

CHAPTER IV.B CUBA

1. The IACHR decided to prepare a report on the human rights situation in Cuba and include it in Chapter IV.B of its Annual Report. On December 26, 2019, the IACHR sent the State a draft of a preliminary Country Report and asked it to submit its comments within a month according to its Rules of Procedure. The State did not submit its observations. The IACHR approved this report on February 3, 2020. Following the Commission presents the Executive Summary of the Country Report and explains the reasons to include it in Chapter IV.B of its Annual Report.

Executive Summary

2. In this report, the Inter-American Commission on Human Rights (“Inter-American Commission,” “Commission,” or “IACHR”) addresses the situation of human rights in Cuba, focusing in particular on the period from 2017 to 2019. The Commission presents an overview of the characteristics of the Cuban State today, identifying the main issues of concern in the area of human rights and offering recommendations to the State.

3. Although the Government of Cuba does not currently participate in the Organization of American States and has not signed the American Convention on Human Rights, the IACHR has constantly monitored the situation of human rights in Cuba, in keeping with its mandate under the Charter of the Organization of American States (Art. 106) and the American Declaration of the Rights and Duties of Man.

4. Commission reaffirms its competence to examine the human rights situation in Cuba. The understanding of the Commission is that the expulsion from the inter-American system occurred with respect to the Government of Cuba, not the State. The State of Cuba is party to international instruments on human rights in the Hemisphere, such as the American Declaration of the Rights and Duties of Man and the Charter of the Organization of American States; it also signed resolution VIII of the Fifth Meeting of Consultation of Ministers of Foreign Affairs (Santiago, Chile, 1959), which established that the Inter-American Commission on Human Rights is “charged with furthering respect for such rights.” Therefore, the international obligations contracted by the State of Cuba have legitimized the competence of the IACHR. Furthermore, with respect to the States that have not ratified the American Convention on Human Rights, the States conferred on the Commission the power “to pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man,” as established in Article 20(a) of the Statute of the IACHR. In this sense, it is incumbent on the IACHR to monitor human rights in Cuba. In addition, the Commission duly notifies the representatives of the Cuban State of each of the actions that should be brought to its attention, thereby respecting its right of defense.

5. The Commission has monitored the human rights situation in Cuba through its various protection mechanisms. Since 1960, the IACHR has published seven country reports: five on the human rights situation in Cuba and two on political prisoners and their families. Cuba has featured in Chapter IV.B of the annual report of the IACHR almost every year since 1985. In addition, the IACHR processes requests for precautionary measures and individual petitions submitted by Cubans, as well as issuing press releases on the human rights situation on the island.

6. The Commission has included Cuba in Chapter V.B of its annual reports because it considers that the fundamental elements and institutions inherent to a representative democracy do not exist in the country: there is no judicial independence, there are limits on the separation of powers, and there are constant restrictions on the exercise of political rights and freedom of expression, in addition to widespread and systematic gross violations of rights recognized in the American Declaration on the Rights and Duties of Man.

The IACHR has considered that this situation meets the criteria set out in Article 59(6)(a)(i) of its Rules of Procedure, which refers to:

- a. a serious breach of the core requirements and institutions of representative democracy mentioned in the Inter-American Democratic Charter, which are essential means of achieving human rights, including:
 - i. there is discriminatory access to or abusive exercise of power that undermines or denies the rule of law, such as systematic infringement of the independence of the judiciary or lack of subordination of State institutions to the legally constituted civilian authority;

7. The IACHR also found that the foregoing situation meets the criteria set forth in Article 59(6)(c) of the Rules of Procedure, which provides that:

- c. [t]he State has committed or is committing massive, serious and widespread violations of human rights guaranteed in the American Declaration, the American Convention, or the other applicable human rights instruments.

8. Based on the information gathered in this report, the IACHR observes that the grounds for including Cuba in Chapter IV.B of its 2019 Annual Report persist, both for the reasons envisaged in Article 59(6)(a)(i) of its Rules of Procedure and those set out in Article 59(6)(c) thereof.

9. In relation to the conditions for representative democracy, the IACHR has taken note of changes in terms of those who exercise high political office, such as the appointment of Miguel Díaz-Canel as president; however, it notes that restrictions persist with regard to access for all Cuban citizens to representative office. The supremacy of the Communist Party, which is again identified in the Constitution as the sole party, restricts the ability of people with different political convictions to participate in public affairs and representative positions. In addition, authorities such as the National Assembly of People's Power continue to agglomerate broad public decision-making powers that obscure the traditional elements of a system of separation of powers. The IACHR also does not see a change in the conditions that offer guarantees for judicial independence.

10. With regard to the commission of systematic gross human rights violations, the IACHR remains concerned about the serious effects on political rights to vote and participate in government, on freedom of opinion, expression, and dissemination of information, on the right to freedom of residence and movement, and on protection against arbitrary detention. According to the information received by the Commission and the testimonies to which it had access, restrictions on these rights on the island remain recurrent. Their enjoyment is reportedly limited by an authoritarian exercise of power, in which political dissidents or those perceived as such apparently encounter constant restrictions on their rights.

11. Through this report, the Inter-American Commission on Human Rights deepens its monitoring of the human rights situation in Cuba in this time of change. The Commission has yet to receive consent from the Cuban State for its first visit to the island, which makes it difficult to obtain comprehensive information. Nevertheless, the report draws on open sources and takes into account both the official press and the press that expresses political opposition to the Cuban Government. It also takes into account investigations and reports from different journalistic sources, international organizations, and local civil society.

12. In addition, a particularly relevant component of the report are interviews with Cuban people who live or have lived on the island at some point in the last three years. Through accounts of individual experiences, the interviews provide an overall description of human rights situations. Thus, they provide a human narrative of events that took place during those years, as well as of perceptions and experiences in relation to the State and the guarantee of rights. Faced with the impossibility of visiting Cuba, the IACHR listens to the voices of Cubans and includes them in its examination of the situation in the country. In all, the

Commission conducted 55 interviews with activists, human rights defenders, regime opponents, independent journalists, and victims of human rights violations, as well as members of the Cuban diaspora who maintain direct contact and ties with the country's population and the Cuban community. In order to carry out this data collection, semi-structured interviews were conducted using a standard instrument.

13. The report consists of ten chapters: (I) Introduction; (II) The United States' Economic Embargo; (III) The Constitution of 2019; (IV) The Institutional Framework of the State; (V) Representative Democracy and Political Rights; (VI) Situation of Human Rights Defenders; (VII) Freedom of Expression; (VIII) Economic, Social, Cultural and Environmental Rights; (IX) Situation of Human Rights of Other Population Groups; and (X) Conclusions and Recommendations. It is worth noting that in Chapter IX, the IACHR analyzes issues related to people of African descent, women, members of the LGBTI community, children and adolescents, persons with disabilities, people deprived of their liberty, and migrants.

14. In the *introductory chapter*, the Commission sets out some technical aspects of methodology and presents the situation of Cuba in relation to the Organization of American States and, in particular, to the Inter-American Commission on Human Rights. In the latter section, the IACHR reaffirms its competence to monitor the human rights situation on the island, based on its mandate.

15. In the *chapter on the economic blockade by the United States of America*, the IACHR, consistent with its previous pronouncements, reiterates the importance of ending the U.S. economic embargo of Cuba in order to ensure human rights that are impaired as a consequence of it.

16. In the *chapter on the 2019 Constitution*, it describes the process of its adoption and promulgation, and makes a number of observations about its content. The Commission welcomes the Government's intention to use popular participation mechanisms for the adoption of the constitutional text, such as the popular consultation and the referendum. However, it expresses concern about the how those mechanisms functioned, since it received multiple testimonies that those spaces did not take into account the opinions of people opposed to the Government, activists, and artists. The Commission recalls that in democracies the opinion must be guaranteed of all citizens, who are entitled to participate in the decisions that affect them.

17. In its report, the Commission welcomes the inclusion of several human rights and guarantees in the Constitution. It highlights the importance of their effective implementation. The IACHR also notes with concern that the Constitution is ranked above international treaties. The Commission also considers that the constitutional reform process was a unique opportunity to outlaw capital punishment as a criminal penalty. However, the new Constitution does not contain any rules on the matter. While it is not proscribed *per se* in the American Declaration, the Commission has indicated that that does not exempt countries from the standards and protections contained in the Declaration.

18. The Commission notes with regard to procedural guarantees that the new Constitution included the guarantees of habeas corpus, the presumption of innocence, and the right of access to justice. Regarding the latter two, the IACHR had called attention to the fact that they were in the constitutional text, and therefore it welcomes their inclusion; however, it calls for legislation to provide the conditions for the effective functioning of habeas corpus as a mechanism to protect the right to personal liberty. The testimonies collected were emphatic in pointing out that despite its constitutionalization, that guarantee is not effective. The Commission is concerned at the large amount of testimonies and public information denouncing arbitrary arrests of activists and regime opponents as a practice on the island.

19. In the chapter on the institutional framework of the State, the IACHR notes, that other than the creation of the position of Prime Minister, it was largely unchanged in the wake of the 2019 Constitution. The Cuban Communist Party continues to be highly important since it is considered the highest political and leadership force in society and the State, the National Assembly of People's Power still concentrates several public powers, and there are no institutional changes to ensure an independent administration of justice nor a separation of public powers.

20. The Commission is concerned by testimonies that denounced the lack of impartiality in the administration of justice—especially in the case of activists and persons who oppose the regime—and by those that mentioned difficulties in obtaining representation by independent lawyers.

21. In the *chapter on representative democracy and political rights*, the IACHR notes that the essential elements of a representative democracy are still absent in Cuba, and that the *de jure* identification of the Cuban Communist Party as the sole party undermines the political rights of citizens. In any case, the Commission notes that, *de facto*, in Cuba there are multiple political movements and organizations that reportedly encounter restrictions on their rights to elect, to be elected, and to assemble, aimed at preventing their participation in politics. The IACHR is also concerned that actions to restrict the rights of political activists reputedly also extend to their families, including children.

22. In the *chapter on human rights defenders*, the IACHR presents copious information about the situation of particular risk that they face, including being victims of constant restrictions on international travel, short-term arbitrary detentions, criminalization and judicial persecution. The Commission has reproached the existence on the books of ambiguous criminal classifications in previous annual reports, noting similar vagueness in the concept of “dangerous state” (*estado peligroso*) contained in Article 72 and following provisions of the Criminal Code. Specifically in relation to human rights defenders, it has been informed about the use of indictments for crimes such as contempt, pre-criminal social dangerousness, non-payment of fines, public disorder, and resistance or rebellion, in order to discourage their work in defending and promoting human rights.

23. In the *chapter on freedom of expression*, the IACHR and the Office of the Special Rapporteur for Freedom of Expression noted that Cuba continues to be the only country in the Hemisphere in which there are no guarantees of any kind for the exercise of the right to freedom of expression. A model of state monopoly over the media remains in place, as does the prohibition on founding private media outlets, all of which is incompatible with international standards on freedom of expression. Targeted and deliberate persecution of independent media and journalists continues, and for periods even intensifies. With regard to the Internet, the legal provisions would seem to be extremely restrictive and ambiguous, and there is limited connectivity for the Cuban population. In addition, the blocking and censorship of critical media seriously impedes the exercise of the rights to freedom of expression and privacy on the Internet. In general, with regard to freedom of expression, there is serious discrimination on political grounds in the exercise of human rights against anyone who thinks or wishes to express himself or herself differently from the socialist regime.

24. In the *chapter on economic, social, cultural and environmental rights*, the IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights express concern regarding the housing deficit in Cuba, reports about the large number of homeless people, and complaints concerning deficiencies in water and basic sanitation services on the island. In relation to the right to food, the Commission welcomes the fact that the State has met its targets under the Millennium Development Goals, reducing hunger and malnutrition. However, it is concerned at reports of shortages of essential foodstuffs and difficulty of access to foodstuffs by the population. In relation to cultural rights, the Commission is troubled by the restrictions imposed by Decree No. 349/2018, and that the great power granted to public authorities to encourage prior censorship of cultural expressions. With respect to trade union rights, the IACHR was informed of the barriers that exist in Cuba to the exercise of independent trade union activities, such as the obstacles imposed on the Independent Trade Union Association of Cuba. As to social security, the Commission is concerned by information that pensions are insufficient to buy the basic staples necessary for a person’s survival. Regarding the right to work, the Commission received information about violations in relation to pay as well as alleged gender, political and racial discrimination, which infringe the right to work in Cuba. With regard to the right to health, the Commission welcomes that the State has made positive strides in that area; however, it is concerned about reports of deterioration in the quality of the health service offered to the population, the supply of medicines, and the functioning of the health care system on the island. With respect to the right to education, the Commission is concerned by reports of violation of academic freedom on the island and conditions in

education facilities. Finally, in relation to environmental rights, the Commission and its Special Rapporteur express concern at the reports of poor waste management and pollution in less developed parts of the country.

25. In the *chapter on the human rights situation of other population groups*, the IACHR also takes note of the situation faced by people of African descent, women, members of the LGBTI community, children and adolescents, persons with disabilities, people deprived of their liberty, and migrants on the island. For example, it highlighted the absence of clear, disaggregated statistics based on intersectoral databases on the Afro-descendent population, which renders that population invisible, as well as situations of discrimination in labor, educational and social contexts, and the violation of the rights of Afro-Cubans in the areas of health, housing, unemployment, and access to clean water and sanitation services. As regards, women's rights, the IACHR notes that the State has made efforts to adapt legal and State mechanisms in favor of equality between women and men; however, Cuba's legal framework has not mainstreamed into its legislation a general definition of discrimination against women or protection against gender-based violence. In addition, there are concerns about the persistence of gender stereotypes that discriminate against girls and women. With regard to the LGBTI population, the IACHR considers that the scarcity of data on this type of violence in Cuba makes the problem of discrimination unviable; however, based on available information, the Commission found that that population suffers violence, discrimination, restrictions on their rights of assembly and association, and curtailment of their freedom of expression and dissemination of thought. Concerning the rights of persons with disabilities, the IACHR regrets the lack of access for persons with disabilities to the health services necessary for their well-being and incorporation into working life, an inclusive, quality education, as well as health care and employment. Regarding migrants, the Commission expresses its concern at the multiple restrictions and procedures that are said to obstruct the effective exercise of personal liberty both on and off the island. Likewise, regarding the population deprived of liberty, the Commission still does not have updated information on the number of people in Cuba's prisons. However, it does have reports on the persistence of deplorable conditions of detention, overcrowding, insufficient medicine, food and drinking water, inadequate hygiene and sanitation, and deficient medical assistance.

26. Finally, the IACHR offers its conclusions regarding the situation of human rights on the island. It also offers recommendations to the State in order to encourage public policies that effectively guarantee rights in a democracy. The IACHR expresses to the Cuban State its willingness to provide the necessary technical support to promote effective enjoyment of human rights for all in Cuba.