to protect fundamental legal interests from the most serious attacks that harm or endanger them. To do otherwise would lead to the abusive and unnecessary exercise of that punitive power.

2. Analysis of the specific case

88. In the instant case, there is no question that the criminal conviction of the four alleged victims constitutes an interference in the exercise of their rights to freedom of thought, expression, and association. In these types of cases, it is appropriate to examine whether the criminal penalty imposed meets the aforementioned requirements, that is, whether it: (a) is previously established by law, (b) has a legitimate aim, and (c) is necessary and proportionate for the accomplishment of that aim. It is incumbent upon the authority imposing the penalty to demonstrate that those conditions have been met; failing to meet any one of them is sufficient for the limitations imposed to be considered unlawful under international human rights law.

a. Legal provision of the restriction

89. With respect to the legal provision of the restriction, the IACHR has indicated that restrictions to freedom of expression must be previously established by law.⁷⁴ Any limitation or restriction must be provided for by law, both procedurally and substantively. If the restriction or limitation is based on criminal law, the strict requirements characteristic of the statutory definition of a criminal offense must be observed in order to satisfy the principle of legality, using strict and unambiguous terms that clearly define the punishable conduct.⁷⁵ Accordingly, the statutory definition of offenses pertaining to speech must be formulated “previously, in an express, precise, and restrictive manner, especially because criminal law is the most restrictive and severe means of establishing liability for unlawful conduct, taking into account that the legal framework must provide legal certainty to citizens.”⁷⁶

90. In this case, the victims were tried and convicted for the violation of Articles 100(c) and 125(c) of the Cuban Criminal Code, which provides that:

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

⁷³ IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 114.

⁷⁴ IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “desacato” Laws with the American Convention on Human Rights. Heading IV. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995; IACHR. Report No. 11/96. Case No. 11.230. Francisco Martorell. Chile. May 3, 1996, para. 55; IACHR. Arguments before the Inter-American Court in the Case of Ricardo Canese v. Paraguay. Reprinted in: I/A Court H.R., Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. Series C No. 111, para. 72(a).

⁷⁵ IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “desacato” Laws with the American Convention on Human Rights. Heading IV. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995; IACHR. Report No. 11/96. Case No. 11.230. Francisco Martorell. Chile. May 3, 1996, para. 55; IACHR. Arguments before the Inter-American Court in the Case of Ricardo Canese v. Paraguay. Reprinted in: I/A Court H.R., Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. Series C No. 111, para. 72(a).

⁷⁶ IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “desacato” Laws with the American Convention on Human Rights. Heading IV. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995; IACHR. Report No. 11/96. Case No. 11.230. Francisco Martorell. Chile. May 3, 1996, para. 55; IACHR. Arguments before the Inter-American Court in the Case of Ricardo Canese v. Paraguay. Reprinted in: I/A Court H.R., Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. Series C No. 111, para. 72(a).

- a) ten to twenty years' imprisonment or death, if the crime is committed in a situation of war or affects State security, or if it occurs during a serious disturbance of the social peace or in a military zone, with the use of weapons or violence;
- b) ten to twenty years' imprisonment, if the crime is committed without the use of arms or violence and if one of the other circumstances defined in the preceding paragraph exists, or if weapons or violence have been used and the crime is committed outside a military zone in time of peace;
- c) one to eight years' imprisonment in all other cases.⁷⁷

ARTICLE 125. It is sanctioned according to the rules regarding the preparatory acts established in articles 12 and 49 any person that: [...] c) incites to another or others, in word or in writing, publicly or privately, to execute some of the crimes provided in this Title. If the incitement was followed by the commission of the crime, the provocateur will be sanctioned as the perpetrator of the crime committed.⁷⁸

91. Regarding Article 100 of the Criminal Code, the IACHR notes that the law is not specific in terms of the punishable conduct and, on the contrary, uses vague and indeterminate concepts to define the offense of sedition, making it impossible to know in advance what conduct is punishable. According to this provision, sedition is committed by any individuals who, riotously and using violence, "disrupt the socialist order," "obstruct compliance with any judgment, legal provision or measure issued by the government," "make demands," or "refuse to carry out their duties." These are ambiguous concepts that invite arbitrary judicial interpretation.

92. For instance, the terms used in the law could make it possible to criminalize social protest, civic activism, or any criticism of government authorities. A social protest could be understood as a "riotous" action of a group or crowd of individuals aimed at "making demands" or "obstruct compliance with any measure issued by the government." In addition, speech "disrupting the socialist order" can be interpreted to penalize the legitimate right of persons to express, in association with others, controversial opinions, messages that lead to protest actions, and legitimate demands on public authorities concerning the problems affecting a population or group.

93. The law is also not exhaustive; rather, it provides for different penalties depending on a variety of open-ended scenarios: if the offense is committed "in a situation of war or affects State security," or "during a serious disturbance of the social peace or in a military zone, with the use of weapons or violence" or "if the crime is committed without the use of arms or violence" and "one of the other circumstances defined [previously] exists." Finally, it provides that "in all other cases," sedition is punishable by "one to eight years' imprisonment."

94. This last phrase, "in all other cases," applied in this case, opens the door for the judge to determine the specific elements of the crime and qualify acts as unlawful within the broadest possible margins. As demonstrated in the instant case, this final provision authorizes the judge to arbitrarily determine criminal acts subject to the most serious penalties in any case in which he or she considers that the exercise of human rights may call into question the existence of the government in power.

95. Similarly, Article 125 (c) of the Cuban Criminal Code uses vague terms to define "incitement" to the commission of crimes related to national security. In particular, the provision does not differentiate expressions of apology from those that directly and intentionally incite violence. The Inter-American Commission has considered that the imposition of sanctions for the abuse of freedom of expression for incitement to violence - such as incitement to commit crimes, breach of public order or national security - must have as legal requirement the actual, certain, objective and conclusive proof that the person was not simply expressing an opinion - however hard, unjust or disturbing - but that he/she had a clear intention to

⁷⁷ See: National Assembly of People's Power of the Republic of Cuba. Law No. 62. Criminal Code. December 29, 1987.

⁷⁸ See: National Assembly of People's Power of the Republic of Cuba. Law No. 62. Criminal Code. December 29, 1987.

commit a crime and the actual, real and effective possibility of achieving those objectives.⁷⁹ Acting otherwise would mean admitting the possibility of punishing opinions, and all the States would be authorized to suppress any kind of thought or expression critical of the authorities that, like anarchism and opinions radically opposed to the established order.⁸⁰

96. Indeed, the exercise of the rights of association and freedom of expression is precisely the element the national court considers to be the basis for the criminal responsibility of the alleged victims. The court found that “The defendants, by mutual agreement and with the aim of destabilizing the Cuban socialist order and jeopardizing the security of the Cuban State, publicly incited and urged others, verbally and in writing, to carry out acts to disrupt the socialist order and the holding of elections in Cuba, and to disobey laws and provisions currently in force, for which they prepared documents and used propagandistic print media.” It held that, “because incitement and urging was always general and broad,” “it is sufficient to meet the elements of the aggravated offense, because sedition as a consummated act is not required; rather, the defendants carried out acts to incite others to commit crimes of sedition.” “It is precisely because this incitement to sedition in its two forms (oral and written) exists that it is aggravated by other acts against the security of the State as preparatory acts for the offense of sedition. The element of publicity has also been met.”

97. The IACHR has explicitly reiterated that “vague, ambiguous, broad or open-ended laws, by their mere existence, discourage the dissemination of information and opinions out of fear of punishment, and can lead to broad judicial interpretations that unduly restrict freedom of expression,” and lead to abuse as a means of silencing ideas and information critical of the government. This Commission has also underscored that the regulation of these types of criminal concepts requires the strict definition of the punishable conduct, so that it cannot be used to criminalize, through abusive interpretations, those associations that are critical of public authorities.⁸¹

98. In this regard, any definition of crimes related to national security, like the offense of sedition or incitement to commit crimes, must be carefully drafted, in precise, express, and exhaustive terms, to ensure that it cannot be invoked to limit the exercise of the right to freedom of expression or punish criticism of the government and its authorities. No definition of sedition can authorize, through the use of vague and ambiguous terms, the criminalization of social activism or the simple dissemination of speech critical of a government or its authorities. In a democracy, the legitimacy and strength of institutions are strengthened by the force of the public debate over their operation, not by its suppression⁸².

99. The IACHR finds that Article 100 of the Criminal Code applied in this case is so ambiguous and expansive as to permit an abusive or overly-broad application of the concept of sedition, and incitement to commit crimes. This entails a failure to comply with the requirement of strict legality in the imposition of restrictions on the rights to freedom of expression and association of Vladimiro Roca Antúnez, René Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés. In the opinion of the Commission, a legal provision of this nature strikes at the core of the right to freedom of investigation, opinion, expression and dissemination provided for in Article IV of the American Declaration and the right to freedom of association recognized in Article XXII thereof. Similarly, by having committed this violation through the application of law that does not meet the requirements of strict legality, the State also failed to comply with the principle of legality enshrined in Article XXVI (right to due process of law) of the American Declaration.

⁷⁹ In this regard, see the following cases from the European Court of Human Rights: *Karatas v. Turkey* [GC], no. 23168/94, ECHR 1999-IV; *Geger v. Turkey* [GC], no. 24919/94, July 8, 1999; *Okcuoglu v. Turkey* [GC], no. 24246/94, July 8, 1999; *Arslan v. Turkey* [GC], no. 23462/94, July 8, 1999; *Erdogdu v. Turkey*, no. 25723/94, § 69, ECHR 2000 – VI. See also IACHR, *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, November 13, 1985. Series A, No. 5, para. 77.

⁸⁰ IACHR. The Inter-American Legal Framework regarding the Right to Freedom of Expression, para. 58.

⁸¹ IACHR, *Criminalization of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 141.

⁸² IACHR. The Inter-American Legal Framework regarding the Right to Freedom of Expression, para. 58.

100. Without prejudice to the above determination, the Commission finds it proper to examine whether the restriction in this case sought to meet a legitimate and compelling objective of the State, and whether it was strictly necessary to accomplish that aim. It will do so for purposes of discussing systematically and completely the possible violations of the rights at issue in this case.

b. Legitimate aim

101. The second issue that must be examined in studying whether a restriction to fundamental rights such as freedom of expression and freedom of association is compatible with the international obligations assumed by the State under the American Declaration is the identification of the aim pursued by the restrictive measure. Indeed, the restriction will only be lawful if it pursues legitimate objectives in light of international human rights law.

102. The IACHR notes that protecting national security and safeguarding public order are legitimate aims for purposes of establishing the subsequent imposition of liability for the abusive exercise of freedom of expression only if they are invoked and interpreted from a democratic perspective.⁸³

103. Nevertheless, the IACHR has affirmed that the States are not free to interpret the content of the objectives any way they like in order to justify a limitation on freedom of expression in specific cases.⁸⁴ The inter-American case law has clearly indicated that, for any penalty to be imposed in the name of defending public order (understood as public safety, health, or morals), it is necessary to demonstrate that the concept of “order” being defended is not authoritarian; rather, it must be a democratic order, understood as the existence of structural conditions for all persons, without discrimination, to be able to exercise their rights freely, vigorously, and without fear of being punished for doing so.

104. According to Article XXVII of the American Declaration, restrictions on fundamental rights are only permissible to ensure “the rights of others,” “the security of all,” and “the just demands of the general welfare and the advancement of democracy.”

105. In the opinion of the Inter-American Court, “public order” generally cannot be invoked to suppress a right guaranteed by the American Convention, to distort it, or deprive it of real content. If this concept is invoked as the basis for curtailing human rights, it must be interpreted with strict adherence to “the just demands of a democratic society.”⁸⁵

106. According to the Inter-American Court, the defense of public order requires as much circulation of information, opinions, news, and ideas as possible—that is, the maximum exercise of freedom of expression. In the words of the Court: “that same concept of public order in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the

⁸³ IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 75. See, e.g., I/A Court H.R., *Case of Molina Theissen v. Guatemala. Merits*. Judgment of May 4, 2004. Series C No. 106, para. 40.2 (where the I/A Court H.R. acknowledged that the repression carried out in Guatemala in the late 1970s and early 1980s was based on an interpretation of the concept of national security known as the “national security doctrine”). In addition, according to The Global Principles on National Security and the Right to Information (“Tshwane Principles”) adopted on June 12, 2013, “It is good practice for national security, where used to limit the right to information, to be defined precisely in a country’s legal framework in a manner consistent with a democratic society.” Available at: <https://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf>; *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, adopted in November 1996.

⁸⁴ IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 75.

⁸⁵ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5, para. 64; IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 81.

public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard [...].⁸⁶

107. In addition, any violation of public order invoked as an excuse to limit freedom of expression must arise from real and objectively verifiable causes that pose a certain and credible threat of a potentially serious disturbance of the basic conditions for the operation of democratic institutions. Consequently, it is insufficient to invoke mere conjecture about potential disturbances of order, or hypothetical circumstances derived from the authorities' interpretations of facts that do not clearly pose a reasonable risk of serious disturbances ("lawless violence"). A broader or less precise interpretation would inadmissibly open the door to arbitrariness and severely restrict freedom of expression, which is an integral part of the public order protected by the American Convention.⁸⁷

108. Similarly, the IACHR has acknowledged that national security can only be legitimately invoked if "its genuine purpose or demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government."⁸⁸

109. The IACHR finds that in the case against Vladimir Roca, René Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés, the Cuban courts did not invoke the protection of public order or national security in the above-cited terms. Rather, the IACHR observes that in various passages of the conviction handed down in this case, the court made legal assessments openly contrary to democratic principles, demonstrating that the penalty was based on national security and public order doctrines typical of an authoritarian regime.

110. It is clear from the judgment of the People's Provincial Court that the exercise of the right to freedom of expression and the dissemination of political ideas by the members of the Working Group for Internal Dissidence, is considered, *per se*, a threat to public order and national security.

111. The judgment handed down by the People's Provincial Court and affirmed by the Supreme People's Court characterized the Working Group for Internal Dissidence as a "subversive" organization that operates within Cuba "on the basis of non-violence to destabilize the domestic order, social discipline, and proper obedience to the laws in force, thereby placing the security of the Cuban State at risk."

112. The court was furthermore of the opinion that the expressions of the alleged victims—which were limited to criticizing the current government and political system—could "place the security of the Cuban State at risk," and constituted an "incitement" "to commit acts that disturbed the social order." The Commission is struck by the accusations made in the judgment of conviction in which the alleged victims are accused of receiving support from foreign "terrorist" and "U.S.-based anti-Cuban" organizations based on the mere fact that they disseminated critical opinions through radio broadcasts "on a foreign station that opposes Cuba," press conferences "with journalists from foreign agencies," and the publication of articles in "foreign newspapers and magazines." The judgment also indicates that the material that was confiscated from the alleged victims included "hundreds of articles, bulletins, computer diskettes, newspapers, magazines, documents, printers, computers, and typewriters that served as the instruments, and were the proceeds of, the defendants' illegal conduct." As for the document entitled "*La Patria es de Todos*" ("The homeland belongs to us all") the court argued that "it uses inaccurate language and outrageously distorts Cuban history, and disrespectfully uses the language of the supporters of José Martí as a way to manipulate their echoes of the

⁸⁶ I/A Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5, para. 69.

⁸⁷ IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 82.

⁸⁸ IACHR. Report on Terrorism and Human Rights. OEA/Ser.L/V/II.116. Doc. 5 rev. 1 corr. October 22, 2002, Para. 329, citing the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, Principle 2(a).

U.S. opposition in Cuba.” The Court concluded that the alleged victims’ actions “corroborate the unconditional allegiance of each one of them as faithful servants of a foreign enemy power.”

113. The judgment of conviction makes clear that the aim is to silence voices that are critical of the government, calling them “subversives,” “anti-Cuban,” and “servants of foreign enemies.”

114. In this regard, we recall that in its 1998 annual report on Cuba, the Inter-American Commission on Human Rights stated that the exercise of fundamental rights like freedom of expression and association cannot be conditioned upon the political ideas of a party or the absolute control of state power. The Commission stated that “the Cuban political system continues to give an exclusive and exclusionary preponderant role to the Communist Party, which in fact is a force superior to the state itself, impeding healthy ideological and political pluralism, which is one of the bases of any democratic form of government. Consequently, the most important state organs are controlled by members of the Communist Party.”⁸⁹

115. It affirmed that “the Commission is especially concerned about the legal formulations used by the Cuban legal order to establish limits on the exercise of the rights and freedoms that citizens are recognized to have. Based on such formulations, it is the citizens who must bring their exercise of their rights and freedoms into line with the aims pursued by the state. The democratic conception is the opposite: it is the state that should limit its actions vis-à-vis rights inherent to the person, and curtail its intervention so as to achieve the observance, in practice, of the civil, political, social, economic, and cultural rights of all of the governed.”⁹⁰

116. In this regard, the Commission lamented:

the difficult situation that the different human rights groups, trade unions, and independent journalists are facing and in which they have to work, as they try, day by day, to consolidate an alternative for those Cuban citizens who wish to have a space to freely and peacefully discuss the problems that beset the country. These sectors also constitute a type of pluralism in a system characterized by absolute state control over the citizens, implemented through the mass organizations, with no intermediaries of any sort allowed.⁹¹

117. In the opinion of this Commission, the argument that it is necessary to criminally convict a group of people for merely expressing opinions critical of government policies and practices in order to protect “national security” and “public order” is inadmissible in this case. No democratic idea of “national security” or “public order,” which are based on respect for human rights and the subjection of public servants to the law, can be consistent with that premise. The Cuban authorities’ intolerance of any form of political opposition or criticism constitutes the principal limitation on the rights of freedom of expression and association, as evidenced by the above-cited judgments of conviction.

c. Necessity and proportionality of restrictions in a democratic society

118. The necessity of the measure is determined upon evaluating whether the restrictions in question are essential to the accomplishment of the legitimate aim, or whether there are other measures less harmful to rights. In order for the restriction to be legitimate, the certain and compelling need to impose the limitation should be clearly established—that is, it must be established that the legitimate and compelling aim cannot reasonably be accomplished by another means less restrictive of human rights. The requirement of

⁸⁹ IACHR. Annual Report 1998. Chapter IV. Human Rights Developments in the Region. Cuba. OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1999. Para. 68.

⁹⁰ IACHR. Annual Report 1998. Chapter IV. Human Rights Developments in the Region. Cuba. OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1999. Para. 69.

⁹¹ IACHR. Annual Report 1998. Chapter IV. Human Rights Developments in the Region. Cuba. OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1999. Para. 23.

“necessity” also means that the right should not be limited beyond what is strictly indispensable in order to guarantee the full exercise and scope of the rights affected.⁹²

119. In addition, the restrictions must be strictly proportionate to the legitimate aim that justifies them. In order to determine the strict proportionality of the limiting measure, it must be determined whether the sacrifice of freedom of expression that it entails is exaggerated or excessive in view of the advantages obtained.

120. The judgment of conviction asserts that the four members of the group incited “sedition in its two forms (oral and written)” and that their writings were understood as “preparatory acts for the offense of sedition, the element of publicity also having been met.”

121. The IACHR notes that the case file does not reflect, nor was it proven at trial, that the alleged victims committed any violent act that threatened or actually endangered the fundamental values underpinning a democratic society. Nor was it proven that they expressed their opinions with the clear intent to incite others to carry out these types of violent actions and that they had the actual, real, and effective ability to accomplish that violent objective.⁹³ Rather, it was only demonstrated that the four detainees expressed political opinions, criticized government actions, and disseminated their opinions through foreign media outlets. In order to be necessary, the restriction imposed had to have been based on the real, certain, objective and compelling premise that the alleged victims were not simply expressing an opinion—however harsh, unfair, or controversial it may have been—but that they had the clear intent to commit a crime.⁹⁴ It bears recalling that, according to the inter-American case law, opinions are not subject to judgments of veracity and should not be subject to penalties of any kind.⁹⁵

122. The restriction imposed in this case cannot be considered proportionate, either. The imposition of prolonged pretrial detention lasting 15 months, the confiscation of items like typewriters, computers, paper, pencils, and other materials used to write and distribute documents classified as “subversive,” criminal prosecution for the offense of sedition, the resulting imposition of severe prison sentences and other accessory penalties in a case such as this one is by any reckoning excessive in light of the facts. In particular, the Commission finds that the prosecution and conviction had a systemic effect on the general conditions for the exercise of the rights affected. In addition to the individual dimension of the impact of these measures, the criminalization that was evidenced had an intimidating and chilling effect on all of Cuban society, potentially leading to the prevention or inhibition of these types of expressions and other similar speech.

123. For all of the above reasons, the Commission concludes that the criminal penalties imposed against the alleged victims in this case are incompatible with the requirements of the right to freedom of expression and the right to freedom of association in a democratic society: (1) they fail to comply with the principle of legality, (2) they do not reflect the pursuit of legitimate objectives, and (3) they are not necessary in a democratic society. Consequently, the Inter-American Commission concludes that the State violated the right to freedom of investigation, opinion, expression and dissemination, as well as the right of association enshrined in Articles IV and XXII of the American Declaration, and violated Article XXVI (Right to due process

⁹² IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009.

⁹³ See the following cases from the European Court of Human Rights: *Karatas v. Turkey* [GC], no. 23168/94. ECHR 1999-IV; *Gerger v. Turkey* [GC], no. 24919/94, 8 July 1999; *Okçuoglu v. Turkey* [GC], no. 24246/94, 8 July 1999; *Arslan v. Turkey* [GC], no. 23462/94, 8 July 1999; *Erdogdu v. Turkey*, no. 25723/94, § 69, ECHR 2000 - VI. See also: I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 77.

⁹⁴ IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 82.

⁹⁵ See, e.g., I/A Court H.R., *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Series C No. 177, paras. 86-88.

of law) thereof, to the detriment of Vladimiro Roca Antúnez, René Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés.

C. Rights enshrined in Articles I (Right to life, liberty and personal security), XXV (Right of protection from arbitrary arrest), and XXVI (Right to due process of law) of the American Declaration

124. Article I of the American Declaration states that “Every human being has the right to life, liberty and the security of his person.” In addition, Article XXV provides that:

No 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 nonfulfillment 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.

125. Article XXVI of the American Declaration states that “Every 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.”

126. It has been established in this case that Vladimiro Roca Antúnez, René Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés were arrested in Havana on July 16, 1997. All four were held in pretrial detention for one year and five months. On March 4, 1999, they were convicted and sentenced to five (Vladimiro Roca), four (Félix Antonio Bonne and René de Jesús Gómez) and three (Marta Beatriz Roque) years in prison for the offenses of “other acts against the security of the State related to the offense of sedition,” under Articles 100 and 125 of the Criminal Code.

127. The petitioners in this case alleged that the victims’ deprivation of liberty was arbitrary, that they were subjected to inhumane treatment, and that the State failed to respect their right to due process, in violation of Articles I, XXV, and XXVI of the American Declaration. The IACHR will now examine those allegations.

1. Protection from arbitrary arrest

128. Articles I and XXVI of the American Declaration recognize the protection of individuals from the unlawful or arbitrary interference of the State in their freedom, and demands that “any deprivation of liberty be carried out in accordance with pre-established law, that a detainee be informed of the reasons for the detention and promptly notified of any charges against them, that any person deprived of liberty is entitled to juridical recourse, to obtain, without delay, a determination of the legality of the detention, and that the person be tried within a reasonable time or released pending the continuation of proceedings.”⁹⁶

129. In this case, the State failed to articulate a legal basis to justify the July 16, 1997 arrest of Vladimiro Roca Antúnez, René Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés, or their detention for one year and five months during the criminal case. The facts show that the victims were arrested without a warrant and were not notified of the charges against them. Nor is there any indication that they were arrested under circumstances of clear criminal activity or in *flagrante delicto*, or that they were brought without delay before a judge for the court to determine the legality of the measure. None of the detainees or their relatives were able to obtain access to the prosecutor’s order that was reportedly issued subsequent to their arrest, ordering their pretrial detention. It was not until the Office of the Prosecutor filed its indictment on September 16, 1998—that is, 14 months after their arrest—that the victims and their relatives were able to learn of the charges against them and the alleged facts supporting their detention. In

⁹⁶ IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116.Doc.5 rev.1, October 22, 2002, para. 120.

addition, the prosecutor's indictment failed to state the legal grounds for the need to keep them in custody during the trial.⁹⁷

130. The IACHR observes, in any case, that the Law of Criminal Procedure in force in Cuba at the time these events took place states that pretrial detention is appropriate, "provided that the following circumstances are met: 1. There is evidence of criminal conduct; 2. There is sufficient cause to assume the criminal responsibility of the accused, irrespective of the extent and quality of the evidence needed for the Court to be able to form its opinion when rendering judgment."⁹⁸

131. These provisions are incompatible with the requirements of due process and the right to personal freedom. The Cuban Law of Criminal Procedure grants broad discretion to the authority, through circumstances that are ambiguous and overly-broad, to keep an individual in pretrial detention. The law does not provide guarantees to ensure that the deprivation of liberty will only be admissible within the limits strictly necessary to ensure that effective investigations will not be hindered and that the defendant will not evade justice, as required under the applicable standards.

132. Thus, in the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, the Commission reaffirms those fundamental standards very specifically in the following terms:

Preventive deprivation of liberty is a precautionary measure, not a punitive one, which shall additionally comply with the principles of legality, the presumption of innocence, need, and proportionality, to the extent strictly necessary in a democratic society. It shall only be applied within the strictly necessary limits to ensure that the person will not impede the efficient development of the investigations nor will evade justice, provided that the competent authority examines the facts and demonstrates that the aforesaid requirements have been met in the concrete case (Principle III.2).⁹⁹

133. In addition, as concluded in the previous section, the detention of the four victims (before, during, and after their trial and conviction) was designed to punish them for their political opinions and civic activism—in other words, it was based on a restriction of the exercise of their rights to freedom of thought and expression and freedom of association, and was part of a systematic pattern of arrests and imprisonment for the exercise of human rights that has been clearly identified by the IACHR in its annual reports on Cuba. The IACHR has affirmed that, in light of democratic principles, the exercise of freedom of expression and association cannot be a legitimate aim that justifies the deprivation of a person's liberty, and results in an arbitrary deprivation of liberty.¹⁰⁰

134. Also, Article XXV of the American Declaration provides that "[e]very individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court". In this regard, any person deprived of his liberty, by herself or through third parties, has the right to bring simple, prompt and effective remedies to competent, independent and impartial authorities against acts or omissions that violate or threaten to violate his or her human rights, which includes the right to bring any legal claim to safeguard their personal freedom or to question the legality of her detention. The IACHR observes that on July 30, 1998, after one year of arbitrary detention, the four members of the Working Group for Internal Dissidence filed a writ of *habeas corpus* questioning the legality of their pretrial detention, which was dismissed the following day. Another remedy filed in in October 1998 was also denied, based on the existence of a detention order from the prosecutor's office. The four members of the group remained in

⁹⁷ Office of the Prosecutor General. Prosecutor's Preliminary Indictment. Pretrial phase file No. 39-97. D.S.E. September 16, 1998.

⁹⁸ See, National Assembly of People's Power of the Republic of Cuba. Law of Criminal Procedure of the Republic of Cuba. July 1977. Article 252.

⁹⁹ IACHR. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

¹⁰⁰ IACHR, Report No. 71/15, Case 12.879. Merits. Vladimir Herzog et al. Brazil. October 28, 2015. Para. 149.

pretrial detention until they were convicted and given harsh prison sentences on March 4, 1999. Consequently, the IACHR finds that the remedies filed were not effective.

135. Therefore, the Commission concludes that the Cuban State violated the right to personal liberty, recognized in Articles I and XXV of the American Declaration, to the detriment of Vladimiro Roca Antúnez, René Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés.

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

136. The Right to due process of law as enshrined in Article XXVI of the American Declaration recognizes the right of due process to which all persons are entitled.

137. The Commission has long underscored the self-evident nature of the presumption of innocence in criminal proceedings, and has urged the States to guarantee that it is expressly established in their domestic laws. It is notable that this presumption may be considered to have been violated when the person is detained in pretrial custody on a criminal charge for a prolonged period of time without the proper justification, because such detention turns into a penalty rather than a precautionary measure, which is the equivalent of an advance sentence.¹⁰¹

138. International human rights law requires that, in order for the proceedings before a competent, independent, and impartial court to be fair, they must include certain guarantees that give the individual an adequate and effective opportunity to defend himself from the charges against him. While the governing principle in every case must always be fairness, and although additional guarantees may be necessary in specific circumstances in order to ensure a fair trial, the most essential protections have been understood to include the right of the accused to be informed in advance, in detail, of the charges he faces, the right to defend himself personally or through the assistance of an attorney of his choosing, or free of charge when circumstances require, and to communicate freely and privately with defense counsel. These protections also include the right to adequate time and means for the preparation of his defense, the right to examine witnesses in court, and the right to present expert witnesses and others whose testimony may shed light on the facts. In addition, the accused cannot be compelled to testify or to plead guilty, and must be granted the right to a public trial and the right to appeal the judgment to a higher court.¹⁰²

139. It has been established that the victims were not informed of the reasons for their arrest, and that they were not informed of the charges against them until they had been in detention for approximately 14 months. The State failed to demonstrate that the prolonged deprivation of liberty was due to legitimate precautionary objectives. On the contrary, it has been demonstrated that pretrial detention in this case became a *de facto* penalty, ahead of the conviction, in violation of the presumption of innocence. The IACHR further notes that the victims and their relatives did not have access to the case file and were denied the right to obtain a lawyer of their own choosing; they only had access to public defenders. The trial court denied René Gómez Manzano—an attorney by profession—the right to defend himself, under capricious arguments unsupported by any legal basis. In this regard, the Commission observes that the legal prohibition against the practice of law by independent attorneys seriously impedes access to such attorneys in Cuba.

140. Additionally, the facts of this case indicate that the trial against the victims was a closed proceeding. The Commission has verified that, given the particular characteristics of these cases, there were no exceptional circumstances to justify the need to apply restrictions, and that the proceedings could have been held publicly without affecting the due course of justice.

141. The Commission has also consistently maintained that there is no proper separation of powers in Cuba to guarantee the freedom of the judiciary from the influence of the other branches of government. In fact, Article 121 of the Cuban Constitution establishes that “The courts constitute a system of

¹⁰¹ IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116.Doc.5 rev.1, October 22, 2002, para. 223.

¹⁰² IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116.Doc.5 rev.1, October 22, 2002, para. 235.

state bodies, structured with operational independence from any other, and subordinate to the National Assembly of People's Power and the Council of State." The Commission has asserted that the subordination of the courts to the Council of State, led by the Head of State, demonstrates the direct dependence of the Judiciary on the directives of the Executive Branch, and that this dependence prevents individuals identified by the State as "dissidents" or "opponents" and accused of political crimes from obtaining an impartial trial as required under the American Declaration, as seen in this case.

142. For all of the above reasons, the Commission finds that the State violated the right to due process of law, recognized in Article XXVI of the American Declaration, to the detriment of Vladimiro Roca Antúnez, René Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés.

3. Humane treatment and decent conditions of detention

143. The right of persons deprived of their liberty to be treated humanely while in the custody of the State is a universally accepted standard under international law. The American Declaration contains several provisions on this point. The Commission has interpreted Article I of the Declaration (Right to life, liberty and personal security) to contain a prohibition against the use of torture or other cruel, inhuman or degrading treatment against persons under any circumstances, similar to that of Article 5 of the American Convention.¹⁰³ Additionally, Articles XXV and XXVI of the Declaration refer to the right to humane treatment in the context of the right of protection from arbitrary arrest and the right to due process of law.

144. The bodies of the inter-American system have held that all persons deprived of their liberty are entitled to live under conditions of detention compatible with their personal dignity, and that the State must guarantee their rights to life and humane treatment. Consequently, the State, as the entity responsible for detention facilities, is the guarantor of those detainee rights. Similarly, the Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955,¹⁰⁴ provided that "Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation."

145. The IACHR has established that the prolonged isolation and incommunicado detention of the victim are, in and of themselves, forms of cruel and inhumane treatment, harmful to the mental and emotional integrity of the person and a violation of the right of every detainee to respect for the inherent dignity of the person. Similarly, the IACHR has specified that "Solitary confinement of unconvicted individuals is particularly troubling, inasmuch as it constitutes an infringement of the conditions of punishment and is potentially harmful to persons who are innocent until proven guilty. Additionally, it can be used to coerce the detainees and force them to self-incriminate or to provide any type of information."¹⁰⁵

146. The IACHR has acknowledged that "The different categories of persons deprived of freedom shall be kept in separate places of deprivation of liberty or in different sections within the same institution, taking account of their sex, age, the reason for their deprivation of liberty, the need to protect the life and integrity of persons deprived of liberty or personnel, special needs of attention, or other circumstances relating to internal security."¹⁰⁶ In addition, "Persons deprived of liberty shall have the right to health, understood to mean the enjoyment of the highest possible level of physical, mental, and social well-being,

¹⁰³ IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116.Doc.5 rev.1, October 22, 2002, para. 184.

¹⁰⁴ Adopted by 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 resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

¹⁰⁵ IACHR, Report on the Use of Pretrial Detention in the Americas. OEA/Ser.L/V/II. Doc. 46/13 December 30, 2013. Para. 280.

¹⁰⁶ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. Approved by the Commission during its 131st regular period of sessions, held from March 3-14, 2008, Principle XIX.

including amongst other aspects, adequate medical, psychiatric, and dental care; permanent availability of suitable and impartial medical personnel; [and] access to free and appropriate treatment and medication.”¹⁰⁷

147. In its report on Cuba (1998), the IACHR stated that “The Cuban state seriously attacks not only principles and standards set forth in the various international instruments to which it is a party, but also that it violates its own laws by allowing the prison authorities to subject prisoners to deliberately severe and degrading treatment. The Commission also reiterates its profound concern over the grave prison conditions, especially for political prisoners.”

148. The Commission found that:

Most of the prisoners suffered malnutrition as a result of the poor prison diet, were overcrowded, and did not receive sufficient medical care. The prison authorities insisted that all the detainees participate in political re-education sessions, for example shouting "Long live Fidel" or "socialism or death," lest they suffer punitive measures such as beatings or solitary confinement. The prison guards at the centers for men delegated the maintenance of internal discipline to the *consejos de reclusos* (prisoners' councils) through methods such as beatings and control over scarce food rations. [...]The confinement of non-violent political prisoners together with prisoners convicted of violent crimes was degrading and dangerous. The guards imposed unlawful restrictions on the visits of the political prisoners' relatives. In addition, the prison authorities punished prisoners who denounced abuses in the prisons or who did not participate in political re-education. Many Cuban political prisoners spent excessive periods in pre-trial detention, often in isolation cells. After serving their sentence, they suffered additional punitive periods in solitary confinement. Often, the police or prison guards aggravated the punitive nature of the solitary confinement by sensory deprivation, darkening the cells, removing clothing, or limiting the intake of food and water. The punitive measures against or intimidation of the political prisoners that caused grave pain and suffering, and reprisals against those who denounced the abuses, violated Cuba's obligations pursuant to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which it ratified in 1995.¹⁰⁸

149. In this case, it has been proven that Vladimiro Roca Antúnez, René Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés were not allowed to contact their relatives and denied access to natural light for the first fourteen days of their detention at the Villa Marista State Security Center. Then, they were deprived of access to fresh air for 36 days. Approximately three months later, in October 1997, they were transferred to different high security detention centers. There they were subject to restrictions on access to sunlight, fresh air, physical exercise, and food, and the general conditions in their cells were unhealthy and inadequate. Moreover, in some cases they were detained together with persons accused and convicted of common crimes. The Commission notes that René Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés suffered from health problems that arose or worsened subsequent to their arrest, and that they were not provided with adequate medical attention. The alleged victims were denied medical attention in several cases, including in very serious situations, leading to the deterioration of their health. René García was beaten by other detainees and was consequently placed in solitary confinement in a maximum security prison. They were transported to military hospitals, which, in the case of Marta Roque Cabello, was denounced as a form of intimidation.

¹⁰⁷ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. Approved by the Commission during its 131st regular period of sessions, held from March 3-14, 2008, Principle X.

¹⁰⁸ IACHR. Annual Report 1998. Chapter IV. Human Rights Developments in the Region. Cuba. OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1999. Paras. 54-55.

150. The Commission is of the opinion that these actions constitute a violation of the right to humane treatment during detention contained in Article XXV of the American Declaration to the detriment of each one of the victims.

VI. ACTIONS SUBSEQUENT TO REPORT No. 75/17

151. The Commission adopted the Merits Report 75/17 on July 5, 2017 and transmitted it to the State on July 27, 2017. On that same date, the petitioners were notified of the adoption of the report. In that report, the Commission recommended:

1. Provide reparations to the victims and, if appropriate, to their relatives, for the pecuniary and non-pecuniary damages suffered as a result of the violations of the American Declaration established herein.
2. Set aside the criminal convictions of the victims in this case and all of the consequences arising therefrom.
3. Hold a public ceremony acknowledging its responsibility for the violations of the American Declaration established herein.
4. Take the necessary measures to bring its laws, procedures, and practices in line with international human rights standards. In particular, repeal the criminal provisions, like the offense of sedition provided for in Articles 100 and 125 of the Criminal Code, that are incompatible with the exercise of the rights to freedom of expression and association.
5. Take the necessary measures to prevent similar acts from being committed again in the future, in keeping with the duty of the State to respect and guarantee human rights. In particular, take the necessary measures to prevent and eradicate the criminalization of persons who exercise the rights to freedom of expression and association.
6. Bring its procedural law into line with the applicable international standards on due process, to ensure that criminal defendants have all of the legal guarantees necessary to exercise their means of defense.

152. The Commission notes that the State did not submit information subsequent to the issuance of report No. 75/17. The petitioner reported, by telephone communication, that they want to seek compliance with the recommendations made to the Cuban State in the instant case.

153. From the information available at the time of adoption of this report, the Committee notes that Cuba has not complied with the recommendations set out in its merits report No. 75/17.

VII. ACTIONS SUBSEQUENT TO REPORT No. 134/17

154. On October 25, 2017, the Inter-American Commission approved the report No. 134/17, in which it reiterated the recommendations contained in report No. 75/17, which was duly notified to the parties. In accordance with article 47.2 of its rules of procedure, the IACHR granted the parties a period of one month to submit information on compliance with the final recommendations contained in the report. The IACHR notes that neither the State nor the petitioners submitted the information requested.

VIII. CONCLUSIONS AND RECOMMENDATIONS

155. Based on the considerations of fact and law contained in this report, the IACHR concludes that the Cuban State violated, to the detriment of Vladimiro Roca Antúnez, René Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés, the rights enshrined in Articles I (Right to life, liberty and

personal security), IV (Right to freedom of investigation, opinion, expression and dissemination), XXV (Right of protection from arbitrary arrest), XXVI (Right to due process of law), and XXII (Right of association) of the American Declaration.

156. Based on these conclusions,

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

1. Provide reparations to the victims and, if appropriate, to their relatives, for the pecuniary and non-pecuniary damages suffered as a result of the violations of the American Declaration established herein.
2. Set aside the criminal convictions of the victims in this case and all of the consequences arising therefrom.
3. Hold a public ceremony acknowledging its responsibility for the violations of the American Declaration established herein.
4. Take the necessary measures to bring its laws, procedures, and practices in line with international human rights standards. In particular, repeal the criminal provisions, like the offense of sedition provided for in Articles 100 and 125 of the Criminal Code, that are incompatible with the exercise of the rights to freedom of expression and association.
5. Take the necessary measures to prevent similar acts from being committed again in the future, in keeping with the duty of the State to respect and guarantee human rights. In particular, take the necessary measures to prevent and eradicate the criminalization of persons who exercise the rights to freedom of expression and association.
6. Bring its procedural law into line with the applicable international standards on due process, to ensure that criminal defendants have all of the legal guarantees necessary to exercise their means of defense.

IX. PUBLICACION

157. Based on the considerations presented and in accordance with Article 47.3 of its Rules of Procedure, the IACHR decides to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, pursuant to the provisions of the instruments that govern its mandate, will continue to monitor compliance with the aforementioned recommendations by the Cuban State until it determines that they have been fully complied with.

Approved by the Inter-American Commission on Human Rights in the city of Bogotá, Colombia, on the 24 day of the month of February, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.