



**REDESCA**  
Special Rapporteur for Economic,  
Social, Cultural and Environmental Rights

**IACHR** Inter-American  
Commission on  
Human Rights

# Labor and Union Rights in Cuba



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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

# Labor and Union Rights in Cuba report

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# CHAPTER 1

## INTRODUCTION





## INTRODUCTION

### A. *Background, scope, and objectives*

1. Through its multiple mechanisms, the Inter-American Commission on Human Rights (the “IACHR”, or the “Commission”) has constantly monitored the Situation of Human Rights in Cuba, by virtue of the mandate granted by the Charter of the Organization of American States (the “OAS Charter”) and the American Declaration on the Rights and Duties of Man (the “American Declaration”).
2. In particular, the IACHR published seven country reports on Cuba between 1962 and 1983. Since 1985, the IACHR has uninterruptedly included Cuba in Chapter IV-B of its Annual Report, given its considerations that: the fundamental elements and institutions inherent to a representative democracy do not exist in the country; there is no judicial independence; there are limitations to the separation of powers; and there are constant restrictions on the exercise of political rights and freedom of expression.
3. In June 2020, the Commission issued a new country report on the "Situation of Human Rights in Cuba", presenting an overview of the human rights situation in the period 2017-2019. In this report, the Commission identified a lack of: political participation and free elections due to the persistence of one single party; provisions to ensure the separation of powers, with a National Assembly that holds several powers; and conditions that guarantee judicial independence. The IACHR surveyed the situation of economic, social, and cultural rights, and highlighted the particular risk faced by some population groups — such as Afro-Cubans, women, LGBTI persons, children and adolescents, migrants, persons with disabilities, and persons deprived of liberty. Given these conditions, the IACHR formulated a series of recommendations to the Cuban State.<sup>1</sup>
4. In relation to labor rights, the IACHR Report highlighted labor discrimination is a serious issue faced by workers in Cuba. In legislative terms, the Committee of Experts of the International Labor Organization (ILO) identified the need for the Labor Code to define and expressly prohibit direct and indirect discrimination based on race, opinion, and national origin. The Commission also pointed out the government must adopt measures so, in practice, information about workers’ political and religious opinions is not requested. The government must guarantee workers’

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<sup>1</sup> IACHR, [Situation of Human Rights in Cuba](#), February 3, 2020.

protection against discrimination in employment and proper working conditions, because of workers' political and religious views. Information gathered by the Commission indicates the Labor Code does not provide gender identity as a protected condition against discrimination, and that trans people do not have access to decent occupations — their options are restricted to low-paying positions and, consequently, they are one of the most vulnerable population groups in the labor market.<sup>2</sup>

5. By virtue of said pronouncements, the Commission and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (“REDESCA” or “Special Rapporteurship”) decided to conduct a deeper analysis of the situation of labor and trade union rights. The Commission and its REDESCA will establish objective and specific guidelines that address the issue from an approach that is mindful of the indivisibility and interdependence of human rights.
6. In addition, as stated in the 2021 IACHR Annual Report, the Commission and its REDESCA pay special attention to: i) the absence of the full exercise of trade union freedom and the right of free association; ii) the existence of arbitrary restrictions on the academic freedom of professors; iii) discrimination and application of disciplinary sanctions for political reasons; iv) structural discrimination affecting Afro-Cubans, women, persons with disabilities, older persons and the LGBTI persons; v) the violation of due legal process and access to justice; and vi) workers' lack of a decent wage that, together with inflation, prevents them from having sufficient purchasing power to meet their basic needs and enjoy other rights, such as health, food and housing.<sup>3</sup>
7. In this regard, the IACHR and its REDESCA emphasize the right to work is a fundamental right, inseparable and inherent to human dignity. Its actions are critical to strengthening economic and social systems from a human rights perspective, to guaranteeing other rights, such as people's autonomous development, and to guaranteeing a dignified life for people.
8. Although Cuba has ratified several international agreements on labor and union law, in addition to its internal legislation (a Labor Code and a recent Constitution), the country has a challenging labor context that directly hinders workers' human rights. The State, as the largest employer, controls wages, limits participation of the private sector in the labor market and prevents the formation of independent unions.
9. It is in the interest of the Commission and its REDESCA to delve into the challenges, obstacles, advances, laws, and judicial decisions regarding

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<sup>2</sup> IACHR, [Situation of Human Rights in Cuba](#), February 3, 2020, par. 261-269.

<sup>3</sup> IACHR, [Annual Report](#), Chapter IV.B “Cuba”, 2021, par. 136.

human rights in Cuba, emphasizing labor and trade union rights. In this regard, and within the framework of its monitoring activities, the objective of this report is to analyze the situation of labor and union human rights in Cuba in light of inter-American standards, while identifying the areas of concern related to these issues.

10. Besides giving visibility to the effects of labor rights violations on Cuban workers, the IACHR and its REDESCA provide recommendations to the Cuban State for the effective protection of labor and trade union rights, including the right of access to justice.
11. This report is relevant because: i) it gives international visibility to the situation of labor and trade union rights in Cuba; ii) it stresses the urgency of addressing regulations and obstacles to the rights of access to justice, due process, and judicial protection; iii) it highlights the need to address the perspectives and challenges related to business and human rights; and iv) it provides recommendations to the Cuban State.
12. This report also aims to refer to the existing international and inter-American standards — mainly those indicated in the IACHR's and its REDESCA's "Compendium on Labor and Trade Union Rights" and the "Report on Business and Human Rights" — and identifies how these rights are being applied, considering the political and economic dynamics in Cuba. The report will consider differentiated approaches and intersectionality — especially with respect to people in vulnerable conditions.

## ***B. Structure and methodology***

13. This report compiles labor rights, trade union rights, access to justice, and due process jurisprudence and standards from the Inter-American Human Rights System (IAHRS) and other sources of International Human Rights Law and International Labor Law, to evaluate their compliance in Cuba. The IACHR and its Special Rapporteurship have used direct sources -such as testimonies from Cuban workers-, comments from civil society, academics, public officials, and experts, and information obtained through mechanisms to monitor the situation of Human Rights in Cuba.
14. In terms of referring to different sources of international law, the Commission and its REDESCA analyze findings, norms and standards regarding labor and trade union rights, as well as access to justice and due process. In doing so, it relies on the jurisprudential, normative, and institutional developments that result from the application of general norms in human rights, their interpretation and practice in particular contexts of the guarantee of labor and trade union rights, as well as their justiciability,

producing knowledge in the matter and promoting the development of new standards.

15. Regarding the data on labor and trade union rights in Cuba, this report uses open sources and considers both official sources from State institutions and independent sources outside State control. The Commission and its REDESCA highlight the difficulty of accessing reliable official data and figures about workers' situation in the country and on effects on their human rights. They also note that official information available online is incomplete or, in some cases, outdated. Despite repeated invitation requests, the Commission has not received approval of the Cuban State to carry out a visit to the island. This hindered the gathering of comprehensive information for the preparation of the current report.
16. However, as a particularly relevant component of their analysis, the IACHR and its REDESCA include in this report testimonies of Cuban workers and former officials of the Cuban Justice System, who live or have lived on the island at some point in the past few years. These interviews describe, through individual accounts, the situation of labor and trade union rights. They provide a human narrative about the reality faced by workers, with their perceptions and experiences regarding the State and the guarantee of their rights. Given the impossibility of a visit to Cuba, the IACHR listens to the voices of the Cuban people and incorporates them into its assessment through this report.
17. The identification and selection of interviewees was carried out with the support of civil society organizations. These organizations were crucial in identifying workers who could provide valuable and relevant information for this report. Likewise, the IACHR and its REDESCA called upon contacts from their monitoring, promotion, and training databases, to gain access to Cuban workers in different provinces and sectors. All interviews used as a source of information complied with the IACHR protocol, which establishes minimum criteria for information verification through access to information strategies, diversification of information sources, identification of valid interviewees, context analysis, quality control of information and records, and ensuring source confidentiality.
18. In particular, the IACHR and its REDESCA express their gratitude to the civil society organizations that facilitated some of these spaces: the Pan American Development Foundation; civil society organizations: Cubalex, Race and Equality, Civil Rights Defenders and DemoCuba; the Independent Trade Union Association of Cuba (*Asociación Sindical Independiente de Cuba - ASIC*); and all the organizations that comprise Red Cuba.
19. In total, the Commission and its REDESCA conducted 80 interviews with Cuban workers, of which 65 were used in the analysis presented in this

report. Semi-structured interviews were carried out on the basis of one single instrument that followed a protocol for taking testimonies. A collective interview session was held with former Cuban prosecutors, lawyers, and judges, who offered their testimonies on the functioning of the Justice System in Cuba — regarding labor proceedings in particular.

20. Interviews were conducted in person at the headquarters of the Commission, during IACHR activities in third countries and (a large number) by videoconference or other electronic means. The Commission sought the broadest possible spectrum of representation, interviewing people from different parts of the country and representatives of different sectors and labor activities. It should be noted that the names of interviewees will remain confidential, upon their request or in view of insecurity or lack of guarantees for their personal safety in that country. Testimonies were taken between April 2021 and January 2023.
21. The Commission and its REDESCA also held an *ex officio* hearing on the "Situation of Labor and Trade Union Rights in Cuba" in June 2022.<sup>4</sup> They also requested for information through a public consultation process, to gather information from civil society organizations within the country and abroad, international organizations, academia, and specialists. They received information from 16 civil society institutions that answered a questionnaire divided into four sections: I) Labor Rights; II) Trade Union Rights; III) Access to Justice, Due Process and Judicial Protection; and IV) Business and Human Rights.
22. When preparing this report, the Commission also received abundant information from civil society organizations — particularly in the framework of the 10 meetings of the Network of Civil Society Organizations regarding the situation of Human Rights in Cuba (RED Cuba), inaugurated on July 12, 2021, in conjunction with REDESCA. With this initiative, the IACHR and its REDESCA deepened strategic monitoring tasks through different mechanisms and mandates, while promoting inter-American standards for the protection of human rights in a more synergetic way and in direct and constant cooperation with civil society. Additionally, the RED Cuba meetings have made it possible to increase information exchange, reception of complaints, and specialized input from civil society.
23. This report is based on information that the IACHR and its REDESCA have documented through different monitoring mechanisms, such as press releases, public sessions, precautionary measures, individual petitions, meetings, interviews, conversations with civil society organizations, reports

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<sup>4</sup> IACHR, Thematic session "Situation of labor and union rights in Cuba", 184 regular period of sessions, June 23, 2022.

and documents sent by academics, institutions, and experts in the field. The IACHR appreciates the information received through these channels.

24. This report comprises seven chapters: (I) Introduction; (II) The Context of Human Rights in Cuba; (III) Labor Rights; (IV) Trade Union Rights; (V) Access to Justice, Due Process and Judicial Protection; (VI) Business and Human Rights; and (VII) Conclusions and Recommendations.

### *C. Cuba's relationship with the Inter-American Commission on Human Rights*

25. The Commission has consistently maintained that possesses the competencies to examine the situation of human rights in Cuba and has monitored this situation and processed individual petitions submitted by Cuban citizens.
26. The IACHR understands and reiterates that the exclusion of the Cuban Government by the Organization of American States (OAS)<sup>5</sup> does not prevent the Commission from fulfilling its mandate to promote and protect human rights, since it recognizes this state as "legally responsible before the Inter-American Commission with regard to human rights", given that it is "part of the international instruments that were established initially in the American hemisphere in order to protect human rights", including the American Declaration adopted in 1948, and because Resolution VI of the Eighth Meeting of Consultation "excluded the Cuban government, and not the State, from their participation in the inter-American system".<sup>6</sup>
27. In addition, the IACHR highlights that, during its 39<sup>th</sup> Regular Period of Sessions held in San Pedro Sula (Honduras) on June 3, 2009, the OAS General Assembly, through Resolution No. 2438, annulled said Resolution and established "[t]hat the participation of the Republic of Cuba in the OAS will be the result of a dialogue process initiated at the request of the Government of the Republic of Cuba, and in accordance with the practices, purposes and principles of the OAS".<sup>7</sup>

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<sup>5</sup> OAS, Eighth Meeting of Consultation of Ministers of Foreign Affairs, Final Act, Resolution VI, Punta del Este, Uruguay, January 22-31, 1962, OEA/Ser.F/II.8, doc. 68, p. 13-15.

<sup>6</sup> The text of Resolution VI can be found at the "Eighth Meeting of Consultation of Ministers of Foreign Affairs to serve as a Consultation Organ in application of the Inter-American Treaty of Reciprocal Assistance, Punta del Este, Uruguay, January 22 to 31, 1962, Documents of the Meeting", Organization of American States, OEA/Ser.F/II.8, doc. 68, pages 13-15.

<sup>7</sup> The text of Resolution AG/RES. 2438 (XXXIX-0/09) can be found in the "Thirty-ninth Regular Session, San Pedro Sula, Honduras, June 2 to 4, 2009, Minutes and Documents, Volume I", Organization of American States, OAS/Ser.P/XXXIX-0.2, page 12.

28. On the other hand, in accordance with Article 20(a) of the IACHR Statute, with respect to the States that have not ratified the American Convention on Human Rights, the Commission maintains its prerogative to "pay particular attention to the task of observance of the human rights mentioned in Articles I, II, III, IV, XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man".
29. Within the framework of said mandate, the Commission has prepared 8 country reports (the last version issued in 2020). Likewise, Cuba has been included in Chapter IV, or its equivalent, of the Annual Report for the years 1984-1985 to 1994, and uninterruptedly since 1996. Since the regulatory reform of 2013, the inclusion of Cuba in the annual reports has been based on the criteria contained in Article 59, paragraph 6, sec. a.i and c of the Regulation.
30. Over the last ten years, the IACHR has held an average of two annual public hearings on Cuba. In 2022, the Commission held a hearing on the situation of labor rights and one on the human rights situation of vulnerable groups in Cuba. Likewise, information has been requested from the State in accordance with the powers provided in Article 18, par. D, of the Statute. Individual petitions, cases, and precautionary measures continue to be received, processed, and examined.
31. As of the publication date of this Report, Cuba has 46 precautionary measures in force. Of these, 4 were granted in 2022, through 3 resolutions. The IACHR highlights the approval of Follow-up Resolution No. 48/22 regarding MC 264-13 - Members of Ladies in White. Although the Cuban government does not respond to the communications and decisions of the IACHR, civil society organizations report the cessation or decrease in intensity (sometimes temporary) of ill-treatment, retaliation, harassment and/or aggression to which they were subjected prior to the Commission's action.
32. With the issuance of this report, the Commission continues to reaffirm its competence and that of its Special Rapporteurship to analyze the situation of human rights in Cuba. Likewise, in the absence of official information and the State's reluctance to allow international scrutiny through a country visit, the IACHR takes note of the information received and makes efforts to obtain the largest amount of information available in order to exercise its mandate and make public the main advances and challenges in the field of human rights.
33. The IACHR approved this report on April 5, 2023. On April 6, 2023, the IACHR transmitted a copy of this report to the State in accordance with the provisions of its Regulations, with a period of 15 days to receive its observations. The State did not make any observations.





## **CHAPTER 2**

# **THE CONTEXT OF HUMAN RIGHTS IN CUBA**



## THE CONTEXT OF HUMAN RIGHTS IN CUBA

### A. *Background*

34. After the publication of its Report "Situation of Human Rights in Cuba", the IACHR continued to learn of various events that constituted obstacles to the enjoyment of the rights of persons under the jurisdiction of the Cuban State, such as arbitrary restrictions on the freedom of expression and thought, and the right of assembly and association for political purposes. Additionally, it has been informed of massive violations of the freedom, security, and integrity of human rights activists and defenders, independent journalists, and artists. Similarly, it has observed that the effects on the minimum judicial guarantees and judicial protection continue to systematically limit the human rights of Cubans.<sup>8</sup>
35. In particular, during 2021 and 2022, the Commission observed with special attention the repercussions of the July 11 protests in Cuba, which have worsened repression of dissent and serious violations of human rights in the country. Since the beginning of the protests, the Commission has received numerous complaints from civil society organizations, reporting the systematic criminalization and persecution of peaceful protesters, activists, and political opponents, through harassment, arbitrary arrests, and criminal proceedings that do not observe the minimum guarantees of due legal process.<sup>9</sup>

### B. *Democratic institutions*

36. Article XX of the American Declaration establishes that: "Every person that is legally able is entitled to participate in the government of his or her country, directly or through his or her representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free."<sup>10</sup>
37. When the OAS member states adopted the Inter-American Democratic Charter (the "Democratic Charter") in 2001, they recognized that representative democracy is the system in which stability, peace and

<sup>8</sup> See: IACHR, [Annual Report, Chapter IV.B "Cuba"](#), 2020; and IACHR, [Annual Report, Chapter IV.B "Cuba"](#), 2021.

<sup>9</sup> IACHR, [Annual Report, Chapter IV.B "Cuba"](#), 2021, par. 4.

<sup>10</sup> OAS, [American Declaration of the Rights and Duties of Man](#), Approved at the Ninth International American Conference, Bogotá, Colombia, 1948.

development of the region can be achieved, it being essential to achieve the full exercise of fundamental rights. Article 3 of the Democratic Charter establishes that:

Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.<sup>11</sup>

38. According to the jurisprudence of the Inter-American Court of Human Rights (the “I/A Court HR”, or the “Court”), the Democratic Charter “is a rule of authentic interpretation of the treaties to which it refers, since it reflects the interpretation that the OAS Member States, including the States Parties to the Convention, make of the provisions pertaining to democracy in both the OAS Charter and the Convention.”<sup>12</sup> In this sense, the Inter-American Court understands that “the effective exercise of democracy in the American States is, therefore, an international legal obligation, and they have sovereignly agreed that such exercise is no longer a matter solely for their domestic, internal or exclusive jurisdiction.”<sup>13</sup>
39. The Commission has indicated that the exercise of the right to political participation implies “the right to organize parties and political associations, which through open discussion and ideological struggle, can improve the social level and economic circumstances of the masses and prevent a monopoly on power by any one group or individual.”<sup>14</sup> Likewise, the Commission has considered that:

The governments have, in the face of political rights and the right to political participation, the obligation to permit and guarantee: the organization of all political parties and other associations, unless they are constituted to violate human rights; open debate of the principal themes of socioeconomic development; and the celebration of general and free elections with all the necessary guarantees so that the results represent the popular will.<sup>15</sup>

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<sup>11</sup> OAS, Inter-American Democratic Charter, Adopted at the Twenty-eighth Special Period of Sessions, September 11, 2001, Lima, Peru, Art 3.

<sup>12</sup> I/A Court HR, Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs, judgment of February 8, 2018. Series C No. 34818, par. 114.

<sup>13</sup> I/A Court HR, Case of San Miguel Sosa et al. v. Venezuela, op. cit., par. 114.

<sup>14</sup> IACHR, Annual Report, Chapter IV, Cuba, “A. political rights”, 2002, par. 12.

<sup>15</sup> IACHR, Annual Report, Chapter IV, Cuba, “A. political rights”, 2002, par. 12.

40. In addition to this, the IACHR has proposed that there is a direct relationship between the exercise of political rights and the concept of democracy as a form of organization of the State, which, in turn, implies the validity of other fundamental human rights. For the IACHR, the concept of representative democracy is indeed based on the principle that the people are the holders of political sovereignty, and that, in exercise of this sovereignty, they elect their representatives to exercise political power. These representatives are elected by the citizenry to carry out specific policies, which in turn implies that the nature of the policies to be implemented has already been extensively discussed (freedom of expression) among organized political groups (freedom of association) that have been able to express themselves and meet publicly (right of assembly).<sup>16</sup> The exercise of political rights is, therefore, inseparable from other fundamental human rights.
41. In relation to Cuba, the Commission continues to note the persistent non-observance of the essential elements of representative democracy — especially due to the absence of free elections and political pluralism, the continuity of the single-party model, and the prohibition of association for political purposes. In particular, it considers that the constitutional provision of a single party not only prevents a higher level of political discussion — which is a fundamental condition for a democracy, but also limits the rights of those who do not share the political conviction of the Communist Party.<sup>17</sup> This results in dissidents not participating in the government or holding public office in the country, in clear opposition to the provisions of Article XX of the American Declaration.<sup>18</sup>
42. In its 2020 Cuba Country Report, the Commission also highlighted that “voices opposed to the government, in an effort to express their views and participate in the country’s affairs, end up being suppressed because of the single-party system, the ban on association for political purposes, and arbitrary restrictions on freedom of expression and the right of assembly, among other fundamental rights.”<sup>19</sup> This silencing impacts the effective exercise of human rights and fundamental freedoms in the country.
43. Additionally, the IACHR has observed that, after the 2019 Constitution, the State’s institutional framework did not undergo major changes — except for the creation of the position of prime minister. In this way, “the Communist Party of Cuba occupies a position of great importance in the Constitution of the Republic of Cuba, which considers it the highest political and leadership

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<sup>16</sup> IACHR, Report on the Situation of Human Rights in Haiti, OEA/Ser. L/V/II.77. rev. 1 Doc. 18, May 8, 1990, Chapter 1. “Political Rights”, par. 15.

<sup>17</sup> IACHR, Report on the Situation of Human Rights in Cuba, 2020, par. 141.

<sup>18</sup> OAS, American Declaration of the Rights and Duties of Man, 1948.

<sup>19</sup> IACHR, Report on the Situation of Human Rights in Cuba, 2020, par. 137.

force in society and the State.”<sup>20</sup> Similarly, the official departure of former President Raúl Castro from party leadership in 2021 did not result in changes in the political participation sphere or the opening to partisan and ideological pluralism.<sup>21</sup> In addition to this, there is a lack of provisions to ensure the separation of powers, through a National Assembly that holds extensive powers, and a lack of conditions that provide guarantees for judicial independence.<sup>22</sup>

44. In this regard, the IACHR has reiterated that the effective observance of the rights to justice (Article XVIII) and due process (Article XXVI) provided for in the American Declaration — and derived from the classic separation of public powers, is based on the independence of the judiciary, which is a requirement for democracy and the practical validity of human rights. In the view of the Commission, the subordination of the courts to the Council of State (headed by the Head of State) means that, in Cuba, the judicial branch is directly subordinate to the directives of the executive branch. Accordingly, the lack of independence of the judicial branch compromises its ability to provide guarantees for the enjoyment of human rights.<sup>23</sup>

### *C. Repression of dissent*

45. For decades, the IACHR has been aware, with extreme concern, of the arbitrary restrictions on the right of assembly and free expression of the population, and of the persistence of violations against the rights to liberty, security and integrity of the individual; protection against arbitrary detention; the inviolability of the home; minimum judicial guarantees; and judicial protection; to which political dissidents, social leaders, activists, human rights defenders, and independent journalists are subjected. The IACHR particularly highlights that, in 2021, repression of dissidence was stricter in the context of the social unrest that began in Cuba on July 11.<sup>24</sup>
46. As the IACHR has warned on previous occasions, there is systematic repression in Cuba by state agents and groups related to the ruling party, which seek to prevent peaceful meetings, demonstrations or protests organized by political dissidents, social leaders, activists, human rights defenders, artists, and journalists. In this regard, the Commission understands that political-ideological discrepancy continues to be the main reason to silence, repress, and prosecute those who express their thoughts

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<sup>20</sup> IACHR, *Report on the Situation of Human Rights in Cuba*, 2020, par. 99.

<sup>21</sup> IACHR, *Annual Report, Chapter IV.B “Cuba”*, 2021, par. 15.

<sup>22</sup> IACHR, *Report on the Situation of Human Rights in Cuba*, 2020, par. 98.

<sup>23</sup> IACHR, *Annual Report, Chapter IV.B “Cuba”*, 2021, par. 18.

<sup>24</sup> IACHR, *Annual Report, Chapter IV.B “Cuba”*, 2021, par. 19.

or opinions in a manner that is critical or different from the lines imposed by the ruling party.<sup>25</sup>

47. The repression of dissents intensified after the protests of July 11, 2021, when thousands of Cubans took to the streets in more than 40 cities throughout the country to protest peacefully, demanding the exercise of civil liberties and changes to the country's political structure, as well as to protest the lack of access to economic, social, and cultural rights, primarily owing to the persistent shortages of food and medications, and the worsening consequences of the Covid-19 pandemic on the Island.<sup>26</sup> In this regard, according to civil society and international bodies (such as the European Parliament), the massive protest of July 11 was characterized as one of the largest protests in recent Cuban history.<sup>27</sup> These protests triggered immediate State reactions against protesters.
48. Since then, the IACHR has documented eight waves of repression by the State in which it has observed: 1) the use of force and campaigns of intimidation and stigmatization; 2) arbitrary arrests, ill-treatment and deplorable conditions of detention; 3) criminalization of protesters, judicial persecution and violations to due process; 4) closure of democratic spaces through repressive and intimidating strategies aimed at discouraging new social demonstrations; 5) continuation of deprivation of liberty, trials without due process guarantees, and disproportionate sentences; 6) legislative proposals aimed at limiting, monitoring and punishing dissident expressions and criticism of the government, as well as criminalizing the actions of independent civil society organizations; 7) harassment of relatives of people arrested and accused for their participation in the protests; and 8) deliberate cuts in internet access.<sup>28</sup>
49. It is noteworthy that the causes that motivated the protests of July 2021, linked to the lack of access to basic services such as electricity, the shortage of food and medicines, in addition to the demands for respect for civil and political rights, continued being the matter of citizen claims in 2022.<sup>29</sup> Between August and October 2022, the IACHR learned of at least 155 protest events in 14 of the 15 provinces of Cuba.<sup>30</sup> In addition to this, the Commission

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<sup>25</sup> IACHR, *Annual Report, Chapter IV.B "Cuba"*, 2021, par. 20.

<sup>26</sup> IACHR, *Annual Report, Chapter IV.B "Cuba"*, 2021, par. 33.

<sup>27</sup> European Parliament, *European Parliament resolution of 16 September 2021 on the government crackdown on protests and citizens in Cuba (2021/2872(RSP))*, September 16, 2021; and Human Rights Watch (HRW), *Cuba responds to landmark demonstrations with brutal repression*, July 20, 2021.

<sup>28</sup> The identification of the repressive waves does not indicate that the previous one has disappeared with the onset of the following one. In other words, through its different monitoring mechanisms, the Commission has observed that repressive strategies have added up and represent a systematic and continuous pattern of State response.

<sup>29</sup> IACHR, *Annual Report, Chapter IV. B Cuba*, 2022, par. 74

<sup>30</sup> Project data Inventory (*map of protests in Cuba 2022*) and Justicia 11J, *Report on protests and repression of protests in Cuba (August, September and October, November 4, 2022)*.



received complaints that people detained during the protests were being held incommunicado, with no exceptional reasons to justify said measure.<sup>31</sup>

50. The IACHR notes, with concern, that the figures provided by civil society organizations indicate a total of 1,760 people detained in Cuba (of which 751 remain in detention) for participating in the social protests that have taken place since July 2021, including those held in the context of the Civic March of November 15, 2021, and the protests of the second half of 2022.<sup>32</sup>

#### *D. Increase in restrictions on the mobility of Cuban citizens*

51. The Commission, through its various monitoring mechanisms, has closely followed the restrictions that prevent the full exercise of the right of movement and residence, both within the country and abroad. In its 1983 Seventh Report on the Situation of Human Rights in Cuba, the IACHR considered that the exercise of the right of residence and transit is extremely restricted in fact and in law, especially for those who have taken critical stances against the Government,<sup>33</sup> and observes that these restrictions have remained in place since.
52. Similarly, in its 2020 Country Report, the Commission observed that, despite Article 52 of the new Constitution covering freedom of movement within Cuban territory, various complaints have been filed regarding restrictions on this right. The testimonies collected by the IACHR consistently indicate that people suffer restrictions to leave and return to the country due to their political ideas.<sup>34</sup>
53. As highlighted in *Chapter IV. B Cuba* of the 2022 Annual Report, the IACHR and its Office of the Special Rapporteur for Freedom of Expression (RELE) observed a growing trend of restrictions and obstacles to entry and exit from the territory by public authorities against human rights defenders, independent journalists, and activists, in order to silence opposition voices and hinder citizen participation in spaces linked to the human rights situation.<sup>35</sup>
54. On the other hand, the Commission also analyzed this situation through its Case System. In particular, its background report in the case Yoani Sánchez

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<sup>31</sup> IACHR, *Annual Report, Chapter IV. B Cuba*, 2022, par. 81.

<sup>32</sup> Information received by the IACHR in meetings of Red Cuba. In particular, based on the records of the Justicia 11J and Cubalex, updated in October 2022.

<sup>33</sup> IACHR, *The Situation of Human Rights in Cuba* (seventh report), OAS/Ser.L/V/II.61 Doc. 29 rev. 1, 4 October 1983, conclusions, par. 13.

<sup>34</sup> IACHR, *Situation of Human Rights in Cuba*, February 3, 2020. par. 358; 364-368.

<sup>35</sup> IACHR, *Annual Report, Chapter IV. B Cuba*, 2022, par. 193

Cordero vs. Cuba (October 30, 2021), highlighted that the right of every person to live in their country of nationality, leave it and return whenever they wish, is a basic right recognized not only in the inter-American system (in particular, Article VIII of the American Declaration), but also in other international instruments for the protection of human rights, such as the Universal Declaration of Human Rights (Article 13) and the International Covenant on Civil and Political Rights (Article 12).<sup>36</sup>

## E. *Massive exodus of Cuban citizens*

55. Despite the restrictions on mobility, the IACHR observed a significant increase in the migration of Cubans to the United States in 2022. The most recent statistical update from the Department of Customs and Border Protection (CBP) shows that, from January 2022 to January 2023, more than 325,000 Cubans arrived in the United States.<sup>37</sup> This figure represents 2.6 times more than the 125,000 who emigrated in 1980 during the Mariel exodus, which is considered the largest migration of Cubans to the United States in the entire history of the island. The number of people who migrated to the US would represent about 2.95% of the 11 million inhabitants of the country.<sup>38</sup>
56. The testimonies collected and the information reported by civil society organizations indicate that this increase has been the result of the serious economic crisis affecting the country, the shortage of food and medicines, the restrictions on the exercise of basic human rights, and the intensification of State repression of social demonstrations — particularly since the protests of July 11, 2021.
57. On this subject, the Commission also highlights the figures in the report of the UN Office for the Coordination of Humanitarian Affairs (September 12, 2022). According to this report, between January and July 2022, US border agencies apprehended Cuban citizens trying to enter the country through Mexico 155,000 times — a more than six-fold increase compared to the same period in 2021. From October 2021 to August 2022, the US Coast Guard intercepted more than 4,600 Cubans — almost six times more than in the entire previous year.<sup>39</sup>

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<sup>36</sup> IACHR, Report No. 297/21. Case 13,639. Background. Yoani Sanchez Cordero, Cuba. October 30, 2021, par. 137.

<sup>37</sup> US Customs and Border Protection (CBP), [Nationwide Encounters](#), Data is available for the Northern Land Border, Southwest Land Border, and Nationwide (i.e.: air, land, and sea modes of transportation) encounters. Last modified: February, 6, 2023.

<sup>38</sup> Total population data for 2021. Available at: World Bank, [Data: Cuba](#). Accessed on: December 29, 2022.

<sup>39</sup> OCHA, Latin America & the Caribbean, [Weekly Situation Summary](#) (September 5-11, 2022), September 12, 2022.

58. Additionally, the Commission observes that the migration of Cubans is mainly taking place along dangerous routes and irregularly, which poses multiple risks. In particular, it expresses deep concern about the increase in maritime incidents involving boats carrying Cuban migrants. These tragic incidents have resulted in numerous deaths and disappearances. According to data from the International Organization for Migration (IOM), at least 108 Cubans would have died in transit to the United States between January 2021 and June 2022.<sup>40</sup>

## *F. Economic, social, cultural and environmental rights*

59. The IACHR and its REDESCA have actively and permanently monitored the situation of economic, social, cultural and environmental rights (ESCER) in Cuba, paying special attention to the challenges that persist in the country and prevent the guarantee of fundamental rights such as health, adequate nourishment, decent work, education, housing, social security, trade union rights, cultural rights and the right to a healthy environment.

60. In particular, these entities observe a decline in conditions for the effective enjoyment of ESCER on the island, reflected in an escalation of social discontent and an increase in street protests linked mainly to violations of economic and social rights, such as the collapse of the public health system, food and medicine shortages, recurring power cuts, or the impossibility of access to essential items as a result of low wages affected by the inflationary situation<sup>41</sup>. In addition to this, they warn of a general increase in poverty and inequality, in a context where the economic and financial situation has been greatly weakened by the contraction of national and household sources of income — especially in the tourism industry, due to restrictions implemented to deal with the COVID-19 pandemic, the monetary reform, and the economic, commercial and financial embargo of the United States.<sup>42</sup>

61. As noted in the 2020 country report regarding the "[Situation of Human Rights in Cuba](#)", the Commission and its REDESCA remain concerned about the persistence of the economic embargo imposed on Cuba by the United States of America and the importance of ending it, based on its impacts on the guarantee of human rights, and in particular of the ESCER of the Cuban population.<sup>43</sup>

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<sup>40</sup> International Organization for Migration (IOM), [Global Statement: Latest Migrant Tragedy in Texas Highlights Crisis Along Deadliest Migration Land Route](#), July 1, 2022.

<sup>41</sup> Cuban Conflict Observatory, [Cuba: 263 protests in July; 1,713 in the first semester; 3,266 since 11J](#), August 1, 2022.

<sup>42</sup> IACHR, [Annual Report, Chapter IV. B Cuba](#), 2022, par. 123.

<sup>43</sup> IACHR, [Situation of Human Rights in Cuba](#), par. 49.

62. Moreover, these entities reiterate their specific concern over the differentiated repercussions of the island's current situation on people and groups that have historically been discriminated against, as is the case of Cuban women, people of African descent and the LGBTI community, widening existing social and economic gaps closely linked to the persistence of gender stereotypes and racist, sexist and discriminatory behaviors.<sup>44</sup>
63. It is necessary to acknowledge food and nutritional insecurity among the main challenges presented by the socioeconomic crisis affecting Cuba, it. The IACHR and its REDESCA warn of their concern about the persistent precariousness and exacerbation of shortages of basic and essential foods on the island.<sup>45</sup> The situation of malnutrition and the decrease in the frequency of meals, as well as interruptions in access to basic foods through the supplies booklet, is evidenced by available public information.<sup>46</sup> Additionally, there are long lines in shops to buy food or basic necessities, and many Cubans cannot access essential products due to the rise in consumer prices.
64. In terms of health care, the IACHR and its Special Rapporteurship follow the widespread shortage of medicines with particular concern. According to information received, the lack of medicines, in many cases, has worsened chronic illnesses, and many people use expired drugs or resort to informal markets to acquire them.<sup>47</sup> During the months with the highest number of infections and hospitalizations due to COVID-19, the IACHR and its REDESCA were informed about the limitations that the public health service faced — such as the collapse of hospitals; poor infrastructure conditions of health centers; lack of beds, stretchers and ambulances; and lack of oxygen and supplies to treat patients.<sup>48</sup> This situation resulted in different United Nations agencies offering their support through the delivery of medical equipment and supplies due to shortages, scarce financing and increased prices worldwide.<sup>49</sup> This situation highlights the difficulties encountered by users of the national health system, as well as medical and auxiliary professionals, which contributes to the weakening of the guarantee of the human right to health and its essential determinants — such as accessibility, availability, acceptability and quality.

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<sup>44</sup> IACHR, Press Release No. 127/22 -[IACHR and Its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights Concerned About Socioeconomic Conditions in Cuba and Their Effect on the Rights of Women and Other Groups](#), June 6, 2022.

<sup>45</sup> IACHR, Press Release No. 136/2021 – [IACHR and Its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights Concerned about Persistent Food Shortages in Cuba](#), May 25, 2021.

<sup>46</sup> Cuban Observatory of Human Rights (OCDH), [The state of social rights in Cuba](#), October 20, 2021.

<sup>47</sup> IACHR, [Annual Report 2021, Chap. IV. B - Cuba](#), par. 123.

<sup>48</sup> IACHR- REDESCA, Integrated Network of Civil Society Organizations of Cuba. Minutes of the meeting on the right to health and access to vaccines against Covid-19, September 1, 2021

<sup>49</sup> UN News, [The UN supports Cuba in its fight against COVID-19 and socioeconomic recovery](#), November 3, 2021.

65. Regarding access to decent housing, the IACHR and its REDESCA take note of the high housing deficit and the low level of housing construction plans, essential to reduce the social gaps index<sup>50</sup>. Many homeless persons facing this scenario must seek temporary shelters that do not qualify as dignified living conditions or, failing that, must occupy empty or disused buildings in order to avoid living in the streets<sup>51</sup>. In addition, the country is undergoing a serious energy crisis (acknowledged by the Government itself<sup>52</sup>), with daily several-hour power cuts that affect a large part of the population and have an impact on the guarantee of other ESCER, such as access to food suitable for consumption, quality health or education in equal conditions<sup>53</sup>. In addition to this, there are still obstacles to access and free availability of drinking water in most homes — only 18% of the population has 24-hour access to water<sup>54</sup>.
66. Regarding the enjoyment of the human right to a healthy environment, the IACHR and its Special Rapporteurship observe the worrisome current climate emergency and the geographical vulnerability of Cuba. In this regard, they take note of the protracted droughts that the country is going through<sup>55</sup>, as well as the serious effects of hurricane Ian in September 2022, which unfortunately brought about the loss of human lives and serious damages to thousands of homes, schools and health centers<sup>56</sup>. Taking into account the special link between climate change, the occurrence of environmental disasters and the guarantee of human rights (including effects on the right to housing, the availability of drinking water and the increase in inequality and poverty), a human rights approach in the country is a priority, under criteria of indivisibility and intersectionality, in the face of climate change and its consequences<sup>57</sup>.
67. Regarding the right to education, the Commission and its REDESCA express their concern about the existence of arbitrary restrictions on the academic freedom of teaching staff, such as the application of disciplinary sanctions to university workers who are persecuted and expelled from institutions for political reasons<sup>58</sup>. According to available information provided by civil

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<sup>50</sup> Rebelión, [Cuba urgently needs to speed up housing construction to address social gaps](#), October 30, 2021; [Cuban newspaper, Four other families are left homeless: more pressure on the chaotic housing situation in Cuba](#), April 14, 2022.

<sup>51</sup> Cuban Conflict Observatory, [Cuba: 263 protests in July; 1,713 in the first semester; 3,266 since 11J](#), August 1, 2022.

<sup>52</sup> SwissInfo, [Arrival of blackouts in Havana marks a new stage in the Cuban energy crisis](#), August 1, 2022.

<sup>53</sup> IACHR, [Annual Report, Chapter IV. B Cuba](#), 2022, par. 119.

<sup>54</sup> OCDH, [The state of social rights in Cuba](#), October 20, 2021.

<sup>55</sup> DW, [Cuba tries to put out a large forest fire in Pinar del Río](#), April 27, 2022.

<sup>56</sup> BBC, [Hurricane Ian increases to category 4 and approaches Florida after leaving significant damage in Cuba](#), September 26, 2022; DW, [Ian leaves five dead in Cuba and more than 100,000 damaged homes](#), October 2, 2022.

<sup>57</sup> IACHR-REDESCA, [Resolution 3/2021: Climate Emergency: Scope of Inter-American Human Rights Obligations](#), December 31, 2021.

<sup>58</sup> IACHR, Public hearing on the [“Situation of labor and union rights in Cuba”](#), 184 Period of Sessions, June 23, 2022.

society organizations, university autonomy, freedom of thought and academic freedom are not guaranteed in Cuba, since there is a State policy aimed at indoctrination and ideological imposition in accordance with the precepts of the Cuban regime<sup>59</sup>. In this sense, they express the importance of academic institutions in the construction of plural, democratic and diverse States, and recall that academic freedom must be promoted, protected and guaranteed with equal opportunities and without discrimination for any reason — including political opinion<sup>60</sup>.

68. Regarding the culture and arts sector, the IACHR and its REDESCA observe that the exercise of cultural rights and artistic work of Cuban people is not being guaranteed. Repressive escalation, persecution and harassment against artists, their production and their works, and against human rights defenders who exercise their freedom of expression and artistic creation in the country cause alarm<sup>61</sup>. They further warn that the violence exerted on the sector, which has deepened after the peaceful protests of July 11, has materialized through other repressive practices such as arbitrary arrests, imprisonment, summary trials without regard for the guarantees of due process, forced exile, censorship, or confiscation and destruction of works of art<sup>62</sup>. This situation evidences the disregard for recognized inter-American standards that guarantee the right of all people to freedom of expression and dissemination of thought, the right to enjoy the benefits of culture, and the right to artistic work in conditions of dignity and freedom.
69. Finally, the IACHR and its REDESCA are deeply concerned about the impact on the protection and guarantee of labor and trade union rights in Cuba, given the socioeconomic situation of the country. During the hearing on the "Situation of labor and trade union rights in Cuba", civil society organizations reported the persistence of obstacles or patterns of violation of labor rights, such as: i) declining labor conditions for workers and a decrease in dignified and decent work; ii) an increase in informality, with a differentiated impact on women; iii) the persistence of gender-based discriminatory stereotypes, maintaining care and household tasks as the responsibility of women,<sup>63</sup> which contributes to deepen and perpetuate the existing gender gap; iv) structural and institutional discrimination against certain population groups (such as the Afro-Cuban population, LGBTI

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<sup>59</sup> Academic Freedom Observatory, [Report No. 17](#), December 2021.

<sup>60</sup> IACHR-REDESCA, [Inter-American Principles on Academic Freedom and University Autonomy](#), 2021.

<sup>61</sup> IACHR, Press Release No. 119/2021 - [IACHR and Offices of Special Rapporteurs Condemn Harassment of Artists, Journalists, and Activists in Cuba and Call on State to Cease Acts of Persecution Against Those Exercising the Right to Freedom of Expression and Artistic Creation](#), May 13, 2021.

<sup>62</sup> IACHR-REDESCA, [Integrated Network of Civil Society Organizations of Cuba. Minutes of the meeting on cultural rights](#), November 29, 2021.

<sup>63</sup> Regarding women's decision to choose care and household tasks, the IACHR warns of the need to be free of any type of pressure or social prejudice that force women down that life path, and prevent or hinder them in seeking different personal development.

individuals, people with disabilities, or the rural population), who encounter serious difficulties in access to employment; v) the lack of freedom of expression in the labor context, which gives rise to discriminatory practices, disciplinary sanctions, expulsion, and even unjustified dismissal based on political reasons, and persecution and harassment against workers who express opinions different from those of the Cuban regime; or vi) non-compliance of existing international and inter-American standards on business and human rights by the State and the private sector (as is the case of the tourism industry).<sup>64</sup>

70. The Commission and its REDESCA continue to monitor the situation of self-employed workers (*cuentalpropistas*), facing significant legal, fiscal and bureaucratic restrictions imposed by the State on their legal activities or undertakings.
71. They warn about the difficulties for full exercise of freedom of association and collective bargaining rights. In this regard, these entities take note of the repression and intimidation suffered by trade unionists who are not affiliated to the Workers' Central Union of Cuba (*Central de Trabajadores de Cuba - CTC*) — the sole officially recognized entity representing workers.<sup>65</sup> This has led to repressive actions against people who dissent from official unions and try to freely form independent unions, as well as against their union representatives. There are limitations on the exercise of the right to strike and formation of independent unions. In this sense, the IACHR and its REDESCA emphasize that freedom of association fulfills an important social function, while the work of the unions is to preserve or improve the working and living conditions of workers. Therefore, their non-existence in the Cuban State constitutes a major obstacle to the protection and guarantee of the rights of workers.

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<sup>64</sup> IACHR, Public hearing on the “[Situation of labor and union rights in Cuba](#)”, 184 Period of Sessions, June 23, 2022.

<sup>65</sup> IACHR-REDESCA, Integrated Network of Civil Society Organizations of Cuba. Minutes of the meeting on labor and union rights, October 6, 2021.

## **CHAPTER 3**

# **LABOR RIGHTS**





## LABOR RIGHTS

72. This chapter assesses the situation of workers' labor rights given Cuba's current social and political context. It takes the approach of the main international conventions ratified by the State and the Inter-American standards in the field of labor rights. It subsequently provides data on the labor market, as well as the main legal-labor regulations applicable in Cuba.

### A. *International agreements ratified by Cuba*

73. International human rights law has recognized the importance of the right to work as a central, fundamental, and guiding element to advance the protection of human rights.<sup>66</sup> Indeed, the right to work is essential for attaining other human rights and is inseparable from and forms an inherent part of human dignity.<sup>67</sup> Therefore, every person has the right to work in order to live with dignity. The right to work contributes to the survival of the individual and to that of his/her family and, insofar as work is freely chosen or accepted, to recognition within the community.<sup>68</sup> Despite outdated and artificial distinctions between labor rights and human rights, labor rights are human rights, and the ability to exercise those rights in the workplace is a prerequisite for workers to enjoy a broad range of other rights, whether economic, social, cultural, political or otherwise.<sup>69</sup>

74. The following sections present an analysis of the international instruments referring to labor issues, especially those prepared by the International Labor Organization (ILO), and the main regional human rights instruments on the matter, which establish the minimum standards that must be respected in all employment relationships.

#### 1. **Universal System: International Labor Organization (ILO)**

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<sup>66</sup> IACHR, *Compendium Labor and trade Union Rights*, OEA/Ser.L/V/II. Doc. 331, October 30, 2020, par. 2.

<sup>67</sup> ESCR Committee, *General Comment No. 18: The Right to Work*, November 24, 2005, par. 1.

<sup>68</sup> ESCR Committee, *General Comment No. 18: The Right to Work*, November 24, 2005, par. 1.

<sup>69</sup> General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, A/71/385, September 14, 2016, par. 17.

75. The ILO is a specialized agency of the UN — the only tripartite agency founded on dialogue and cooperation between governments, entrepreneurs and workers, which contributes to strengthening the importance of labor rights in the international human rights system. The ILO has established and developed a system of international labor standards aimed at promoting opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and dignity. In today's globalized economy, international labor standards are an essential component of the international framework to ensure that global economic growth provides benefits for all.<sup>70</sup>
76. The Cuban State has been a member of the ILO since its creation in 1919. From the beginning of its membership, it has ratified 90 International Conventions on labor matters and one Protocol. Of these, 66 are in force, 9 have been denounced, and 11 have been repealed<sup>71</sup>. The nine **Fundamental Conventions of the ILO** have been ratified:<sup>72</sup>
- C087 - Freedom of Association and Protection of the Right to Organize Convention, 1948 (06.25.1952)
  - C098 - Right to Organize and Collective Bargaining Convention, 1949 (29.04.1952)
  - C029 – Forced Labor Convention, 1930 (20.07.1953)
  - C105 - Abolition of Forced Labor Convention, 1957 (02.07.1958)
  - C100 - Equal Compensation Convention, 1951 (13.01.1954)
  - C111 - Discrimination (Employment and Occupation), Convention, 1958 (26.08.1965)
  - C138 - Minimum Age Convention, 1973 (03.07.1975)
  - C182 – Worst Forms of Child Labor Convention, 1999 (28.09.2015)
  - C187 - Convention on the promotional framework for occupational safety and health, 2006 (05.08.2008)

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<sup>70</sup> ILO, [Rules of the game: An introduction to the standards-related work of the International Labor Organization](#), 2019, p. 7.

<sup>71</sup> ILO, [Ratifications for Cuba](#), last accessed on March 26, 2023.

<sup>72</sup> The ILO Governing Body had initially identified eight “fundamental” Conventions, covering subjects that were considered to be fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation.

77. Cuba has ratified two of the four **ILO priority Governance Conventions**.<sup>73</sup>

- C081 - Labor Inspection Convention, 1947 (09.07.1954)
- C122 - Employment Policy Convention, 1964 (05.02.1971)

However, the Cuban State has not ratified Governance Conventions C129 - Labor Inspection (Agriculture) Convention of 1969 and C144 - Tripartite Consultation (International Labor Standards) Convention of 1976.

78. Cuba has ratified 80 of the 178 existing **ILO Technical Conventions**. It is worth noting that technical conventions such as C156 – Workers with Family Responsibilities Convention of 1981, C189 – Domestic Workers Convention of 2011, and C190 – Violence and Harassment Convention of 2019 are yet to be ratified. Ratification of Convention 190, which addresses violence and harassment at work, is particularly important, as it is fundamental for Cuba to incorporate an institutional policy into its legal system to combat violence and gender inequality at work<sup>74</sup>, and to adopt an inclusive, comprehensive, and conscientious approach to gender issues in the multiple and intersectoral forms of discrimination and unequal power relations.

79. In accordance with the provisions of the **ILO Declaration on Fundamental Principles and Rights at Work**, adopted on June 19, 1988, as a Member State of the ILO, even though it has not ratified the conventions, the Cuban State has committed to respect, promote and enforce (in good faith) the principles related to the fundamental rights that are the object of the agreements. This includes freedom of association and union membership, as well as the effective recognition of the right to collective bargaining; the elimination of all forms of forced or obligatory labor; the effective abolition of child labor; and the elimination of discrimination in employment and occupation.

80. However, according to information from the Cuban Observatory for Human Rights (OCDH), there are 20 ILO conventions ratified by the Cuban

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<sup>73</sup> The ILO Governing Body has also designated another four Conventions as governance (or priority) instruments, thereby encouraging member States to ratify them because of their importance for the functioning of the international labor standards system.

<sup>74</sup> In this sense, the new Penal Code that was approved on May 15, 2022 and entered into force on December 1, 2022, contemplates, among aggravating circumstances of criminal responsibility typified in Article 80: "m) committing the crime as consequence of gender violence or family violence" and "(r) committing the act for reasons of discrimination based on sex, gender, sexual orientation, gender identity, age, ethnic origin, skin color, religious belief, disability, national or territorial origin, or any other condition or personal circumstance that implies a distinction that is harmful to human dignity". Likewise, Article 397 typifies the crime of harassment. The crime of femicide has not been criminalized, despite claims made by civil society.

State that are systematically ignored<sup>75</sup>. In particular, OCDH mentions C029 - Forced Labor Convention; C095 - Protection of Wages Convention; C131 - Minimum Wage Fixing Convention; C111 - Discrimination (Employment and Occupation) Convention; C122 - Employment Policy Convention; C098 - Right to Organize and Collective Bargaining Convention; C087 - Freedom of Association and Protection of the Right to Organize Convention; and C158 - Termination of Employment Convention<sup>76</sup>.

## 2. Inter-American Human Rights System (IAHRS)

81. At the American regional level, the right to work was recognized in the American Declaration. Article XIV establishes:

Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit.

Every person who works has the right to receive such compensation as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.

82. Additionally, the recognition of the right to work is verified in Article 45.b of the OAS Charter, which establishes:

Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working.

83. 83. The right to work is also included and proclaimed in Articles 1, 16 and 26 of the 1969 American Convention on Human Rights (the “American Convention” or “ACHR”); and Articles 6, 7 and 8 of the 1988 Additional Protocol to the American Convention on Human Rights in terms of Economic, Social and Cultural Rights (the “Protocol of San Salvador”) — although these instruments have not been ratified by the State. In addition, it should be noted that references to the right to work can be found in other regional instruments, such as the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (the “Convention of Belém do Pará”); the Inter-American

<sup>75</sup> OCDH, *First Semester Report: Violations of Economic, Labor, Social and Cultural Human Rights in Cuba*, 2019.

<sup>76</sup> OCDH, *First Semester Report: Violations of Economic, Labor, Social and Cultural Human Rights in Cuba*, 2019.

Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities; the Inter-American Convention on the Rights of Older Persons; or the Inter-American Convention Against Racism, Discrimination and Related Forms of Intolerance. None of the aforementioned instruments has been ratified by Cuba.

84. The inter-American legal framework recognizes the right to work as a fundamental right, inseparable from and inherent to human dignity. Its development is key to strengthening economic and social systems from a human rights approach, since this is vital for guaranteeing and exercising other human rights, and for the autonomous development of the individual.<sup>77</sup>
85. Regarding the legal force of ILO conventions and recommendations in the inter-American System for the Protection of Human Rights, the Inter-American Court has indicated its value as sources of international law or *corpus iuris* of international human rights law, along with other relevant instruments, such as the opinions and recommendations of the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations, in order to carry out a harmonious interpretation of international obligations in the labor field.<sup>78</sup> On multiple occasions, both the Inter-American Court and the Commission have used the ILO Conventions as a source that forms part of the *corpus iuris* in the area of labor rights.<sup>79</sup>

## B. *Internal regulations on labor rights*

86. The Cuban legal system is governed by the Constitution of the Republic, promulgated in 2019. After its inception, a legislative update process has been carried out to adapt the Cuban *corpus legis* to the new Constitution.<sup>80</sup> For these purposes, the National Assembly of People's Power (ANPP)

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<sup>77</sup> IACHR, Compendium Labor and trade Union Rights, October 30, 2020, par. 1.

<sup>78</sup> I/A Court HR, Rights to freedom of association, collective bargaining and strike, and their relationship with other rights, with a gender perspective. Advisory Opinion OC-27/21 of May 5, 2021, Series No. 27, par. 52 and 53.

<sup>79</sup> Inter-American Court of Human Rights, Case of Workers of the Brazil Verde Farm v. Brazil, Preliminary Objections, Merits, Reparations and Costs, Series C 318, judgment of October 20, 2016, par. 291 and 331; IACHR, Report No. 25/18, Case 12.428 Admissibility and Merits, Employees of the fireworks factory in Santo Antônio de Jesus and their families, Brazil, OEA/Ser.L/V/II.167 Doc. 29, March 2, 2018, par. 105 and 113; I/A Court HR, Case Employees of the Santo Antônio de Jesus Fireworks Factory and their Relatives vs. Brazil. Preliminary Exceptions, Merits, Reparations and Costs. Series C 407, judgment of July 15, 2020, par. 164 and 180; IACHR, Compendium Labor and trade Union Rights, October 30, 2020, par. 138.

<sup>80</sup> Ministry of Education of Cuba, "New constitution demands new laws in Cuba", October 9, 2019.

approved a legislative calendar for the period 2019-2022.<sup>81</sup> However, the COVID-19 pandemic interrupted its normal course of operations for several months, prompting a readjustment.<sup>82</sup> Moreover, the ANPP annually evaluates compliance with the schedule and approves changes that are considered necessary.<sup>83</sup>

#### Sources of law in Cuba



Source: Prepared by the IACHR.

87. The legal-labor framework, in addition to Constitutional provisions related to labor rights, is developed in Law 116, by which the Labor Code of 2013 of the Republic of Cuba is issued, establishing and developing the fundamental principles that govern labor law, as complemented by the Labor Code Regulations. Likewise, there are certain specific provisions in some matters, among which Decree-Law 44/2021 on the exercise of Self-Employment stands out.

### 1. Constitution of the Republic of 2019

88. On April 10, 2019, a new Constitution of the Republic of Cuba was proclaimed — the second issued after the regime change that took place in 1959.<sup>84</sup> Said Constitution maintains the most essential features of the Cuban Government: it describes the Cuban State as socialist, and the

<sup>81</sup> Cuba, Official Gazette, Agreement Number IX-49. Annex Legislative schedule. Law proposal (period 2019-2022), of December 21, 2019, published in Edition of the Ordinary Official Gazette No. 2, of January 13, 2020.

<sup>82</sup> Cuba, Official Gazette, Agreement Number IX-76, December 15, 2020, published in Ordinary Official Gazette Edition No. 3, of January 12, 2021.

<sup>83</sup> Cuba, Official Gazette, Agreement Number IX-115. Annex Legislative Schedule year 2022, of December 22, 2021, published in Ordinary Official Gazette Edition No. 5, of January 12, 2022.

<sup>84</sup> Cuba, Constitution of the Republic.

Communist Party as the supreme leading political force of society and the State<sup>85</sup>.

89. Regarding the labor rights specifically recognized in the Constitution, Article 1 guarantees the value of work for the socialist system. It affirms that "Cuba is a democratic, independent and sovereign socialist State of law and social justice, organized by all and for the good of all, as an indivisible and unitary republic, founded by the labor, [...]"<sup>86</sup> Work is defined as a fundamental value in Cuban society, and constitutes "a right, a social duty, and a source of honor for all people who are able to work"<sup>87</sup>. Similarly, Article 31 states that "paid labor must be the principal source of income that sustains dignified living conditions, allows for the improvement of material and spiritual well-being and the realization of individual, collective, and social projects".<sup>88</sup>
90. Title V, Chapter II - Rights, recognizes the right to work, indicating that it is a fundamental right. Similarly, in the terminology of the ILO, Article 64 of the Constitution recognizes the right to obtain "dignified employment according to their choice, qualifications, aptitude, and the demands of the economy and society".<sup>89</sup>
91. This same Title and Chapter of the Constitution recognizes the right to equality between women and men, as well as the right to equal compensation for equal work, without discrimination;<sup>90</sup> prohibits the work of children and adolescents;<sup>91</sup> recognizes the right to weekly rest, an eight-hour working day, and paid annual vacations;<sup>92</sup> the right to social security for people who cannot work due to age, maternity, paternity, disability or illness;<sup>93</sup> and the duty of the State to guarantee the right to safety and health at work by adopting adequate measures to prevent occupational accidents and illnesses.<sup>94</sup>

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<sup>85</sup> IACHR, Situation of Human Rights in Cuba, 2020. p. 40.

<sup>86</sup> Cuba, Constitution of the Republic, Article 1.

<sup>87</sup> Cuba, Constitution of the Republic, Article 31.

<sup>88</sup> Cuba, Constitution of the Republic, Article 31.

<sup>89</sup> Cuba, Constitution of the Republic, Article 64.

<sup>90</sup> Cuba, Constitution of the Republic, Articles 42 and 43.

<sup>91</sup> Cuba, Constitution of the Republic, Article 66.

<sup>92</sup> Cuba, Constitution of the Republic, Article 67.

<sup>93</sup> Cuba, Constitution of the Republic, Article 68.

<sup>94</sup> Cuba, Constitution of the Republic, Article 69.



## 2. The Labor Code and the Labor Code Regulations

92. Labor relations in Cuba are governed by Law 116, which dictates the Labor Code, approved by the ANPP on December 20, 2013.<sup>95</sup> These provisions are complemented by the Labor Code Regulations<sup>96</sup> and other specific regulations on the matter.
93. Article 2 of the Labor Code establishes the fundamental principles that govern labor law in Cuba, which are: (i) work is a right and a social duty of the citizen; (ii) equality at work; (iii) equality in salary; (iv) prohibition of child labor and special protection for young people between the ages of 15 and 18 who start working; (v) the right of workers to training and self-improvement; (vi) the right of workers to daily and weekly rest and paid annual vacations; (vii) the right of workers to safety and health at work; (viii) the right of workers and their families to receive social security protection; (ix) the labor and social security rights conferred on female workers to protect maternity and facilitate medical care; (x) the right of workers to voluntarily associate and establish trade union organizations; and (xi) the right of workers to promote actions before competent bodies, authorities and instances for the recognition and fulfillment of labor and social security rights.<sup>97</sup>
94. Article 4 of the Code defines labor relations as those that "are established between employers within the national territory and national or foreign persons with permanent residence in the country, for the fulfillment of the reciprocal rights and duties of the parties." The Labor Code regulates "labor relations in Cuba, of individuals who, with prior authorization, work outside the national territory, unless special legislation or bilateral agreements establish another regime for them."<sup>98</sup>
95. On the other hand, in accordance to Article 9 of the Labor Code, parties to the labor relationship are the worker (Cuban or foreign natural person permanently residing in the national territory with legal capacity, who works in subordination to a legal or natural person and receives corresponding compensation; who enjoys the rights of work and social security and fulfills the corresponding duties and obligations by law) and the employer (legal or natural person endowed with legal capacity to

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<sup>95</sup> Cuba, Official Gazette, Law No. 116, Labor Code, December 20, 2013, published in Extraordinary Official Gazette Edition No. 29, June 17, 2013, updated: February 20, 2020. According to the Considerations of this Law, the updating of the Cuban economic model made it necessary to replace the legal regulatory system established in Law No. 49, of December 28, 1984, Labor Code and its complementary provisions to adjust it to production relations.

<sup>96</sup> Cuba, Official Gazette, Decree No. 326, Labor Code Regulations, June 12, 2014, published in the Edition of the Extraordinary Official Gazette No. 29, of June 17, 2013.

<sup>97</sup> Cuba, Labor Code, Article 2.

<sup>98</sup> Cuba, Labor code, Article 4.

enter into labor relations, who employs one or more workers, and exercises the powers and complies with the obligations and duties established in the legislation)<sup>99</sup>. Additionally, the minimum working age in Cuba is 17. In this regard, the law provides, exceptionally, that “employers can enter into employment contracts with young people between the ages of 15 and 16, with consent of their parents or guardians, under the circumstances and conditions established in this Code and its Regulations.”<sup>100</sup> However, there are work limitations for minors between the ages of 15 and 18. Working hours may not exceed 7 hours per day or 40 hours per week, and they are not allowed to work on rest days.<sup>101</sup> Additionally, they may not be employed in work that poses physical and psychological risks; work at night, underground or in water, at dangerous heights or in closed spaces; work with heavy loads; or be exposed to dangerous substances, high/low temperatures or noise levels/vibrations that are harmful to their health and integral development<sup>102</sup>.

96. In accordance with the provisions of Article 25 of the Labor Code, the types of employment contract used are: i) indefinite term; and ii) fixed term or for execution of a given assignment.<sup>103</sup>
97. With regard to working conditions, the Labor Code generally establishes a minimum workday of 8 hours, 5 days a week, with a weekly limit of 40 to 44 hours.<sup>104</sup> Workers have the right to enjoy one month of paid annual vacation for every 11 months of effective work, considering this month of vacation as 30 calendar days.<sup>105</sup>
98. Moreover, the Labor Code Regulations detail the procedures to enforce the rights and duties of workers and employers. These provisions regulate, among others: the process of workplace incorporation;<sup>106</sup> the processes of transferring from one position to another and suspension of the employment relationship;<sup>107</sup> compulsory social service<sup>108</sup> or disciplinary processes.<sup>109</sup> Specific processes are outlined in regard to certain working conditions, such as: reduced working hours;<sup>110</sup> salary

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<sup>99</sup> Cuba, [Labor Code](#), Article 9.

<sup>100</sup> Cuba, [Labor Code](#), Article 22.

<sup>101</sup> Cuba, [Labor Code](#), Article 65.

<sup>102</sup> Cuba, [Labor Code](#), Article 68.

<sup>103</sup> Cuba, [Labor Code](#), Article 25.

<sup>104</sup> Cuba, [Labor Code](#), Article 87.

<sup>105</sup> Cuba, [Labor Code](#), Article 101.

<sup>106</sup> Cuba, [Labor Code Regulations](#), Articles 1 to 3.

<sup>107</sup> Cuba, [Labor Code Regulations](#), Articles 33 to 35.

<sup>108</sup> Cuba, [Labor Code Regulations](#), Articles 87 to 95.

<sup>109</sup> Cuba, [Labor Code Regulations](#), Articles 156 to 182.

<sup>110</sup> Cuba, [Labor Code Regulations](#), Articles 122 to 125.

system, form, guarantees and conditions of payment;<sup>111</sup> or extraordinary work.<sup>112</sup>

99. In addition to ordinary employment relationships, the Labor Code dedicates Chapter VII to special employment relationships. Section I (Articles 72 to 75) regulates labor relations between natural persons — i.e.: labor relations that take place between workers and natural persons authorized to act as employers in the non-state sector, formalized through an employment contract or an equivalent document.<sup>113</sup>

### 3. Regulation of self-employed workers (“cuentapropistas”)

100. Self-employment, known in Cuba as “*cuentrapropismo*”, is specifically regulated by Decree-Law 44/2021 on the exercise of Self-Employment<sup>114</sup>. Article 2 defines it as “the activity or activities that are autonomously carried out by natural persons, owners or not, of the means and objects of work that they use to provide services and the production of goods”. The exercise of an independent remunerated activity requires authorization, is personal and non-transferable,<sup>115</sup> and is limited to permitted activities<sup>116</sup>. Self-employed workers are also unique in that they are not subject to a labor contract with legal entities and must register before the National Tax Administration Office (*Oficina Nacional de Administración Tributaria* - ONAT), where they pay their taxes<sup>117</sup>.
101. After the approval of the so-called “Ordering Task”<sup>118</sup> (*Tarea Ordenamiento*), the update of the Cuban economic model entailed a review of certain aspects of the legal regime applicable to the private sector. In terms of self-employment, the improvement policy for the exercise of self-employment was approved, which involved two major updates: the “single window” (*Ventanilla Única*) and the replacement of the list of permitted activities by the list of activities prohibited for self-employment. Procedures for new authorizations for self-employment must be carried out through the single window:<sup>119</sup> an office created to streamline work-related procedures. This online platform contains all of

<sup>111</sup> Cuba, [Labor Code Regulations](#), Articles 126 to 133.

<sup>112</sup> Cuba, [Labor Code Regulations](#), Article 147.

<sup>113</sup> Cuba, [Labor Code Regulations](#), Article 72.

<sup>114</sup> Cuba, Official Gazette, [Decree-Law 44 on the exercise of self-employment](#), of August 16, 2021, published in Ordinary Official Gazette Edition No. 94 of August 19, 2021.

<sup>115</sup> Cuba, [Decree-Law 44 on the exercise of self-employment](#), Articles 5 and 6.

<sup>116</sup> Cuba, [Decree-Law 44 on the exercise of self-employment](#), Article 8.

<sup>117</sup> Information obtained from the conceptualization of the [Statistical Yearbook of Cuba 2021](#), ONEI.

<sup>118</sup> The “Ordering Task” is the term used to refer to the set of measures adopted by the [Ministry of Economy and Planning of Cuba](#) for the country’s monetary and exchange regulations that have been taking place since January 2021.

<sup>119</sup> The single window is a grouping, in a single entity or body, of all the procedures that Cubans must carry out before the public administration in order to obtain permits, licenses and authorizations for self-employment. See Ministry of Labor and Social Security, [What is the Single Window and how does it work?](#), February 24, 2021.

the steps necessary to obtain permits, licenses and authorizations necessary for self-employment.

102. The other most important update stemming from the implementation of the improvement policy for self-employment was the replacement of the list of 127 permitted activities with a new list of limited or restricted occupations. According to the current list published on the website of the Ministry of Labor and Social Security,<sup>120</sup> the National Classifier of Economic Activities (*Clasificador Nacional de Actividades Económicas - CNAE*) establishes a total of 124 activities in which self-employment is not allowed. This list does not include illegal activities for any economic actor or those specifically prohibited by law. The specific prohibition of professional business associations and trade union activities warrant mentioning.
103. Finally, the First Final Provision of Decree-Law 44/2021 empowers the heads of the Central State Administration agencies to dictate complementary provisions to complete the activities not authorized for self-employment<sup>121</sup>. It should be noted that the State usually makes use of that power and, therefore, new unauthorized activities are constantly introduced. For example, Resolution 15/2022 establishes the prohibition for teachers active in the National Education System to carry out certain activities (educational attention, childcare, or teaching shorthand, typing or languages) outside State management<sup>122</sup>.

### C. Labor market data

104. At the time of publication of this Report, and according to official data from the National Office of Statistics and Information (*Oficina Nacional de Estadísticas e Información - ONEI*), from 2021, the Cuban working age population amounted to a total of 7,051,300 people, of which 4,619,100 were employed (1,796,000 women and 2,822,600 men).<sup>123</sup> Of this total, the majority of employed persons provided services in the State sector (3,120,600); while 1,498,600 worked in non-state activities (including 596,000 self-employed workers). In this regard, the IACHR and its REDESCA warn that there are no official data on labor force, economic activity rates, or unemployment rates, given that the National Occupation Survey (*Encuesta Nacional de Ocupación - ENO*) has not yet been carried

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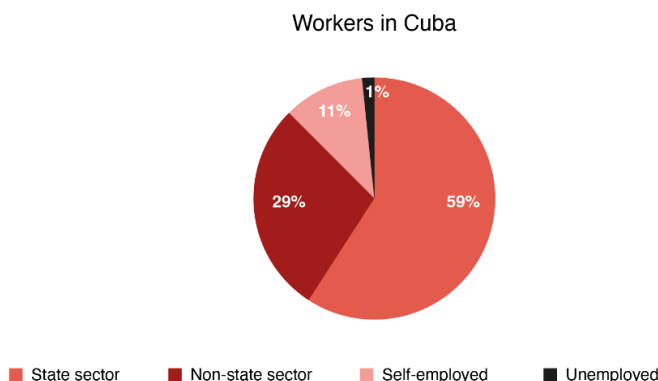
<sup>120</sup> Ministry of Labor and Social Security, Cuba, [Activities in which the exercise of self-employment is not allowed](#), February 10, 2021.

<sup>121</sup> Cuba, [Decree-Law 44 on the exercise of self-employment](#).

<sup>122</sup> Cuba, Official Gazette, [Decree-Law 60/2022 On the recognition of service time for the granting of pensions to commercial fishermen](#), February 23, 2022, published in Ordinary Official Gazette No. 32, of April 22, 2022.

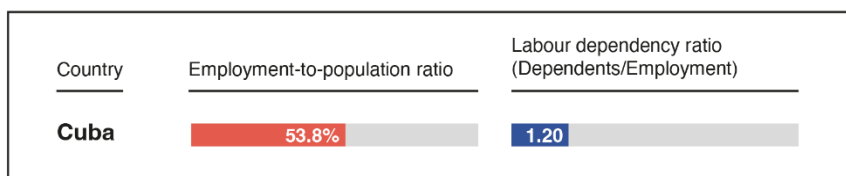
<sup>123</sup> ONEI, [Statistical Yearbook of Cuba 2021. Employment and wages](#), 2022 edition.

out. Notwithstanding this, the latest official data (corresponding to 2020) indicate that the labor force amounts to 4,710,000.<sup>124</sup>



Source: Prepared by IACHR with data from ONEI.

105. According to ILO estimates for the year 2022, the employment-population ratio (which shows the relationship between employed people and the working-age population — i.e.: people aged 15 or over) is 53.8%. The labor dependency ratio (which shows the relationship between dependents (people under 15 plus working-age people who are not part of the labor force or are unemployed) and total employment) is 1.20%.



Source: ILO modeled estimates (Nov. 2022), ILOSTAT

106. Regarding salaries, ONEI data indicate that the average monthly salary in state and mixed entities is CUP 3,830 (USD 155).<sup>125</sup> By the year 2021, as part of the Task Ordering process<sup>126</sup>, the Council of Ministers of Cuba approved a salary scale and rates applicable to all workers on the island, setting the minimum wage at CUP 2,100 per month (86 USD) for a 44-hour work week.<sup>127</sup> Subsequently, it created a mechanism to provide

<sup>124</sup> According to data from the World Bank, the total labor force of Cuba amounts to 5,099,652. World Bank, Labor force, total – Cuba, 2020.

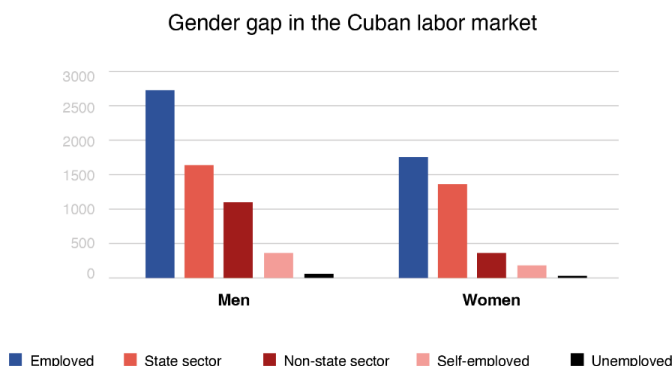
<sup>125</sup> ONEI, Statistical Yearbook of Cuba 2021. Employment and wages, 2022 edition.

<sup>126</sup> Ministry of Labor and Social Security, “The Extraordinary Official Gazette No. 69 is available for download in PDF”, December 12, 2020.

<sup>127</sup> Cuba, Official Gazette, Resolution 29 of 2020 of the Ministry of Labor and Social Security, of November 25, 2020, published in Ordinary Official Gazette Edition No. 69, of December 10, 2020.

flexibility in the business salary system for workers of state-owned companies, including affiliated companies and superior Business Management organizations.<sup>128</sup>

107. The latest ONEI official data (corresponding to the year 2020) place the unemployment rate at 1.4%. Conversely, the independent Cuban press reported that the COVID-19 pandemic had an impact on the increase in poverty and unemployment in Cuba, reaching 37.7% among the working-age population in September 2020.<sup>129</sup> Despite the latest unemployment rate reported by the Cuban government suggesting almost full employment, the actual current rate would be higher than 30% according to public information.<sup>130</sup> This highlights the lack of official data on informal workers and hidden employment, as these would not be taken into account by the Cuban State.
108. In terms of gender equality, figures published by ONEI place the employment rate for women at 38.9%, and that of men at 61.1%. Women represent 45.9% of state-sector employees, and 24.3% in the non-state sector.<sup>131</sup> The rate of unemployed women was 1.6%, while that of men was 1.3%.<sup>132</sup>



Source: Prepared by IACHR with data from ONEI.

<sup>128</sup> Cuba, Official Gazette, Decree 53 of the Organization of the salary system in the Cuban state business system, of September 8 2021, published in Ordinary Official Gazette Edition No. 80, of September 16, 2021.

<sup>129</sup> Cybercuba, "Unemployment in Cuba: a 37.7% poorly disguised", September 19, 2020.

<sup>130</sup> OCDH, First Semester Report: Violations of Economic, Labor, Social and Cultural Human Rights in Cuba, 2019. Cuba Social Rights Observatory. The state of Social Rights in Cuba. Report IV, 2021. Cuba Social Rights Observatory. The state of Social Rights in Cuba. Report V, 2022.

<sup>131</sup> ONEI, Statistical Yearbook of Cuba 2021. Employment and wages, 2022 edition.

<sup>132</sup> ONEI, Statistical Yearbook of Cuba 2020. 2021 Edition, p. 177 et seq.

109. In relation to informal work, despite the lack of availability of official data,<sup>133</sup> the Commission and the REDESCA observe that labor informality and the precarious recovery of employment have skyrocketed in the region due to COVID-19.<sup>134</sup> It is reasonable to infer that Cuba has followed this same trend. The lack of visibility of this problem does not prevent us from ignoring its existence or its expansion, since the rate of informality exceeds 70% in the highly feminized sectors of the economy (such as domestic work or street vending, where female predominance is 90%).<sup>135</sup>

#### *D. Situation of labor rights in Cuba*

110. Despite the ratification of international conventions on labor, as well as the recent promulgation of internal regulations on the matter, the Commission and its REDESCA observe that the enjoyment of labor rights in Cuba is directly affected by the current context of socioeconomic crisis, aggravated by the COVID-19 pandemic, as well as by the particular aspects of the political and economic dynamics that the country is experiencing.

111. According to 92.3% of the testimonies of Cuban nationals collected by the Commission and its Special Rapporteurship, respect for labor rights does not exist in Cuba. In particular, the testimonies show that the State, as the largest employer, controls wages, limits participation of the private sector in the labor market, and de labor conditions of workers. In this regard, the IACHR and its REDESCA note with concern how the employment situation of workers on the island has become more precarious, with a notable increase in the levels of informality and the lack of guarantees of labor rights<sup>136</sup>.

112. In this section, the Commission and its REDESCA analyze the main patterns of violation of labor rights identified: (1) lack of free access to work and lack of job stability; (2) precarious working conditions and lack of fair wages; (3) harassment in the workplace; (4) lack of freedom of expression in the workplace: discrimination and persecution for political

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<sup>133</sup> Inter Press Service in Cuba, "Informal work in Cuba: recognition? vulnerability?", September 16, 2000.

<sup>134</sup> ILO, [Technical note. Latin America and the Caribbean: Gender equality and labor market policies during the pandemic](#), March 2022; Economic Commission for Latin America and the Caribbean (ECLAC), [Social Panorama of Latin America and the Caribbean, 2022](#), November 2022.

<sup>135</sup> ILO, [Technical note. Latin America and the Caribbean: Gender equality and labor market policies during the pandemic](#), March 2022.

<sup>136</sup> IACHR and REDESCA, Press Release No. 185/2022 - [IACHR and Its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights Concerned About Precarious Working Conditions and Lack of Trade-Union Rights in Cuba](#). Washington DC, August 24, 2022.

opinions; (5) structural discrimination in labor; and (6) lack of regulation on special labor relations.

## 1. Lack of free access to work and lack of job stability

113. The Commission and its REDESCA have received information suggesting that freedom of access to work and free professional choice are not guaranteed in Cuba, due to the control that the State exercises both in employment through state companies and employment agencies and self-employment (through control of the activities permitted under this modality and the power held by the government to grant activity licenses).
114. In this regard, the right to work, protected by Article 6 of the International Covenant on Economic, Social and Cultural Rights, affirms the obligation of the States Parties to guarantee the people's right to freely choose or accept work, particularly, the right not to be unfairly deprived of work. Indeed, the basic obligations of States include the guarantee of access to employment, which has three dimensions: non-discrimination, physical accessibility, and access to information<sup>137</sup>. Additionally, ILO Convention No. 122 establishes the need for the States Parties to carry out policies that guarantee the freedom to choose a job<sup>138</sup>. Along the same lines, the inter-American system, through Article XIV of the American Declaration, establishes that: "Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit"<sup>139</sup>.
115. On the other hand, the Constitution of the Republic of Cuba enshrines the right to work in relation to the free choice of persons who are able to work<sup>140</sup>. In addition, Article 2 of the Labor Code establishes equality at work as a fundamental principle, providing that "[...] every citizen able to work has the right to obtain a job according to the demands of the economy and their choice, both in the state and non-state sectors [...]"<sup>141</sup>.

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<sup>137</sup> ESCR Committee, General Comment No. 18: The right to work. E/C.12/GC/18 February 6, 2006, par. 12.

<sup>138</sup> Article 1 of the ILO Employment Policy Convention (C122): "1. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. 2. The said policy shall aim at ensuring that [...] (c) there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, color, sex, religion, political opinion, national extraction or social origin".

<sup>139</sup> OAS, *American Declaration of the Rights and Duties of Man*, 1948, Article XIV.

<sup>140</sup> Article 64 of the Constitution recognizes the right to work and establishes that: "Any person that is able to work has the right to obtain a dignified employment according to their choice, qualifications, aptitude, and the demands of the economy and society. The State organizes institutions and services that facilitate the ability of working families to carry out their responsibilities".

<sup>141</sup> Cuba, *Labor Code*, Article 2.



However, the recognition of these principles, in accordance with international and regional standards, lose validity by virtue of the provisions of Article 36 *et seq.* of the Labor Code on the so-called "demonstrated suitability" (*idoneidad demostrada*) to determine incorporation into employment.

116. Indeed, under the concept of "demonstrated suitability" an employer or authorized entity is granted broad powers to assess the qualities of the worker that is intended to be hired for a certain position.<sup>142</sup> Ultimately, this principle (the guiding principle of labor contracting in Cuba) allows management to interfere, without justification objectively and in terms of non-discrimination criteria, in the decision of which workers meet the demonstrated suitability assessment for the purposes of being hired or keeping their job — i.e.: it also constitutes an element to terminate the employment relationship due to loss of suitability, which affects job permanence. In this regard, one worker expressed:

Under the justification of what the Cuban State called the "demonstrated suitability process", hundreds of social workers were left unemployed and helpless, without salaries to properly support themselves and their families<sup>143</sup>.

117. At the same time, the Commission and its REDESCA observe that the freedom to choose a job is also limited due to the imposition of a 3-year social service duty on all people who graduate from higher education day courses and specialized medium-level technical courses. In accordance with the provisions of Article 69 of the Labor Code, this social service consists of "compliance with the duty of daytime course graduates who attain knowledge at the higher and technical-professional level of education, to practice in service of society in accordance with economic and social development planning and priorities."<sup>144</sup> Therefore, graduates must comply with work in the entity to which they are assigned, and non-compliance will determine their disqualification for professional practice<sup>145</sup>.

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<sup>142</sup> According to Article 36 of the Cuban Labor Code (Law 116), "demonstrated suitability" includes the following requirements: a) performance of work with the required efficiency, quality and productivity, demonstrated in the results of their work; b) compliance with the general or specific rules of conduct and the personal characteristics required in the performance of certain positions; c) formal qualification required, due to the nature of the position, through certification or title issued by the corresponding educational center. The requirement regulated in subparagraph b) is agreed between the employer and the union, which is registered in the Collective Bargaining Agreement.

<sup>143</sup> IACHR, interview 8, September 28, 2021, IACHR file.

<sup>144</sup> Cuba, Labor Code, Articles 69 to 71.

<sup>145</sup> Cuba, Labor Code, Article 71.

118. In the 2020 Report on the Situation of Human Rights in Cuba, the IACHR and its Special Rapporteurship remarked that the Cuban State is the main employer on the island, but does not offer jobs that are necessarily in line with the interests, needs, and academic training of young people.<sup>146</sup> As part of this report's preparation, testimonies were received from Cubans evidencing the conditioning of the State when employing workers, which determines they do not have freedom and that they often find themselves being forced to provide their services in occupations that are imposed on them. One of the interviewees pointed out:

I was at the university to choose a job, already in the 5<sup>th</sup> and last year of my degree, and I only had 2 options to choose from: work in the provincial party as an economist or in the provincial collection company as an economist. I had to choose one because, otherwise, they would invalidate the degree for which I had studied for 5 years.<sup>147</sup>

119. Similarly, inputs have been received from civil society organizations reporting loss of employment or the imposition of disciplinary measures for lack of proven suitability of the workers. This, on many occasions, leads to the impediment of accessing another position within the state system.<sup>148</sup>
120. Indeed, the IACHR and its REDESCA have received testimonies from Cuban people highlighting the lack of stability at work, which indicates a lack of guarantees for workers. This leads to dismissal or pressure for workers to resign voluntarily without sufficiently accredited reasons. In this sense, interviewees stated that:

The sanction was temporary removal from my position. At the end of this whole process [in which it was never proven that they transferred money to my card], I should have been reinstated. The store manager called me to tell me that it was best for me to ask for dismissal, and that I would leave with no stains on my file. And here you see me now, unemployed.<sup>149</sup>

[...] the head nurse read my student file and realized that, in addition to my good grades, there was a sheet classifying me as a risk due to having relatives who had protested against the government. From that moment on, my labor problems began. The fact that I was absent or late one day because my child was

<sup>146</sup> IACHR, Report on the Situation of Human Rights in Cuba, OEA/Ser.L/V/II., February 3, 2020, par. 268.

<sup>147</sup> IACHR, interview 13, September 28, 2021, IACHR file.

<sup>148</sup> Information provided by Cubalex in response to a questionnaire published for this report, IACHR file.

<sup>149</sup> IACHR, interview 33, September 29, 2021, IACHR file.

sick was considered a work absence. During shifts, I was assigned the most critical situations or patients in the room. They began to rotate me through all the services. They placed me in clinics in rural areas, without transportation. Every time someone was absent, they called me to cover or continue rotating in my duties. Some weeks I had to do up to 72 hours nonstop. Finally, they let me go from the center for refusing to cover one of those excessive shifts, or for absences.<sup>150</sup>

I asked to leave the center, feeling shame and sorry for how my image was denigrated before my colleagues from so many years of work. They accused me of unlawful enrichment and embezzlement, for which the prosecution asked for 8 to 10 years in prison. [...] It was proven in court that it had nothing to do with the facts.<sup>151</sup>

121. As the Committee on Economic, Social and Cultural Rights (ESCR Committee) pointed out in its General Comment No. 18, the right to work implies the right not to be unjustly deprived of employment.<sup>152</sup> Articles XIV of the American Declaration and 45.b of the OAS Charter enshrine the right to work, which necessarily implies the recognition of job stability that protects workers against arbitrary acts that unfairly deprive them of employment, both in the private and public sectors. Likewise, job stability, as an inseparable component of the right to work, was embodied, for the first time, in the judgment of the I/A Court HR of August 31, 2017, Case of Lagos del Campo v. Peru:<sup>153</sup>

It should be noted that job stability does not consist of an unrestricted permanence in the job, but of respecting this right, among other measures, granting due guarantees of protection to the worker so that eventual dismissal has justified causes, which implies that the employer proves sufficient justification to impose said sanction with the due guarantees, and the worker can appeal such decision before the internal authorities, who verify that the alleged causes are not arbitrary or contrary to law.<sup>154</sup>

<sup>150</sup> IACHR, interview 31 CGL, September 30, 2021, IACHR file.

<sup>151</sup> IACHR, interview 35, September 25, 2021, IACHR file.

<sup>152</sup> ESCR Committee, General Comment No. 18: The right to work. E/C.12/GC/18 February 6, 2006, par. 6.

<sup>153</sup> I/A Court HR, Case of Lagos del Campo v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340.

<sup>154</sup> I/A Court HR, Case of Lagos del Campo v. Peru, op. cit., 2017, par. 150. Subsequently, it is alluded to in other judgments of the Inter-American Court, including: Case of Dismissed Workers of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs, judgment of November 23, 2017. Series C No. 344, par.

122. The IACHR and its REDESCA recall the obligation that falls on States to seek progressive development of the right to work, as well as to respect, guarantee and adopt the necessary measures to make it effective,<sup>155</sup> which includes the freedom to exercise any legal profession without interference from the authorities. For this reason, they call on the Cuban State to put an end to the structural obstacles that prevent free access to and choice of work, which result in a lack of stability of the Cuban labor market, and a lack of respect for the right of Cuban people to freely choose and accept a job.

## 2. Precarious working conditions

123. The IACHR and its REDESCA have received information that points to a deficit of decent work derived from the lack of labor rights whose enjoyment enables minimum and satisfactory working conditions. Specifically, decent work is understood as any work that respects the fundamental rights of the human individual, as well as the rights of workers in terms of job security conditions and compensation.<sup>156</sup> Article 6 of the International Covenant on Economic, Social and Cultural Rights (in line with the provisions of Article 23 of the Universal Declaration of Human Rights) recognizes the right to decent work at the universal level<sup>157</sup>. The ILO, at the same time, has developed the analogous concept of “decent work” that synthesizes all the aspirations of workers during their working lives, such as enjoying the freedom to express opinions at work; earning fair compensation that allows them to cover their basic needs; offering safety conditions to workers in the workplace; ensuring social protection; allowing the participation of workers in decisions that concern them; or guaranteeing equal treatment and opportunities for women and men,<sup>158</sup> among others. In addition, decent work stands as a key factor to achieve fair globalization and reduce poverty. In this spirit, it is included as Sustainable Development Goal 8 of the 2030 Agenda.<sup>159</sup>

124. The concept of decent work developed by the ILO finds points of connection with the concept of decent work of the IAHRs. Article XIV of the American Declaration includes the right of every person to work in decent conditions — i.e.: the right to just, equitable and satisfactory

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142 and 143; Case of San Miguel Sosa et al. Venezuela, op. cit., par. 220 o Case of Nina v. Peru. Preliminary Objections, Merits, Reparations and Costs, judgment of November 24, 2020. Series C No. 419, par. 104.

<sup>155</sup> IACHR, Report No. 25/18, Case 12.428 Admissibility and Merits, *Employees of the fireworks factory in Santo Antônio de Jesus and their families*, Brazil, March 2, 2018.

<sup>156</sup> ESCR Committee, General Comment No. 18: The right to work. E/C.12/GC/18 February 6, 2006.

<sup>157</sup> UN, International Covenant on Economic, Social and Cultural Rights, December 16, 1966, Article 6.

<sup>158</sup> ILO, *Decent work*, [online].

<sup>159</sup> United Nations Organization, Sustainable Development of the 2030 Agenda, 2019, Goal 8.

working conditions.<sup>160</sup> The provisions of Article 45 of the OAS Charter, which, interpreted in light of the American Declaration, suggests the conditions under which work must be performed: guaranteeing life, health and a fair wage system that ensures a decent economic level for workers and their families, both during their working years and in old age, or when any circumstance deprives them of the ability to work.<sup>161</sup> In addition, the IACHR has also interpreted the content of the right to decent work in Report on Admissibility and Merits No. 25/18, Case 12,428 on Employees of the fireworks factory in Santo Antônio de Jesus and their families<sup>162</sup>.

125. In addition to being widely enshrined in the universal and regional sphere, the different aspects related to decent work is recognized in the Constitution of the Republic of Cuba, as well as in the Labor Code. In particular, Article 64 of the Constitution expressly recognizes the right to obtain decent employment,<sup>163</sup> while Article 65 establishes that everyone has the right to receive payment for their work based on quality and quantity — an expression of the principle of socialist distribution: "from each according to their ability, to each according to their labor."<sup>164</sup>
126. Notwithstanding the foregoing, the IACHR and its REDESCA have received testimonies from workers indicating a general increase in job insecurity in Cuba. Some interviewees stated:

[The existence of] precarious working conditions (I had no work material... computer, furniture, telephone, etc.); long hours of overtime without compensation, or requirements outside working hours<sup>165</sup>.

I am a specialist in cultural management. I was hired for 8 working hours payable under a basic salary of 365 pesos. Due to poor working conditions, my hours are extended to more than 10 hours per day, without receiving compensation for overtime, often working till 11 or 12 at night. In my workplace, office supplies, as well as basic means, are scarce and those available are deteriorated. The entire electrical installation is exposed outside the wall, and every day my life is at risk because of these wires. I have contacted my supervisor to

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<sup>160</sup> OAS, American Declaration of the Rights and Duties of Man, 1948. Article XIV.

<sup>161</sup> OAS, Charter of the Organization of American States, 1948, Article 45.

<sup>162</sup> IACHR, Report No. 25/18, Case 12,428 Admissibility and Merits. Employees of the fireworks factory in Santo Antônio de Jesús and their families, Brazil, March 2, 2018.

<sup>163</sup> Cuba, Constitution of the Republic, Article 64.

<sup>164</sup> Cuba, Constitution of the Republic, Article 65.

<sup>165</sup> IACHR, interview 25, September 29, 2021, IACHR file.

negotiate a raise or a change in position, since my health is being seriously affected. It's been a year since my appeal, and I still haven't received a response. I have kept working, in spite of my health and under unsuitable conditions, for a low salary that does not cover my basic needs<sup>166</sup>.

127. The IACHR and its REDESCA call on the State to face the challenges of the labor market by promoting public policies that guarantee decent work and ensure effective compliance, progressing in the elimination of the lack of quality opportunities and precarious working conditions, and specifically protecting vulnerable groups.

128. The following paragraphs address the particular situation of two of the fundamental pillars on which decent work is based: (a) fair pay; and (b) safety and health at work.

**a. Fair pay**

129. One of the factors that characterizes a decent job is the compensation received by workers: the amount they receive should allow them to have a decent standard of living. According to the ESCR Committee, a decent job offers an income that allows workers to live and ensure decent living conditions of their families, as highlighted in Article 7 of the Covenant<sup>167</sup>.

130. In the 2020 Report on the Situation of Human Rights in Cuba, the IACHR and its REDESCA observed the non-payment of wages and the lack of compliance with the minimum wage in Cuba.<sup>168</sup> This situation persists today, with reports on its exacerbation due to the COVID-19 pandemic; this has impacted the quality of life of workers.<sup>169</sup> According to the Report of the Observatory of Social Rights Cuba, on "The State of Social Rights in Cuba,"<sup>170</sup> more than half of the Cuban population struggle to buy the essentials to survive, and 80% consider that the salary they receive does not reflect their workload. This is, among others, one of the factors that leads half of the workers in the state sector to work on their own to achieve economic independence, given the insufficient salary they receive.<sup>171</sup>

131. This situation has also been observed by the Commission and its REDESCA in the testimonies of Cuban people, who report lack of payment of their wages or payments below the minimum established by law. They

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<sup>166</sup> IACHR, interview 24, September 30, 2021, IACHR file.

<sup>167</sup> ESCR Committee, General Comment No. 18: The right to work. E/C.12/GC/18 February 6, 2006.

<sup>168</sup> IACHR, *Situation of Human Rights in Cuba*, OEA/Ser.L/V/II., February 3, 2020, par. 262.

<sup>169</sup> IACHR, Interview 11, IACHR file.

<sup>170</sup> Observatory of Social Rights Cuba. *The state of Social Rights in Cuba. Report V*, 2022, p. 12-13.

<sup>171</sup> IACHR, interview 10, IACHR file.

highlight the insufficiency of salaries, being unable to afford subsistence for their families. Some interviewees stated:

Me and several other hotel workers have been asking for a response to our request for a raise for more than two years. [...], because we are receiving a salary that corresponds to a worker with the lowest educational level and who does less complex work. Work was interrupted by the pandemic. [...] We resumed work in April 2020 [...] when we received our first salary and realized nothing had changed, we made claims before the authorities [...] A counterintelligence officer of the FAR [Revolutionary Armed Forces] told us that [...] any strike or collective claim involving other workers and leaders would imply that we are not reliable workers, and would result in our labor contracts being terminated with definitive separation from the sector. He threatened me and advised that I just keep my mouth shut.<sup>172</sup>

We work from dusk to dawn, and the wages that the Administration established behind the workers' backs are very low. Not enough money to satisfy basic needs such as food, clothing, hygiene products, medicines, modest leisure, and other basic and necessary services, such as transportation to take my family to the doctor twice a month.<sup>173</sup>

Despite carrying out complex work as an administrator, the salary I receive is barely enough to survive on the basics for 7 days. It is impossible to plan vacations, save or go once a year to have dinner or eat at a restaurant. It is impossible for me to live without committing illegal acts in order to support myself and my family: my wife and two girls who need clothing and snacks to be able to go to school. In addition, despite the fact that the company receives large profits in national currency, raise prospects do not exist, and I and the majority have to steal small and necessary products to cook and eat, such as oil, flour, eggs and some portions of pork, etc.<sup>174</sup>

At present, with the economic reordering, wages are being increased in Cuba. This is good. Wages have increased in Cuba, and a standard wage is now 4,000 pesos in national currency. But this is a smoke screen... 4,000 pesos in Cuban national

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<sup>172</sup> IACHR, interview 12, August 14, 2022, IACHR file.

<sup>173</sup> IACHR, interview 23, July 21, 2022, IACHR file.

<sup>174</sup> IACHR, interview 21, July 17, 2022, IACHR file.

currency today is equivalent to USD 20 per month. However, this is not reflected on searches, because they publish the exchange rate to the dollar at 24 pesos, but the dollar has been normalized at an informal price [...] Now we don't have access to food because there is no access to USD.<sup>175</sup>

132. In terms of fair compensation and wages, Articles 45.b and 34.g of the OAS Charter establish that work must be provided under conditions "including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family."<sup>176</sup> This is also supported by Article XIV of the American Declaration, which establishes that "every person has the right to work, under proper conditions, [...]"<sup>177</sup>. In addition, Article 1 of ILO Convention No. 100 on equal remuneration establishes that "the term remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable, directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment."<sup>178</sup>
133. The Inter-American Court established in its Judgment of February 1, 2022, Case of the National Federation of Maritime and Port Workers vs. Peru,<sup>179</sup> that the payment of wages has a food and survival nature, since it is intended to satisfy the basic needs of workers, which implies that any disturbance generated in the collection may have an impact on the enjoyment of other rights of the Convention. In this judgment, the Inter-American Court further indicated that the right to work also implies obtaining a fair salary, which, in turn, must include all the emoluments that are included within the term "compensation." Thus, it has indicated that the States must respect and guarantee these rights, which make it possible to level the unequal relationship that exists between male and female workers, and male and female employers, and access to fair wages and safe working conditions.<sup>180</sup>
134. Despite the fact that recent years have seen salary increases for Cuban workers in units financed by the State, the Independent Trade Union Association of Cuba denounces that such increases are insufficient and do not constitute an improvement for workers, given high inflation and wages insufficient to cover essential expenses.<sup>181</sup> In addition, the

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<sup>175</sup> IACHR, interview 43, IACHR file.

<sup>176</sup> OAS, [Charter of the Organization of American States](#), 1948, Articles 45.b. and 34.g.

<sup>177</sup> OAS, [American Declaration of the Rights and Duties of Man](#), 1948. Article XIV.

<sup>178</sup> International Labor Organization, [Equal Remuneration Convention](#), 1951, Article 1.

<sup>179</sup> I/A Court HR, Case of the National Federation of Maritime and Port Workers v. Peru. Preliminary Objections, Merits and Reparations, judgment of February 1, 2022. Series C No. 448, par. 111.

<sup>180</sup> I/A Court HR, Case of the National Federation of Maritime and Port Workers v. Peru, op. cit., par. 108.

<sup>181</sup> Radio Television Martí, [Interview with Joel Brito about salary increase in Cuba](#), July 2, 2019.



inefficiency of the official unions is pointed out, which do involve the workers in negotiation processes and make it impossible to improve salary conditions, as well as the absence of legal recognition of the right to strike, which prevent collective efforts towards the improvement of salary conditions.<sup>182</sup>

135. According to ILO provisions, the purpose of establishing a minimum wage is to protect workers against the payment of unduly low wages, it being a means to overcome poverty among workers and combat inequality.<sup>183</sup> To this end, Convention 131 on Minimum Wage Fixing of 1970, establishes the elements to be considered for minimum wages: the needs of workers and their families, and economic factors. In order to maintain their relevance, wages must be adjusted from time to time, since failure to do so could cause the purchasing power of workers who earn the minimum wage to deteriorate whenever there is an increase in the prices of goods and services or generate greater wage inequality.<sup>184</sup>
136. For this reason, the IACHR and its Special Rapporteurship recommend that the Cuban government, on the one hand, carry out clearly focused minimum wage reviews, adequately supported by factual data and statistical indicators, including the considerations derived from consultations with society. On the other hand, it is recommended that the revisions of the minimum wage take into account the international standards on the matter prepared by specialized organizations — including those of the ILO. They especially recommend the study, analysis, and surveillance of the specific impacts that the increase in the minimum wage could particularly have on inflation in the country, ensuring an effective and adequate level of protection in terms of wages for workers.
137. The IACHR and its REDESCA are especially concerned with the salary withholdings that are applied to workers in the Cuban tourism sector. According to information submitted by civil society, the tourism sector is one of the most strategic in the country due to its impact on the economy, concentrating most foreign investment.<sup>185</sup> They claim that mixed or foreign capital companies do not pay salaries directly to workers, but to intermediary employers<sup>186</sup>. In this operation, the employment entity retains between 80 and 90% of the salary paid by the mixed or foreign

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<sup>182</sup> Information provided at the 9<sup>th</sup> meeting of the Network of civil society organizations on the situation of human rights in Cuba (Red Cuba), September 21, 2022.

<sup>183</sup> ILO, [Minimum Wage Policy Guide](#), p. 4-5.

<sup>184</sup> ILO, [Minimum Wage Policy Guide](#), p. 60.

<sup>185</sup> Information provided at the 9<sup>th</sup> meeting of the Network of civil society organizations regarding the situation of human rights in Cuba (Red Cuba), September 21, 2022.

<sup>186</sup> This is established in Article 9.d) of the Regulations on Labor Regime in Foreign Investment, published in [Extraordinary Official Gazette No. 69](#), December 10, 2020. Its purpose is to regulate specificities in terms of work in the modalities of foreign investment.

capital company and, in addition, the balance is paid in national currency, whose devaluation has a negative impact on the purchasing power of workers.<sup>187</sup> This same situation is also observed in the so-called "internationalization missions" of civilian professionals (programs led by the Cuban government to take Cuban workers in different fields (health personnel, sailors, engineers, athletes, artists or teachers, among others) to provide services abroad on behalf of Cuban companies). In these cases, according to the information received, the government withholds around 85% of salaries.<sup>188</sup> This situation places these professionals in what can be classified as modern slavery.

138. The foregoing reveals the flagrant breach by Cuban legislation of the provisions of ILO Convention No. 95 on the Protection of Wages (1949), which provides that employers must be prohibited from limiting, in any way, the freedom of workers to dispose of their wages.<sup>189</sup>
139. For all of the above, the IACHR and its REDESCA reiterate the need for work to comply with minimum fair conditions<sup>190</sup> and, consequently, they urge the Cuban State to cease salary withholdings of both personnel sent to provide services abroad and personnel who provide services on the island for foreign or mixed capital companies, emphatically insisting on the need that the State comply with international and regional standards and guarantee the protection of the labor rights of the aforementioned group.

## **b. Occupational health & safety**

140. The IACHR and its REDESCA have received information about the precarious security conditions that workers face in Cuba. According to information released by the Independent Trade Union Association of Cuba (*Asociación Sindical Independiente de Cuba - ASIC*), the State is not providing adequate maintenance to the country's buildings infrastructure despite its current state of deterioration.<sup>191</sup> It asserts that this situation is the main cause of the work accident that occurred at the Saratoga Hotel in Havana on May 6, 2022.<sup>192</sup> Additionally, they point out that the State is not providing workers with adequate means and equipment for safety and personal protection, nor is it offering training in terms of risk, which

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<sup>187</sup> Information received by the IACHR and REDESCA in a work meeting with civil society for the preparation of this report, September 14, 2022.

<sup>188</sup> Prisoners Defenders and CADAL. [1,111 Cuban professionals vs. Cuban Government. Internationalization missions in Cuba.](#) January 2022.

<sup>189</sup> ILO, Protection of Wages Convention, 1949 (No. 95), 1949, Article 6.

<sup>190</sup> IACHR, [Annual Report, Chapter IV.B "Cuba"](#), 2021, par. 142.

<sup>191</sup> Information received by the IACHR and REDESCA in a work meeting with civil society for the preparation of this report, September 14, 2022.

<sup>192</sup> ASIC, Letter to the Director General of the ILO, June 22, 2022.

places workers in a particularly vulnerable situation regarding occupational risks and contributes to increased workplace accidents on the island.<sup>193</sup>

141. According to ONEI official data, 50 people died due to work accidents in 2021.<sup>194</sup> Between January and June 2022, occupational accidents caused a total of 20 deaths.<sup>195</sup> The ASIC points to the existence of discrepancies between reality and official data, with the only official union in Cuba having made no statement on the matter.<sup>196</sup>
142. General Comment No. 23 of the ESCR Committee indicates that "Preventing occupational accidents and illnesses is a fundamental aspect of the right to just and favorable conditions of work, and closely related to other Covenant rights — in particular the right to the highest attainable level of physical and mental health."<sup>197</sup> In its Comment No. 14, the aforementioned Committee establishes that the improvement of all aspects of environmental and industrial hygiene entails, in particular, "preventive measures in respect of occupational accidents and illnesses; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health."<sup>198</sup>
143. ILO provides over 40 standards that specifically address the issue of occupational safety and health. Among the main instruments on safety and health ratified by Cuba, it is worth mentioning Convention No. 187 on the promotional framework for occupational safety and health of 2006 (an instrument whose purpose is to establish and implement coherent national policies on the matter), and Convention No. 155 on occupational safety and health of 1981 on actions by governments and within companies to promote occupational safety and health, and improve working conditions.

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<sup>193</sup> Cubaencuentro, [Explosion at the Hotel Saratoga, another work accident](#), May 9, 2022.

<sup>194</sup> ONEI, Labor Protection Selected Indicators, January-December 2021, p. 5.

<sup>195</sup> ONEI, Labor Protection Selected Indicators, January-June 2022, p. 5.

<sup>196</sup> Information received by the IACHR and REDESCA in a work meeting with civil society for the preparation of this report, September 14, 2022.

<sup>197</sup> Committee on Economic, Social and Cultural Rights. [General Comment No. 23 \(2016\) on the Right to just and favorable conditions of work \(article 7 of the International Covenant on Economic, Social and Cultural Rights\)](#). E/C.12/GC/23, April 27, 2016, par. 25 and 29.

<sup>198</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) [The right to the highest attainable standard of health \(article 12 of the International Covenant on Economic, Social and Cultural Rights\)](#), E/C.12/GC/23, August 11, 2000, par. 15.

144. At the regional level, as an integral part of the right to fair and satisfactory working conditions (enshrined in Article 45 of the OAS Charter) workers should be able to perform their work in adequate safety, hygiene and health conditions that prevent accidents at work and occupational illnesses.<sup>199</sup> In accordance with the foregoing, the Inter-American Court has held that the right to fair and satisfactory conditions that guarantee safety, health, and hygiene at work is protected by Article 26 of the ACHR.<sup>200</sup> As a means of enforcing this right, the IACHR has affirmed that labor inspections are essential measures that States must deploy to prevent and monitor compliance — in particular, the following aspects must be guaranteed: independence, the existence of trained personnel, prior mapping of sensitive and risk areas and industries, authority to enter workplaces without prior notice, or facilitate victims' access to justice. In addition, States (through inspection bodies) must ensure that sanctions against private actors are adequate and proportional to the severity of damages, including criminal and administrative sanctions and pecuniary penalties.<sup>201</sup>
145. In addition to all of the above, Article 69 of the Cuban Constitution establishes the duty of the State to guarantee the right to safety and health at work through the adoption of adequate measures for the prevention of accidents and illnesses.<sup>202</sup> The Labor Code develops the general legal framework on the matter. Its main objective is to prevent the occurrence of incidents, accidents at work and occupational illnesses.<sup>203</sup> Chapter XI states, in general, the obligation of businesses to comply with current legislation and adopt the necessary measures to guarantee safe and hygienic working conditions, prevent work accidents, occupational illnesses, fires, breakdowns or other damages that may affect the health of workers and the working environment.<sup>204</sup> This framework is completed by the provisions of Chapter XI of the Labor Code Regulations

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<sup>199</sup> I/A Court HR, Case of the Miskito Divers v. Honduras, judgment of August 31, 2021. Series C No. 432, par. 75.

<sup>200</sup> I/A Court HR, Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs, judgment of June 9, 2020. Series C No. 404, par. 99.

<sup>201</sup> IACHR, Merits Report No. 64/18, Opario Lemoth Morris et al. (Miskito Divers), Honduras, May 8, 2018, par. 262.

<sup>202</sup> Cuba, [Constitution of the Republic](#), Article 69.

<sup>203</sup> Article 126 of the Labor Code states that: "Safety and health at work aims to guarantee safe and hygienic conditions, prevent accidents, occupational illnesses and other effects on the health of workers and the work environment".

<sup>204</sup> Article 127 of the Labor Code establishes: "Employers are obliged to comply with the legislation on safety and health at work and adopt measures that guarantee safe and hygienic working conditions, as well as the prevention of accidents at work, occupational illnesses, fires, breakdowns or other damages that may affect the health of workers and the working environment".

and the special norms or regulations that develop the right to safety and health at work for some specific sectors.<sup>205</sup>

146. Despite the wide international, regional, and internal recognition of the right to work in equitable and satisfactory conditions that ensure safety, health, and hygiene for workers, the IACHR and its REDESCA express their deep concern over the precarious, unhealthy and insecure conditions that exist in many workplaces on the island according to information received. Many workers do not enjoy minimum safety standards, nor are they able to avoid or prevent accidents at work, given the lack of necessary training; the total absence of basic protective equipment (e.g.: gloves, goggles, helmets); and the structural deficiencies of many buildings and infrastructures where workers render their services. An employee of the agricultural sector stated:

We lack appropriate conditions to work. It is risky for my health due to accident and illness. [...] For years, they have not given us work clothes or elements such as machetes, files, hoes or other safety components. [...] In addition, it's been years since they did health inspections to assess our condition. I'm sore from so much work, and they told me that if I get sick, I will go through a commission. I don't want to get sick; I want to work. Therefore, I demand check-ups on my health [...] I am afraid to protest or complain, because I don't know anything else but work in the fields, and I partly support my family with my work, as well as with other informal activities that I carry out in the evening in order to survive.<sup>206</sup>

Another worker in the state culinary sector said:

Apart from the low salary, there are terrible hygiene, health and safety conditions at work. We are forced to provide a food preparation and delivery service to vulnerable people without allocation of resources, having to illegally sell the rice, oil or beans that we are assigned in order to buy clothes, shoes, aprons, spices, detergent, cleaning and hygiene materials and utensils. Many times, the glasses, plates and kitchen utensils are cleaned only with water, which can cause infections among a vulnerable population that is generally the sickest. If I stand up for my convictions and stop working, I lose my job and my

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<sup>205</sup> Article 155 of the Regulations of the Labor Code determines the activities in which special regulations are issued, including, among others, import, manufacture, installation, and operation of machine tools for metal processing, steam boilers, wood, or hoisting equipment.

<sup>206</sup> IACHR, interview 23, July 21, 2022, IACHR file.

food security. These issues are known to the union leadership and the management of the company for which I work, but profit is transferred to the State's central budget, and it cannot be reinvested. They say there are other priorities<sup>207</sup>.

147. The IACHR and its REDESCA call on the State to guarantee the right to work in fair, equitable, and satisfactory conditions that ensure occupational safety, health, and hygiene conditions. To this end, they call for increasing efforts in terms of policies aimed at minimizing the risks of occupational accidents and illnesses. The following actions are needed: i) provide workers with the necessary basic training and information on health and safety standards; ii) provide personal protective clothing and equipment necessary for the performance of duties; iii) establish an independent and autonomous inspection body to ensure compliance with the legal framework on occupational health and safety; and iv) establish a system for the acknowledgement and recording of work accidents and occupational illness that is reliable and rigorous, in order to gain sound and real data on the state of the matter in the county.

### 3. Workplace harassment

148. The IACHR and its Special Rapporteurship have received complaints about frequent acts of harassment and violence at the workplace, which indicate concern about the use of the labor market as a tool for repression, and the lack of a comprehensive response in Cuban legislation.
149. According to the information received in the preparation of this Report, many Cuban workers are reportedly victims of psychological violence and moral harassment in the workplace, perpetrated by co-workers, hierarchical superiors, and State security agents. Specifically, testimonies collected by the Commission and its REDESCA report the existence of arbitrary, surprise, and intimidating controls carried out by State Security agents, as well as complaints by colleagues and threats to impose disciplinary sanctions or dismissal for being considered critical of the regime. A worker in the state sector said:

I was a victim of bullying, harassment, and discrimination for more than two years due to my political opinions and my refusal to get involved in activities of a political nature outside work, such as rallies, marches, and morning political events. I was forced to quit my job after 11 years due to the physical and mental stress caused by this situation. [...] I was denied the right to vacation; I was excluded from various distributions of

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<sup>207</sup> IACHR, interview 44, July 21, 2022, IACHR file.

materials, supplies, clothing, footwear, etc. that were delivered or sold to other workers; I was penalized on several occasions with extra payment withholdings for mistakes made by my superiors<sup>208</sup>.

150. In addition to other relevant instruments,<sup>209</sup> the ILO enacted Convention No. 190 - Violence and Harassment Convention in June 2019, concerning the elimination of violence and harassment in the work sphere. It is the first international instrument that recognizes the right of everyone to a working environment free from violence and harassment — including gender-based violence and harassment.<sup>210</sup> The Convention puts forth a series of measures to prevent, remedy, and eliminate violence and harassment in the work sphere. To this end, the Member States must adopt specific national legislation on the matter and carry out necessary efforts to address the issue with the appropriate national policies, after consulting with representative organizations of employers and workers.<sup>211</sup>
151. Despite the fact that workplace harassment deserves a *lex specialis* or specific and special regulations, the Labor Code in reality makes no specific provisions in this regard, nor is there a special law regulating this issue which takes into account any intrinsic particular aspects of this area<sup>212</sup>. For this reason, the IACHR and its REDESCA urge the Cuban State to offer a comprehensive response to workplace harassment that ends violence and harassment in the workplace, ratifying and implementing ILO Convention 190 on the elimination of violence and harassment in the work sphere. Moreover, the State is called on to refrain from using its position as the country's main employer and controller of the private sector to carry out repressive acts against Cuban workers, such as discriminatory and improper dismissal.

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<sup>208</sup> IACHR, Interview 26, April 12, 2022, IACHR file; information provided by RCD in response to a questionnaire published for this report, IACHR file.

<sup>209</sup> Such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and their Families, and the Convention on the Rights of Persons with Disabilities.

<sup>210</sup> The Preamble of Convention No. 190 states: "Recognizing the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment".

<sup>211</sup> ILO, Violence and Harassment Convention, 2019 (No. 190), Article 4.

<sup>212</sup> The only reference found is Article 146 of the Labor Code, which states that "Employers are responsible for the direction and organization of the work process and its control, for which it must ensure knowledge by the workers of their attributions and obligations; guaranteeing adequate working conditions and the enjoyment of the rights recognized in labor legislation, as well as developing adequate relations with workers, based on attention to their opinions and complaints, protection of physical and psychological integrity and due respect to their dignity." It should be noted that the new Penal Code defines workplace harassment as a punishable offence.

#### 4. Lack of freedom of expression in the workplace: discrimination and persecution for political opinions

152. Regarding acts of workplace harassment, the IACHR and its Special Rapporteurship are especially concerned about the impact on the labor rights of individuals classified as "dissidents" or "oppositionists," as well as of human rights activists who (among other groups and professionals) exercise their right to freedom of expression in the workplace. These groups are repressed, persecuted, and discriminated against for expressing themselves freely, both within and beyond the workplace. The Commission and its REDESCA have received information and testimonies about the exacerbation of this situation after the peaceful protests of July 11, 2021.<sup>213</sup>
153. According to information provided by civil society, there has been an increase in punishments and disciplinary measures against Cubans after the protests of July 11, 2021. Accordingly, this information highlights the passing of new criminal legislation that limits the exercise of the rights of free association and assembly, with vague and imprecise wording that, in some cases, will increase penalties.<sup>214</sup> Moreover, it mentions the classification of a criminal charge labelled "Other acts against the security of the State" (Article 143 of the Penal Code), which establishes prison sentences for those who receive financial resources from abroad. According to some civil society organizations, this scenario makes the right to complain and protest an attack against public safety and the general population.<sup>215</sup> Moreover, since the enacting of Decree Law No. 370 on "the computerization of society in Cuba" on July 4, 2019,<sup>216</sup> the State would also sanction all complaints and protests made through information and communication technologies (internet blogs, social networks, comments on websites, among others). This legal framework was intensified with the approval of Decree Law No. 35 on "Telecommunications, Information and Communication Technologies and the use of the Radioelectric Spectrum"<sup>217</sup> in August 2021.
154. The IACHR and its REDESCA have also received information from civil society regarding significant limitations on the exercise of labor rights

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<sup>213</sup> Information provided at the 6<sup>th</sup> meeting of the Network of civil society organizations regarding the situation of human rights in Cuba (Red Cuba), March 2, 2022.

<sup>214</sup> Cuba, Official Gazette, Cuba, Law 151/2022, Penal Code, 2022, of September 1, 2022, published in Ordinary Official Gazette Edition No. 93, of September 1, 2022, Article 176.

<sup>215</sup> Information received by the IACHR and REDESCA in a work meeting with civil society for the preparation of this report, August 2, 2021.

<sup>216</sup> Cuba, Official Gazette, Decree Law No. 370 on the computerization of the company, of December 17, 2018, published in Ordinary Official Gazette Edition No. 45, of July 4, 2019.

<sup>217</sup> Cuba, Official Gazette, Decree Law No. 35 on Telecommunications, Information and Communication Technologies and the use of the Radioelectric Spectrum, Official Gazette No. 92, of August 17, 2021.



that human rights defenders in Cuba are suffering, being classified as "oppositionists" or "counterrevolutionaries."<sup>218</sup> This classification would prevent them from accessing sources of employment or lead to their dismissal for their work defending and promoting human rights

155. There is a great deal of information received regarding acts of discrimination based on political opinion. The civil society organization Cubalex has denounced the critical situation of freedom of expression, of academics and of the opinions of working people, registering, in recent months, multiple cases of violation of labor rights for having and expressing ideas different from the Cuban official party line.<sup>219</sup> In short, political discrimination is still used as a tool of repression for those who publicly dissent,<sup>220</sup> which affects job stability and free access to employment in other institutions.
156. In this regard, the Commission and the Inter-American Court have indicated that freedom of expression, enshrined in Article IV of the American Declaration and Article 13 of the ACHR, comprises two dimensions: one individual and one social.<sup>221</sup> The individual dimension of freedom of expression consists of the right of each person to express their own thoughts, ideas, and information, and is not exhausted with the theoretical recognition of the right to speak or write, but inseparably includes the right to use any appropriate means to disseminate thought and make it reach the largest number of recipients.<sup>222</sup> On the other hand, the collective or social dimension consists of the right of society to seek and receive any information, to learn the thoughts, ideas and information of others, and to become well informed.<sup>223</sup> Both the Commission and the Court have indicated that freedom of expression constitutes a fundamental element of democratic societies, given its indispensable structural relationship with democracy, affirming that it constitutes the cornerstone of the very existence of a democratic society.<sup>224</sup>
157. The Commission observes with alarm that there is a persistent failure to observe fundamental freedom of expression in Cuba — which is harshly restricted and arbitrarily repressed by the government. This reveals the serious failure of one of the essential elements of representative

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<sup>218</sup> Information provided by Race & Equality in response to a questionnaire published for this report, IACHR file.

<sup>219</sup> Information provided by Cubalex in response to a questionnaire published for this report, IACHR file.

<sup>220</sup> Cubanet, *Nine acts of employment discrimination for political reasons in Cuba*, February 2, 2022.

<sup>221</sup> IACHR, Report No. 27/15. Case 12,795, Merits. Alfredo Lagos del Campó, Peru, July 21, 2015, par. 74.

<sup>222</sup> I/A Court HR, *The Compulsory Association of Journalists* (Articles 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5, par. 31.

<sup>223</sup> I/A Court HR, *Case of Kimel v. Argentina*. Merits, reparations and costs, judgment of May 2, 2008. Series C No. 177, par. 53.

<sup>224</sup> I/A Court HR, Advisory Opinion OC-5/85, op. cit., par. 70.

democracy that impact the effective exercise of human rights and fundamental freedoms in the country.<sup>225</sup>

158. Regarding the exercise of this right in the context of labor, the IACHR has asserted that all persons are entitled to the right to freedom of expression. This includes workers, who should enjoy the right to express their thoughts, opinions, information, or personal ideas, as well as to criticize and formulate claims or complaints regarding working conditions within a company, and the protection of their rights in general, without retaliation.<sup>226</sup> In its 2020 Cuba Country Report, the Commission and its REDESCA highlighted the need for the government to adopt measures so that, in practice, information on the political opinion of workers is not requested, and that there are guarantees to protect workers from discrimination in access to employment and against adverse working conditions due to their political opinions.<sup>227</sup>
159. Three patterns of violation of freedom of expression in the context of labor emerge from the testimonies of Cuban people collected by the IACHR and its REDESCA. The first is the imposition of retaliatory actions such as disciplinary sanctions, expulsions, and dismissals against workers for expressing their political opinions at the workplace – even in the private sphere. Some interviewees said:

As a worker of the Ministry of Culture, due to my academic background and good professional performance, I was directed to carry out political activities for the UJC [Union of Young Communists] and the PCC [Communist Party of Cuba], under threat of losing my job. I did not accept, and I was sanctioned and dismissed from my job. I started working independently.<sup>228</sup>

Expressing public opinions on the negative things of the Cuban Government led me to be dismissed from my first job with the State. I had to look for work with the church, because I could not continue working in such conditions.<sup>229</sup>

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<sup>225</sup> IACHR, [Situation of Human Rights in Cuba](#), 2020, par. 195; IACHR, [Annual Report, Chapter IV.B “Cuba”](#), 2021, par. 83 *et seq.*

<sup>226</sup> IACHR, Report No. 27/15. Case 12,795, Merits, Alfredo Lagos del Campó, Peru, July 21, 2015, par. 78.

<sup>227</sup> IACHR, [Situation of Human Rights in Cuba](#), 2020, par. 195 *et seq.*; par. 264.

<sup>228</sup> IACHR, Interview 1, September 26, 2021, IACHR file.

<sup>229</sup> IACHR, interview 27, July 13, 2022, IACHR file.

160. A second pattern of violation of freedom of expression in the context of labor is the bullying, harassment, and threats against workers for expressing their political opinions. In particular, they report:

Everything springs from my husband's open position against the Cuban government. I was harassed by my work colleagues and immediate supervisors due to my husband's and my political position, ranging from constant interrogations in the office to harassment for not participating in political activities.<sup>230</sup>

I received death threats from an undercover State Security agent, precisely for doing independent journalism. I was walking down the street while covering a story. He showed me a blade and told me "Get out of Cuba, because you're going to die. This revolution was won by the edge of the machete in the independence wars of 1868, and that same edge will preserve it if necessary". This was after the July 11 protests. That's when I realized my life was already in danger.<sup>231</sup>

Since I started working as an independent journalist, State Security has set its sights on me. I began to suffer arbitrary interrogations and threats. One of the threats was that they were going to confiscate all my property and work equipment. I suffered direct discrimination for political reasons, not because of my photography activity, but because of my independent journalism.<sup>232</sup>

161. Thirdly, human rights defenders point out the specific persecution and discrimination they suffer due to their work. Human rights activism leads to obstacles on advocacy work, to dismissal from their jobs, or to resignation due to constant pressure. Some interviewees stated:

Doing the work of a civil society activist has led me to be discriminated against, and to the impossibility to pursue my career as a professional — just for being a human rights defender [...]. I am deprived of many rights, and all of this is protected by Cuban law.<sup>233</sup>

Citizen and independent journalism on the island necessarily make you a human rights defender [...] Independent journalists

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<sup>230</sup> IACHR, interview 14, July 13, 2022, IACHR file.

<sup>231</sup> IACHR, interview 15, July 20, 2022, IACHR file.

<sup>232</sup> IACHR, interview 2, July 20, 2022, IACHR file.

<sup>233</sup> IACHR, interview 38, IACHR file.

have doors closed in their face. State security turns your image into that of an antisocial, a criminal, precisely so that civil society won't take you seriously and will turn its back on you. This makes it difficult for you to do your job. Either you participate in the official regime, or you are a ghost.<sup>234</sup>

My labor rights were violated when I began my work as a rights defender. For example, after I went to training in the US, I was persecuted and lost my job. The delegate issued a document so that no one gave me information of any kind, which hurt me in my next job.<sup>235</sup>

I left the country for two weeks, to take a course on human rights in Miami. The student residence manager, knowing of my departure, claimed that my absence was unjustified. They did not even wait for my return to notify me of my dismissal, and they made my grandmother sign as a witness or tutor that I had been notified of this dismissal. They were prepared to fire me.<sup>236</sup>

My work as a culture manager was going well, but my director began to hear about my links with civil society organizations and I was called several times to the manager's office. Discretely, she explained to me that if I continued working with civil society, I could not continue as a member of the Council and, therefore, of the culture system. [...] I had to ask for dismissal from the municipal culture directorate because my work environment was increasingly hostile, and the pressure was mounting. [...] Once it is known that you are part of civil society, you begin to be discriminated against. They begin to stigmatize you, or they simply assign responsibilities greater than your position so that they can have justification to fire you, or you can't take it anymore and resign.<sup>237</sup>

162. In this regard, the IACHR has affirmed that every person is entitled to freedom of expression in conditions of equality and without discrimination, and this includes workers.<sup>238</sup> In the logic of intersectionality, indivisibility and interdependence that characterizes human rights, freedom of expression also applies in labor relations, and so workers do not relinquish their fundamental rights when taking a

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<sup>234</sup> IACHR, interview 28, July 22, 2022, IACHR file.

<sup>235</sup> IACHR, interview 58, October 6, 2022, IACHR file.

<sup>236</sup> IACHR, interview 20, September 30, 2021, IACHR file.

<sup>237</sup> IACHR, interview 16, September 24, 2021, IACHR file.

<sup>238</sup> IACHR, Report No. 27/15, Case 12,795, Merits, Alfredo Lagos del Campo, Peru. July 21, 2015, par. 76 and 77.

position, but rather should enjoy, like the rest of the people, a broad right to freedom of expression. In particular, the IACHR has pointed out that:

Indeed, when exercised in the workplace, freedom of expression protects the worker's right to express their thoughts, opinions, information, or personal ideas, as well as to criticize and make claims or complaints regarding working conditions within a company. Their rights in general must also remain protected. This includes the guarantee to express ideas without retaliatory measures — among which the most distressing is unfair dismissal.<sup>239</sup>

163. In this sense, the Commission and its REDESCA reiterate that “States have a duty to provide due guarantees to protect workers from unwarranted or arbitrary dismissals. Workers must exercise their rights, including freedom of expression and the right to peaceful assembly, without fear of possible reprisals or threat, hostile acts, harassment, defamation, or workplace violence.”<sup>240</sup> In addition to this, the right to freedom of expression includes the right to express ideas through collective strike action as a legitimate means of defending economic, social and professional interests (this aspect will be addressed and developed in Chapter IV of this Report).<sup>241</sup>
164. The IACHR highlights the fundamental role that freedom of expression plays in achieving democratic societies. For this reason, it emphatically calls on the State to guarantee freedom of expression in the workplace without fear of retaliation, as well as immediate cessation of attacks against human rights defenders, guaranteeing that these individuals can carry out their work without fear, intimidation, or undue restriction of their labor rights.

## 5. Structural discrimination in labor contexts

165. The Commission and its Special Rapporteurship take note that Article 2, paragraph b of the Cuban Labor Code enshrines the principle of equality at work, and indicates the right of every citizen who is able to work to obtain a job, taking into account the demands of the economy and the individual’s choice, both in the state and non-state sectors, without discrimination based on skin color, gender, religious belief, sexual orientation, geographical origin, disability, or any other distinction

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<sup>239</sup> IACHR, Report No. 27/15, Case 12,795, Merits, Alfredo Lagos del Campo, Peru. July 21, 2015, par. 78.

<sup>240</sup> IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua, OEA/Ser.L/V/II. Doc. 86, June 21, 2018, par. 168.

<sup>241</sup> Inter-American Court of Human Rights, Case of Former Employees of the Judiciary vs. Guatemala. Preliminary exceptions, Merits and Reparations. Judgment of November 17, 2021. Series 445, par. 109.

harmful to human dignity.<sup>242</sup> The new Penal Code also addresses non-discrimination, by typifying the crime against the right to equality of any person who discriminates, promotes or incites discrimination against another because of age, sex, gender, sexual orientation, gender identity, ethnic origin, skin color, religious belief, national or territorial origin, or disability, or any other distinction harmful to human dignity, whether with ill-spirited statements, or with actions to hinder or prevent, for these reasons, the exercise or enjoyment of the rights of equality established by law.<sup>243</sup>

166. Notwithstanding these internal regulations, the IACHR and its REDESCA remind the State that, in addition to legal reform, it must address the underlying causes of violence and discrimination and comply with its obligation to act with due diligence to prevent, investigate, prosecute, punish, and provide reparations for human rights violations motivated by different types of discrimination.
167. In this regard, the information provided by independent civil society organizations shows that, in Cuba, there are still certain vulnerable groups historically discriminated against that face significant challenges in terms of access to employment, due to the State's economic and social situation, which affects them differently. Given this scenario, the Commission and its REDESCA remind the State of its duty to fully guarantee the right to work, in conditions of equality and without discrimination, which constitutes a key tool to eradicate poverty and extreme poverty and to ensure the autonomy of the most marginalized sectors of society.
168. In regard to these considerations, the IACHR, Report No. 25/18, Case 12,428 Admissibility and Merits. Employees of the fireworks factory in Santo Antônio de Jesus and their families of November 3, 2011<sup>244</sup>, states that:

The inter-American system has emphasized the duty of States to adopt measures to ensure substantive and legal equality between people and combat historical or de facto discrimination against a variety of social groups. The Commission has asserted that the implementation of special measures to protect and advance equality are necessary to guarantee the exercise of the rights of sectors that suffer from

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<sup>242</sup> Cuba, [Labor Code](#), Article 2.

<sup>243</sup> Cuba, [Penal Code](#), 2022, Article 388.1.

<sup>244</sup> IACHR, Report No. 25/18, Case 12,428 Admissibility and Merits. Employees of the fireworks factory in Santo Antônio de Jesus and their families. OEA/Ser.L/V/II.167 Doc. 29, March 2, 2018, par. 171. See also: IACHR. Situation of people of African descent in the Americas. OEA/Ser.L/V/II. Doc. 62. December 5, 2011, par. 203.

structural inequality or have been victims of historical processes of exclusion.

169. Based on the information received by the IACHR and its REDESCA, the following paragraphs analyze the main patterns of structural discrimination that directly affect the guarantee of Cuban workers' labor rights, based on gender, ethnic-racial origin, sexual orientation, and gender identity, and physical/mobility condition.

**a. Gender-based discrimination**

170. In its 2020 Report on the Situation of Human Rights in Cuba, the Commission identified that significant challenges persist in addressing of gender-based discrimination, elimination of stereotypes, and violence against women.<sup>245</sup> In addition, the Commission and its REDESCA have expressed their concern about the increase in violations of labor rights and the specific and differentiated impact that this entails for women, due to historical and structural discrimination against them.<sup>246</sup>

171. Similarly, the IACHR and its Special Rapporteurship have received information and testimonies related to violence against women in the workplace, workplace harassment, and sexual harassment. In this regard, they note that although the 2019 Constitution recognizes the principle of equality and the right of women to integral development,<sup>247</sup> there is a differentiated impact of gender-based violence and workplace harassment on women. In addition, the Labor Code does not recognize the various forms of violence in the workplace, as it does not prohibit, for example, workplace harassment or sexual harassment at work. One of the interviewees expressed:

The director of the entity ordered me to go clean his office, without that being part of my duties. After 10 minutes, he approached me from behind, very quietly. When I turned around, he was masturbating in front of me, which made me go into an anxiety attack. I started yelling for help. He tackled me and forcefully covered my mouth. [...] From that moment on, the harassment did not stop, to the point that I was forced to resign. I am currently unemployed with no income.<sup>248</sup>

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<sup>245</sup> IACHR, *Situation of Human Rights in Cuba*, February 3, 2020, par. 310-324.

<sup>246</sup> IACHR, Press Release No. 127/22 – *IACHR and Its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights Concerned About Socioeconomic Conditions in Cuba and Their Effect on the Rights of Women and Other Groups*, June 6, 2022.

<sup>247</sup> Cuba, *Constitution of the Republic*, Article 42.

<sup>248</sup> IACHR, interview 59, April 21, 2022, IACHR file.

172. On the other hand, the Commission and its REDESCA recognize that, despite having been issued without democratic deliberation, the new Family Code establishes an equitable distribution of domestic work and care responsibilities.<sup>249</sup> However, they observe that gender stereotypes that perpetuate care roles and household chores as a duty and a responsibility of women still persist.<sup>250</sup> A study carried out by the United Nations Development Program gave an account of this, stating that the persistence of stereotypes, gender roles and the configuration of families in Cuba continue to deem domestic and care activities a women’s duty, as their responsibility without remuneration<sup>251</sup>. This generates a direct impact on the labor market, since it contributes to perpetuating gender gaps in access to employment.
173. The IACHR and its REDESCA have received information of the existence of worse or less favorable working conditions for women who access formal and paid employment. Specifically, reports show that the role of women continues to be linked to the lowest paid activities or the performance of minor jobs, as well as unpaid tasks (related to family and domestic care), which contributes a larger wage gap. The information refers to the fact that many women lack the same possibilities to access the same jobs as men, which places them in an extremely unfavorable position, forcing them into the informal market to make a living for themselves and their family.<sup>252</sup>
174. Similarly, the ILO Committee of Experts has emphasized the need to adapt the definition of compensation provided for in the Labor Code, to ensure respect for the principle of equal compensation for equal work between men and women — applied not only to salary, but to any other emoluments, of money or in kind, that an employer pays a worker, directly or indirectly, for their work.<sup>253</sup>
175. On the other hand, the Commission and its REDESCA note that one of the causes that motivate women’s invisibility in Cuba lies in the high percentage of women forced to make a living from informal activities —

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<sup>249</sup> Official Gazette. [Law 156/2022 "Family Code"](#), National Assembly of People’s Power (ANPP), August 17, 2022, art. 4.f.

<sup>250</sup> IACHR, Hearing on the [“Situation of labor and union rights in Cuba”](#), 184 Period of Sessions, June 23, 2022; IACHR, Press Release No. 127/22 [IACHR and Its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights Concerned About Socioeconomic Conditions in Cuba and Their Effect on the Rights of Women and Other Groups](#), June 6, 2022.

<sup>251</sup> United Nations Development Program, [IV National Human Development Report – Cuba 2019. Ascent to the roots. The local perspective of human development in Cuba](#), 2019, p. 181.

<sup>252</sup> Information provided by Race & Equality in response to a questionnaire published for this report, IACHR file.

<sup>253</sup> In this sense, CEACR has made a direct request to the Cuban Government in relation to the Convention on equal remuneration of 1951 (C100), urging the Cuban Government to adapt its legislation to the provisions of the Convention on equal remuneration. CEACR, [Direct request on Equal Remuneration](#), 109th IAC Meeting, 2021.



i.e.: employment that is not registered or formalized by an employment contract. This has an impact on the possibility of enjoying the formal system of social benefits granted by the labor regime (such as unemployment, illness, maternity, accidents at work or disability insurance).<sup>254</sup> The testimonies collected from Cuban women confirm these patterns of gender-based discrimination. Two interviewees stated:

I was working as an assistant at a *paladar* [restaurant], as a self-employed worker. I suffered gender discrimination for being a mother. All opportunities were given to my male colleague. I earned less than him, yet I had the same duties and the same hours. When I needed to take a day off because my children were sick, I had to make up more hours and more work in order to receive a reasonable salary. The salary was not transparent. My boss argued that I was making trouble at work.<sup>255</sup>

I was working at a *paladar*. I had been working there for 2 years when I found out I was pregnant. When the owner found out, he fired me. I asked him to let me work for as long as my pregnancy allowed. I assured him that I was going to do the same work and told him not to worry. This wouldn't affect him, because I needed the job. The owner did not accept. I had to turn in my license, because I couldn't keep my job. One of my co-workers told me that the owner gathered the staff and lashed out against the female workers, making them sign a document stating that, if they got pregnant, they would automatically leave the job. He told the mothers that they should think about it, because he did not want any absences.<sup>256</sup>

The fact that I had two small children (aged 1 and 2) was not taken into account. I was not allowed to have a different schedule to be able to tend to my children. I was required to comply with overtime and mandatory activities outside work, even on rest days (Saturdays and Sundays).<sup>257</sup>

176. The IACHR acknowledges that the bodies of the inter-American system have recognized the protection of the right to social security, both in

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<sup>254</sup> Information provided at the 7<sup>th</sup> meeting of the Network of civil society organizations regarding the situation of human rights in Cuba (Red Cuba), May 4, 2022.

<sup>255</sup> IACHR, interview 9, October 4, 2022, IACHR file.

<sup>256</sup> IACHR, interview 45, September 29, 2021, IACHR file.

<sup>257</sup> IACHR, interview 46, September 30, 2021, IACHR file.

Article 26 of the ACHR<sup>258</sup> and Article XVI of the American Declaration.<sup>259</sup> Additionally, it reiterates that States must ensure that legislation, policies, programs, and allocated resources facilitate access to social security for all members of society without discrimination. Within this framework, they must adopt specific measures for the implementation of social security plans — in particular those aimed at protecting disadvantaged and marginalized individuals and groups and adopt surveillance measures to ascertain to what extent this right is exercised. It also highlights the importance that national social security health programs have a human rights focus, and that their design and scope not be limited to the financial capacity and employment situation of the beneficiaries, but also their specific health needs.<sup>260</sup>

177. On the other hand, the Commission and its REDESCA observe that, in the case of Cuban women, multiple factors of discrimination converge: gender identity, ethnic-racial origin and sexual orientation, and that they are disproportionately affected. They learned about cases of discrimination and dismissal of women from their jobs due to their sexual orientation. Women also face acts of harassment and ridicule from colleagues and co-workers to such an extent that they are forced to hide their sexual orientation to keep their jobs.<sup>261</sup> As a consequence of the lack of job opportunities, Afro-Cuban women are predominantly represented in informal jobs, tasks related to caring for family members and people with disabilities, cleaning services, and enduring exhausting queues to purchase food. Likewise, Afro-Cuban women receive the lowest income and are mostly unable to access jobs with decent wages (such as those in state companies). Many have low levels of education and, as a result, have fewer possibilities of advancement in the labor market.<sup>262</sup>
178. Based on the above considerations, the IACHR and its REDESCA observe with concern that the actions of the Cuban State have not yet translated into change that allows for true equal opportunities for women in the workplace. Cuban women still face hurdles in terms of access to decent jobs and in the establishment of labor relations on equal terms, which is aggravated in the case of women of African descent or who belong to the LGBTI community. It is necessary for the State to implement affirmative measures with a gender perspective that completely eradicate gender

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<sup>258</sup> I/A Court HR, Case of Muelle Flores v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of March 6, 2019. Series C No. 375, par. 170 et seq.

<sup>259</sup> IACHR, Report No. 50/16, Case 12.834, Merits (Publication), Undocumented workers, United States of America, November 30, 2016, par. 115 et seq.

<sup>260</sup> IACHR, Report No. 64/18, Case 12,738, Merits. Opario Lemoth Morris et al. (Miskito Divers), Honduras, May 8, 2018, par. 266 and 268.

<sup>261</sup> IACHR, interview 30, September 28, 2021, IACHR file; IACHR, interview 60, September 28, 2021, IACHR file.

<sup>262</sup> Latin American Federation of Rural Women (FLAMUR), Mujeres Esperanza Organization, Citizens Committee for Racial Integration (CIR). Women and ESCER in Cuba: Reflections from the perspective of intersectionality, October 2021, p. 83.

stereotypes deeply rooted in culture, close the pay gap, and prevent and eradicate sexual violence and harassment in the workplace.

179. Lastly, the Commission and its Special Rapporteurship emphatically call on the Cuban State to reinforce its actions regarding the adoption of labor policies that take into account the specific gender vulnerabilities of women, their impact on the achievement of equal working conditions, employment and opportunities, bringing visibility to their situation.

#### **b. Discrimination due to ethnic-racial origin**

180. The IACHR and its REDESCA observe with alarm the persistence of structural patterns that perpetuate prejudice, stereotypes and practices of racial discrimination in Cuba, which have been accentuated in the context of the COVID-19 pandemic.<sup>263</sup> In its 2021 Annual Report, the Commission particularly highlighted that racial inequality is also one of the causes that triggered the peaceful social demonstrations on July 11, 2021, motivated by the exclusion of people of African descent from different economic and social sectors, the persistence of an economic model that deepens inequality, and the historic denial by the Cuban State of the existence of structural racism and the consequent lack of public policies to counteract it.<sup>264</sup>

181. In addition, regarding the implementation of public policies that give visibility to the situation of racial discrimination experienced by the Afro-Cuban population, the Commission and its REDESCA take note of the 2019 approval of the National Program against Racism and Racial Discrimination towards gradual and definitive eradication, in which the political will of the country's leadership is expressed.<sup>265</sup> However, they observe that the preparation of the aforementioned program was carried out without participation of independent civil society organizations working in the field, and thus an incomplete diagnosis was carried out — especially in terms of living conditions and employability of people of African descent.<sup>266</sup>

182. On the topic, an Afro-Cuban worker stated:

I started working in public health, as a health inspector accompanying fumigators. One day we received a complaint about a lack of gasoline and oil that had been assigned to fumigators under my charge. The administrator blamed me for

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<sup>263</sup> IACHR, [Public hearing on the “Human rights situation of vulnerable groups in Cuba”](#), 183 Period of Sessions, March 15, 2022.

<sup>264</sup> IACHR, [Annual Report, Chapter IV.B “Cuba”](#), 2021, par. 116 and 118.

<sup>265</sup> Ministry of Culture, [National Program against Racism and Racial Discrimination](#), October 26, 2022.

<sup>266</sup> Information provided by Race & Equality in response to a questionnaire published for this report, IACHR file.

not supervising properly, when in fact that was not my job. I felt like it was a personal thing because I'm black. [...] After proving that I had nothing to do with it, I resigned, and they came to apologize. [...] I cannot be in a place where they accuse me just because of the supposition that the young black boy is the one who has to steal.<sup>267</sup>

183. Additionally, they note Afro-Cuban underrepresentation in the labor and economic spheres of the island, inasmuch as they have fewer opportunities to access decent and paid jobs, greater participation in marginal sectors of the economy, lower wages, and persecution for joining unions or independent groups.<sup>268</sup> In particular, the absence of official data disaggregated by ethnic-racial origin continues to be a challenge in the Cuban labor context, which exacerbates the invisibility of this group and the impossibility of carrying out progressive and effective affirmative actions that lead to structural changes to improve the guarantee of their ESCER.
184. The Commission and its REDESCA remind the Cuban State that the American Declaration provides for the protection of the right to work, and that it must be guaranteed in dignified and satisfactory conditions.<sup>269</sup> In this context, the IACHR emphasizes that States must put labor policies into place that benefit Persons of African Descent effectively, promoting differential measures for access to quality jobs in dignified and acceptable conditions to this population. Additionally, they must implement strategies to prevent, combat and punish racial discrimination in the labor market, using an intersectional approach to benefit groups that have been historically discriminated against and face heightened obstacles to access to work and protection of their labor rights.<sup>270</sup>

**c. Discrimination based on sexual orientation and gender identity**

185. With regard to LGBTI persons, the ILO has highlighted the considerable labor discrimination that this community continues to suffer around the world, emphasizing equal employment opportunities and equal

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<sup>267</sup> IACHR, interview 32, September 30, 2021, IACHR file.

<sup>268</sup> Information provided at the 7<sup>th</sup> meeting of the Network of civil society organizations regarding the situation of human rights in Cuba (Red Cuba), May 4, 2022.

<sup>269</sup> OAS, American Declaration of the Rights and Duties of Man, 1948. Articles 14 and 37.

<sup>270</sup> IACHR, Economic, Social, Cultural and Environmental Rights of Persons of African Descent, OEA/Ser.L/V/II. Doc. 109, March 16, 2021, par. 202.

treatment in the labor market as fundamental values to obtain decent employment.<sup>271</sup>

186. Regarding the Cuban case, the Commission's 2020 Report recognized an advancement in the 2019 constitutional changes against discrimination based on sexual orientation and gender identity.<sup>272</sup> Regarding access to work in conditions of equality and non-discrimination, the IACHR and its REDESCA particularly highlight the progress made in the recognition of the rights of the LGBTI community, and the explicit mention of sexual orientation in the text of the Labor Code and the Criminal Code.
187. Nevertheless, the IACHR and its Special Rapporteurship still recognize that sexual orientation continues to be a factor of discrimination when applying for and obtaining a job in the country. They warn of the persistence of stereotypes and patterns of systemic discrimination and harassment of LGBTI people in the Cuban labor market, which materialize in obstacles — not only for access to employment, but also in job stability and professional advancement.<sup>273</sup> Two interviewees from the trans community said:

I started working as a surgical instrument technician at a surgical center. On one occasion, I went to enroll in a training course, but I was rejected. Due to the way I dress and the stereotype, I was not allowed to work directly with patients. After denouncing this situation before basic labor justice, they said that I had unjustified misconducts and should be sanctioned. If you have a sanction on your record, you no longer have the possibility of enrolling in these training courses. Faced with my manifest discontent, they called the police, took me into custody and fined me 300 pesos for disturbing institutional public order. I finally got fired.<sup>274</sup>

I am a trans man working in the educational sector in Cuba. When I decided to make my transition, the administration and the Ministry of Education threatened to fire me. They said I had to dress according to my original sex. On one occasion, a worker, in collusion with the center's manager, said that I was looking at the girls inappropriately. Without any explanation, I received a public admonishment aiming to demoralize me and

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<sup>271</sup> ILO "Inclusion and diversity in the labor market: a call for LGBT labor statistics", December 9, 2019.

<sup>272</sup> IACHR, *Situation of Human Rights in Cuba*, February 3, 2020, par. 325.

<sup>273</sup> Latin American Federation of Rural Women (FLAMUR), Mujeres Esperanza Organization, Citizens Committee for Racial Integration (CIR). *Women and ESCER in Cuba: Reflections from the perspective of intersectionality*, October 2021.

<sup>274</sup> IACHR, interview 3, September 23, 2021, IACHR file.

question my integrity. I appealed to the union, but again, in collusion with the administration, they did not offer me help or protection, and ignored my rights.<sup>275</sup>

188. Faced with this situation, many transgender and gender-diverse people have informed the Commission and its REDESCA that, driven by the lack of employment opportunities, they found the only opportunity for personal livelihood and that of their family in self-employment and sex work. In the latter case, their situation of vulnerability was especially aggravated by the COVID-19 pandemic, due to the lack of adequate sanitary measures for people who work on the street — this added to police harassment through warning letters, fines for breach of confinement rules, or even deprivation of liberty.<sup>276</sup>
189. Two Cuban female workers brought up harassment due to their sexual orientation. They stated:

Together with my partner, we worked as inspectors in the Province of Granma. Our bosses agreed to make life impossible for both of us, until we had to resign. I had to leave a job I liked because of discrimination based on my sexual orientation.<sup>277</sup>

I felt that they retaliated against me for being a lesbian. For example, if I sat next to any woman, the director would call my attention saying, "why are you next to each other? here we come to work". For me, it was disrespectful and insulting, because this happened repeatedly and in front of my coworkers. It only happened with me.<sup>278</sup>

190. In addition, some interviewees report that they are victims of ridicule and mistreatment by peers and superiors in the workplace, which prevents them from enjoying decent working conditions and safe spaces to develop professionally.<sup>279</sup> One worker stated:

As a gay man, I am continuously criticized for my sexual preference. Some colleagues support me, but from others I get ridicule and criticism. It all started when I participated in campaigns for the LGBTI community against homophobia in May 2018. I am part of

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<sup>275</sup> IACHR, interview 53, September 30, 2021, IACHR file.

<sup>276</sup> Information provided by Race & Equality in response to a questionnaire published for this report, IACHR file

<sup>277</sup> IACHR, interview 64, September 28, 2021, IACHR file.

<sup>278</sup> IACHR, interview 65, September 28, 2021, IACHR file.

<sup>279</sup> Information provided at the 4<sup>th</sup> meeting of the Network of civil society organizations regarding the situation of human rights in Cuba (Red Cuba), October 6, 2021.

the management team, and some colleagues say that a gay person does not have the capacity or character to lead.<sup>280</sup>

191. The IACHR and its REDESCA further warn about the lack of official data on the human rights situation of LGBTI persons in Cuba, particularly regarding the violence to which they are subjected. The IACHR considers that the scarcity of data on this type of violence makes the problem invisible and makes it difficult to carry out an in-depth analysis of the real situation in terms of the labor rights of LGBTI persons in the country.<sup>281</sup>
192. Addressing all of the above, the IACHR and its REDESCA urge the State to increase its efforts to respect and guarantee the rights of LGBTI persons, ensuring that employers comply with their responsibility to respect the rights of this group.<sup>282</sup> In order to progressively reduce the levels of poverty associated with discrimination based on sexual orientation, gender identity, gender expression or sexual diversity, they recommend taking measures to ensure that no rule, decision or public policy diminishes, differentiates or restricts a person's employment and pension rights on the basis of sexual orientation, gender identity, gender expression or sexual diversity.<sup>283</sup> In response to the high levels of prejudice that exist in the workplace, the IACHR and its REDESCA have emphasized that programs to help insert trans persons into the labor market must necessarily be accompanied by ongoing training processes for the people in charge of their implementation and for those with whom the beneficiaries are supposed to work.<sup>284</sup>
193. Additionally, the IACHR and its Special Rapporteurship recall that the State has the obligation of protecting human rights defenders who work on issues of sexual orientation, gender identity and/or gender expression, who continue to suffer acts of violence, discrimination, restrictions of their rights of assembly and association, and limitation of their freedom of expression and dissemination of thought, as has been developed above.<sup>285</sup>

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<sup>280</sup> IACHR, interview 29, May 10, 2022, IACHR file.

<sup>281</sup> Among others, see: IACHR, Annual Report, Chapter IV.B "Cuba", 2021; IACHR, Annual Report, Chapter IV.B "Cuba", 2020, par. 92; IACHR, Annual Report, Chapter IV.B "Cuba", 2019, par. 25.

<sup>282</sup> IACHR, Compendium Labor and trade Union Rights, October 30, 2020, par. 385.

<sup>283</sup> IACHR, Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas. OAS/Ser.L/V/II.170 Doc. 184, December 7, 2018, par. 267, recommendation 19.

<sup>284</sup> IACHR, Report on Trans and Gender-Diverse Persons and Their Economic, Social, Cultural, and Environmental Rights, OEA/Ser.L/V/II. Doc. 239, August 7, 2020, par. 294

<sup>285</sup> See section 4.

#### d. Discrimination based on disability

194. In regard to persons with disabilities, official State data provided in the report submitted to the United Nations Committee on the Rights of Persons with Disabilities<sup>286</sup>, indicate that There are 362,222 registered persons with disabilities in Cuba, of whom 198,180 are male and 16,442 are female.<sup>287</sup>
195. In its Country Report, the Commission expressed its concern regarding the absence of a specific law that protects the rights of persons with disabilities in Cuba, which contributes to the invisibilization of this population and their specific needs.<sup>288</sup> In its Public Hearing on the Human Rights Situation of Vulnerable Groups in Cuba, the IACHR highlighted that such law still does not exist, and that the politicization of access to care by persons with disabilities is particularly worrisome.<sup>289</sup>
196. In regard to labor rights, the IACHR and its REDESCA are concerned over the lack of adequate measures to ensure employment for people with disabilities, and the lack of guarantees regarding the observance of employment regulations for this population group, both in the state and private sectors.<sup>290</sup> According to the information received, there is a pattern of labor discrimination with a differentiated effect on this group, stemming from the lack of an open, inclusive, and accessible labor market. People with disabilities are practically unable to access work, unless their intellectual capacity is very elevated and allows them to find positions with particular intellectual demands. However, even in these cases, if the physical disability is very limiting, they also encounter innumerable obstacles — especially in physical accessibility to workspaces.<sup>291</sup>
197. The Commission and its REDESCA recall that people living with some form of disability are more likely to experience adverse socioeconomic conditions, such as lower levels of education, inferior health conditions, and higher unemployment rates.<sup>292</sup> This is exacerbated when people find themselves in some additional situation of vulnerability characterized, for

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<sup>286</sup> Committee on the Rights of Persons with Disabilities, List of issues relating to the initial report of Cuba, CRPD/C/CUB/Q/1/Add.1. January 15, 2019, par. 6.

<sup>287</sup> The State of Cuba indicates that it does not have disaggregated data on disabled workers. Specifically, it states that it does not have an unemployment rate for workers with disabilities or the average income of employed workers with disabilities. See: Committee on the Rights of Persons with Disabilities, List of issues relating to the initial report of Cuba, CRPD/C/CUB/Q/1/Add.1. January 15, 2019, par. 110.

<sup>288</sup> IACHR, Situation of Human Rights in Cuba, 2020, par. 350.

<sup>289</sup> IACHR, public hearing on the “Human rights situation of vulnerable groups in Cuba”, 183 Period of Sessions, March 15, 2022.

<sup>290</sup> Information provided at the 4th meeting of the Network of civil society organizations regarding the situation of human rights in Cuba (Red Cuba), October 6, 2021.

<sup>291</sup> Information provided by Cubalex in response to a questionnaire published for this report, IACHR file.

<sup>292</sup> IACHR, Report on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147, September 7, 2017, par. 427.



example, by factors such as gender, ethnic origin or age, generating differentiated and intersectional forms of discrimination and violence.

198. The IACHR and its REDESCA recommend that the State adopt special measures in favor of persons with disabilities, to guarantee the restoration of their human rights and ensure their participation in society under equal conditions, as well as refrain from politicizing access to health services and discriminating against this group in any other way.

## 6. Special labor relations: internationalization missions, teachers, and self-employed people

### a. Internalization missions

199. The IACHR and its REDESCA express their concern regarding the conditions to which thousands of Cuban workers are exposed in the so-called "internationalization missions", which consist of sending Cuban professionals (such as artists, athletes, doctors, seamen, architects, and teachers, among others)<sup>293</sup> to work abroad on behalf of the Cuban State and its state companies.<sup>294</sup>
200. Specifically, the IACHR and its REDESCA have expressed deep concern about the situation of the Cuban medical brigades abroad, noting that these personnel could be in a situation of forced or obligatory labor (concepts linked to modern slavery), since their most basic labor rights are at risk of being violated.<sup>295</sup> Indeed, health sector cooperation agreements constitute one of the largest sources of income and foreign currency for the Cuban State<sup>296</sup>. It should be noted that, during the COVID-19 pandemic (March 2020 to September 2021), Cuba sent close to 5,000 medical personnel, including nurses, technicians and "logistical" personnel, to help in 39 countries, which added to the 30,000 people who

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<sup>293</sup> Elaine Acosta Gonzalez, General Panorama of the Cuban communist medical brigades in Latin America, August 2021, p. 10.

<sup>294</sup> Regarding the legal framework of international cooperation, Decree No. 16 of International Cooperation stands out; Resolution 365 of 2020 of the Ministry of Foreign Trade and Foreign Investment; published in Ordinary Official Gazette No. 85 of December 1, 2020. Resolution 267 of 2020 of the Ministry of Finance and Prices; Resolution 283 of 2020 of the Ministry of Public Health and Resolution 25 of 2020 of the Ministry of Labor and Social Security that regulates the labor, salary and social security treatment for workers who participate in the execution of international cooperation actions that Cuba offers and receives. Published in Ordinary Official Gazette No. 85 of December 1, 2020.

<sup>295</sup> IACHR, Annual Report, Chapter IV.B "Cuba", 2020, par. 127.

<sup>296</sup> Cuba Salud, Cuban doctors in Argentina: history of a controversial collaboration, April 28, 2020, p. 11. Elaine Acosta Gonzalez, General Panorama of the Cuban communist medical brigades in Latin America, August 2021, p. 10. Archivo Cuba. Fact Sheet: The Cuban Medical Brigades. May 23, 2022, p. 10-14.

were already abroad to support the responses of the health systems at the local and regional level<sup>297</sup>.

201. Without discrediting the valuable support that these missions have provided to combat the pandemic in many countries, complaints about the exploitation of health professionals abroad persist.<sup>298</sup> During the preparation of this report, input from civil society organizations was gathered indicating that the Cuban government withheld up to 90% of the salaries that other governments pay for medical collaboration.<sup>299</sup> In accordance with Article 7 of the Labor Code Regulations on salary and Social Security benefits for workers who participate in international cooperation actions (Resolution 25 of 2020 of the Ministry of Labor and Social Security), during the period of execution of the cooperation actions, personnel receive only their basic salary in Cuba, without receiving any type of income abroad.<sup>300</sup>
202. Similarly, the Commission and its REDESCA have received information regarding the serious limitations on personal freedom, freedom of expression and freedom of association suffered by Cuban workers in internationalization missions. Normal behaviors are considered disciplinary infractions, such as developing friendly, romantic, or any other type of relationship with anyone with positions or opinions in opposition to the Cuban regime. Limitations also include the prohibition of making statements to the media about internal workplace matters without prior authorization or that stand to compromise Cuban collaboration.<sup>301</sup> The aforementioned behaviors, as well as the questioning of labor practices, would lead to consequences such as persecution, harassment, professional disqualification, retention of educational and professional credentials, discrimination, or the impossibility of returning to the country in case of deciding to abandon the international mission.<sup>302</sup>

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<sup>297</sup> Archivo Cuba. Fact Sheet: [The Cuban Medical Brigades](#). May 23, 2022, p. 9.

<sup>298</sup> This was already noted in the IACHR, [Annual Report, Chapter IV.B "Cuba"](#), 2021; par. 142.

<sup>299</sup> IACHR, public hearing on the ["Situation of labor and union rights in Cuba"](#), 184 Period of Sessions, June 23, 2022.

<sup>300</sup> Cuba, Official Gazette, Decree-Law No. 16 of the Regulation on the labor, salary and Social Security treatment of workers who participate in the execution of international cooperation actions, of October 26, 2020, published in the Ordinary Official Gazette No. 85, December 1, 2020, Article 7.

<sup>301</sup> IACHR, public hearing on the ["Situation of labor and union rights in Cuba"](#), 184 Period of Sessions, June 23, 2022.

<sup>302</sup> Prisoners Defenders, ["Italy, Qatar and Mexico are co-authors of human trafficking and enslavement of Cuban workers"](#), December 13, 2022. Different testimonials can be found at ["we are not deserters"](#).

203. Resolution 368 of 2020 of the Ministry of Foreign Trade and Foreign Investment<sup>303</sup> establishes disciplinary regulations for so-called "cooperators"<sup>304</sup> that provide services abroad. Cuban cooperators have the labor duties typical of any employment relationship, such as set hours and the obligation to remain at work. However, the list of duties established in Article 3 of the aforementioned Resolution also includes duties external to the labor sphere, such as having an ethical political, labor and social behavior; returning to Cuba upon conclusion of the mission abroad; informing the immediate supervisor of relationships with nationals or foreigners, whether residents or not in the country; or informing their intention to marry in the country where they provide services, among others. Some disciplinary infractions typified in this Resolution go far beyond issues that affect work performance, such as participating in public acts of a political or social nature without due authorization; performing acts contrary to morality and good customs; issuing opinions or assessments to press, social media, radio or television organizations that compromise Cuban cooperation or about internal workplace situations or the country where services are provided; or maintaining friendly relations or ties of another type with people who assume positions that are hostile or contrary to the principles and values of Cuban society and the Revolution.<sup>305</sup> The civil society organization Prisoners Defenders has documented the imposition of disciplinary sanctions for posting on websites, where workers were sanctioned with the revocation of their mission. Another sanction was documented for dissident conduct that led to the interruption of the cooperator's mission, without the right to benefits or follow-up.<sup>306</sup>
204. The IACHR and its REDESCA observe with concern the provisions of the Cuban Penal Code that establish that any public employee who abandons a mission or refuses to return to the country upon conclusion will incur imprisonment for eight years.<sup>307</sup> According to information provided by civil society organizations, this provision would be applicable to any mission abroad, whether they are medical professionals, teachers, elite athletes, marine personnel working in international shipping companies or artists, and that, in case of desertion, offenders would be deemed

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<sup>303</sup> Cuba, Official Gazette, Resolution 368 of 2020 of the Ministry of Foreign Trade and Foreign Investment, of October 26, 2020, published in Ordinary Official Gazette No. 85, December 1, 2020. This Resolution replaces Resolution 168 of 2010 of the Ministry of Foreign Trade and Foreign Investment.

<sup>304</sup> Pursuant to the provisions of Article 21 of Decree No. 16, workers who participate in the execution of Cuba's international cooperation are considered "cooperators". Their stay abroad is up to three years, unless the Ministry of Foreign Trade and Foreign Investment or the Ministry of Public Health -in the case of cooperators in the health sector- approve an exceptional extension.

<sup>305</sup> See, Article 8 of Resolution 368 of 2020 of the Ministry of Foreign Trade and Foreign Investment.

<sup>306</sup> Prisoners Defenders, "Italy, Qatar and Mexico are co-authors of human trafficking and enslavement of Cuban workers", December 13, 2022.

<sup>307</sup> Cuba, Penal Code, 2022, Article 176.

inadmissible by the Cuban authorities and their entry to Cuba would be banned for a term of 8 years.<sup>308</sup>

205. The Commission and its REDESCA consider that the lack of fair and satisfactory working conditions for workers who provide services in international missions, including the questioning of the voluntary nature of such missions by workers, the restriction of rights and freedoms (expression, assembly, movement, intimacy or privacy, among others), and the serious consequences that desertion can have, merit strengthening the transparency of these programs and addressing labor concerns through the development of public policies and measures that guarantee the protection of these workers' rights.
206. For this reason, the IACHR and its Special Rapporteurship urge the Cuban State to reinforce transparency in the programs of the so-called international missions, and to adopt public policies and measures that guarantee the effective protection of the labor rights of workers on international missions who provide services abroad through state companies, including freedom to decide whether to participate in such assignments without any type of conditioning, by complying with international human rights standards on the matter — including ILO standards.

#### **b. Professors**

207. In a public hearing held during the 184<sup>th</sup> Period of Sessions, the IACHR and its REDESCA received information about unwarranted dismissals of university professors and researchers for political reasons.<sup>309</sup> Specifically, according to input provided by the civil society organizations Aula Abierta and the Observatory of Academic Freedom of Cuba (*Observatorio de Libertad Académica de Cuba - OLA*), until June 2022, at least 32 university professors and researchers had been registered as victims of unjustified or illegal dismissals. In at least 46.8% of the documented cases, violations of due process were identified at the administrative office, where common factors included arbitrariness of measures, blatant irregularities in the preparation of case files, and restrictions for victims to access said documents, which are necessary to defend their cases in court.<sup>310</sup> The foregoing would be due to a State policy aimed at ideological imposition that remains in force and that violates the right to academic freedom, to the extent that university teaching and research personnel must be

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<sup>308</sup> IACHR, Public hearing on the “Situation of labor and union rights in Cuba”, 184 Period of Sessions, June 23, 2022.

<sup>309</sup> IACHR, Public hearing on the “Situation of labor and union rights in Cuba”, 184 Period of Sessions, June 23, 2022.

<sup>310</sup> Inputs sent by OLA and Aula Abierta in the 184 Period of Sessions, IACHR file.

aligned with the ideological pillars of the communist party to be able to carry out their work within the academic institutions.

208. On the other hand, violations of the labor rights of university professors directly or indirectly affect the guarantee of other rights, insofar as they have a negative impact on the teaching and knowledge that professors impart in universities. These effects hinder the production of qualified information based on science, violating the human right to academic freedom — both in its individual and collective dimensions.<sup>311</sup>
209. In addition to the cases of unwarranted dismissal, the IACHR and its REDESCA have also received complaints about specific cases of criminalization,<sup>312</sup> persecution, harassment and even prosecution and imprisonment<sup>313</sup> of teaching staff who have spoken out against the regime. As of October 2022, 86 cases were recorded demonstrating the arbitrary actions of Cuban public authorities against academic freedom, freedom of thought and freedom to work.<sup>314</sup> Among the incidents registered, the highest recurrence is discrimination due to political orientation and/or affiliation, which implies an affectation of the right to dignity, personal integrity, and academic freedom, followed by bullying and harassment, and censorship and unfair or illegal dismissal. Additionally, the most violated rights within the educational institutions of Cuba include the right to freedom of expression, opinion and access to information; the right to education; and the right to freedom of thought, conscience, worship or religion.<sup>315</sup>
210. Given the foregoing, the Commission and its Special Rapporteurship observe that the persistence of patterns of political persecution by the State against university workers violate the provisions of the ESCR Committee on academic freedom, understood (according to General Comment No. 13) as including the freedom of individuals to freely express their opinions about the institution or system in which they work, and to perform their duties without discrimination or fear of repression by the State or any other institution.<sup>316</sup>
211. Among the testimonies recorded, two Cuban professors said:

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<sup>311</sup> IACHR, Public hearing on the “Situation of labor and union rights in Cuba”, 184 Period of Sessions, June 23, 2022.

<sup>312</sup> Academic Freedom Observatory (OLA), report 12, August 2021.

<sup>313</sup> Academic Freedom Observatory (OLA), Professor Pedro Albert Sánchez transferred to the hospital after a week on hunger strike, September 21, 2022.

<sup>314</sup> Academic Freedom Observatory (OLA), report 26, October 2022.

<sup>315</sup> Academic Freedom Observatory (OLA), report 26, October 2022.

<sup>316</sup> ESCR Committee, General Comment No. 13: The right to education. E/C.12/1999/10, December 8, 1999.

In 2018, I spoke out in favor of a student who was going to be expelled from the University due to posts criticizing the Government; I also made publications and participated in a media outlet that is an enemy of the regime. As a disciplinary sanction, I was demoted to a category with lower compensation and importance, and my institutional e-mail and internet access were suspended. They also took away my teaching and research activities and assigned me to work in the library for less than half my original salary. They also expelled me from the union of journalists. In the end, I resigned from to avoid being fired. After these events, I was unable to obtain another type of job in Cuba, whether as a professor or a journalist.<sup>317</sup>

As a result of my posts on social networks contrary to the Cuban political system, they decided to terminate my contract with the University where I worked. [...] They told me that I could not continue working in any position in the Ministry of Higher Education. Internally, I filed a complaint with the Rector [...] [The dean] said that I became his political adversary for having broken away from the revolution, and that I had no place at the University for expressing myself in that way. He told me that, even if I appealed to the Ministry, which was his decision, and there was no appeal against that decision. [...] They also went to look for me at my house in an informal and repressive way. They tried to make me sign a commitment that I would change my speech and position, but I refused to sign. They told me that I was going to appear in the system as an anti-revolutionary individual. [...] I have suffered threats from State Security through false Facebook profiles.<sup>318</sup>

212. Given these considerations, the IACHR and its REDESCA remind the State that the 2021 Inter-American Principles on Academic Freedom and University Autonomy indicate that academic freedom is an interdependent and indivisible human right that enables the exercise of other rights, such as labor and trade union rights.<sup>319</sup> In this sense, they understand that State application of administrative or disciplinary processes against people exercising academic freedom, as well as the imposition of subsequent sanctions of a labor or civil nature, must necessarily occur under minimum rules of transparency, due process, judicial guarantees and non-discrimination, and must be based on criteria

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<sup>317</sup> IACHR, interview 17, April 29, 2021, IACHR file.

<sup>318</sup> IACHR, interview 34, January 13, 2023, IACHR file.

<sup>319</sup> IACHR, Inter-American Principles on Academic Freedom and University Autonomy, 2021, Principle VIII.

that meet the requirements of legality and legitimate purpose, as well as suitability, necessity and proportionality, under the precepts of a democratic society.<sup>320</sup>

### c. Self-employed people

213. Although the Cuban Labor Code broadly recognizes labor rights for all people, inequalities persist depending on the type of employer, particularly in terms of whether the employer is the State or a non-state party. According to information provided during the Commission's 184<sup>th</sup> Period of Sessions, labor rights in the non-state sector are restricted, with no guarantees and weak regulations. In addition, protection measures are practically non-existent, and there are no institutional mechanisms that guarantee the rights of private sector workers.<sup>321</sup>
214. Regarding the self-employed population, the IACHR and its REDESCA have received information and testimonies on the difficult working conditions of this important sector in Cuba. Their situation has further declined after the announcement of the "Ordering Task", as well as by the rise in prices, inflation, and the unfavorable dollar and euro exchange rate, which affect 85% of self-employed workers.<sup>322</sup> This is one of the sectors that has suffered the highest level of repression in retaliation for the social protests of July 11, 2021.<sup>323</sup>
215. The Commission and its REDESCA have received information about the local shortages of raw materials and supplies. This adds to the lack of wholesale markets, which forces the self-employed sector to resort to imports, subjecting them to bureaucratic practices and government policies that hinder the normal working activity. Some of them have even been forced to close their businesses.<sup>324</sup> In this regard, one of interviewees said:

As a maker and street vendor of cookies and pastries, getting flour is very difficult and expensive, so I buy cookies from others and resell them, at a profit of 5 pesos. Currently I cannot work by myself, because there is no flour available in Cuba to make my products.<sup>325</sup>

<sup>320</sup> IACHR, Inter-American Principles on Academic Freedom and University Autonomy, 2021, Principle VIII.

<sup>321</sup> IACHR, Public hearing on the "Situation of labor and union rights in Cuba", 184 Period of Sessions, June 23, 2022.

<sup>322</sup> Diario de Cuba, "The Ordering Task aggravates the critical situation of 'self-employed' workers in Cuba", March 5, 2021; ASIC, Survey: Situation of the self-employed sector, September 2022.

<sup>323</sup> Information received by the IACHR and REDESCA in the framework of a work meeting with civil society for the preparation of this report, February 28, 2022.

<sup>324</sup> ASIC, Survey: Situation of the self-employed sector, September 2022.

<sup>325</sup> IACHR, interview 4, May 26, 2021, IACHR file.

216. Another interviewee in the hospitality industry stated:

There are no rights for the private sector, nor access to any benefits. You cannot buy wholesale anywhere, nor do you have priority access to purchase the things you need for your business. I am self-employed and work in the hotel business. I cannot buy bedding or supplies for my lodging. Food is becoming more and more difficult to find, and you also have inspectors watching over you all the time.<sup>326</sup>

217. The Commission and its REDESCA are alarmed by the imposition of severe controls and sanctions (such as fines or confiscations) on the self-employed sector, which reduce profit margins and limit work possibilities. Testimonies from Cuban self-employed individuals indicate serious difficulties in carrying out their activity, given the constant persecution they claim to suffer at the hands of public authorities or state inspectors. The Commission warns of hostile treatment, harassment, extortion, and illegal detentions to which self-employed workers are subjected by oversight authorities.<sup>327</sup> Three female workers in the sector said:

Since I opened my business in 2017, I have had excessive controls over my activity. Almost every month I receive surprise visits and police searches, alleging that I illegally introduce food, drinks, and cleaning products for my service. [...] One day, they searched my business. They claimed that I was guilty of possession of stolen goods because the computer I had bought had been stolen. In these circumstances they gave me two options: close the business for a while voluntarily or go to trial so that the court would order, in addition to the sentence, the accessory sanction of definitive prohibition of my activity in the hotel business.<sup>328</sup>

I obtained my telephone agent license, and I am self-employed. I have had obstacles with the tax service, with the percentage of profits, and continuous surveillance due to my work as a leader of an independent civil society organization and my political opinions.<sup>329</sup>

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<sup>326</sup> IACHR, interview 18, July 17, 2021, IACHR file.

<sup>327</sup> Information provided at the 4<sup>th</sup> meeting of the Network of civil society organizations regarding the situation of human rights in Cuba (Red Cuba), October 6, 2021.

<sup>328</sup> IACHR, interview 57, August 8, 2022, IACHR file.

<sup>329</sup> IACHR, interview 5, September 24, 2021, IACHR file.



I have no government support and I suffer constant harassment and repression. In 2019, I was fined by labor inspectors. They claimed that, as a street vendor, I could not work in one single place, but had to move around to sell my product. When I refused to hand over my license for them to write me up, the police took me to jail for four days. They alleged contempt and disobedience. During those four days, I slept on the floor and was incommunicado.<sup>330</sup>

218. In a context where the government can grant and revoke private self-employment licenses, the IACHR and its REDESCA observe with concern the limitations that this modality imposes on many professions, which would imply limitation of the freedom to work. At present, according to the information received, a total of 124 professions (e.g.: architecture or veterinary medicine) cannot be practiced under the modality of self-employed services providers.<sup>331</sup> In addition, there are inaccuracies in terms of disaggregated data on self-employment, which compromises the study, monitoring, and scrutiny of the sector. These statistics also do not differentiate between owners and employees, obscuring people in very different economic situations<sup>332</sup>.
219. Additionally, worrisome is the lack of protection for women in the self-employed sector. The IACHR and its Special Rapporteurship have received information that reveals a lack of a defined policy to benefit self-employed women, single mothers and other vulnerable sectors<sup>333</sup>. Indeed, they learned of the delicate situation of discrimination suffered by domestic and care workers (which worsened during the pandemic)<sup>334</sup>, and by pregnant women, who lose their licenses for self-employment activities. The lack of official data disaggregated by sex to provide information on self-employed women and other vulnerable groups poses an important limitation and constitutes an additional form of invisibilization and disregard for these workers.
220. A self-employed female worker recounts the lack of knowledge and guidance in terms of her rights when applying for a license:

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<sup>330</sup> IACHR, interview 50, May 26, 2021, IACHR file.

<sup>331</sup> Information received by the IACHR and REDESCA in the framework of a work meeting with civil society for the preparation of this report, March 9, 2022.

<sup>332</sup> IACHR, Public hearing on the “Situation of labor and union rights in Cuba”, 184 Period of Sessions, June 23, 2022.

<sup>333</sup> ASJC, Survey: Situation of the self-employed sector, September 2022.

<sup>334</sup> Information provided at the 4<sup>th</sup> meeting of the Network of civil society organizations regarding the situation of human rights in Cuba (Red Cuba), October 6, 2021.

Well, the social security I paid supported me, but this is not explained to you when you get your license. They don't tell you about your rights as a self-employed worker, and the benefits that you get regarding social security. I didn't know that, if I get sick, I can take a medical certificate to the work body, and that would exempt me from paying tax in that month.<sup>335</sup>

221. Given these considerations, the Commission and its REDESCA warn of the lack of freedom to engage in self-employment and free exercise of economic activity. For the IACHR, according to the criteria of the Inter-American Court, "any person who is going to carry out, carries out or has carried out a paid activity, immediately acquires the status of worker and, consequently, the inherent rights to said condition."<sup>336</sup> For this reason, the Commission has stressed that one of the substantive elements of the right to work implies free choice or acceptance of employment, which in turn entails, either through the creation of opportunities to provide it or the adoption of measures that do not impede it, the ability of people to follow their own vocation and dedicate to any activity that reasonably corresponds to their own expectations or life plans.<sup>337</sup>

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<sup>335</sup> IACHR, interview 19, September 29, 2021, IACHR file.

<sup>336</sup> I/A Court HR, Legal Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, par. 133.

<sup>337</sup> IACHR, Merits Report No. 148/18, Case 12,997, Sandra Cecilia Pavez, Chile, December 7, 2018, par. 65.



## **CHAPTER 4**

# **TRADE UNION RIGHTS**



## TRADE UNION RIGHTS

222. Chapter 4 analyzes the main challenges faced by trade unions in Cuba, with an emphasis on freedom of association, collective bargaining, and the right to strike. This Chapter begins by analyzing the main international conventions ratified by the State and the fundamental inter-American standards on trade union rights, and afterwards analyzes Cuba's internal legal framework.

### A. *International agreements ratified by Cuba*

223. The right to freedom of association and collective bargaining, enshrined in the Universal Declaration of Human Rights, protects the effective participation of non-state actors in economic and social policy, and constitutes the core of democracy and the rule of law. Therefore, ensuring participation and representation of workers and employers is essential for the effective functioning of national labor markets and general governance structures. In addition, collective bargaining is key for employers and their organizations and unions to establish fair wages and working conditions, and to guarantee equal opportunities between women and men.<sup>338</sup>

224. Under international law, States are obliged to respect, protect, and fulfill the fundamental rights of workers to freedom of peaceful assembly and association. Without an environment conducive to at least a minimal exercise of this right, workers have little power to change conditions that perpetuate poverty, increase inequality and limit democracy. The traditional means to claim these rights (unions, strikes, collective bargaining, etc.) are indispensable, since they allow people to express and represent their interests. Likewise, they are essential to realize democracy and dignity, and by giving the former a collective voice, constitute a means of leveling the unequal relationship between workers and employers.<sup>339</sup>

225. The study of the collective sphere of labor rights must necessarily start with the analysis of international instruments with universal scope on labor issues — the most significant being those issued by the ILO; and

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<sup>338</sup> ILO, [Decent work for sustainable development Resource Platform Thematic areas 8. Freedom of Association and Collective Bargaining](#), November 17, 2016.

<sup>339</sup> UN, [Rights to freedom of peaceful assembly and of association](#), A/71/385, September 14, 2016, par. 3, 4, 11 and 16.

subsequently address the main instruments of the American regional scope that establish the minimum standards in collective labor matters.

## 1. Universal system: The International Labor Organization

226. Two of the ILO Fundamental Conventions ratified by Cuba have a direct incidence on trade union rights:

- C087 - Freedom of Association and Protection of the Right to Organize Convention, 1948 (06.25.1952)
- C098 - Right to Organize and Collective Bargaining Convention, 1949 (29.04.1952)

227. ILO Convention 87 recognizes that workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.<sup>340</sup> Workers' and employers' organizations shall have the right to establish and join federations and confederations.<sup>341</sup> Although not expressly mentioned, both the Committee of Experts on the Application of Conventions and Recommendations and the jurisprudence recognize the right to strike considering the provisions of this Agreement.

228. ILO Convention 98 complements Convention 87 by establishing measures to guarantee the right of unionization of both workers and of organizations in which workers and employers are grouped, and to promote the development of collective bargaining. Among them, it establishes protection against acts of interference<sup>342</sup> and against anti-union discrimination,<sup>343</sup> as well as the use of voluntary negotiation procedures to regulate employment conditions through collective agreements.<sup>344</sup>

229. The ILO has control mechanisms in place that help guarantee application of the conventions by the countries that ratify them.<sup>345</sup> The main mechanism for periodic monitoring and control is the Committee of Experts on the Application of Conventions and Recommendations (CEACR), which examines the application of ratified conventions and recommendations through reports submitted by the countries.<sup>346</sup> In the area of freedom of

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<sup>340</sup> ILO, [Freedom of Association and Protection of the Right to Organize Convention, 1948 \(No. 87\)](#), 1948, Article 2.

<sup>341</sup> ILO, [Freedom of Association and Protection of the Right to Organize Convention, 1948 \(No. 87\)](#), 1948, Article 5.

<sup>342</sup> ILO, [Right to Organize and Collective Bargaining Convention, 1949 \(No. 98\)](#), 1949, Article 2.

<sup>343</sup> ILO, [Right to Organize and Collective Bargaining Convention, 1949 \(No. 98\)](#), 1949, Article 1.

<sup>344</sup> ILO, [Right to Organize and Collective Bargaining Convention, 1949 \(No. 98\)](#), 1949, Article 4.

<sup>345</sup> ILO, Application and promotion of standards. Available at: <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/lang--en/index.htm>

<sup>346</sup> N. VALTICOS and G. VON POTOBSKY, *International Labor Law*, Deventer: Kluwer, 1995, p. 240-242.

association, there is also a specific control procedure before the Committee on Freedom of Association that examines complaints filed against Member States for violations of freedom of association or collective bargaining.<sup>347</sup>

230. Regarding the application of Convention 87 on freedom of association and protection of the right to organize and Convention 98 on the right to organize and collective bargaining, it is worth mentioning two ILO pronouncements regarding freedom of association in Cuba.
231. In Case No. 3271, filed by ASIC against the Cuban State in 2016, the ILO Committee on Freedom of Association presented its first conclusions and recommendations in June 2018,<sup>348</sup> requesting the Government to guarantee the recognition of ASIC and ensure its freedom to operate freely and carry out its trade union activities. In addition, the Committee requested that all allegations of assault and other forms of anti-union discrimination be investigated and, if proven, that dissuasive sanctions be imposed on the Cuban State, and appropriate compensatory measures be granted to the victims. Specifically, it requested the State to provide detailed information on the outcome of the administrative or judicial proceedings against the trade unionists mentioned as victims of anti-union discrimination, such as Mr. Reyes Consuegras. That same month, the ILO Governing Body approved the Committee's recommendations.<sup>349</sup> However, after the Committee's pronouncement, ASIC has once again denounced anti-union actions, which has given rise to three new reports — the last of which was issued in March 2022.<sup>350</sup>
232. On the other hand, the comments issued by the CEACR in relation to the Cuban State in 2019 were published during the 109<sup>th</sup> session of the International Labor Conference in 2021. These comments indicated that they regretted "that the Government had not sent a copy of the sentences related to specific cases of conviction of trade unionists of the National Independent Workers Confederation of Cuba (*Confederación Obrera Nacional Independiente de Cuba* - CONIC), persecution and threats of imprisonment against delegates of the Light Industry Workers Union (*Sindicato de Trabajadores de la Industria Ligera* - SITIL), and confiscation of material and humanitarian aid sent from abroad to the Unitary Council of Cuban Workers (*Consejo Unitario de Trabajadores Cubanos* - CUTC)". The CEACR also took note of the Government's insistence that these trade unionists were being sentenced for crimes duly defined by law and, therefore, no violation of the Convention could be alleged. The Government

<sup>347</sup> N. VALTICOS and G. VON POTOBSKY, *International Labor Law*, Deventer: Kluwer, 1995, p. 248-250.

<sup>348</sup> ILO, Committee on Freedom of Association, *Interim report No. 386*, June 2018.

<sup>349</sup> IACHR, *Situation of Human Rights in Cuba*, OEA/Ser.L/V/II; Doc. 2/20, February 3, 2020, p. 105.

<sup>350</sup> ILO, Committee on Freedom of Association, *Interim report No. 397*, March 2022.



also stated that the ILO supervisory bodies were not impartial, and that they were being manipulated.

233. Additionally, the Committee on Freedom of Association also expressed its regret at the government's refusal to comply with its recommendations. Specifically, regarding the request to provide copies of judicial decisions, recalling that the Government has also refused to provide the judgments issued in relation to other allegations of persecution of trade unionists.<sup>351</sup> For this reason, the Committee once again requested the Government provide copies of said judgments.<sup>352</sup>

## 2. Inter-American Human Rights System

234. The Inter-American System recognizes freedom of association as a fundamental human right,<sup>353</sup> and union rights are enshrined in various regional legal instruments. Article 45.c of the OAS Charter recognizes the right of association, legal status and its protection, as well as the right to collective bargaining and the right to strike.<sup>354</sup> Article XXII of the American Declaration recognizes the right of association.<sup>355</sup> In addition, the American Convention recognizes freedom of association in Article 16,<sup>356</sup> and the Protocol of San Salvador<sup>357</sup> recognizes the right to organize unions and join a union of choice for the protection and promotion of workers' interests,<sup>358</sup> as well as the right to strike.<sup>359</sup> However, none of these instruments have been ratified by the Cuban State
235. In the aforementioned inter-American legal framework, the protection of freedom of association, collective bargaining, and the right to strike are fundamental pillars to guarantee the right to work under fair and equitable

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<sup>351</sup> See case No. 3271, report No. 389 of the ILO.

<sup>352</sup> ILO, *Observation (CEACR) - adopted 2019, published 109th ILC session (2021)*, 2021.

<sup>353</sup> I/A Court HR, Advisory Opinion OC-27/21, op. cit., par. 70.

<sup>354</sup> OAS, *Charter of the Organization of American States*, 1948, Article 45.c.

<sup>355</sup> OAS, *American Declaration of the Rights and Duties of Man*, 1948. Article XXII.

<sup>356</sup> OAS, *American Convention on Human Rights*, 1969, Article 16.

<sup>357</sup> It should be noted that the fact that the Protocol has not been ratified limits IAHRs access to trade union organizations constituted or operating in Cuba. See, I/A Court HR, *Titularity of rights of legal persons in the inter-American human rights system (interpretation and scope of Article 1.2, in relation to Articles 1.1, 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62.3 of the American Convention on Human Rights, as well as Article 8.1.a and b of the San Salvador Protocol)*. Advisory Opinion OC-22/16, of February 26, 2016, Serie No. 22, par. 99 to 105.

<sup>358</sup> OAS, *Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights: "Protocol of San Salvador, 1988. Article 8.1.a.*

<sup>359</sup> OAS, *Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights: "Protocol of San Salvador, 1988. Article 8.1.b.*

conditions. The Inter-American Court has established the autonomy of each of these rights, although they are interdependent and indivisible.<sup>360</sup>

236. The right to freedom of association is a general principle of international law.<sup>361</sup> It consists of the power to establish trade union organizations and implement their internal structure, activities and programs, without intervention of public authorities to limit or hinder the exercise of this right.<sup>362</sup> The right to collective bargaining is an essential part of freedom of association and allows workers to jointly defend or claim their interests through dialogue with their employers.<sup>363</sup> The right to strike is the fundamental tool available to workers to defend their interests, having independence from their organizations.<sup>364</sup>
237. Indivisibility and interdependence are characteristics of human rights that are especially evident in the field of trade union rights. The full exercise and effectiveness of trade union rights depend on effective pre-existence — i.e.: respect and guarantee of free and full exercise of the other human rights; otherwise, the development of trade union freedom would not be possible.<sup>365</sup>
238. The Inter-American Court has indicated that freedom of association is a general principle of international law.<sup>366</sup> It fulfills an important social function, since union work preserves or improves the working and living conditions of workers. To that extent, its protection allows the realization of other human rights.<sup>367</sup> Within the framework of protection of the right to freedom of association in labor relations, this human right has both collective and individual connotations.<sup>368</sup> In its collective aspect, union freedom protects the establishment of trade union organizations and the implementation of their internal structure, activities and programs, without the intervention of public authorities to limit or hinder the exercise of this right. In its individual dimension, this freedom means that each person can determine without coercion whether to be part of an association.

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<sup>360</sup> I/A Court HR, Case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Office of the Comptroller”) v. Peru. Preliminary Objection, Merits, Reparations and Costs, judgment of July 1, 2009. Series C, No. 198, par. 101; I/A Court HR, Case of Lagos del Campo v. Peru, op. cit., 2017, par. 141.

<sup>361</sup> I/A Court HR, *Advisory Opinion OC-27/21*, op. cit., par. 70.

<sup>362</sup> IACHR, *Compendium Labor and trade Union Rights*, par. 49 and 50.

<sup>363</sup> IACHR, *Compendium Labor and trade Union Rights*, 2020, par. 53.

<sup>364</sup> IACHR, *Compendium Labor and trade Union Rights*, 2020, par. 54.

<sup>365</sup> I/A Court HR, *Advisory Opinion OC-27/21*, op. cit., par. 106 to 108.

<sup>366</sup> I/A Court HR, *Advisory Opinion OC-27/21*, op. cit., par. 70.

<sup>367</sup> I/A Court HR, *Advisory Opinion OC-27/21*, op. cit., May 5, 2021, Series No. 27, par. 71. I/A Court HR, Case of former employees of the judicial body v. Guatemala, op. cit., par. 114.

<sup>368</sup> I/A Court HR, Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C, No. 72, par. 153-159. I/A Court HR, Case of Huilca Tecse v. Peru. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C, No. 121, par. 69-77.

239. An essential component of freedom of association is collective bargaining, insofar as it includes the necessary means to give workers a position to defend and promote their interests.<sup>369</sup> The I/A Court HR indicates that this right comprises various elements, which include (at least) the following:<sup>370</sup> i) the principle of non-discrimination of workers in the exercise of trade union activity; ii) direct or indirect non-interference of employers in workers' unions in the stages of incorporation, operation and administration; and iii) progressive encouragement of voluntary negotiation processes between employers and workers that make it possible to improve employment conditions through collective agreements.
240. Regarding the right to strike, Advisory Opinion OC-27/21 of the Inter-American Court points out this is a fundamental human right of workers, which can be exercised with independence for their organizations.<sup>371</sup> In particular, the Court establishes that “states must respect and guarantee this right be exercised effectively by all workers without discrimination. They must therefore adopt any measures necessary to ensure that preconditions and advance requirements for calling a strike are not become obstacles. The state must also guarantee that workers be able to exercise their right to strike without any sanctions from their employer or by the state. This means states should repeal criminal provisions that could be used to prosecute the exercise of the right to strike.”<sup>372</sup>

## *B. Internal regulations on trade union rights*

241. In trade union issues, the Cuban legal system is governed by the 2019 Constitution, which enshrines the right to freedom of union as part of the right of association. Regarding the exercise of this right, the provisions of the Labor Code that regulate the activity of union organizations and union representatives are of interest, as well as the limits to this right established in the Penal Code after its recent reform.

### **1. The 2019 Constitution**

242. The Constitution of the Republic of Cuba<sup>373</sup> subsumes the right to freedom of union in the broader right of association, recognized in Article 56,

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<sup>369</sup> I/A Court HR, [Advisory Opinion OC-27/21](#), op. cit., par. 91.

<sup>370</sup> I/A Court HR, [Advisory Opinion OC-27/21](#), op. cit., par. 94.

<sup>371</sup> I/A Court HR, [Advisory Opinion OC-27/21](#), op. cit., par. 95.

<sup>372</sup> I/A Court HR, [Advisory Opinion OC-27/21](#), op. cit., par. 111.

<sup>373</sup> Cuba, [Constitution of the Republic](#).

provided it is for peaceful and lawful purposes.<sup>374</sup> There is no law that develops these constitutional rights to regulate the process of authorization and holding of meetings and demonstrations in the terms recognized by the Constitution. The legislative schedule approved by the National Assembly on December 20, 2019, included an initiative to regulate the right to demonstrate (the Decree-Law on Demonstration and Meeting), whose approval was scheduled for September 2020.<sup>375</sup> Proceedings were postponed due to the COVID-19 pandemic, and it was not included in the legislative schedule for 2022.<sup>376</sup>

243. Although the right of association recognizes unions and, consequently, freedom of union, the Cuban Constitution only recognizes the Workers' Central Union of Cuba (*Central de Trabajadores de Cuba - CTC*), expressly mentioning it in Articles 134, 164 and 227 on the right of the Secretary General of the CTC to attend the meetings of the Council of Ministers and granting the CTC legal initiative to promote amendments to the Constitution.<sup>377</sup> The existence of a unitary trade union structure and the State's refusal to acknowledge union pluralism opposes the most basic principles of freedom of association — recognized not only by the Cuban Constitution but also in the international agreements signed by the Cuban State itself.<sup>378</sup>
244. In the Universal Periodic Review of the UN, several entities indicated that a large number of workers in Cuba were unionized and protected by collective agreements, that unions could participate in the administration of labor justice, and that they had the right to conduct inspections. However, other groups claimed that no union except the CTC was legally recognized, and that independent union activists were systematically repressed by the government.<sup>379</sup>

## 2. Associations Law

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<sup>374</sup> Cuba, [Constitution of the Republic](#), Article 56: "The rights of assembly, demonstration and association, for lawful and peaceful purposes, are recognized by the State as long as they are exercised with respect for public order and comply with the requirements established by law".

<sup>375</sup> Cuba, [Agreement IX-49 \(GOC-2020-24-O2\) Approves the Legislative Schedule for the current Legislature](#), 2020.

<sup>376</sup> Cuba, [Agreement IX-115](#), 2021.

<sup>377</sup> Cuba, [Constitution of the Republic](#), Articles 134 and 164.

<sup>378</sup> In this sense, the ILO Committee on Freedom of Association has affirmed that "The right of workers to establish organizations of their own choosing implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party". See, ILO [Compilation of decisions of the Committee on Freedom of Association, Sixth Edition](#), 2018, par. 475. Committee on Freedom of Association, 353rd report, Case No. 2516, par. 999 and 372nd report, Case No. 3025, par. 151. For its part, the Inter-American Court considers that "an individual does not enjoy full exercise of the right of association if, in reality, this power is non-existent or is reduced in such a way that he cannot put it into practice". See, I/A Court HR, Case of Huilca Tecse v. Peru, op. cit., par. 77.

<sup>379</sup> IACHR, [Situation of Human Rights in Cuba](#), par. 136.

245. The right of association in Cuba is governed by the provisions of Law No. 54 of Associations (December 27, 1985)<sup>380</sup> and its Regulations, approved by Resolution No. 53/86 of the Ministry of Justice (July 14, 1986),<sup>381</sup> which establishes complementary regulations for the enforcement of said Law.
246. Pursuant to the provisions of Article 2 of the Associations Law, the types of associations that may be established in the country are: a) scientific or technical; b) cultural and artistic; c) sports; d) of friendship and solidarity; and e) any others that, in accordance with the Constitution and this Law, have purposes of social interest.<sup>382</sup> The Law establishes a minimum number of 30 members<sup>383</sup> to incorporate an association, which must have bylaws or internal regulations that govern its purpose, operation, activities, and territorial demarcation.<sup>384</sup>
247. Once these requirements have been met, the founders or incorporators of the association must submit an authorization for incorporation request to the Ministry of Justice, following the procedures established in Article 12 *et seq.* of the Regulations for Associations. Said registration will determine the granting of legal personality.<sup>385</sup> The resolution denying, or authorizing incorporation of the association will be issued within 60 business days following the request filing date.<sup>386</sup>
248. Associations and their directors may be subject to administrative sanctions, against which appeals may be filed before the Ministry of Justice within 30 working days from the date of notification of the sanction resolution. In turn, appeal resolutions may be challenged in court.<sup>387</sup>
249. According to the report presented by civil society organizations for the Universal Periodic Review of Cuba in May 2018, Cuban legislation does not comply with international standards and best practices on the right of association. In addition, the internal regime is subject to the discretion of administrative authorities, requiring procedures and requirements without

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<sup>380</sup> Cuba, ANPP, Law No. 54/85 on Associations, December 27, 1985.

<sup>381</sup> Cuba, Ministry of Justice, Resolution No. 53/86 Regulation of Law No. 54 of December 27, 1985, "Associations Law", of July 15, 1986.

<sup>382</sup> Cuba, ANPP, Law No. 54/85 Associations Law, of December 27, 1985, Article 2.

<sup>383</sup> Cuba, ANPP, Law No. 54/85 Associations Law, of December 27, 1985, Article 5.

<sup>384</sup> Cuba, ANPP, Law No. 54/85 Associations Law, of December 27, 1985, Article 4.

<sup>385</sup> Cuba, Ministry of Justice, Resolution No. 53/86 Regulation of Law No. 54 of December 27, 1985, "Associations Law", of July 15, 1986, Article 19.

<sup>386</sup> Cuba, Ministry of Justice, Resolution No. 53/86 Regulation of Law No. 54 of December 27, 1985, "Associations Law", of July 15, 1986, Article 17.

<sup>387</sup> Cuba, ANPP, Law No. 54/85 Associations Law, of December 27, 1985. Article 19.

a review process or effective recourse to challenge decisions denying registration.<sup>388</sup>

250. The legislative schedule approved by the ANPP for 2022 included a new Associations Law (the Associative Forms Law), scheduled for December 2022. This act would regulate the requirements for authorization for incorporation of associations, associative forms and their operation.<sup>389</sup>

### 3. The Cuban Labor Code

251. To guarantee the right contained in Article 56 of the Constitution, the Labor Code regulates trade union organizations. Article 12 establishes that "The State recognizes and encourages union organizations that bring together workers from different sectors and branches of the economy and represent their specific rights and interests, regardless of the nature or characteristics of their employment relationship."<sup>390</sup> It also recognizes the right of workers to voluntarily associate and establish trade union organizations in the scope and level in which they carry out their activities.<sup>391</sup>
252. Union representatives are granted facilities to perform their functions (premises and resources that are part of the employer's assets), and the necessary guarantees for their exercise. Thus, representatives cannot be transferred, subjected to disciplinary measures, dismissed for exercising their union functions, and their working conditions may not be affected — if they perform their functions in accordance with the law.<sup>392</sup>

### 4. Penal Code

253. In its extraordinary session of May 15, 2022, the ANPP approved a new Penal Code in Cuba,<sup>393</sup> replacing the regulations contained in Law No. 62 of December 29, 1987.
254. The new Penal Code limits the exercise of the rights of free association and assembly and, in some cases, increases penalties for belonging to an organization not registered before the corresponding registry. Up until this point, belonging to an unregistered association was punishable by imprisonment from 1 to 3 months or a fine of up to 100 quotas.<sup>394</sup> The new

<sup>388</sup> Cubalex and Robert F. Kennedy Human Rights, [Report on the right of association in Cuba for the Universal Periodic Review of Cuba in May 2018](#) (3rd Cycle), October 3, 2017.

<sup>389</sup> Cuba, [Agreement IX-115](#), 2021.

<sup>390</sup> Cuba, [Labor Code](#), Article 12.

<sup>391</sup> Cuba, [Labor Code](#), Article 13.

<sup>392</sup> Cuba, [Labor Code](#), Articles 16 and 17.

<sup>393</sup> Cuba, [Penal Code](#), 2022.

<sup>394</sup> According to Article 208.1 of [Law No. 62 "Penal Code"](#): "1. Whoever belongs, as an associate or affiliate, to an association not registered before the corresponding registry, incurs a sanction of deprivation of liberty of one to

wording of Article 274 of the Penal Code increases the imprisonment sentence from 6 months to 2 years, and fines from 200 to 500 quotas.<sup>395</sup> With this new wording, members of independent civil society organizations could also have their property confiscated as an accessory sanction.

255. In relation to Article 143 of the new Penal Code, that typifies a criminal offence called "Other acts against State security", it should be noted that any person, by themselves or on behalf of a non-governmental organization, who supports, encourages, finances, provides, receives or has in its possession funds, material or financial resources, with the purpose of paying for activities against the State and its constitutional order, will be sentenced to imprisonment from 4 to 10 years.<sup>396</sup>
256. Some civil society organizations have expressed their concern about this new regulation, which is a threat to the exercise of the right of free association and assembly by members of civil society.<sup>397</sup> The ambiguous, broad and imprecise wording describing this offence opens the possibility of invoking any legal basis to criminalize any individual or organization. This is generating serious worries among the Cuban population.
257. In addition, the IACHR has expressed its concern about the possible use of certain criminal offenses contemplated in the new Penal Code as a tool for the Cuban State to criminalize the legitimate exercise of freedom of expression, assembly, and association.<sup>398</sup>

### C. *Situation of trade union rights in Cuba*

258. Although Cuba has ratified the ILO Conventions on freedom of association and collective bargaining and updated its labor legislation in 2013 (Law No. 116 approving the Labor Code), there are severe limitations on the creation

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three months or a fine of up to one hundred quotas. 2. Promoters or directors of an unregistered association incur a penalty of deprivation of liberty from three months to one year, or a fine of one hundred to three hundred quotas".

<sup>395</sup> According to the provisions of Article 274 of the new Penal Code: "1. Promoters, organizers or directors of an association not authorized to be established, incur a penalty of deprivation of liberty from six months to two years, or a fine of two hundred to five hundred quotas, or both. 2. Whoever belongs, as an associate or affiliate, to an association not authorized to be established, incurs a penalty of deprivation of liberty from six months to one year, or a fine of one hundred to three hundred quotas, or both. 3. The court may impose the accessory sanction of confiscation of property on those responsible for the actions described in the preceding paragraphs".

<sup>396</sup> Cuba, *Penal Code*, 2022, Article 143.

<sup>397</sup> Race & Equality, "[Alert on the new Penal Code that intensifies the criminalization of the exercise of fundamental rights](#)", June 14, 2022.

<sup>398</sup> IACHR [@IACHR]. (May 20, 2022) Cuba. Given the approval of the new Penal Code on #15MAY, #IACHR and @RELE\_IACHR express concern about criminal offenses that could be used to criminalize the legitimate exercise of freedom of expression, assembly, and association [Tweet]. Twitter. <https://twitter.com/IACHR/status/1527665963507802114>

of independent unions. The Cuban Government only allows, de facto, a confederation of unions controlled by the State: the Workers' Central Union of Cuba (*Central de Trabajadores de Cuba - CTC*).<sup>399</sup>

259. This section analyzes the right to freedom of association and the main patterns of violation thereof; the right to collective bargaining and the lack of real participation of workers in such bargaining processes; and the repression by the Cuban State of the right to strike.

## 1. Freedom of union and its main patterns of violation

260. According to 98.4% of the testimonies of Cuban people collected by the IACHR and its REDESCA, freedom of association and union does not exist in Cuba. The Commission and its REDESCA have received information highlighting the lack of union pluralism in the Cuban State (deriving from the impossibility of registering independent unions), and the non-existence of the right to free association of workers. This restriction makes it unfeasible for independent union leaders to carry out union activities.

### a. Lack of freedom of association in the workplace

261. In their 2020 Report on the Situation of Human Rights in Cuba, the Commission and its REDESCA state that, although labor legislation in Cuba allows the establishment of independent trade unions, in practice it allows only one confederation of workers' unions, which is under the control of the State.<sup>400</sup>
262. According to the information received by the IACHR and its REDESCA, there are 18 national unions in Cuba, structured by branch or sector, integrated since 1961 into one single union (CTC). Its predecessor was the National Workers Confederation of Cuba (*Confederación Nacional Obrera de Cuba - CNOC*). The structure of the CTC is:
- Congress
  - National Council
  - National Committee
  - National Secretariat
  - 18 National Unions
  - Branch Unions

<sup>399</sup> HRW, [Events of 2019](#), World Report 2020, January 23, 2021.

<sup>400</sup> IACHR, [Situation of Human Rights in Cuba](#), 2020, par. 252.



- Provincial Committees
- Comités Provinciales
- Union Bureau (company level)
- Union Section (constituted in each workplace)

263. The 18 national unions are structured based on the characteristics of each workplace and the number of affiliates. Two types of union sections exist: i) basic union sections, constituted in a single workplace, with 10 or more affiliated workers; and ii) territorial union sections, with affiliates from two or more workplaces of the same union within the municipality.

264. Although the IACHR and its REDESCA take note that, since the reform of the Labor Code, express reference to the CTC has been removed from the text (which granted the CTC the monopoly of union representation of the workers of the country),<sup>401</sup> the *de facto* situation persists.

265. The IACHR and its REDESCA have received information regarding the creation and operation of independent unions in Cuba by civil society organizations. They all confirm that, despite this being a right widely exposed in state labor legislation, international standards on the matter continue to be breached:<sup>402</sup> the creation or operation of free trade unions outside the CTC is not allowed.<sup>403</sup> In addition, the only existing central union is controlled by the State and the Cuban Communist Party (PCC), given that the General Secretary of the CTC is a member of the highest State body (the Political Bureau) and the PCC.<sup>404</sup> Existing trade unions are therefore not truly independent, and do not play a countervailing role in industrial relations.

266. The ILO Committee on Freedom of Association has been reporting on this situation. For several decades, different complaints related to the Government's non-recognition and intervention in the free functioning of trade unions outside the CTC have been examined.<sup>405</sup> By way of example, it is worth mentioning the latest recommendations of the Committee in relation to the latest complaint submitted by ASIC (Case No. 3271), in which the Cuban Government is once again urged to ensure that the Independent

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<sup>401</sup> ILO, *Observation (CEACR) - Adoption: 2016, Publication: 106th ILC meeting, 2017*.

<sup>402</sup> Mainly, the provisions contained in ILO Conventions 87 and 98 on freedom of association and its protection, and on the right to unionize and to collective bargaining, respectively.

<sup>403</sup> Information provided by Race & Equality in response to a questionnaire published for this report, IACHR file.

<sup>404</sup> Information provided by ASIC in response to a questionnaire published for this report, IACHR file

<sup>405</sup> See cases No. 1198, 1628, 1805, 1961, 2258 of the ILO Committee on Freedom of Association.

Trade Union Association of Cuba (ASIC) is given recognition and that it can freely operate and carry out its trade union activities.<sup>406</sup>

267. The IACHR and its REDESCA emphasize the importance of union freedom for the defense and vindication of the collective interests of workers.<sup>407</sup> States must allow the free exercise of freedom of association which not only consists of the theoretical or formal recognition of the right to form groups, but also, and inseparably, of guaranteeing the right to exercise that freedom,<sup>408</sup> for which recognition and guarantee of the autonomy and independence of trade unions is a *sine qua non* requirement.<sup>409</sup>
268. Responses to questionnaires and testimonies from Cuban people collected by the IACHR and its REDESCA point out acts contrary to freedom of association carried out by the Cuban State, such as hindering free association and the creation of independent unions; the lack of representativeness of official unions; the compulsory unionization of official unions controlled by the State; and compulsory payment of union dues. One of the responses states:

Workers do not consider the CTC their union, but rather one more organ of the power structure. Union financing is done through compulsive deductions from workers' salaries of periodic union dues and some extraordinary dues — imposed for various reasons based on a decision-making process that is completely unknown to the workers.

To this basic financing, we should add the salaries and other benefits for trade unionists who participate in the National Assembly, or who are part of the directorates and the hundreds of institutions that comprise a tangled bureaucratic structure, both in state companies and public administration, and in the administration of labor “justice.”<sup>410</sup>

269. Likewise, some of the testimonies have pointed out the lack of protection and defense of the labor rights of workers by the official unions. In this sense, some interviewees stated:

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<sup>406</sup> ILO, Committee on Freedom of Association, Interim report No. 397, March 2022, par. 364.

<sup>407</sup> I/A Court HR, Case of Huilca Tecse v. Peru, op. cit., par. 71.

<sup>408</sup> I/A Court HR, Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs, judgment of August 31, 2017. Series C, No. 340, par. 156.

<sup>409</sup> IACHR, Merits Report No. 25/15, Case 10,737. Background. Víctor Manuel Isaza Uribe and family, July 21, 2015, par. 145.

<sup>410</sup> Information provided by ASIC in response to a questionnaire published for this report, IACHR file.

[...] The union does not work at all and does not defend the rights of workers. Their only purpose is to collect money and influence workers politically, in addition to assigning tasks outside working hours without any incentive.<sup>411</sup>

The union in Cuba does not represent the interests of the workers. It is a kind of pulley that acts in favor of the interests of the party.<sup>412</sup>

I hope that we Cuban agricultural workers can associate independently from the CTC to demand our interests. We are without union representation, and the union is the same as the State. We can never advance our rights and get justice.<sup>413</sup>

270. In the case of self-employed workers, the IACHR and its REDESCA have also received information pointing out the impossibility of creating spaces for unionization independent from the State, and the lack of protection of the rights of those workers.<sup>414</sup> Some interviewees stated:

The right of free association is prohibited in Cuba. They do not allow the creation of associations outside state control. In 2021, several entrepreneurs tried, despite these adverse circumstances, to create a network of enterprises with bylaws, with 11 initial participants. State Security intervened within two weeks, threatening some of us, saying that they were going to accuse us of fraud or some other crime. They said we had to knock down our initiative, because we could not do what we wanted. [...] Entrepreneurs do not have the right to associate. We are prevented from joining a union of our choice. We are in a state of helplessness, defenselessness and total insecurity.<sup>415</sup>

We have no union or organization that protects us or watches over the rights of workers in the non-state sector.<sup>416</sup>

If you want to associate as a professional or a worker of a given union, independently, you are persecuted and psychologically

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<sup>411</sup> IACHR, interview 61, July 15, 2022, IACHR file.

<sup>412</sup> IACHR, interview 37, August 7, 2022, IACHR file.

<sup>413</sup> IACHR, interview 23, July 21, 2022, IACHR file.

<sup>414</sup> Information provided at the 4<sup>th</sup> meeting of the Network of civil society organizations regarding the situation of human rights in Cuba (Red Cuba), October 6, 2021.

<sup>415</sup> IACHR, interview 6, July 20, 2022, IACHR file.

<sup>416</sup> IACHR, interview 18, July 17, 2022, IACHR file.

pressured to desist, because all labor rights in this sense are violated.<sup>417</sup>

271. The ILO Committee on Freedom of Association has affirmed that the State must take the necessary measures to ensure that self-employed workers can fully enjoy trade union rights for the purpose of furthering and defending their interest, including means of collective bargaining; and to identify, in consultation with the social partners concerned, the particularities of self-employed workers that have a bearing on collective bargaining, so as to develop specific collective bargaining mechanisms relevant to self-employed workers, if appropriate.<sup>418</sup>
272. Another aspect that shows the lack of union freedom is the matter of union affiliation of workers. Pursuant to Article 12 of the Labor Code, union affiliation is a voluntary act, although dues are set by the scales approved by the Confederation of Cuban Workers.<sup>419</sup> However, according to the information reported by civil society organizations and the testimonies collected by the Commission and its REDESCA, affiliation or membership and payment of established union dues is mandatory for all workers, and those who do not pay are pressured publicly.<sup>420</sup>
273. The International Labor Conference has indicated that the fundamental and permanent mission of the trade union movement is the economic and social progress of workers and, hence, it is essential to preserve their freedom and independence. Governments should not seek to transform the trade union movement into a political instrument, or use it to achieve their political objectives, nor interfere with the normal functions of unions on the pretext that it maintains freely established relations with the union.<sup>421</sup>
274. The IACHR and its REDESCA urge the State to comply with the recommendations of the ILO Committee on Freedom of Association and, consequently, to end the union monopoly. To promote the transition towards trade union pluralism, they also call on the Cuban State to recognize and legitimize the creation of free, autonomous and independent trade union organizations that allow the defense of the rights of all workers, including those self-employed.

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<sup>417</sup> IACHR, interview 1, September 26, 2021, IACHR file.

<sup>418</sup> ILO, Compilation of decisions of the Committee on Freedom of Association, par. 1285. Committee on Freedom of Association, 376th report, Case No. 2786, par. 349.

<sup>419</sup> As part of the Ordering Task, the CTC established new scales for union dues in 2021. Juventud Rebelde, “New scales approved for union dues”, January 11, 2021.

<sup>420</sup> Information received by the IACHR and REDESCA in a work meeting with civil society for the preparation of this report, September 14, 2022; IACHR, interview 63, July 13, 2022, IACHR file.

<sup>421</sup> ILO, Compilation of decisions of the Committee on Freedom of Association, 2018, par. 722-724.

## **b. Lack of protection of independent trade unionists and their defense**

275. The IACHR and its Special Rapporteurship have been constantly monitoring the situation of human rights defenders in Cuba — among them, independent trade unionists. They have received information about systematic violations of trade union freedom, which manifest not only in the impossibility of establishing independent trade union organizations, but also in the detention, threats and arrest of independent trade unionists.
276. According to the report prepared by the Independent Trade Union Association regarding the protests of July 11, 2021, seven independent trade unionists were detained due to the demonstration.<sup>422</sup> This means that the situation is worsening, since the State exerted strong repression and harassment against independent unionists, imprisoning them under accusations of crimes that, on many occasions, are not typified in the Penal Code.<sup>423</sup>
277. The IACHR and its REDESCA have received testimonies from independent trade unionists reporting the difficulties they face in exercising freedom of association due to constant threats of repression,<sup>424</sup> and from self-employed workers who try to form unions. One of them stated:

The main obstacle for Cuban entrepreneurs is the lack of political liberties [...] especially the right to free association, a right that I tried to exercise with a small group of entrepreneurs. We were brutally attacked until the network we created was dismembered.<sup>425</sup>

278. It is worth noting the ILO pronouncements regarding the attacks, harassment and persecution (arrests, assaults and dismissals, among other acts of discrimination and anti-union interference) of independent trade unionists in Cuba,<sup>426</sup> with Case No. 3271, filed by ASIC in 2016, still active.<sup>427</sup> The Committee on Freedom of Association urges the Government to refrain from unduly restricting the right of the leaders and members of the

<sup>422</sup> IACHR, *V Annual Report of the Rapporteurship on Economic, Social, Cultural and Environmental Rights of the IACHR*, OEA/SER.L/V/II Doc. 64 rev. 1, May 26, 2021, par. 656.

<sup>423</sup> Information received by the IACHR and REDESCA in a work meeting with civil society for the preparation of this report, December 2, 2021.

<sup>424</sup> Information received by the IACHR and REDESCA in a work meeting with civil society for the preparation of this report, December 2, 2021.

<sup>425</sup> Information provided at the 9<sup>th</sup> meeting of the Network of civil society organizations regarding the situation of human rights in Cuba (Red Cuba), September 21, 2022.

<sup>426</sup> According to the information available on the ILO website, there are a total of 17 cases related to limitations on the exercise of freedom of association. Normlex *Freedom of association cases*, October 20, 2022 (last visit).

<sup>427</sup> ILO, Committee on Freedom of Association, *Case No. 3271*, December 21, 2016.

aforementioned union association to freely organize and carry out their union activities (both outside the country and virtually), and to guarantee certain public liberties — such as freedom of movement within the national territory, which allows them to carry out their activities without interference from the authorities.<sup>428</sup>

279. The IACHR granted precautionary measures to protect the life and personal integrity of Iván Hernández Carrillo, General Secretary of the Confederation of Independent Workers of Cuba, who was the object of a series of alleged physical assaults, threats, arrests, and acts of intimidation by agents of the Cuban Department of State Security because of his activities as a union leader.<sup>429</sup>
280. On numerous occasions, the Inter-American Court has affirmed that the human right to freedom of association has both collective and individual connotations. In its individual dimension, this freedom means that each person can determine, without coercion, whether or not they want to be part of an association.<sup>430</sup> In addition, it has indicated that the scope of protection recognized for the right to freedom of association in the labor context also extends to organizations that, even if different from unions in nature, pursue legitimate representation of workers' interests.<sup>431</sup>
281. In the Judgment on the *Huilca Tecse v. Peru* case, the I/A Court HR indicated the obligation of States to guarantee the free exercise of this right:

[...] The State must guarantee that people can freely exercise their freedom of association without fear of being subjected to any kind of violence. Otherwise, the ability of groups to organize and protect their interests could be diminished.<sup>432</sup>

In addition, it has indicated that:

Summary execution of a unionist leader [...] can have a menacing effect on the workers of the trade union movement, diminishing the freedom of specific groups to exercise their right of association.<sup>433</sup>

<sup>428</sup> ILO, Committee on Freedom of Association, *Interim report No. 397*, March 2022.

<sup>429</sup> IACHR, *Resolution 5/2013, PM 245/13* Matter of Iván Hernández Carrillo Regarding Cuba. October 28, 2013.

<sup>430</sup> I/A Court HR, *Advisory Opinion OC-27/21*, op. cit., par. 80.

<sup>431</sup> I/A Court HR, *Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs*, judgment of August 31, 2017. Series C, No. 340, par. 158.

<sup>432</sup> I/A Court HR, *Case of Huilca Tecse v. Peru*, op. cit., par. 77.

<sup>433</sup> See, I/A Court HR, *Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C, No. 167, par. 146.*, I/A Court HR, *Case of Lagos del Campo v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C, No. 340, par. 156.*

282. The IACHR and its REDESCA point out the importance of the Cuban State recognizing the autonomy and independence of unions and allowing the free exercise of union freedom, without any attacks on personal integrity, threats, persecution, harassment, deprivation of access to employment, discrimination, or unwarranted dismissal because of union activity.<sup>434</sup> They urge the State to cease actions of harassment and stigmatization against independent trade unionists and, particularly, to cease the policy of criminalization against them, refraining from using criminal law in an abusive manner to initiate unfounded actions of harassment that discourage the exercise of their rights

## 2. The right to collective bargaining and the lack of real participation of workers

283. Collective bargaining is a fundamental right and a basic mechanism of social dialogue, through which employers and unions can agree on fair wages and working conditions (wages, work hours, professional training, etc.) conducive to good labor relations.<sup>435</sup> The objective of collective bargaining is none other than to establish a contract or collective agreement that regulates the employment conditions of a certain group of workers.<sup>436</sup>

284. Despite the fact that Article 12 of the Labor Code regulates the right of trade unions to enter into collective labor agreements with employers, and that Chapter XIV regulates them explicitly, the IACHR and its REDESCA take note of information received about the non-existence of free and voluntary collective bargaining in the country between trade unions and employers to redistribute power, due to intervention of public authorities in the process, that which alters the nature of such negotiations.

285. The responses to the questionnaires and the testimonies collected by the IACHR and its REDESCA indicate the absence of a true social dialogue; true collective negotiations for the improvement of living and working conditions by trade union forces; and the imposition of working conditions without the possibility of resorting to collective bargaining to defend or vindicate workers' interests in direct dialogue with their employers. One response to the questionnaire stated:

Given the non-existence of such collective negotiations, any document (such as the collective bargaining agreement or the allocation of budgets and investments) is drawn up by a small

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<sup>434</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, par. 261.

<sup>435</sup> ILO, *Collective bargaining, policy guide*, 2016, p. 2.

<sup>436</sup> ILO, *Collective bargaining, policy guide*, 2016, p. 3.

group of people — always with a majority of the administration staff. Workers are simply informed, but they have no say in these important decisions.<sup>437</sup>

**286.** Some interviewees said:

The union says that the norm is agreed upon by the Ministry of Agriculture, and that nothing can be done against it, except now that the country is in crisis and workers are required to make a contribution as a sacrifice for the common good and for the Revolution. [...] we have said that it is no longer an exceptional contribution but a regular one, and they tell us that we must continue taking a step forward for the food security of the people.<sup>438</sup>

Several workers have taken the issue [salary insufficiency] to our union representative, but he advises us to continue working, because any action to increase salaries depends on the will and initiative of the country's government, and an element that is not within his reach and can generate consequences.<sup>439</sup>

Everything was imposed, without prior negotiation or support from the union organization. If you make a claim before the Base Labor Justice Organ, it could have other consequences.<sup>440</sup>

**287.** The Inter-American Court has established as fundamental the protection of the right to collective bargaining and to go on strike, as an essential tool of the rights of association and freedom of union.<sup>441</sup> The IACHR and its Special Rapporteurship establish that collective bargaining is a procedure that forms part of the basic collective labor rights, intended for workers to jointly defend or claim their interests in direct dialogue with their employers. In this sense, the Commission's Seventh Report on the Situation of Human Rights in Cuba (October 4, 1983) recalls:

The right to strike and to bargain collectively, although not specifically listed in the American Declaration of the Rights and Duties of Man, are closely related to fundamental labor rights.

In addition, the Charter of the Organization of American States declares in Article 43 that employers and workers, both rural and

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<sup>437</sup> Information provided by 39. in response to a questionnaire published for this report, IACHR file.

<sup>438</sup> IACHR, interview 55, July 21, 2022, IACHR file.

<sup>439</sup> IACHR, interview 40, July 17, 2022, IACHR file.

<sup>440</sup> IACHR, interview 56, July 15, 2022, IACHR file.

<sup>441</sup> I/A Court HR, Advisory Opinion OC-27/21, op. cit., par. 124.



urban, have the right to associate freely for the defense and promotion of their interests, including the right to collective bargaining and strike.<sup>442</sup>

In view of this, the Commission considers that the right to strike and to collective bargaining should be considered, implicitly, as basic collective rights.<sup>443</sup>

288. Likewise, the ILO recognizes that the right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. Any such interference would appear to infringe the principle that workers' and employers' organizations should have the right to organize their activities and to formulate their programs.<sup>444</sup>
289. The IACHR and its REDESCA reiterate the importance of collective bargaining as an essential element of freedom of association, which allows unions to freely negotiate working conditions with employers, and emphatically call on the State to ensure that public authorities refrain from any intervention or interference that tends to limit or hinder the exercise of this collective right.
290. On the other hand, the information received by the IACHR and its REDESCA indicates that the absence of collective bargaining is particularly worrying in cases in which workers provide services for foreign capital companies but are hired through state employment agencies.

**a. Collective bargaining within the framework of the Foreign Investment Law**

291. Law No. 118 on Foreign Investment establishes the legal framework for foreign investment within the Cuban national territory,<sup>445</sup> and establishes employment relationships between foreign or mixed capital companies and workers, with the mediation of state employment agencies or entities. Therefore, foreign capital companies do not hire directly. Instead, they must

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<sup>442</sup> IACHR, Compendium Labor and trade Union Rights, 2020, par. 53.

<sup>443</sup> IACHR, Compendium Labor and trade Union Rights, 2020, par. 53.

<sup>444</sup> ILO Compilation of decisions of the Committee on Freedom of Association, 2018, par. 1232. Committee on Freedom of Association, 376th report, Case No. 3067, par. 950 and Case No. 3113, par. 990.

<sup>445</sup> Cuba, Official Gazette, Law No. 118 Foreign Investment Law, of April 9, 2014, published in Extraordinary Official Gazette No. 20, April 16, 2014, updated on February 7, 2020.

contact the state employment agency in charge of providing the workforce to foreign companies in a corresponding sector.<sup>446</sup> Article 12.1 of this regulatory provision establishes that salaries are set by agreement between the employing entity and the joint venture or foreign capital company.<sup>447</sup> This means that the State itself assumes the role of negotiator in matters of wage rights and working conditions, and the role of unions is ultimately irrelevant.

292. The Mariel Special Development Zone (ZED Mariel), established outside the scope of the Foreign Investment Law by special regulation,<sup>448</sup> has certain particular aspects regarding employment, regulated in Resolution No. 42.<sup>449</sup> Article 1 of this Resolution establishes that amounts to be paid for workers' labor are agreed between the designated Cuban entity<sup>450</sup> and the concessionaire or foreign user of the ZED Mariel. This means that there is no social dialogue or collective bargaining in the ZED Mariel, since working conditions are imposed on workers by virtue of the agreement between the State or employing agencies and the foreign companies.
293. Considering the foregoing, the Commission recalls that collective bargaining, as an essential component of freedom of association, includes the necessary means to give workers a position to defend and promote their interests, which is why States must refrain from interfering in negotiation processes.<sup>451</sup> The IACHR and its REDESCA call on the State to respect the right to collective bargaining, in accordance with existing international standards on the matter (including ILO regulations), and to refrain from imposing labor conditions without considering the interests of workers.

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<sup>446</sup> There is no digitized information on Cuban employer entities or an official registry of all entities that act as intermediaries for foreign capital companies. According to the information collected, all these entities are subordinated mainly to the Ministries of the Interior and of the Armed Forces, among them, and to a lesser extent, the Business Administration Group (Gaesa), and the Gaviota Tourism or Universal Stores Group (Ausa). However, there are multiple employer entities subordinate to other ministries, such as Tourism or Agriculture, among others.

<sup>447</sup> Article 12.1 "The salary is set by agreement between the employing entity and the foreign capital company, taking into account the complexity, working conditions and additional requirements of the positions".

<sup>448</sup> Cuba, Official Gazette, Decree-Law No. 313 "on the Mariel Special Development Zone", September 20, 2013, published in Extraordinary Official Gazette No. 26, September 23, 2013.

<sup>449</sup> Cuba, Official Gazette, Resolution No. 42 (GOC-2020-807-EX69), of November 25, 2020, published in Extraordinary Official Gazette No. 69, December 20, 2020.

<sup>450</sup> According to information in Extraordinary Official Gazette No. 26, of September 23, 2013, and Extraordinary Official Gazette No. 23, of May 7, 2014, the employer entities of the Mariel Special Development Zone are: Agencia Almacenes Universales; Grupo BioCubaFarma; Empresa Empleadora de la Construcción; Empresa Comercializadora de Servicios Técnicos y Tecnológicos (Tecnosime); Empresa de Servicios de Ingeniería Eléctrica Cubana (Siecsa); Empresa de Preparación y Suministro de Fuerza de Trabajo de Cubapetróleo: Petroempleo; Empresa Empleadora del Ministerio de la Agricultura: Cubatabaco; Empresa de Servicios Especializados de las Comunicaciones (Delta); Agencia Empleadora del Ministerio de Turismo: Empleatur; Empresa Empleadora del Ministerio de Transporte: Agemport; Corporación Cubaron o Inversiones Gamma.

<sup>451</sup> I/A Court HR, Advisory Opinion OC-27/21, op. cit., par. 124.

### 3. State repression of the right to strike

294. For the ILO Committee on Freedom of Association, a strike is one of the fundamental rights of workers and their organizations, insofar as it constitutes a means of defending their economic and social interests.<sup>452</sup> Although not expressly recognized in the ILO Conventions, this right is an inseparable corollary of the right to organize, protected by ILO Convention 87.<sup>453</sup> It consists of a temporary work stoppage (or slowdown) willfully effected by one or more groups of workers with a view to enforcing or resisting demands, or expressing grievances, or supporting other workers in their demands or grievances.<sup>454</sup>
295. In the inter-American system, the right to strike is understood as the collective, temporary and peaceful suspension of work carried out by the workers of a company or sector, whose purpose is to improve working, health and safety conditions.<sup>455</sup> It is expressly recognized as a fundamental human right of workers that can be exercised independently of their organizations,<sup>456</sup> as well as a right of trade associations in general.<sup>457</sup>
296. The IACHR and its REDESCA confirm that Cuban legislation does not contemplate the right to strike. The legal framework itself makes it impossible to take collective action measures to defend the rights of workers. The Cuban Government has reported to the Committee on Union Freedom regarding this right on several occasions, affirming that national legislation does not regulate, limit or prohibit strikes, nor do criminal laws establish any sanction for such actions, and that it is a prerogative of the trade union organizations to decide on the matter.<sup>458</sup> However, they have received information from civil society about the classification of any collective action by workers as illegal, and its consideration as public disorder or attack against peace and social security,<sup>459</sup> which implies that, in practice, this right is prohibited.

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<sup>452</sup> ILO [Compilation of decisions of the Committee on Freedom of Association](#), 2018, par. 751 and 752.

<sup>453</sup> ILO [Compilation of decisions of the Committee on Freedom of Association](#), 2018, par. 754. Committee on Freedom of Association, 372nd report, Case No. 3022, par. 614; Committee on Freedom of Association, 377th report, Case No. 3107, par. 240.

<sup>454</sup> ILO [Compilation of decisions of the Committee on Freedom of Association](#), 2018, par. 783. Committee on Freedom of Association, 358th report, Case No. 2716, par. 862.

<sup>455</sup> I/A Court HR, Advisory Opinion OC-27/21, op. cit., par. 124.

<sup>456</sup> I/A Court HR, Advisory Opinion OC-27/21, op. cit., par. 95.

<sup>457</sup> I/A Court HR, Case of former employees of the judicial body v. Guatemala, op. cit., par. 106.

<sup>458</sup> ILO, Committee on Freedom of Association, [Interim report No. 386](#), June 2018, par. 226.

<sup>459</sup> Information provided by ASIC in response to a questionnaire published for this report, IACHR file.

297. In relation to the possible consequences of exercising the right to strike, the responses to the questionnaires carried out by the IACHR and its REDESCA indicate:

Sure dismissal of those who dare exercise the right to strike and the subsequent persecution to which they are subjected, as well as denial of any future employment in the state or public sector.<sup>460</sup>

298. The Commission and its REDESCA have also received testimonies confirming the impossibility of exercising the right to strike due to persecution and fear of reprisals against workers who take peaceful protest actions, in addition to threats of dismissal and possible criminal charges. One of the interviewees stated:

[...] All nine workers who agreed to start the strike due to ineffective wages are afraid of the consequences. Many of us regret putting our families in danger.<sup>461</sup>

299. The Commission has indicated that the right to strike is a tool for workers to defend their interests.<sup>462</sup> In Merits Report No. 157/19, Case of Former Workers of the Guatemalan Judiciary, the IACHR established:

While the right to strike is not absolute, and can be limited by law, the restrictions must take into account the purpose of that right; so that workers do not face undue restrictions to their right or that it becomes inoperative in practice. The IACHR understands that the right to strike, as well as the freedom of association and the right to collective bargaining, can be described as a freedom as long as it is necessary for the State to refrain from undue interfering with the exercise of said right and to ensure that the conditions and guarantees necessary for its effective realization exist. The IACHR observes that the enjoyment of the right to strike is a prerequisite, and at the same time, the result of the enjoyment of other human rights; [...].<sup>463</sup>

300. More recently, the 2021 Advisory Opinion of the Inter-American Court indicates that the right to strike is one of the fundamental human rights of workers, which they can exercise with independence for their organizations.<sup>464</sup> It established that:

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<sup>460</sup> Information provided by RCD in response to a questionnaire published for this report, IACHR file.

<sup>461</sup> IACHR, interview 54, August 8, 2022, IACHR file.

<sup>462</sup> IACHR, *Compendium Labor and trade Union Rights*, 2020, par. 54

<sup>463</sup> IACHR, Merits Report No. 157/19. Case 12,432. Former workers of the judicial body, September 28, 2019, par. 84.

<sup>464</sup> I/A Court HR, *Advisory Opinion* OC-27/21, op. cit., par. 95.

In relation to the right to strike, the Court indicates that States must respect and guarantee that it can be exercised effectively by all workers, without discrimination. For such purposes, the necessary measures must be adopted to prevent the conditions and prerequisites for the establishment of a strike from constituting an obstacle to its effective implementation. Likewise, the State must guarantee that workers can exercise their right to strike without being penalized by the private employer or by the State itself. In this sense, the States must abolish criminal regulations that can be used to prosecute the exercise of the right to strike.<sup>465</sup>

301. Likewise, the ILO has expressed the need to guarantee that no person is discriminated against or harmed in their employment due to the peaceful exercise of their right to strike. The 2016 observations of the CEACR Commission state:

The Committee recalls that it has been referring for years to the absence of explicit recognition of the right to strike in the legislation, and the prohibition of its exercise in practice. The Committee notes that the new Labor Code again contains no provisions explicitly recognizing the right to strike.<sup>466</sup>

302. The IACHR and its REDESCA express their concern about the lack of legitimacy of the right to strike in the Cuban State, which prevents workers from having a means of defending their economic, social, and professional interests. In this regard, they reiterate the important work carried out by trade union organizations in defending the human rights of workers who face precarious working conditions in their workplaces, with the right to strike being one of the mechanisms used by unions to get answers to complaints.<sup>467</sup> They call on the State to recognize and legitimize the right to strike in the Cuban legal system, not only as a fundamental human right of workers, but also as an instrumental component for the achievement of other fundamental rights within the workplace, so that it may direct the participatory democratic principle within the sphere of work.

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<sup>465</sup> I/A Court HR, [Advisory Opinion](#) OC-27/21, op. cit., par. 111.

<sup>466</sup> ILO, Observation (CEACR) - [Adoption](#): 2016, Publication: 106th ILC meeting, 2017.

<sup>467</sup> IACHR, [Democracy and human rights in Venezuela](#), OEA/Ser.L/V/II. Doc. 54, December 30, 2009, par. 84.

## **CHAPTER 5**

# **ACCESS TO JUSTICE, DUE PROCESS AND JUDICIAL PROTECTION**



## ACCESS TO JUSTICE, DUE PROCESS AND JUDICIAL PROTECTION

### A. *Systems for resolution of labor disputes in Cuba*

303. In accordance with the Cuban Labor Code, labor disputes can be resolved through two mechanisms: a) the Labor Justice System, when the claim is related to "organs and agencies of the Central State Administration and national entities, the business system and budget of either type; companies and dependencies of political and mass organizations, foreign capital employers and those that directly contract the labor force"; or b) the Judicial System, when the case involves "those hired by natural persons authorized to do so, and for associative and cooperative salaried workers, once the specific procedure has been exhausted when so established."<sup>468</sup>
304. In the Labor Justice System (system a), resolution of labor conflicts is carried out by the Labor Justice Bodies (*Órganos de Justicia Laboral* - OJL) in its capacity of "first instance of claim for disciplinary measures and labor rights."<sup>469</sup> These comprise five appointed members: one by the head of the entity, one by the union, and three workers elected in assembly.<sup>470</sup> The corresponding Popular Municipal Court acts as second instance.<sup>471</sup>
305. The Labor Code provides the possibility for workers to request a review procedure before the Supreme Court against final sentences issued by the Popular Municipal Courts. According to the Cuban norm, this occurs when the matter falls under labor law, and if the initial disciplinary measure imposed was dismissal from the entity, evidencing "its illegality, arbitrariness, inadmissibility or notorious injustice; or new facts come to light that were not heard before; or new evidence surfaces."<sup>472</sup>
306. On the other hand, within the Judicial System (system b), applicable to the non-state sector, resolution of labor conflicts can occur in two ways: i) for workers hired by authorized natural persons, claims are submitted directly before the Popular Municipal Courts; ii) in the case of associative and cooperative forms of work, claims are resolved by a specific procedure,

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<sup>468</sup> Cuba, [Labor Code](#), Article 166.

<sup>469</sup> Cuba, [Labor Code](#), Article 167.

<sup>470</sup> Cuba, [Labor Code](#), Article 190.

<sup>471</sup> Cuba, [Labor Code](#), Article 167.

<sup>472</sup> Cuba, [Labor Code](#), Article 178.



being admissible by court once said procedure has been exhausted, and as provided in the specific rule.<sup>473</sup>

307. This chapter focuses on the Labor Justice System (a), which covers the majority of labor relations in Cuba. The following section pays particular attention to the mandatory administrative procedure before Labor Justice Bodies, which are the first instance for labor disputes in Cuba —i.e.: they are the point of entry to justice for the claim of rights by workers in Cuba.

## *B. First instance of access to labor justice in Cuba*

308. As mentioned above, Labor Justice Bodies are the first instance to resolve labor disputes in Cuba, within the framework of the Labor Justice System. This occurs through an administrative procedure.
309. Pursuant to Decree No. 326, Regulation of the Labor Code, OJLs are constituted in employer entities<sup>474</sup> with 50 or more workers. When there are multiple work centers in a municipality with fewer than 50 workers who depend on the same entity, a common Territorial Labor Justice Body may be established.<sup>475</sup> Additionally, in entities with fewer than 50 workers where Labor Justice Bodies are not established, claims regarding discipline and workers' rights are heard by another OJL, previously assigned by the Municipal Labor Director.<sup>476</sup> Exceptionally, for entities that, for reasons of force majeure or other justified causes, do not have an OJL, the Municipal Labor Director appoints "a Body to hear the claims of workers."<sup>477</sup>
310. OJLs comprise five or seven effective members. According to the Regulations of the Labor Code, "one is appointed by the head of the entity, among the cadres or workforce; one by the union organization, by the members of its executive body; and three workers elected in assembly."<sup>478</sup> According to the Cuban norm, members must meet the following requirements: a) be a worker of the entity; b) have a good attitude towards work and be disciplined; c) observe good social conduct inside and outside the entity; and

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<sup>473</sup> Cuba, [Labor Code](#), Article 180.

<sup>474</sup> According to the Cuban Labor Code, "bodies, agencies, national entities, higher management organizations, companies, budgeted units, dependencies of political and mass organizations are considered entities. Likewise, cooperatives and associative forms authorized by law are considered entities with respect to their paid workers". Cuba, [Labor Code](#), Article 10.

<sup>475</sup> Cuba, [Labor Code Regulations](#), Article 187.

<sup>476</sup> Cuba, [Labor Code Regulations](#), Article 188.

<sup>477</sup> Cuba, [Labor Code Regulations](#), Article 189.

<sup>478</sup> Cuba, [Labor Code Regulations](#), Article 190.

- d) not having been penalized for violations of work discipline, unless the penalty has been rescinded."<sup>479</sup>
311. In relation to the composition of OJLs, the IACHR has received complaints from civil society organizations about the absence of objective criteria for the appointment or election of members, as well as about the partiality of these members in assessing the cases.<sup>480</sup>
312. The Commission and its REDESCA observe that, although the Cuban norm establishes that members of OJLs receive technical training in issues of labor legislation, among other matters,<sup>481</sup> testimonies of former public officials of the Justice System in Cuba recounted that, in reality, they do not have the necessary technical knowledge for the exercise of the functions required of them, and that there is great interference of the State Administration in OJLs — either through the employing entity or the union, which, in turn, is also controlled by the Communist Party, given that there is no effective union freedom in the current system.
313. In particular, a former Cuban prosecutor highlighted in his testimony to the IACHR that “it is exceptional to see a Labor Justice Body that is not biased towards the Administration. [...] The Body is made up of workers elected in assemblies, 5 or 7 members, who have no knowledge of the law and issue very rudimentary resolutions based on models.”<sup>482</sup> Along the same lines, civil society has reported to the Commission that the partiality of OJLs is evident “from the moment that one of the members of the OJL is a part of the Communist Party of Cuba or an official designated by the head of the entity.”<sup>483</sup>
314. Regarding the mandate of OJL members, the Cuban norm establishes that they are appointed or elected for a period of two and a half years. However, before the expiration of that term, “they can be replaced when they fail to meet the requirements established for the performance of this function, as well as by resignation, termination of the employment relationship, breach of their duties, or other causes provided by law.”<sup>484</sup>
315. In relation to the procedure before OJLs, the Cuban norm provides that, to resolve conflicts in matters of discipline or labor rights, the worker, or their

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<sup>479</sup> Cuba, [Labor Code Regulations](#), Article 193.

<sup>480</sup> Information collected by the IACHR in the public consultation carried out for this report, corroborated in meetings of Red Cuba.

<sup>481</sup> Cuba, [Labor Code Regulations](#), Articles 198 and 199.

<sup>482</sup> IACHR, Interview 22, August 12, 2022, IACHR file.

<sup>483</sup> Information received by the IACHR at a work meeting with civil society for the preparation of this report, February 14, 2023.

<sup>484</sup> Cuba, [Labor Code Regulations](#), Article 195.

representative, can contact any of the members of the OJL, through: "a) a document with a copy stating the facts that motivate the claim, presenting any evidence they have; or b) a verbal request of which a record is drawn up with the statements of the claimant and the evidence presented."<sup>485</sup> In addition, according to the legal provision, "the member of the Body that receives the claim leaves a written record of the date on which it is received and forwards it to the president or the secretary within three (3) business days after receiving the claim, which cannot be rejected, to file it for commencement of the process."<sup>486</sup>

316. After examination of the claim by the OJL, and at least 72 hours in advance, the President of the Body summons the parties to a public appearance, to be held within 10 business days following the date of the claim.<sup>487</sup> In accordance with Cuban law, this appearance has the purpose of notifying the claim and presenting the evidence admitted. During this session, the acting members can, with authorization of the President, ask questions to the parties, the witnesses, and the experts<sup>488</sup>.
317. Regarding participation in the appearance and representation before the OJL, the Regulation establishes that the parties (the worker and the authority on whom the claim is being made) appear and act by themselves. However, the possibility of the worker being represented "by a union leader or a co-worker of their entity; their spouse or a relative within the fourth degree of consanguinity or second of affinity" is allowed.<sup>489</sup> With respect to the party that is the subject of the claim, the regulation indicates that "the authority that applied or proposed the imposition of the disciplinary measure, or the one that adopted the decision that could be claimed in cases of rights, should appear, unless force majeure grants representation by another cadre."<sup>490</sup>
318. In accordance with the procedure established in the Regulations of the Labor Code, after analyzing the evidence and deliberating, the Labor Justice Body collectively adopts the decision by simple majority, issues the Agreement within five business days thereafter, and notifies the parties in writing within three business days.<sup>491</sup>
319. In relation to the decisions of OJLs, the Regulation establishes that their reasoning will be guided by legal provisions, the analysis of the facts, and

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<sup>485</sup> Cuba, [Labor Code Regulations](#), Article 200.

<sup>486</sup> Cuba, [Labor Code Regulations](#), Article 200.

<sup>487</sup> Cuba, [Labor Code Regulations](#), Article 203.

<sup>488</sup> Cuba, [Labor Code Regulations](#), Article 207.

<sup>489</sup> Cuba, [Labor Code Regulations](#), Article 201.

<sup>490</sup> Cuba, [Labor Code Regulations](#), Article 201.

<sup>491</sup> Cuba, [Labor Code Regulations](#), Article 209.

whatever is truly proven during the procedure. However, the IACHR notes with concern that, in practice, independent unions and testimonies from Cuban workers report a situation far removed from the legal provision. Specifically, they denounce that OJLs are not guided by the search for truth, and instead serve as a way of legitimizing instructions previously given by state entities.<sup>492</sup> For the Commission and its REDESCA, this is particularly worrisome in cases of labor claims with political connections, such as those involving workers punished for expressing an opinion contrary to or critical of the government, and they highlight that they have received testimonies from workers who, due to their political position or social activism, have been persecuted at work through arbitrary and disproportionate disciplinary measures, and have not been able to receive a fair and impartial analysis of their claims. On the contrary, they have been victims of violations of their right of access to justice.<sup>493</sup>

320. The IACHR and its REDESCA report that, according to the Cuban norm, the parties can resort to Popular Municipal Courts to appeal Agreements issued by the OJLs in matters of labor rights and in the cases provided by law.<sup>494</sup> The parties may also request a review procedure before the Supreme Court against final rulings of Municipal Courts. This would occur in cases of claims of work rights and definitive dismissal, if the grounds provided by law exist.<sup>495</sup>

### C. *Technical defense and legal assistance in labor and union matters*

321. The Cuban Constitution recognizes the right of every person to due process, both in the judicial and administrative spheres, which includes the right to receive legal assistance to exercise rights in all proceedings.<sup>496</sup> On the other

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<sup>492</sup> According to reports of civil society, before issuing an Agreement, the OJL should carry out an analysis of the evidence, but, in practice, this does not happen. Likewise, according to reports to the IACHR and its REDESCA, OJLs do not usually verify whether the authority has complied with the prior investigation procedure before making a labor decision. (Information provided by Cubalex during an event on the patterns of violation of labor and union rights in Cuba, held in Los Angeles, California, on March 9, 2023, within the framework of the 186<sup>th</sup> Period of Sessions of the IACHR).

<sup>493</sup> The IACHR and REDESCA take note of the information provided by civil society, according to which: "the Cuban Constitution establishes that treason is the most serious of crimes, and whoever commits it is subject to the most severe sanctions. Labor discrimination based on political opinion in Cuba is legal by constitutional mandate. In this sense, labor sanctions are used as a form of punishment for exercising the rights to: freedom of conscience, opinion and expression, freedom of association, protest, political participation and private and family life". (Information provided by Cubalex during an event on the patterns of violation of labor and union rights in Cuba, held in Los Angeles, California, on March 9, 2023, within the framework of the 186<sup>th</sup> Period of Sessions of the IACHR).

<sup>494</sup> Cuba, [Labor Code Regulations](#), Article 210.

<sup>495</sup> Cuba, [Labor Code](#), Article 178.

<sup>496</sup> Cuba, [Constitution of the Republic](#), Article 94.

hand, the Code of Procedure establishes that representation or direction of a lawyer is not essential in labor processes, in which workers can be represented by union leaders, family members or other employees of the same entity.<sup>497</sup>

322. As mentioned above, workers may be represented by a union leader or a co-worker from the same entity, a spouse or a relative within the fourth degree of consanguinity or second of affinity in administrative procedures before OJLs. The designation of the representative would be made in writing or verbally before the Secretary of the Body.<sup>498</sup>
323. On the other hand, in accordance with Decree-Law No. 81 "On the practice of law and the national organization of collective law firms", workers who wish to be represented by a lawyer could hire the services of a lawyer from the National Organization of Collective Law Firms, which is a national entity of social interest and professional character, voluntarily made up of lawyers.<sup>499</sup> Services can be hired at a rate which, in some cases, can be reduced or completely waived.<sup>500</sup> Thus, users of the services of collective law firms would have the right, in theory, to freely choose a lawyer and their eventual substitute to direct the procedure or advise them on matters of interest to them.
324. Despite the foregoing, the Commission and its REDESCA note that the Labor Code Regulations do not list lawyers among the people who can represent workers. Likewise, they have received testimonies that show difficulties in accessing independent and impartial lawyers,<sup>501</sup> as will be discussed in the following section.
325. The Commission and its REDESCA observe that, although domestic legislation regulates the right to receive legal assistance in labor processes, this assistance is not necessarily provided by a trained person. They also note that, in practice, there would be difficulties in obtaining legal representation through the National Organization of Collective Law Firms and, even when it is possible to obtain it, it could be biased. According to complaints from civil society organizations, there is extensive government interference in the National Organization of Collective Law Firms.

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<sup>497</sup> Cuba, Official Gazette, Law 141/2021 Code of processes, October 28, 2021, published in Extraordinary Official Gazette No. 138. Article 82.1

<sup>498</sup> Cuba, Labor Code Regulations, Article 201.

<sup>499</sup> Cuba, Decree-Law No. 81 "On the practice of law and the national organization of collective law firms" June 8, 1984. Article 5.

<sup>500</sup> Cuba, Decree-Law No. 81 "On the practice of law and the national organization of collective law firms" June 8, 1984. Article 20.

<sup>501</sup> IACHR, Annual Report, Chapter IV.B "Cuba", 2019, par. 20. IACHR, interview 47, August 12, 2022, IACHR file.

## ***D. Challenges of access to justice, due process and judicial protection in Cuba***

326. The American Declaration establishes in its Article XVIII on the right to justice that: “Every person may resort to the courts to ensure respect for his or her legal rights. There should similarly be available to him or her a simple, brief procedure whereby the courts will protect him or her from acts of authority that, to his or her prejudice, violate any fundamental constitutional rights.”<sup>502</sup> The Declaration also provides for the right to petition (Article XXIV) and the right to due process (Article XXVI).
327. The American Convention on Human Rights establishes, in its Article 25, the right to judicial protection in the following terms:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.<sup>503</sup>

328. In addition, Article 8 of the Convention establishes that the right to be heard by a competent, independent, and impartial judge or court is part of the guarantees to which every person is entitled:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.<sup>504</sup>

329. In this regard, the Inter-American Court has indicated that the due process recognized in Article 8 of the Convention would cover the conditions that must be met to ensure the adequate defense of persons whose rights or obligations are under judicial consideration.<sup>505</sup> This entails the duty of the

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<sup>502</sup> OAS, *American Declaration of the Rights and Duties of Man*, 1948.

<sup>503</sup> OAS, *American Convention on Human Rights*, 1969. Article 25.1.

<sup>504</sup> OAS, *American Convention on Human Rights*, 1969. Article 8.1.

<sup>505</sup> I/A Court HR, *Judicial guarantees in states of emergency* (Articles 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, par. 28.

State to organize the government apparatus and create the necessary structures to guarantee said rights.<sup>506</sup>

330. In particular, the Inter-American Court has highlighted that, although the aforementioned Article 8 does not specify what the minimum guarantees are in civil, labor, fiscal, or any other type of proceedings (as it does with respect to criminal matters), the concept of due guarantees would also apply to these orders and, therefore, in this type of matter, the individual is also entitled to the minimum guarantees of due process as established in criminal matters, and insofar as it is applicable to the respective proceeding.<sup>507</sup>
331. According to the Court, the minimum guarantees must be respected even in administrative proceedings or any other whose decision may affect the rights of individuals<sup>508</sup>. On this matter, the Inter-American Court has clarified in its jurisprudence that:

Although Article 8 of the American Convention is titled "Right to a Fair Trial", its application is not limited to judicial remedies in the strict sense, "but rather the set of requirements that must be complied with in procedural instances" so that people can adequately defend themselves against any type of act on behalf of the State that may affect their rights.<sup>509</sup>

332. In the same way, the I/A Court HR has noted that Article 8 of the Convention is also applicable to situations in which a public authority or non-judicial state bodies issue resolutions that affect the determination of rights.<sup>510</sup> According to its jurisprudence, any State body that exercises functions of a materially jurisdictional nature has the obligation of adopting resolutions attached to the guarantees of due legal process.<sup>511</sup>
333. Following this line, the Commission and its REDESCA understand that, in terms of processes and/or administrative procedures in labor matters, particularly those of a punitive nature, the minimum guarantees provided for in Article 8.2 of the American Convention must be complied with as long

<sup>506</sup> I/A Court HR, Exceptions to the exhaustion of domestic remedies (Arts. 46.1, 46.2.a and 46.2.b, American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, par. 24.

<sup>507</sup> I/A Court HR, Advisory Opinion OC-11/90, op. cit., par. 28.

<sup>508</sup> I/A Court HR, Case of López et al. v. Argentina. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 25, 2019. Series C No. 396, par. 200.

<sup>509</sup> I/A Court HR, Case of the Constitutional Court v. Peru. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, par. 69.

<sup>510</sup> I/A Court HR, Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, par. 105. In the same sense, I/A Court HR, Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, par. 118 and 119.

<sup>511</sup> I/A Court HR, Case of Petro Urrego v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of July 8, 2020. Series C No. 4062, par. 119.

as they are compatible with the nature of the process or procedure in question. It is concluded that workers must be entitled, at least, to the following guarantees of due process:

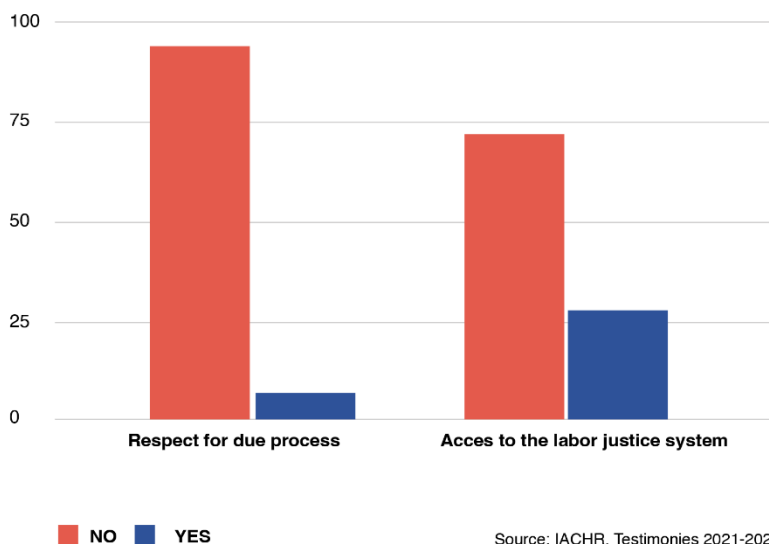
- a) prior and detailed communication of the accusation;
- b) concession of adequate time and means to prepare a defense;
- c) defend themselves personally or be assisted by a defender of their choice, and communicate freely and privately with their defender;
- d) the inalienable right to be assisted by a defense attorney provided by the State, paid or not according to domestic legislation, if they do not defend themselves or appoint a defense attorney within the period established by law;
- e) the right of the defense to question the witnesses and to obtain the appearance, as witnesses or experts, of other people who can shed light on the facts;
- f) the right not to be forced to testify against oneself or to plead guilty; and
- g) the right to appeal the ruling before a judge or higher court.<sup>512</sup>

334. Regarding Cuba, the data analyzed by the IACHR and its REDESCA in the 65 testimonies of Cuban workers used in this Report (collected between 2021 and 2023), indicate that 93.8% of interviewees state that the minimum guarantees of due process in the country are not complied with. Added to this is the fact that 72.3% of interviewees feel that they cannot access or are afraid of accessing the labor justice system. The following graph summarizes this conclusion.

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<sup>512</sup> OAS, American Convention on Human Rights, 1969, interpretation based on Article 8.2.





335. Despite the fact that the Cuban State has not ratified the American Convention on Human Rights, the IACHR reaffirms its competence to analyze the situation of the right to justice and due process in this country, based on Article 20(a) of its Statute.<sup>513</sup> This, in light of the American Declaration (particularly Articles XVIII and XXVI), as well as the authentic interpretations of these rights embodied in the inter-American jurisprudence on the matter.

336. Based on a systematic interpretation of the aforementioned documents and inter-American jurisprudence, it is possible to conclude that the Cuban State has the obligation to respect and provide procedural guarantees of workers in practice, as is the case of the right to be tried by an impartial authority, the right to defense, the motivation and justification of decisions, and the possibility of accessing suitable and effective remedy.

### 1. The right to be tried by an impartial authority

337. Article 3 of the Inter-American Democratic Charter establishes that the separation and independence of public powers are constitutive elements of a representative democracy.<sup>514</sup> In this regard, the I/A Court HR specified, in Advisory Opinion 28 of 2021, that "the separation of State power into different branches and bodies is closely related to the purpose of preserving

<sup>513</sup> IACHR, Statute of the Inter-American Commission on Human Rights, Approved by Resolution No. 447 adopted by the OAS General Assembly at its ninth regular session, held in La Paz, Bolivia, October 1979. Article 20 (a).

<sup>514</sup> OAS, Inter-American Democratic Charter, 2001, Article 3.

the freedom of associated branches, under the understanding that the concentration of power implies tyranny and oppression, and division of state functions allows for the efficient fulfillment of the various purposes entrusted to the State.<sup>515</sup>

338. Additionally, the Inter-American Court has indicated that one of the main objectives of the separation of public powers is the guarantee of judicial independence. In doing so, it prevents members of the judicial system from being subjected to possible undue restrictions in the exercise of their functions by bodies outside the Judiciary. According to the Court, judicial independence derives from guarantees such as an adequate appointment process, tenure in office and the guarantee against external pressure. Thus, the autonomous exercise of the judicial function should be guaranteed by the State both in its institutional facet (i.e.: in relation to the Judiciary as a system), and in connection with its individual aspect (i.e.: in relation to specific judges).<sup>516</sup>
339. The Court, in its jurisprudence, has stated that “the right to be tried by an impartial judge or tribunal is a fundamental guarantee of due process. That is to say, it must be guaranteed that the judge or court, in the exercise of his function, has the greatest objectivity to face the trial”.<sup>517</sup>
340. In turn, the IACHR has highlighted that the effective observance of the rights to justice (Article XVIII) and due process (Article XXVI) contained in the American Declaration (which derive from the classic separation of public powers) is based on the independence of the Judiciary, which is a requirement for the practical validity of human rights.<sup>518</sup>
341. Contrary to these postulates, in the case of Cuba, the Commission has pointed out in its Annual Reports that “the subordination of the courts to the Council of State, headed by the Head of State, means that in Cuba, the Judicial Branch is directly subordinate to the directives of the Executive Branch. Accordingly, the lack of independence of the Judicial Branch compromises its ability to provide guarantees for the enjoyment of human rights”.<sup>519</sup>
342. The Commission has also discovered that, although the Constitution establishes that magistrates and judges are independent and must obey only

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<sup>515</sup> Interpretation and scope of Articles 1, 23, 24 and 32 of the American Convention on Human Rights, XX of the American Declaration of the Rights and Duties of Man, 3.d of the Charter of the Organization of American States and the Inter-American Democratic Charter). Advisory Opinion OC-28/21 of June 7, 2021. Series A No. 28, par. 80.

<sup>516</sup> I/A Court HR, Case of Argüelles et al. v. Argentina. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 288, par. 147.

<sup>517</sup> I/A Court HR, Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, par. 145.

<sup>518</sup> IACHR, [Annual Report, Chapter IV.B Cuba](#), 2021, par. 18.

<sup>519</sup> IACHR, [Annual Report, Chapter IV.B Cuba](#), 2021, par. 18; IACHR, Annual Report, Chapter IV.B Cuba, 2022.

the law in their function of imparting justice,<sup>520</sup> the testimonies received from former Cuban judges, prosecutors and lawyers show that the constitutional provision is not observed in practice.

343. In this regard, in its 2020 Report on the Situation of Human Rights in Cuba, the Commission warns that the separation of powers would be prevented by the country's institutional model. It stressed that:

The foundations of the State and the characteristics of the branches of government show that the main powers for the conduct of public affairs remain concentrated in a small number of authorities. The National Assembly of People's Power has a very high concentration of functions, including the appointment of those who will hold other positions in the State. In addition, the possibility of removing officials without substantial protection to prevent reprisals against them for their decisions would seem to undermine independent and impartial decision-making<sup>521</sup>.

344. Moreover, in its Annual Reports, the IACHR has continuously expressed its concern about the lack of provisions to ensure the separation of powers: the National Assembly has broad powers, and there is a lack of conditions providing guarantees for judicial independence.<sup>522</sup> In addition to this, the Commission has produced multiple country reports on Cuba in which it has also expressed concern regarding the issue of the lack of independence of the administration of justice, which affects one of the conditions that the IACHR considers essential for the effective enforcement of human rights.<sup>523</sup>

345. Testimonies collected by the IACHR from former members of the Cuban Judicial System indicate that:

Judicial independence, as established by the Constitution, the law of the courts and the law of the prosecution, is not achieved in practice. Everything is judicial arbitrariness in all senses and processes. [...] Since the complaint is filed, the investigative process is opened, and it is presented to the court, arbitrariness has been verified. Everything is directed by the Communist Party and the interests of the Government, structures that have the

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<sup>520</sup> Cuba, [Constitution of the Republic](#), Article 150.

<sup>521</sup> IACHR, [Situation of Human Rights in Cuba](#), 2020, par. 113.

<sup>522</sup> IACHR, [Annual Report, Chapter IV.B Cuba](#), 2021, par. 2; IACHR, [Annual Report, Chapter IV.B Cuba](#), 2020, par. 3; IACHR, [Annual Report, Chapter IV.B "Cuba"](#), 2019, par. 6; IACHR, [Annual Report, Chapter IV.B Cuba](#), 2018, par. 28; IACHR, [Annual Report, Chapter IV.B Cuba](#), 2017, par. 33;

<sup>523</sup> IACHR, [Situation of Human Rights in Cuba](#), February 3, 2020, par. 114; IACHR, [Situation of Human Rights in Cuba](#), February 3, 2020, par. 4. IACHR, [Sixth Report on the Situation of Political Prisoners in Cuba](#), December 14, 1979.

"leading voice" in all the processes in which they have an interest.<sup>524</sup>

Judicial independence is highly compromised in Cuba, since all the actors have to be part of the Communist Party of Cuba. Independence is very well conceived from the legal and constitutional point of view, but, in practice, the pressures to which we are subjected force us away from what we would like to do.<sup>525</sup>

346. In particular, the Commission was informed by former Cuban prosecutors about how the interference of the Communist Party in the administration of justice works:

Before sending the file to the court, the matter must be reviewed by the chief municipal and provincial prosecutors, with prior approval of the Party, because in the municipal prosecutor's office there is a secretariat of the Party nucleus with which decisions must be consulted, especially political cases (cases in which the Party shows interest in the parties). In this way, from the political point of view, the ruling is prejudged by agreements in this phase through the decisive action of police instructors who know how and what evidence should be admitted to determine the final decision, putting forth exclusively incriminating elements to get a sentence.<sup>526</sup>

347. The Commission and its REDESCA received specific information regarding said interference in labor proceedings:

In civil, family, and labor matters, you also have the obligation to inform superiors about processes where one of the parties is an official, a party member, or holds relevant positions in state institutions. Of course, this file is monitored from the Specialty Chamber of the superior court, impeding any possibility that the judge decides without interference.<sup>527</sup>

348. Additionally, the Commission and its REDESCA were informed about the role played by "Department 24" of State Security against the independence of the Prosecutor's Office in justice processes. One of the interviewees explained that:

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<sup>524</sup> IACHR, interview 41, August 12, 2022, IACHR file.

<sup>525</sup> IACHR, interview 52, August 12, 2022, IACHR file.

<sup>526</sup> IACHR, interview 48, August 12, 2022, IACHR file.

<sup>527</sup> IACHR, interview 36, August 12, 2022, IACHR file.

[Department 24] is dedicated to controlling, monitoring, and spying on the main leaders/decision makers, such as judges, prosecutors, lawyers, etc. They investigate them professionally and personally. They ask if the official got a passport. They control family relationships — especially relatives who come to Cuba visiting from abroad. They spy on you at all times, in public and private places, without the authorization of a competent judge. They record and analyze all kinds of conversation. This extreme surveillance does not allow judges, prosecutors, etc. to have autonomy<sup>528</sup>.

349. Regarding retaliatory actions that justice operators may suffer, one of the interviewees indicated:

[As a judge] in particular I suffered this type of intelligence intervention several times in specific civil matters. [...] These interventions occur in all matters, but criminal and labor matters are the most affected areas, because the Party and the State show greater interest in them<sup>529</sup>.

350. The information collected by the IACHR and its REDESCA through different testimonies of justice operators, lawyers, and people under the jurisdiction of the Cuban State, as well as from complaints from independent organizations and unions, indicate that there is a structural subordination of the Justice System to political powers, allowed by the institutional machinery in the administration of justice, resulting in the absence of real independence and autonomy of the public powers and in the complete lack of legal security, access to justice, and effective protection. This occurs both in judicial processes and in administrative procedures, including the entire labor Justice System.

351. Based on the foregoing, the Commission reiterates its recommendation to the Cuban State to adopt the necessary measures to guarantee the full independence of the judiciary in Cuba. Specifically, it recommends that measures be undertaken so that judges have guarantees to carry out their work independently and impartially, in accordance with the law, and with respect for human rights.<sup>530</sup> Likewise, the IACHR and its REDESCA recommend that the State adopt the undertake measures to ensure the impartiality of the members of Labor Justice Bodies.

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<sup>528</sup> IACHR, interview 49, August 12, 2022, IACHR file.

<sup>529</sup> IACHR, interview 36, August 12, 2022, IACHR file.

<sup>530</sup> IACHR, Annual Report, Chapter IV.B Cuba, 2021, par. 164, recommendation 6; IACHR, Annual Report, Chapter IV.B Cuba, 2020, par. 166, recommendation 2.

## 2. The right to defense

352. The right to defense is included among the judicial guarantees set forth in Article 8.2 of the American Convention on Human Rights.<sup>531</sup> In this sense, the Inter-American Court has indicated that it is a central component of due process that obliges the State to treat the individual, at all times, as a true subject of due process, in the broadest sense of this concept, and not simply as an object of the same.<sup>532</sup> Additionally, it has indicated that the right to defense must be effective, timely, and carried out by technical personnel, which makes it possible to strengthen the protection of the specific interest of the accused and not as a simple means to formally comply with the legitimacy of the process. Therefore, any form of apparent defense would be in violation of the American Convention.<sup>533</sup>
353. The Inter-American Court has indicated that public defense is a state function or public service, which must enjoy the necessary autonomy in order to adequately carry out its functions.<sup>534</sup> In turn, the Commission has considered that it would not be admissible for the right of defense to be put at risk as a result of a line of command or pressure from other actors or powers of the State.<sup>535</sup> Hence, the international responsibility of the State could be compromised by the response provided through judicial bodies regarding the actions or omissions attributable to the public defense.<sup>536</sup>
354. In addition to this, the provisions of the Brasilia Regulations on Access to Justice confirm the relevance of technical-legal advice for the effectiveness of the rights of vulnerable people, as is the case of Afro-Cubans, women, LGBTI persons and persons with disabilities. According to these regulations, the right to legal assistance and public defense includes legal consultation on any matter likely to affect the rights or legitimate interests of a vulnerable person, even when a legal proceeding has not yet been initiated.<sup>537</sup>
355. On this specific aspect, the UN Committee against Torture has expressed its concern about the restrictions on the independent practice of law in Cuba, since only members of the National Organization of Collective Law Firms can practice the profession. In addition, it has received information that

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<sup>531</sup> OAS, American Convention on Human Rights, 1969. Article 8.2.

<sup>532</sup> I/A Court HR, Case of Ruano Torres et al. v. El Salvador. Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 303, par. 153.

<sup>533</sup> I/A Court HR, Case of Girón et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 15, 2019. Series C No. 390, par. 99.

<sup>534</sup> I/A Court HR, Case of Girón et al. v. Guatemala, op. cit., par. 100.

<sup>535</sup> IACHR, Guarantees for the independence of justice operators towards strengthening access to justice and the rule of law in the Americas. OEA/Ser.L/V/II. Doc. 44, December 5, 2013, par. 46 and 47.

<sup>536</sup> I/A Court HR, Case of Ruano Torres et al. v. El Salvador, op. cit., par. 168.

<sup>537</sup> Ibero-American Judicial Summit, Brasilia Regulations regarding Access to Justice for Vulnerable People, Brasilia, March, 2008, Chapter 2, section 2, par. 28-31.

questions the autonomy of the National Organization of Collective Law Firms, whose decisions on denial of entry or definitive dismissal from this organization can only be appealed before the Minister of Justice. The Committee has indicated that the State must also ensure respect for the right to free association and independent practice of law, in accordance with the Basic Principles on the Function of Lawyers.<sup>538</sup>

356. The Commission and its REDESCA have expressed their concern about testimonies that demonstrate the difficulties in accessing independent and impartial lawyers.<sup>539</sup> A former member of the Cuban justice system stated:

The lawyer knows that he depends on what the Cuban Communist Party says. The lawyer cannot speak beyond his orders, if he wishes to do so, he is censored in some way.<sup>540</sup>

357. The Commission and its REDESCA received information indicating that workers are discouraged from using the representation of a lawyer in administrative proceedings, since it would be seen as a negative factor in the process. In the public consultation carried out for this report, civil society indicated:

Although legal representation can be accessed in first-instance bodies, due to the precarious and ineffective nature of the process, their participation is sterile, and said bodies are extremely reluctant to the participation of lawyers, sometimes even suggesting, as a way of prejudging the ruling, that legal representation would be an aggravating circumstance<sup>541</sup>

358. Given these considerations, the IACHR and its REDESCA observe that there are challenges to the guarantee of the right to defense of Cuban workers. Specifically, with regard to the possibility of having independent technical representation by an impartial lawyer. In this sense, the Commission and its REDESCA recall that the right to defense is necessary to guarantee the principles of equality of arms and adversarial procedure in judicial proceedings, whatever their nature.<sup>542</sup>

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<sup>538</sup> UN, Committee against Torture, Concluding observations on the third periodic report on Cuba. CAT/C/CUB/CO/3, June 9, 2022, par. 14 and 15.

<sup>539</sup> IACHR, *Annual Report, Chapter IV.B "Cuba"*, 2019, par. 20.

<sup>540</sup> IACHR, interview 49, August 12, 2022, IACHR file.

<sup>541</sup> Information provided by Cubalex in response to a questionnaire published for this report, IACHR file.

<sup>542</sup> IACHR, *Corruption and Human Rights: Inter-American Standards*, OEA/Ser.L/V/II. Doc. 236, December 6, 2019, par. 326.

### 3. Motivated and founded decision

359. The duty to provide reasons for decisions is also part of the judicial guarantees included in Article 8.2 to safeguard the right to due process.<sup>543</sup> The Inter-American Court has defined justifiable reason as "the reasoned justification that allows a conclusion to be reached."<sup>544</sup> Likewise, it has indicated that the decisions adopted by internal bodies that may affect human rights must be duly founded — otherwise they are arbitrary.<sup>545</sup> Argumentation of a ruling and of certain administrative acts must inform the facts, motives, and norms on which the authority relied to make its decision, in order to rule out any indication of arbitrariness.<sup>546</sup>
360. Regarding labor matters, under the precept that the judicial guarantees of Article 8.2 of the ACHR also apply to labor proceedings, the jurisdictional bodies, as well as those of another nature, that exercise materially jurisdictional functions have the duty to adopt fair decisions based on full respect for the guarantees of due process established in Article 8 of the American Convention. While Article 8.1 of the Convention refers to the right of every person to be heard by a 'competent judge or court' for the 'determination of their rights,' this Article is equally applicable to situations in which a public authority, not necessarily a judicial one, issues resolutions that impact the determination of these rights.<sup>547</sup>
361. However, the Commission and its REDESCA received information regarding the lack of appropriate motivation in labor cases in Cuba. In this sense, one of the testimonies collected indicated that Municipal Courts only consider whether the procedural aspects have been fulfilled, and that substantive aspects are not adequately examined.<sup>548</sup>

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<sup>543</sup> OAS, [American Convention on Human Rights](#), 1969. Article 8.2; I/A Court HR, Case of Acosta et al. v. Nicaragua. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of March 25, 2017. Series C No. 334, par. 133.

<sup>544</sup> I/A Court HR, Case of López Mendoza v. Venezuela. Reparations and Costs Fund. Judgment of September 1, 2011. Series C No. 233, par. 141; I/A Court HR, Case of Escher et al. v. Brazil. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of July 6, 2009. Series C No. 200, par. 208; and I/A Court HR, Case of Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, par. 118.

<sup>545</sup> I/A Court HR, Case of López Mendoza v. Venezuela. Reparations and Costs Fund. Judgment of September 1, 2011. Series C No. 233, par. 141. Citing, I/A Court HR, Case of Yatama v. Nicaragua. Judgment of June 23, 2005. Series C No. 127, par. 152 and 153. Likewise, the European Court has stated that judges must indicate with sufficient clarity the reasons from which they make their decisions. Cf. European Court of Human Rights, *Hadjianastassiou v. Greece*. Judgment of December 16, 1992, Series A No. 252, par. 23.

<sup>546</sup> I/A Court HR, Case of López Mendoza v. Venezuela. Reparations and Costs Fund. Judgment of September 1, 2011. Series C No. 233, par. 141. Citing, I/A Court HR, Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, par. 122.

<sup>547</sup> I/A Court HR, Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74 103. par. 103 and 105.

<sup>548</sup> IACHR, interview 56, October 1, 2021, IACHR file.



362. The Commission points out that the obligation to provide reasons for decisions is essential to control judicial activity. When authorities provide motivation for their decisions, it legitimizes their function and allows for social accountability. Thus, providing adequate justification or motivation for decisions serves as a constraint on discretion, as it enables scrutiny by the parties involved and the public.<sup>549</sup>

#### 4. Right to suitable and effective remedy

363. The Commission observes that legal determinations must explicitly include the reasons for the decision, in order to enable the applicant to exercise his or her right of appeal, which, in turn, constitutes another essential procedural guarantee.<sup>550</sup>

364. In this regard, the IACHR has recommended that the right to a suitable and effective remedy in the face of a negative decision comply with the following parameters: i) the availability of judicial review of the administrative decision; ii) suspension of the decision until a final resolution at the highest level; iii) provision of sufficient information to applicants regarding the appeal process; iv) reasonable time given to file the appeal; v) provision of free legal assistance; vi) application of the right to expedited proceedings as well; vii) no requirement of difficult or impossible-to-obtain identity documents.<sup>551</sup>

365. In particular, the Inter-American Court has specified that, when a decision is adopted by an administrative authority, the review by a judge or court is a fundamental requirement to guarantee adequate control and scrutiny of administrative acts affecting fundamental rights.<sup>552</sup> Similarly, the I/A Court H.R. has indicated that the right to appeal, enshrined in the Convention, is not satisfied with the mere existence of a higher-ranking body than the one that tried and sentenced the subject, to which they have or may have access. For there to be a true review of the sentence, in the sense required by the Convention, it is necessary for a higher court to meet the jurisdictional characteristics that legitimize it to hear the specific case.<sup>553</sup>

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<sup>549</sup> IACHR, Corruption and Human Rights: Inter-American Standards, OEA/Ser.L/V/II. Doc. 236, December 6, 2019, par. 331 and 332.

<sup>550</sup> IACHR, Due process in the procedures for determining the status of refugee and stateless person and the granting of complementary protection, OEA/Ser.L/V/II. Doc. 255, August 5, 2020, par. 256.

<sup>551</sup> IACHR, Due process in the procedures for determining the status of refugee and stateless person and the granting of complementary protection, OEA/Ser.L/V/II. Doc. 255, August 5, 2020, par. 267.

<sup>552</sup> I/A Court HR, Rights and guarantees of girls and boys in the context of migration and/or in need of international protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, par. 141.

<sup>553</sup> I/A Court HR, Case of Herrera Ulloa v. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, par. 159.

366. In the case of Cuba, the Commission and its REDESCA received testimonies indicating the lack of effective review of the rulings of Labor Justice Organs by Municipal Courts, which should be functioning as a second instance. One of the interviewees indicated that:

Cuban labor legislation does not establish judicial control in [labor] matters, this route only being enabled to exhaust the recursive route as a last instance. In most cases, it becomes a mere procedure since the judiciary does not have independence in the exercise of their functions. Consequently, the vast majority of appeals are dismissed.<sup>554</sup>

367. Another interviewee indicated that, even when workers resort to the Municipal Courts, they obtain the same decision issued by the Labor Justice Organ:

In almost all cases, the workers receive the same result, because the prosecution maintains, in most petitions, the decisions adopted by the entity's administration, despite there being compelling reasons in the workers' writings.<sup>555</sup>

368. Given the foregoing considerations, the Commission and its REDESCA recall that, based on the right to justice and a regular trial provided for in the American Declaration, the Cuban State has the obligation to guarantee, to all persons under its jurisdiction, and thus all workers, a simple, fast, and effective judicial remedy before a competent judge or court. Consequently, it would not be enough for it to be provided for by the Constitution or the law, or for it to be formally admissible, but it is required that it be truly suitable to establish whether a violation of human rights has occurred and to provide necessary remedy.<sup>556</sup>

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<sup>554</sup> Information provided by Cubalex in response to a questionnaire published for this report, IACHR file.

<sup>555</sup> IACHR, interview 49, August 12, 2022, IACHR file.

<sup>556</sup> I/A Court HR, Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs, judgment of October 5, 2015. Series C No. 302, par. 245.



## **CHAPTER 6**

# **BUSINESS AND HUMAN RIGHTS**



## BUSINESS AND HUMAN RIGHTS

369. This chapter focuses on the international human rights obligations that fall on the Cuban State, in cases where companies that operate in the territory are involved in the enjoyment or affectation of such rights. Based on the inter-American standards developed on business and human rights, the Cuban normative regulations that have been sanctioned on the subject and the policies and mechanisms implemented are comprehensively analyzed, considering the current political context and economic situation of Cuba.

### A. *Universal and inter-american standards on business and human rights*

370. Within the international system for the protection of human rights, various instruments have been created that generate State obligations to guarantee and protect the rights of individuals relating to business activities, as well as responsibilities applicable to companies so that they operate with respect for human rights. This section identifies the main universal and inter-American standards created in the intersection of business and human rights, taking into account the recent Cuban process of creation and inclusion of new economic actors and the updating of the economic and social model.

#### 1. Universal Human Right System

371. In recent years, the international community has been discussing the treatment given to companies committing human rights violations through their operations, and the obligations that fall on States in this regard. In effect, the implementation of the United Nations Global Compact initiative was an important motivator to articulate and promote voluntary and responsible action of companies before the international community, based on the challenges introduced by globalization, sustainable development, and the enjoyment of human rights.<sup>557</sup> Similarly, General Comment No. 24 of the ESCR Committee on State obligations of in the context of business activities,<sup>558</sup> as well as the ongoing discussion within the Human Rights

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<sup>557</sup> UN Press Release. "Secretary General proposes global compact on human rights, labor, environment, in address to World Economic Forum in Davos", February 1, 1999.

<sup>558</sup> ESCR Committee, *General Comment No. 24 on the obligations of States under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, UN Doc. E/C.12/GC/24, August 10, 2017.

Council on the adoption of a binding treaty (which already has a third revised draft published in 2022<sup>559</sup>), constitute other key milestones in the matter.

372. As a relevant precedent within the universal system for the protection of human rights, the Human Rights Council (with Cuba as a full member) approved Resolution 17/4 of 2011, adopting the Guiding Principles on business and human rights. This document is received as a fundamental instrument of a non-binding nature that acts as a founding, dynamic, and evolutionary conceptual foundation, and provides theoretical and practical aspects in the field of business and human rights to other legally binding standards.<sup>560</sup> The Guiding Principles are structured around three fundamental pillars, establishing the minimum reference bases for global governance in this area: i) the duty of States to protect human rights; ii) the responsibility of companies to respect human rights; and iii) access to effective reparation mechanisms.
373. Within the ILO framework, the publication of the 1977 Tripartite Declaration of Principles on Multinational Companies and Social Policy becomes relevant as a voluntary code of conduct that establishes a guide for States, companies, and employers' and workers' organizations trying to guide the actions of transnational corporations in terms of social policy and inclusive, responsible, and sustainable practices in the workplace, in compliance with the labor rights of workers.<sup>561</sup> The Commission highlights that Cuba is one of the countries with the highest number of ratifications within the ILO.<sup>562</sup>
374. Due to the foregoing, the Commission and its REDESCA emphasize the United Nations Guiding Principles as a starting point and authorized source in the Americas to promote an environment that comprehensively and effectively prevents and remedies violations of human rights in the context of business activities or operations.<sup>563</sup> Additionally, they point out that the I/A Court HR has highlighted the importance of the three pillars, as well as the founding principles that derive therefrom.<sup>564</sup>

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<sup>559</sup> Human Rights Council, [Open-ended intergovernmental working group on transnational corporations and other business enterprises with regard to human rights](#).

<sup>560</sup> Human Rights Council. Resolution No. 17/4: Human rights and transnational corporations and other businesses. UN Doc. A/HRC/RES/17/4, July 6, 2011.

<sup>561</sup> ILO, [What is the ILO MNE Declaration?](#)

<sup>562</sup> ILO, [Conventions ratified by Cuba](#).

<sup>563</sup> REDESCA-IACHR, [Business and Human Rights: Inter-American Standards](#), OEA/Ser.L./V/II, November 1, 2019, par. 10 and 11.

<sup>564</sup> I/A Court HR, Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras, op. cit., par. 84.

## 2. Inter-American Human Rights System

375. The Commission and its Special Rapporteurship warn that the effects on human rights as a consequence of corporate actions have repercussions not only on civil and political rights, but also on economic, social, cultural and environmental rights — such is the case of the right to health, water, a healthy environment, prior and informed consultation of indigenous peoples, work, and social security, among others. This reinforces the need and urgency to develop standards on business and human rights applicable throughout the region and, in parallel, to strengthen the understanding of the culture of indivisibility, interdependence, and the interrelationship of all human rights as central elements to ensure their effective protection.<sup>565</sup> In this sense, the inter-American system for the protection of human rights has included State obligations in terms of fundamental rights explicitly linked to the actions of non-state actors, as well as specific standards aimed at public and private actors for effective respect and protection of rights in these contexts.
376. In the Cuban case, the State is party to international instruments such as the American Declaration and the OAS Charter. The latter indicates some provisions closely linked to business activities, such as Article 34.m, which recognizes that in order to achieve integral development, State goals must include the "promotion of private initiative and investment in harmony with action in the public sector;"<sup>566</sup> or Article 36, which establishes that, "transnational enterprises and foreign private investment shall be subject to the legislation of the host countries and to the jurisdiction of their competent courts and to the international treaties and agreements to which said countries are parties, and should conform to the development policies of the recipient countries."<sup>567</sup>
377. The OAS framework also includes important work precedents, such as the "Guide of Principles on Corporate Social Responsibility in the Field of Human Rights and the Environment in the Americas,"<sup>568</sup> and the report on the "Conscious and Effective Regulation of Companies in the Field of Human Rights,"<sup>569</sup> both approved by the Inter-American Juridical Committee; as

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<sup>565</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 43.

<sup>566</sup> OAS, *Charter of the Organization of American States*, 1948, Article 34.m.

<sup>567</sup> OAS, *Charter of the Organization of American States*, 1948, Article 36.

<sup>568</sup> OAS, Inter-American Juridical Committee. *Corporate Social Responsibility in the Area of Human Rights and the Environment in the Americas*. OEA/Ser.Q CJI/doc.449/14 rev.1 corr.1, February 24, 2014.

<sup>569</sup> OAS, Inter-American Juridical Committee, *Conscious and Effective Regulation of Companies in the Field of Human Rights*. OEA/Ser.Q CJI/doc.522/17 rev.2, March 9, 2017.



well as the Inter-American Business Charter, approved by the OAS General Assembly in November 2021.<sup>570</sup>

378. Additionally, in November 2019, the Commission approved the REDESCA Thematic Report on Business and Human Rights: Inter-American Standards, published in January of the following year.<sup>571</sup> The report starts with the States' international human rights obligations in cases in which businesses are in some way involved with the realization or affectation of said rights. In this sense, it not only systematizes and brings together various holdings about the subject that have happened in the inter-American system, but from a systematic and evolutionary analysis, it seeks to clarify, organize, and develop said state duties and the effects these can have on businesses from the inter-American legal experience.<sup>572</sup>
379. The aforementioned Report specifies a series of fundamental criteria that should guide all actions in the area of business and human rights: a) Centrality of the person and of human dignity; b) Universality, Indivisibility, Interdependence and interrelation of Human Rights; c) Equality and Non-Discrimination; d) Right to Development; e) Right to a healthy environment; f) Right to Defend Human Rights; g) Transparency and Access to Information; h) Prior, Free and Informed Consultation and General Mechanisms for Participation; i) Prevention and Human Rights Due Diligence; j) Accountability and Effective Reparation; k) Extraterritoriality; and l) Fighting Corruption and the Capture of the State.<sup>573</sup> These criteria spring from a comprehensive interpretation of the framework of the international human rights system, the development produced by the inter-American system, and the application and interpretation that the Inter-American Court of Human Rights,<sup>574</sup> the Commission itself, and the Working Group of the San Salvador Protocol have carried out through their various advocacy tasks and pronouncements.
380. Through a comprehensive study of inter-American and universal human rights instruments, the Report provides a systematic and evolutionary analysis that clarifies, organizes, and develops State duties and the effects on companies. Indeed, although the Commission and its REDESCA recognize

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<sup>570</sup> OAS, General Assembly, Inter-American Business Charter, AG/RES. 2969 (LI-O/21), November 11, 2021.

<sup>571</sup> REDESCA-IACHR, Business and Human Rights: Inter-American Standards, 2019,

<sup>572</sup> REDESCA-IACHR, Business and Human Rights: Inter-American Standards, 2019, par. 25.

<sup>573</sup> REDESCA-IACHR, Business and Human Rights: Inter-American Standards, 2019, par. 41-53.

<sup>574</sup> I/A Court HR, Case of Vera Rojas et al. v. Chile. Preliminary exceptions, Merits, Reparations and Costs. Judgment of October 1, 2021. Series C No. 439; I/A Court HR, Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras, op. cit.; I/A Court HR, Case of Employees of the Fireworks Factory in Santo Antônio de Jesús and their relatives vs. Brazil. Judgment of July 15, 2020. Series C No. 407; I/A Court HR, Case of Workers of the Brazil Verde Farm v. Brazil, op. cit.; I/A Court HR, Case of the Kaliña and Lokono Peoples v. Suriname. Merits, Reparations and Costs. Judgment of November 25, 2015. Series C No. 309; I/A Court HR, Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23; I/A Court HR, Advisory Opinion OC-18/03, op. cit.

the complex and diverse relationships that the State and the business sector may have, there is no doubt that, under the inter-American system, human rights norms impose obligations on the States to respect and guarantee these safeguards — including the field of business.<sup>575</sup>

- 381.** Under this regional framework, the action or inaction of business entities can invite the scrutiny of the States in light of the duties of respect and guarantee. In this sense, within the field of business and human rights, the duty to respect entails that the States must refrain from actions linked to business activities that infringe on the exercise of human rights.<sup>576</sup> States must also adopt a series of affirmative measures, with due diligence, that legally ensure the free and full exercise of human rights (duty of guarantee).<sup>577</sup> Regarding business activities, the IACHR and its REDESCA identified four State duties to comply with their obligation to guarantee: i) the duty to regulate and adopt provisions in domestic law; ii) the duty to prevent human rights violations in the framework of business activities; iii) the duty to supervise such activities; and iv) the duty to investigate, punish, and ensure access to integral reparations for victims in said contexts.<sup>578</sup> From the foregoing it is evident that the obligation to ensure the free and full exercise of human rights is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation — this also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights.<sup>579</sup>
- 382.** Notwithstanding the foregoing, within the business and human rights agenda, due diligence not only refers to the positive actions required of States, but also includes identification, prevention, mitigation, and accountability actions that must be carried out by business actors themselves, in compliance with the regulatory frameworks that have been created by the countries on the matter.<sup>580</sup> In such a case, the total absence or deficient performance of due diligence by a company entails its legal responsibility at the internal level, and the duty to compensate the victims for the damages caused.
- 383.** Considering the presence of companies that operate on Cuban soil whose headquarters are abroad, it should be noted that for the IACHR and its REDESCA, possible human rights violations linked to transnational business

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<sup>575</sup> IACHR, *Indigenous Peoples, Afro-descendant Communities, and Natural Resources: Protection of human rights in the context of extraction, exploitation, and development activities*. OEA/Ser.L/V/II. Doc. 47/15, December 31, 2015, par. 56.

<sup>576</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 69.

<sup>577</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 81.

<sup>578</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 86.

<sup>579</sup> I/A Court HR, *Case of Velásquez Rodríguez v. Honduras*. Background. Judgment of July 29, 1988. Series C No. 4. par. 167.

<sup>580</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 192-198.

activities could create international liability of the home State, in light of its obligations of respect and guarantee.<sup>581</sup> In this sense, the inter-American system of protection has referred to the extraterritorial application of the obligations of States through a broad interpretation of the notion of jurisdiction.<sup>582</sup>

384. For all of the above, the IACHR and its Special Rapporteurship highlight the progress brought about by international instruments and pronouncements of different universal and regional bodies that guarantee greater respect and protection of human rights in in terms of business activities, to the extent that they allow States to enforce international obligations, ensure adequate behavior of companies in these contexts, and guarantee the rights of victims as a consequence of business actions.

## *B. Internal Cuban regulations on business and human rights*

385. In regard to business and human rights, States, as the main recipients of international obligations, must ensure respect and guarantees for the human rights of persons or groups under their jurisdiction who may be affected as a consequence of the impacts of business activity. Without prejudice to the public policies implemented in the matter, a correct review and adaptation of regulatory frameworks must be carried out, as well as all internal legislation, in its substantive and procedural form, with a human rights approach.<sup>583</sup> This normative adaptation must include State obligations and the various responsibilities that fall on the companies operating in their territory (whether national or foreign capital; public, private or mixed; large, medium or small) that may be involved in violations of fundamental rights.<sup>584</sup>
386. Upon closer inspection of the Cuban legal system, in addition to Constitutional provisions, the Commission and its REDESCA take note of a set of instruments that have defined and expanded the field of action of some non-state actors within the local economy and that have a direct impact on the country's business and human rights agenda.
387. The Commission and its REDESCA observe that the Constitution of the Republic of Cuba considers state companies to be the main economic actor

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<sup>581</sup> REDESCA-IACHR, [Business and Human Rights: Inter-American Standards](#), 2019, par. 175.

<sup>582</sup> REDESCA-IACHR, [Business and Human Rights: Inter-American Standards](#), 2019, par. 148-150.

<sup>583</sup> REDESCA-IACHR, [Business and Human Rights: Inter-American Standards](#), 2019, par. 106 and 414.

<sup>584</sup> REDESCA-IACHR, [Business and Human Rights: Inter-American Standards](#), 2019, par. 112 and 414.

within the Cuban economic system.<sup>585</sup> However, given the establishment of a new model based on the opening towards new non-state agents, The Cuban Constitution promotes foreign investment for the first time "as an important element for the economic development of the country, on the basis of the protection and rational use of human and natural resources, as well as respect for national sovereignty and independence."<sup>586</sup>

388. On the other hand, the IACHR and its REDESCA warn that the text of the Labor Code acknowledges the legal-labor relations between state and non-state sectors and nationals or foreigners who have permanent residence in the country. In addition, it legitimizes the different forms of ownership and management (state and non-state) and provides special regulations on labor relations created as a consequence of the modalities of foreign investment, branches, or agents of foreign commercial companies based in the country<sup>587</sup>.
389. The Commission and its Special Rapporteurship also point to the Foreign Investment Law No. 118 (which replaces Law No. 77), adopted in order to achieve greater diversification and expansion of international export markets, access to advanced technologies, import substitution prioritizing food, obtaining external financing, creating new sources of employment, and real estate development for tourism purposes, among others.<sup>588</sup> The IACHR and its REDESCA take note of the creation of an "employer entity" as a State body that acts as an intermediary in the employment relationship between foreign companies and workers.<sup>589</sup> Employment agencies or entities are defined as Cuban entities empowered to enter into agreements with foreign capital or mixed companies (so-called "work force supply contracts") to provide the necessary work force (who enter into individual labor contracts with the agency).<sup>590</sup> Resolution 33 of the Ministry of Labor and Social Security was sanctioned in 2020, establishing the labor regime applicable to the modalities of foreign investment — such as the responsibilities of employment agencies and foreign capital or mixed companies; the wage regime applicable to workers; and the relations between the employment agencies and foreign companies, among others.<sup>591</sup>
390. Notwithstanding the foregoing, and taking into account the relevance of the State in the Cuban economic system, the Commission and its REDESCA take

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<sup>585</sup> Cuba, [Constitution of the Republic](#), Article 27.

<sup>586</sup> Cuba, [Constitution of the Republic](#), Article 28.

<sup>587</sup> Cuba, [Labor Code](#), Article 8.

<sup>588</sup> Cuba, [Law No. 118 Foreign Investment Law](#), Article 3.

<sup>589</sup> Cuba, [Law No. 118 Foreign Investment Law](#), Articles 30 and 31.

<sup>590</sup> See Article 2. i) of Law No. 118 on Foreign Investment and Article 3 of Resolution No. 33 on labor regime in foreign investment.

<sup>591</sup> Cuba, [Resolution 33 of 2020](#).

note of the approval of Decree-Law 335 of 2017, which was the first legal norm that regulates the Cuban state business system,<sup>592</sup> repealed by Decree-Law 34 of 2021.<sup>593</sup> The provisions of the latter establish that Cuban state-owned companies are understood as “[...]the principal subject of the national economy; they have autonomy in their administration and management; play the leading role in the production of goods and services, and fulfill their social responsibilities [...]”<sup>594</sup> In addition, it confers a liability framework on companies for damages and losses caused to other companies, bodies, agencies of the Central State Administration, state institutions or other entities, citizens, natural resources, or the environment, obliging them to restore, repair or indemnify, as appropriate.<sup>595</sup>

391. The IACHR and its REDESCA register the approval of Decree-Law 46 of 2021 which, in order to reactivate the local economy and the generation of new sources of employment, enshrines the creation and operation of micro, small and medium-sized enterprises (also called MSMEs) as new economic actors.<sup>596</sup> In particular, the Decree-Law defines MSMEs as “economic units with legal personality, which have their own dimensions and characteristics, and whose purpose is to develop the production of goods and the provision of services that satisfy the needs of society.”<sup>597</sup> Additionally, it establishes that this type of company can be state-owned, private, or mixed<sup>598</sup>, and have a maximum of 10 (micro-enterprises), 35 (small enterprises), and 100 (medium-sized enterprises) members<sup>599</sup>. Among other activities, they can export and import in accordance with the provisions of the legislation (through state intermediaries), and fix the prices of their goods and services, except save for those that are subject to centralized authorization.<sup>600</sup>
392. The IACHR and its Special Rapporteurship also take note of the approval of Decree-Law 47 of 2021, recognizing non-agricultural cooperatives as autonomous economic entities of a business nature, constituted by voluntary association of people who contribute money, other goods and rights to satisfy the economic, social and cultural needs of their members

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<sup>592</sup> Cuba, Official Gazette, [Decree Law 335](#), of September 5, 2017, published in Extraordinary Official Gazette No. 58, December 13, 2017.

<sup>593</sup> Cuba, Official Gazette, [Decree Law 34 on the Cuban state business system](#), of April 13, 2021, published in Ordinary Official Gazette No. 51, May 7, 2021.

<sup>594</sup> Cuba, [Decree Law 34 on the Cuban state business system](#), 2021, Article 20.1.

<sup>595</sup> Cuba, [Decree Law 34 on the Cuban state business system](#), 2021, Article 21.

<sup>596</sup> Cuba, Official Gazette, [Decree Law 46 on micro, small and medium enterprises](#), of August 6, 2021, published in Ordinary Official Gazette No. 94, August 19, 2021.

<sup>597</sup> Cuba, [Decree Law 46 on micro, small and medium enterprises](#), Article 3.1.

<sup>598</sup> Cuba, [Decree Law 46 on micro, small and medium enterprises](#), Article 3.2.

<sup>599</sup> Cuba, [Decree Law 46 on micro, small and medium enterprises](#), Article 4.

<sup>600</sup> Cuba, [Decree Law 46 on micro, small and medium enterprises](#), Article 6.

and for social purposes, supported by their work and the effective exercise of universally recognized principles of cooperatives.<sup>601</sup>

### C. *Companies within the Cuban political and economic system*

393. The Commission and its REDESCA emphasize that the role of the business sector in the field of human rights is essential. In addition to generating new sources of employment, economic growth, and greater investment, they substantially contribute to reduce poverty, generate sources of employment, build fairer and more democratic societies, sustainable and comprehensive development, and strengthen legal security. However, above all, they must contribute to the effective realization of human dignity and, therefore, the more sensitive and committed their activity is to human rights, the better they will contribute to their effective validity.<sup>602</sup> All of the above, within a framework where respect for the freedoms in decision-making, away from the single-party model that restricts personal rights, is still a challenge.
394. In the Cuban case, the adoption of the "updating of the Economic and Social Model of Socialist Development" ushered a gradual transition from exclusive state management and predominance of state companies to new non-state actors with their own forms of ownership and management.<sup>603</sup> It is worth mentioning that the transfer of possession or management of certain state-owned means of production to private economic actors would not, *a priori*, constitute an act of privatization or alienation of said assets. On the contrary, according to the Central Committee of the Communist Party itself, the Cuban State reserves certain faculties as representative of the people, in addition to establishing a regulatory normative regime.<sup>604</sup>
395. Pursuant to current regulatory systems, the Commission and its REDESCA observe two main types of business entities: i) companies owned by the socialist State; and ii) non-state-owned companies (whether with national, foreign, or mixed capital). The main economic actors of the country operate within this structure: i) the Cuban State as the main actor through state companies; ii) micro, small and medium-sized enterprises (public or

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<sup>601</sup> Cuba, Official Gazette, Decree Law 47 on non-agricultural cooperatives, of August 6, 2021, published in Ordinary Official Gazette No. 94, August 19, 2021.

<sup>602</sup> REDESCA-IACHR, Business and Human Rights: Inter-American Standards, 2019, par. 2.

<sup>603</sup> Central Report to the VI Congress of the Communist Party of Cuba, April 2011.

<sup>604</sup> For more information, see Conceptualization of the Cuban economic and social model of socialist development: Guidelines of the economic and social policy of the Party and the Revolution for the period 2021-2026, Chap. II, p. June 23, 2021.

private); iii) non-agricultural cooperatives; and iv) self-employed people or “*cuentapropistas*”<sup>605</sup> Data published by the National Office of Statistics and Information (*Oficina Nacional de Estadística e Información* - ONEI) indicate that there were 12,486 business entities on the island as of June 2022 — an increase of more than 2,000 entities compared to 2021. This coincides with the approval of the first micro, small and medium-sized companies in the second half of the same year.<sup>606</sup>

396. At the same time, according to available information, most of the MSMEs that have been approved are private.<sup>607</sup> However, the Commission and its REDESCA take note that their approval as economic actors and the granting of licenses to Cuban people for their operation is conditioned on the type of work they do. In other words, there is no free choice of work in MSMEs due to the control that the State exercises. In this sense, Decree-Law 49, which regulates the activities that private micro, small and medium-sized companies, and non-agricultural cooperatives can carry out, establishes a list of activities linked to strategic sectors of the Cuban economy that only fall within the orbit of the State and that private economic actors are prohibited from carrying out. Such is the case of specific activities in health, teaching, telecommunications, energy, the press, and specialized professional, scientific and technical activities, among others.<sup>608</sup>

Main entities by type of organization

YEAR	TOTAL	State Enterprises	Mercantile Corporations	MSMEs	Cooperatives				Budgeted Units	
					Total	CNoA(*)	UBPC	CPA		CCS
2017	9 628	1 801	230	-	5 355	439	1 563	882	2 471	2 242
2018	9 563	1 776	236	-	5 310	434	1 529	879	2 468	2 241
2019	9 542	1 774	237	-	5 290	431	1 519	876	2 464	2 241
2020	9 560	1 795	255	-	5 278	421	1 513	876	2 468	2 232
2021	10 010	1 867	258	270	5 211	426	1 459	863	2 463	2 404
June 2022	12 486	1 941	277	2 710	5 146	463	1 406	846	2 431	2 412

(\*) MSMEs are registered before the National Office of Statistics and Information, upon finalization of registration before the Mercantile Registry and the National Tax Administration Office. These procedures are carried out after approval by the Ministry of the Economy and Planning. Therefore the difference with data published with said ministry.

Source: National Office of Statistics and Information (ONEI).

<sup>605</sup> Ministry of the Economy and Planning, [Economic Actors](#).

<sup>606</sup> According to ONEI data, the total number of entities does not include political and mass organizations, non-profits (ISFLs), joint ventures, foreign capital companies, Cuban branches of foreign companies, the Chamber of Commerce, or Collective Law Firms. It is the sum of state companies, mercantile companies with fully Cuban capital, cooperatives, and budgeted units.

<sup>607</sup> Cubadebate, [Ministry of Economy and Planning approves 82 new MSMEs](#), July 14, 2022.

<sup>608</sup> Cuba, Official Gazette, [Decree Law 49/2021 on the activities to be carried out by micro, small and medium-sized private companies, non-agricultural cooperatives and self-employed workers](#), of August 11, 2021, published in Ordinary Official Gazette No. 94, August 19, 2021.

397. However, the IACHR and its REDESCA observe that there is still a high level of participation by the Cuban State, not only in ventures that require greater investment and specialized human resources, but also in local activities, in which, in addition to participating as a regulatory agent, it acts as supplier of goods and services (e.g.: travel agencies and tourist guides).<sup>609</sup> Indeed, the Commission and its Special Rapporteurship have received information from civil society organizations that indicates that, despite the opening and delivery of licenses, an absolute monopoly of the State over general economic activity persists, preventing small and medium-sized companies to trade freely or access foreign investment without State intervention. In this regard, the large business economic activities that take place within the island, such as those linked to the tourism and hotel sector or construction, could only be carried out in co-ownership with the State, thus hindering any form of growth or development within the sector.<sup>610</sup>

### 1. Foreign or mixed capital companies. Cuban Employment entity

398. The Commission and its REDESCA take note that foreign capital or mixed capital (jointly owned with the Cuban State) companies, whatever their activity in Cuba, are regulated under the Foreign Investment Law of 2014. According to the Ministry of Foreign Trade and Foreign Investment, the foreign companies most likely to invest in the country are those that specialize in certain sectors of relevance for local growth, such as those linked to agricultural production and the food industry, tourism (including health), the development of renewable energy sources, exploitation of hydrocarbons and mining resources, and construction.<sup>611</sup>

399. Available information shows that, among the different business activities that take place in Cuba, those linked to the tourism and hospitality sector are the most relevant, since they provide one of the largest sources of income for the Cuban economy (10.3% of GDP). This is one of the sectors with the highest rates of foreign investment, in the form of hotel management contracts.<sup>612</sup> Moreover, this sector generates a large number of jobs — employing one in five people in 2021.<sup>613</sup> However, the IACHR and its REDESCA warn that the tourism sector was extremely harmed as a result of the restrictions imposed by the Government in response to the COVID-19

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<sup>609</sup> Diario de Cuba, [Travel agencies and private tour guides are prohibited in Cuba, the Government responds to entrepreneurs](#), January 13, 2022.

<sup>610</sup> IACHR, Public hearing on the “[Situation of labor and union rights in Cuba](#)”, 184 Period of Sessions, June 23, 2022.

<sup>611</sup> Ministry of Foreign Trade and Foreign Investment, Foreign Investment Opportunities Portfolio, [General Policies](#).

<sup>612</sup> ProCuba, [General Profile of the Republic of Cuba](#), December 2020.

<sup>613</sup> Human Rights Observatory, [The state of social rights in Cuba](#), Report IV, 2021, p. 48.



pandemic.<sup>614</sup> Indeed, they observe that, faced with the declaration of a state of health emergency and the consequent decrease in international tourism, many companies in the sector were forced to suspend their operations and let go almost half of the 75,000 tourism workers in the country.<sup>615</sup> One of the interviewees stated:

[...] The pandemic came and, with it, the lack of tourists. They suspended all the workers of the Store, with 60% of the average salary. We only received about 1,560 pesos — less than many pensioners and retirees. In that period, I and other workers did not complain, because we understood that the country and the world were in crisis, so we decided to wait to resume our work.<sup>616</sup>

400. The IACHR and its Special Rapporteurship note with concern that, despite the recognition of foreign investment in the Constitution, Law 118 and other similar regulations impose a series of limitations that are not consistent with constitutional principles and guarantees, particularly affecting the guarantee of fundamental labor rights for workers on the island. Indeed, foreign companies are not allowed to freely hire the local labor force. Rather, Cuban personnel are hired directly by a State "employment entity," which is constituted at the proposal of the Ministry of Foreign Trade and Foreign Investment and authorized by the Ministry of Labor and Social Security.<sup>617</sup> Thus, Cuban workers who provide services for a company with foreign capital, whatever the type of activity, both in the country and abroad (such is the case of medical missions or cruise ship workers), are not hired directly by the company, but maintain a direct and exclusive employment relationship with the State through the employment agency.<sup>618</sup>
401. In addition to the above, the employment relationship begins when the foreign capital company requests the employment entity for personnel and specifies its requirements, which are later formalized through a Labor Force Supply Contract.<sup>619</sup> The main functions of employment entities in the labor relationship between workers and companies include the selection and supply of personnel; payment of workers' salaries, prior agreement with the company on the price for services rendered; replacing workers who have been returned by the company; and preparing disciplinary regulations (in

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<sup>614</sup> Among the measures adopted are the suspension of tourist activities, cancellation of internal trips or the closure of jobs in hotels, *paladares*, sports or cultural centers that were not essential, directly affecting the labor availability of workers. of the sector. See UN-ECLAC (2020). [2020 Economic Survey of Latin America and the Caribbean: main determinants of fiscal and monetary policies in the post-pandemic era](#). October 2020.

<sup>615</sup> Cubanet, [Luxury hotels, pandemic and workers on the street](#), January 14, 2021.

<sup>616</sup> IACHR, interview 42, August 14, 2022, IACHR file.

<sup>617</sup> Cuba, [Law No. 118 Foreign Investment Law](#), Articles 30.1 and 30.3.

<sup>618</sup> Cuba, [Law No. 118 Foreign Investment Law](#), Article 31.1.

<sup>619</sup> Cuba, Official Gazette, [Resolution 33](#), of November 25, 2020, published in Extraordinary Official Gazette No. 69, December 10, 2020, Article 14.

agreement with the company) and applying the corresponding measures.<sup>620</sup> In return, companies must pay the employment entity the agreed price for their labor force supply services.<sup>621</sup>

402. In the case of Cuba, the Commission and its REDESCA observe that the powers of contracting and control of human resources, which in other countries fall on the contracting company itself, remain in the hands of the State. In this regard, a testimony on the operations of foreign companies in Cuba affirmed that when companies start operations in Cuba, they renounce their ability to hire personnel directly and to exercise a natural labor relationship. They accommodate the impositions of the regime and take advantage of having a docile workforce with no other obligation than the commercial contract that they maintain with the employment entity.<sup>622</sup>
403. In regard to the salaries received by workers who provide services for this type of company, the IACHR and its REDESCA take note that payment is made by the employment entity in Cuban pesos,<sup>623</sup> taking into account criteria such as complexity, conditions, and additional requirements of the positions.<sup>624</sup> It is not possible for Cuban workers to negotiate in these contracts the currency of their salary nor its amount according to the work position.<sup>625</sup> In any case, according to information provided by the government authorities themselves, it is the state entity that receives the foreign currency amount for the services provided as agreed with the foreign company.<sup>626</sup>
404. As a result of the foregoing, the IACHR and its REDESCA note with concern of the complaints about the low wages received by people who work in the field of foreign investment, which is not consistent with their workload and does not cover the minimum wage established by law.<sup>627</sup> In particular, workers only receive a minimum portion of the total paid by the company to the employment entity, while the remainder is retained by the State.<sup>628</sup> One testimony describes these difficulties:

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<sup>620</sup> Cuba, [Resolution 33 of 2020](#), Article 9.

<sup>621</sup> Cuba, [Resolution 33 of 2020](#), Article 10.

<sup>622</sup> Information provided by Organización Cuba Sindical in response to a questionnaire published for this report, IACHR file.

<sup>623</sup> Cuba, [Resolution 33 of 2020](#), Article 11.

<sup>624</sup> Cuba, [Resolution 33 of 2020](#), Article 12.

<sup>625</sup> [Diario de Cuba, Cuban employees of foreign companies will receive their entire salary in national currency](#), December 22, 2020.

<sup>626</sup> [Interview with the Minister of Foreign Trade and Foreign Investment, Rodrigo Malmierca Díaz](#), December 2020.

<sup>627</sup> [OCDH, Report V: The state of social rights in Cuba](#), October 2022, p. 12.

<sup>628</sup> Information received by the IACHR and REDESCA in a work meeting with civil society to prepare this report, February 24, 2022.

Almost more than a million civilian employees of the Armed Revolutionary Forces who work for GAESA.SA have no right to go before a labor justice body or a court. Arbitrariness is systematic, and we are forced to work as a kind of slaves.<sup>629</sup>

405. The IACHR and its REDESCA take careful note of the testimony of the civil organization Prisoners Defenders, denouncing the lack of due diligence of foreign tourism companies and the impacts or risks in guaranteeing the right to decent work in fair and equitable conditions. In this regard, they state that "it is difficult for hotel companies to go unaware of the real salary that the State pays to workers, since they have direct contact with the people they employ and can obtain first-hand information."<sup>630</sup>
406. The Commission and its REDESCA also observe that this pattern extends to other ventures in the country that are carried out with foreign capital, as is the case of building or infrastructure construction projects, where a discrepancy is observed between the salary received by the worker and the amount deposited by the foreign company.<sup>631</sup>
407. In addition to the problem of the low salaries received by personnel in the tourism sector, the IACHR and its Special Rapporteurship have learned of the persistence of violations of their labor rights: long hours, serious types of exploitation (such as forced labor), and discrimination during recruitment and employment.<sup>632</sup> According to the Cuban Human Rights Observatory (*Observatorio Cubano de Derechos Humanos – OCDH*), 56% of the Cuban population considers that there is some type of discrimination in work opportunities — political ideas, sexual orientation, race, and sex being some of the main reasons for exclusion.<sup>633</sup>
408. Regarding discrimination based on ideology within the tourism sector, testimonies were received regarding acts of pressure and harassment pushing workers to resign from unions not affiliated with the only recognized representative entity in the country. Two testimonies from workers in the tourism sector stated:

My husband and I were visited more than twice by an agent from the Intelligence Directorate who made it very clear to us that we had to resign from the Independent Trade Union Association of

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<sup>629</sup> IACHR, interview 42, August 14, 2022, IACHR file.

<sup>630</sup> Information received by the IACHR and REDESCA in a work meeting with civil society for the preparation of this report, February 24, 2022.

<sup>631</sup> Cubanet, [Employment agencies in Cuba, a new type of slavery \(II\)](#), September 12, 2019.

<sup>632</sup> British Institute of International and Comparative Law (BIICL). Human rights responsibilities of multinational enterprises and State in the Cuban Tourism, London 2021.

<sup>633</sup> OCDH, [Report IV: The state of social rights in Cuba](#), p. 11, 2021.

Cuba (ASIC). He said they knew what we were up to, and that we were going to be fired.<sup>634</sup>

I submitted all my titles and qualification certificates as a gastronomic service worker to work in the Cayo Coco and Cayo Guillermo Hotels, which unfortunately belong to the Armed Forces (GAESA). When the employment office saw that a military counterintelligence officer had rejected me for being "ideologically unreliable", the selection process was terminated without explanations. The lack of protection and insecurity is barbaric against thousands of young people who want to work in these types of facilities, but they restrict our right and access due to the damned ideology that must be served at all cost.<sup>635</sup>

409. Regarding all of the above, the IACHR and its REDESCA observe with concern the challenges facing labor in Cuba. Through their Report on Business and Human Rights, they have formulated specific guidelines for the State and the business sector to adopt specific standards to become respectful actors and commit to guaranteeing the work rights of the Cuban people. They conclude that business activities (whether state or non-state) will not generate reasonable results if the State does not take into account and assume the applicable human rights norms and standards based on the inter-American experience.<sup>636</sup> In short, Cuba is urged to establish a legal framework so that companies can operate in the territory, ensuring that said legal framework allows and requires companies to respect human rights.
410. The Commission and its REDESCA recall that the Cuban State (as a subject of international law) is subject to its obligations of respect and guarantee even in the face of human rights violations by non-state actors (such as companies). These obligations are closely linked to their duty to refrain from conduct related to business activities that may affect the exercise of human rights, assuming the duty to prevent violations of human rights, supervise the effective enjoyment of those rights, regulate, and adopt internal laws for their protection, and investigate, punish, and guarantee access to effective remedy.
411. In the context of labor matters and human rights, the obligation of States to respect and guarantee the rights of workers in the face of private actions was also accepted by the Inter-American Court itself. In the decision "Employees of the Fireworks factory vs. Brazil", the Court pointed out the obligation that falls on States to ensure fair and satisfactory working

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<sup>634</sup> IACHR, interview 51, December 5, 2021, IACHR file.

<sup>635</sup> IACHR, interview 62, July 15, 2022, IACHR file.

<sup>636</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 29.

conditions to guarantee safety, health and hygiene in the workplace and prevent accidents at work — especially in the case of hazardous working conditions.<sup>637</sup> As a preventive action, it is necessary for States to adopt all legal, administrative or other measures within their reach or that are pertinent for this purpose. Once the possible impacts or risks have been identified, they must adopt, or where appropriate, require and ensure that the companies act accordingly and implement pertinent measures to correct the hazard.<sup>638</sup>

412. Regarding the business sector operating in Cuba, the Commission and its Special Rapporteurship emphasize that, regardless of size, ownership, structure, sector or activity, companies must adjust their behavior and practices to the internal provisions on the matter and international standards on business and human rights, either under the terms of the United Nations Guiding Principles or under the parameters and recommendations contained in the report "Businesses and Human Rights: inter-American standards" of the IACHR and its REDESCA. Therefore, an intersectional and differential focus should be incorporated, including a gender perspective, which takes into consideration the possible aggravation and frequency of human rights violations due to conditions of vulnerability or historic discrimination of persons and collectives, such as ethnic origin, age, sex, sexual orientation, gender identity, or economic position, among other conditions, in the framework of business activities and operations.<sup>639</sup>
413. Faced with the political and social context of Cuba, the Commission has indicated that, although its functions are focused on state conduct and it only has competence to determine the responsibility of States in the event of possible violations of human rights, State obligations in this matter give rise to legal effects that necessarily bind businesses.<sup>640</sup> Even in cases of non-compliance of State obligations, the business sector maintains the responsibility of directing and guiding its actions and processes under applicable international (especially inter-American) human rights standards. They must refrain from infringing, contributing to, facilitating, encouraging or aggravating human rights violations, and address the effects on human rights in which they have participated (whether through their own activities, commercial relationships, or corporate structures).

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<sup>637</sup> I/A Court HR, Case of the Employees of the Santo Antônio de Jesús Fireworks Factory and their families v. Brazil. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of July 15, 2020. Series C No. 4075, Par. 29.

<sup>638</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 89.

<sup>639</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 44.

<sup>640</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 176 and 177.

## *D. Mechanisms for supervision and inspection of business activities in Cuba in labor and union matters*

414. The Cuban State has the obligation to establish solid regulatory and legal frameworks, so companies can operate with respect for human rights, in line with the inter-American standards. In this sense, absence or ineffectiveness of legal and institutional frameworks, that provide binding and clear guidelines for due diligence in the field of human rights, directly affects the incidence of risks thereon and can generate barriers to accountability and adequate reparation for the victims.
415. In the Cuban context, the IACHR and its REDESCA observe that the internal legal framework is limited when carrying out a comprehensive approach to companies and their responsibility in terms of human rights (particularly labor rights). Although Cuban legislation refers to issues related to occupational health and safety, as well as social protection in the workplace, there are no specific provisions regarding the accountability of the business sector in terms of human rights, nor mechanisms for judicial complaints and effective extrajudicial measures against violations of labor and trade union rights, in the framework of business activity.<sup>641</sup> Analysis of internal regulations evidences the absence of internal legal provisions and solid public policies that establish basic guidelines for the protection of the fundamental rights of workers, within the framework of business activities in the country.
416. Taking into account that state companies are the main economic actor in Cuba, the Commission and its REDESCA point out that Decree-Law 34/2021 recognizes a framework of responsibility for state companies against damages they cause to other companies, bodies, agencies of the Central State Administration and state institutions or other entities, citizens, natural resources or the environment, obliging them to restitute, repair or compensate, as appropriate.<sup>642</sup> In this regard, the IACHR and its REDESCA emphasize that, in cases where the State intervenes directly as an economic actor, mediating effective control or influence over business activity, the attribution of international responsibility of the State operates (and not that of the state company) for breach of the obligations to respect and guarantee human rights.<sup>643</sup> Added to this, it is presumed that the State has or should have necessary and sufficient means to ensure respect for human rights in these circumstances, as well as the possibility of exercising a greater level of

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<sup>641</sup> British Institute of International and Comparative Law (BIICL), *Human rights responsibilities of multinational enterprises and State in the Cuban Tourism*, London 2021.

<sup>642</sup> Cuba, *Decree Law 34 on the Cuban state business system*, 2021, Article 21.

<sup>643</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 308.

control or influence over the company, or by the very nature of the activity of the state company involved.<sup>644</sup>

417. Regarding mixed companies where the Cuban State participates together with a private company through investment agreements, the IACHR and its Special Rapporteurship warn that the international responsibility of the State also operates, because an additional and reinforced responsibility falls upon the State, as the main subject of obligations under international human rights standards, and as a guarantor of their compliance.<sup>645</sup> Along the same lines, the Guiding Principles establish that States must not only act with due diligence in human rights, regarding the activities of companies under their responsibility, but also must promote due diligence of the companies with which they carry out commercial transactions.<sup>646</sup>
418. Information obtained by the Commission and its REDESCA reveal the existence of limitations in domestic jurisdiction to supervise and control the activities of state and non-state companies, in terms of labor and trade union rights, which grant workers the possibility to demand respect for their rights. The organization Cuba Sindical said:

There is no way to monitor or legally pressure any wrongdoing or criminal conduct by companies, whatever their nature. We can only invoke the international norms on the matter, such as the codes on the behavior of multinational companies, to demand that parent companies comply with the same commitments that they mostly fulfill in their home countries and in non-totalitarian destinations.<sup>647</sup>

419. Given all the above, the IACHR and its REDESCA remind the Cuban State of its obligation to prevent violations and supervise the effective enjoyment of human rights in the framework of business activities, receiving the concerns of workers, whatever the sector. This duty to supervise shall not be exhausted through due diligence alone, through practices aimed at verifying cases in which risks to human rights arise in the context of business activities but will also require States to take effective actions aimed at keeping the risks from consummating, considering the mentioned duty of prevention.<sup>648</sup>

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<sup>644</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 308 and 312.

<sup>645</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 310.

<sup>646</sup> Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/17/31, March 21, 2011, principles 4-6.

<sup>647</sup> Information provided by Organización Cuba Sindical in response to a questionnaire published for this report, IACHR file.

<sup>648</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 102.

## *E. Challenges and best practices in the field of business activities in the Cuban context*

420. The IACHR and its Special Rapporteurship observe that the decentralization process of the Cuban economic model and the expansion and revitalization of the local economy have facilitated the creation of new labor forces and brought about the possibility of reducing structural inequality gaps and poverty on the island. Within the framework of this report, and considering the inter-American criteria that have been mentioned before, the Commission and its REDESCA call on the Cuban State and the companies that operate in the country to implement positive actions that translate into practices respectful of fundamental rights in general, and of labor and association rights specifically.
421. The Commission and its REDESCA have received information on the limitations of the Cuban model regarding the production and access to information as a guarantee of transparency and accountability.<sup>649</sup> In the context of business activities, the availability or lack of State and company official information on due diligence processes adopted is essential to create solid legal frameworks and concrete public policies to face the challenges in this field. In addition, access to accurate and quality information, and the creation of a tool for citizen control over the functioning of the State and public management,<sup>650</sup> is a key factor in the exercise and protection of workers' rights against business impacts.<sup>651</sup>
422. Throughout this chapter, the Commission and its REDESCA have pointed out the relevance of a correct adaptation of the internal legal frameworks applicable to the context of companies and human rights, contemplating the obligations of the State and of the business sector. They take note of the Government's decision to expand and recognize new non-state actors with their own forms of ownership and management. However, they observe that clear and favorable legal environments are still required for due diligence in human rights that guarantee correct identification, prevention, mitigation and reparation through the availability of specific complaint mechanisms for affected workers to access justice. Deliberate and concrete state measures are needed to accompany these new economic actors and let them know what is expected of them (considering sector, size or degree of risk of operations) in guaranteeing human rights. For instance, the smaller a

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<sup>649</sup> Information provided by Organización Cuba Sindical in response to a questionnaire published for this report, IACHR file.

<sup>650</sup> IACHR, [Report: Public policies with a human rights approach](#), OEA/Ser.L/V/II. Doc. 191, September 15, 2018, par. 74.

<sup>651</sup> REDESCA-IACHR, [Business and Human Rights: Inter-American Standards](#), 2019, par. 48.



company is, the lower degree of professionalization and, therefore, the greater the risk of working in precarious or informal conditions.

423. Considering the central position of the person and the differentiated impacts on vulnerable populations in Cuba, it is required that special protection measures be adopted in the field of business and human rights.<sup>652</sup> Indeed, in the face of complaints regarding discrimination in hiring or during employment, legal frameworks are needed that incorporate an intersectional and differential approach, including a gender perspective and taking into account the possible aggravation and frequency of violations within the framework of business activities and operations that could affect trade unionists and workers (in their capacity as human rights defenders), women, Afro-descendants, or LGBT individuals when expressing their discontent with the labor regime to which they are subjected.
424. Notwithstanding the foregoing, the Cuban State's failure to comply with its duty to respect and guarantee human rights does not imply that companies should not operate under the highest standards of respect for human rights. Rather, this is a global standard of conduct applicable to all companies in all situations.<sup>653</sup> In the case of foreign capital companies, although limited by the legislation of the host country, the fact that there could be a deficit of decent work in the country should not be considered as the rule, nor should it imply a waiver of the duties of respect in accordance with Pillar II of the United Nations Guiding Principles. In any case, the basic standard that all companies that act or operate on the island must observe is the right to decent work in conditions of equality and without discrimination — recognized in international legal systems, the Constitution of the Republic, the Labor Code, and other regulations.
425. The Commission and its REDESCA observe that companies that do not respect human rights can cause serious damage to the guarantee of rights. To avoid these violations, they must have corporate management policies that transcend the vision of corporate social responsibility, leaning towards binding parameters that respect international human rights instruments and an exercise of due diligence in matters of human rights.<sup>654</sup> In this sense, they urge the business sector to: i) include appropriate due diligence policies and procedures within their operations, corporate structures and supply chains; ii) include internal contractual clauses that require respect for fundamental rights, with special attention to the rights of the most vulnerable people or groups, and indicate the consequences for non-compliance; iii) refrain from placing obstacles that hinder access to justice;

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<sup>652</sup> REDESCA-IACHR, [Business and Human Rights: Inter-American Standards](#), 2019, par. 313-315.

<sup>653</sup> REDESCA-IACHR, [Business and Human Rights: Inter-American Standards](#), 2019, par. 177.

<sup>654</sup> REDESCA-IACHR, [Business and Human Rights: Inter-American Standards](#), 2019, par. 26.

iv) guarantee accountability mechanisms and effective comprehensive reparation for the victims of human rights violations and abuses by companies; and v) refrain from putting pressure or exerting undue influence on the States to obtain benefits that generate negative impacts or risks for the realization of human rights.<sup>655</sup>

426. Regarding transnational business operations (such as large international hotel chains or multinational construction companies), beyond the measures of supervision, inspection, investigation and eventual sanction that the Cuban State should apply to them due to their effects on human rights, it is necessary to underline the obligations of home States of the companies operating on Cuban soil. In this sense, the Commission and the Court interpret that the term “jurisdiction” referred to in Article 1(1) of the American Convention is not limited to the national territory and effective control over any person or situation, but rather encompasses a broader concept that includes certain forms of exercise of jurisdiction outside the territory.<sup>656</sup> In the field of business and human rights, although there is no strict exercise of extraterritorial jurisdiction in terms of authority and effective control by home States, they can exercise significant levels of influence in the protection of human rights through favorable frameworks for regulation, prevention, supervision, accountability and eventual sanction of companies domiciled in their territories and that operate abroad.<sup>657</sup>
427. In addition to the above, the Commission and its REDESCA warn that the possibility of home States to respond internationally to activities carried out by a company outside the national territory is closely linked to the duty of international cooperation that must exist between States, enshrined in Article 26 of the American Convention, its Additional Protocol, and other inter-American and universal human rights instruments.<sup>658</sup> In this regard, different actions can be put into practice, such as: i) the construction of

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<sup>655</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 416.

<sup>656</sup> I/A Court HR, Advisory Opinion OC-23/17, op. cit., par. 74; IACHR, Franklin Guillermo Aisalla Molina (Ecuador v. Colombia), Admissibility Report No. 112/10 of October 21, 2011, par. 91; IACHR, Saldaño v. Argentina, Inadmissibility Report No. 38/99 of May 11, 1999, par. 15 to 20; IACHR, Case of Armando Alejandro Jr. et al. v. Cuba, Merits Report No. 86/99 of September 29, 1999, par. 23 to 25, and IACHR, Case of Coard et al. v. United States, Merits Report No. 109/99 of September 29, 1999, par. 37.

<sup>657</sup> REDESCA-IACHR, *Business and Human Rights: Inter-American Standards*, 2019, par. 152.

<sup>658</sup> Article 26 of the Convention establishes that: The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires”. Regarding the Protocol of San Salvador, the Preamble and Articles 1, 12 and 14 refer to this obligation. Inter-American Convention on Forced Disappearance of Persons, Articles Ic and XII; Inter-American Convention to Prevent and Punish Torture, Article 11; Inter-American Convention to Prevent, Punish and Eradicate Violence against Women, Article 8.i, among others. At the universal level, it is worth mentioning the International Covenant on Economic, Social and Cultural Rights, Articles 2.1, 11.1,

spaces for dialogue towards a greater dissemination of standards in the field of business and human rights, facilitating greater involvement of States and business actors; ii) the collaborative promotion of new practices towards greater knowledge and empowerment of workers on standards regarding labor and association rights, and available mechanisms to demand their protection; and iii) the establishment of mutual legal assistance mechanisms for better access to information by victims and the search for justice.<sup>659</sup>

428. Finally, the Commission and its Special Rapporteurship stress there cannot be development without due fulfilment of human rights.<sup>660</sup> The economic growth of companies operating in Cuba should not be considered an end, but rather sustainable and comprehensive development<sup>661</sup> that places the needs of people at the center of business policies, with a focus on respecting people's dignity, and that allows the realization of all their rights. For this reason, the respect and guarantee of human rights in the context of business activities, far from being counterproductive, contribute to consolidate responsible business behavior and increase the profitability of companies, reducing the risk of claims, avoiding damage to their public image, and allowing greater investment and employment opportunities.

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<sup>659</sup> In this regard, the British Institute of International and Comparative Law (BIICL) has published a series of recommendations both to States and to foreign companies that operate in Cuba in the context of tourism activities. See: Human rights responsibilities of multinational enterprises and State in the Cuban Tourism, London 2021

<sup>660</sup> REDESCA-IACHR, Business and Human Rights: Inter-American Standards, 2019, par. 45.

<sup>661</sup> Articles 30 and 31 of the OAS Charter have spoken in this sense, as well as the Inter-American Democratic Charter and the Social Charter of the Americas. The Commission has also said the same in the Thematic Report on Indigenous Peoples, Afro-descendant Communities and Extractive Industries (2016) and in the Report on Poverty and Human Rights (2017).

## **CHAPTER 7**

# **CONCLUSIONS AND RECOMMENDATIONS**

## CONCLUSIONS AND RECOMMENDATIONS

429. The Inter-American Commission on Human Rights (IACHR) and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (REDESCA), take note of the persistence of great challenges regarding the protection and guarantee of ESCER in general, and of labor and union rights in particular, from the perspective of intersectionality, indivisibility and equality contemplated in international and regional standards on human rights.
430. The IACHR and its REDESCA reiterate that the right to work is inherent to human dignity, and contributes to the autonomous development of all people and to the guarantee and enjoyment of other human rights. Safeguarding these rights is fundamental, since it guarantees basic social and economic conditions to give workers the necessary means to enjoy their lives with dignity and freedom, and strengthens the foundations of any democratic State. Although Cuba has ratified various international conventions on labor rights, in addition to its internal legislation (an updated Labor Code and a recent Constitution), the complex current labor and union rights landscape still affects the human rights of people under its jurisdiction.
431. Based on the testimonies collected throughout this Report, the IACHR and its REDESCA warn about the persistence of systematic patterns of violation of labor rights. These rights are especially affected by the lack of democracy and by the peculiar socioeconomic context of country, linked to job insecurity, worsening hiring conditions, absence of occupational health and safety protection measures, and lack of freedom of expression in the workplace, which gives rise to disciplinary sanctions, expulsions and even unjustified dismissals. This last conduct was exacerbated by the Cuban State's repressive waves, derived from the peaceful protests of July 11, 2021, and the design and approval of new regulations that tend to criminalize freedom of expression, assembly and association (including opinions on social networks).
432. The testimonies yield trend indicators based on the individual perceptions of workers regarding the observance of labor and trade union rights in Cuba. These indicators focus on four specific issues: respect for labor rights, freedom of association, due process, and access to the labor justice system. As a result of this analysis, 92.3% of interviewees believe that labor rights are not being respected in Cuba; 98.4% do not perceive union freedom exists in the country; 93.8% report that due process is not being observed in the

field of labor claims; and 72.3% feel they cannot or are afraid to access the labor justice system in Cuba.

433. The Commission and its REDESCA also highlight special risks faced by various population groups in the country, as a result of the persistence of historical stereotypes of discrimination to which they are subjected within the labor context — women, Afro-Cubans, LGBTI individuals, people with disabilities, and human rights defenders. They also warn about the particular danger to workers under special labor relations (e.g.: teachers suffering arbitrary restrictions on academic freedom), people assigned to "Internationalization Missions", and the self-employed sector.
434. In addition to this, the IACHR and its REDESCA note with concern that collective labor rights (such as freedom of union or freedom of association) are totally non-existent because of the lack of a democratic context and the imposition of a single party. The entire union movement is severely limited due to politicization and the monopoly of the sole union (controlled by the State), which leads to repressive actions against representatives of independent unions, people who freely join these independent unions, and people who dissent from official unions. Indeed, the social protests of July 11, 2021, highlighted restrictions on the full exercise of freedom of union and association. Added to this, new criminal legislation further limits the exercise of these rights, through vague and imprecise wording of criminal typification and increased penalties for certain offences.
435. On the other hand, Cuban legislation does not contemplate the right to strike, which implies that the legal framework itself makes collective action measures for the defense of labor rights impossible, and classifies any collective action of workers as illegal, considering such actions contrary to public order or attacks against peace and social security. The IACHR and its REDESCA recall that freedom of association is a fundamental right that promotes democracy, good governance of the labor market and decent working conditions, and guarantees the collective organization of workers, allowing them to enjoy their labor rights and put into practice their autonomous development.
436. Persisting obstacles regarding access to justice, due process, and effective judicial protection for workers and unions deserve special attention. This is also due to the non-existence of democracy or separation of powers, and a judicial power subordinated to the single party. In practice, the suitability and effectiveness of the Cuban judicial process in the specific protection of labor and trade union rights is weakened in the face of the difficulties facing workers in accessing labor justice and the lack of guarantee of due process. The initial conditions of extreme inequality in which workers find themselves in labor conflicts (and the specificity of the matter) make due

process non-existent and have an impact on the enjoyment and exercise of fundamental rights of workers.

437. Finally, the IACHR and its REDESCA observe the persistence of challenges regarding compliance of the Cuban State with its obligations of respect and guarantee of business and human rights, particularly the rights of workers under its jurisdiction, that may be affected because of business activities. They warn about the lack of adequacy of the internal legal systems, with respect to the obligations of the State towards corporate actions, as well as the absence of mechanisms that assign responsibility to the companies operating in the territory (foreign, mixed or national capital; public, private or mixed participation) in the face of violations of labor and union rights.
438. Based on their observations, and in light of the norms that govern the Inter-American Human Rights System, the Inter-American Commission on Human Rights and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights, consider it relevant to make the following recommendations to the Cuban State:

#### **Regarding labor rights in particular:**

1. Establish a democratic transition path that allows, within the framework of a democracy, the full enjoyment of human rights (including labor and trade union rights) and the implementation of these recommendations.
2. Promote public policies that guarantee dignified and decent work, and ensure their effective compliance, influencing the elimination of the lack of quality opportunities and precarious working conditions, and specifically protecting vulnerable groups.
3. Adopt the necessary measures that, in accordance with the principle of equality and non-discrimination, put an end to the structural obstacles that prevent workers from free access to employment, respecting their right to choose a job based on their interests, needs and training.
4. Adopt the necessary measures to guarantee work stability for all workers — particularly vulnerable and historically discriminated groups, ensuring that all terminations and dismissals are justified, as established by law or in collective agreements.
5. Redouble efforts to eradicate discrimination in the workplace due to political ideas, gender, ethnic origin, sexual orientation, gender identity or physical ability.
6. Adjust the minimum wage following ILO international standards, considering the specific impacts that such increase could have on the

context of inflation in the country, and ensure effective and adequate protection in terms of wages for workers.

7. Refrain from making salary withholdings (both from personnel providing services abroad and personnel providing services to foreign or mixed capital companies on the island), in compliance with international and regional standards on the matter.
8. Ensure minimum occupational safety, health and hygiene conditions that minimize occupational accidents and illnesses, redoubling its efforts in terms of policies aimed at minimizing the risks of occupational accidents and illnesses.
9. In terms of equality in the workplace:
  - (i) Adopt a specific legal framework on violence and harassment in the workplace, which necessarily involves ratifying and implementing ILO Convention 190. Said legal framework should consider the aspects of the workplace and include, among others, effective mechanisms of access to justice for women victims of these behaviors.
  - (ii) Adopt positive measures to eradicate stereotypes deeply rooted in Cuban culture; close the wage gap between men and women for equal work from a gender perspective, reviewing any discriminatory effect against women that these norms may cause.
10. Ensure the exercise of freedom of expression in the work context and guarantee immediate cessation of attacks against human rights defenders, ensuring that they can carry out their work without fear of intimidation or undue restrictions of their labor rights.
11. Implement strategies to prevent, combat, and punish racial discrimination in the labor market, incorporating an intersectional approach that benefits and guarantees the labor rights of groups that have historically been discriminated against and face exacerbated obstacles to access to work.
12. Adopt legislative, administrative, and policy measures that effectively and comprehensively address the underlying causes of harassment, violence, and discrimination against LGBTI persons in the workplace.
13. Refrain from imposing restrictions on the rights and freedoms of workers in internationalization missions, and strengthen the transparency of these programs in favor of their labor rights.



14. Ensure the academic freedom of teaching staff, refraining from imposing unjustified administrative or disciplinary sanctions, under minimum rules of transparency, due process, judicial guarantees and non-discrimination, all of which allow measures to be duly substantiated.
15. Allow and guarantee free choice and acceptance of the work carried out by self-employed workers. Allow each person to follow their vocation and practice any activity that reasonably responds to their expectations, without imposing restrictions on the exercise of certain activities of self-employed workers. Refrain from limiting the activities of self-employed workers through inspections, random controls, or restricted access to certain supplies or raw materials.

**Regarding trade union rights:**

16. Guarantee the free exercise of trade union and association rights, following inter-American standards on the matter.
17. Refrain from imposing actions that restrict union freedom, as well as any measure that affects the rights of union representatives.
18. Recognize and legitimize the creation of free, autonomous and independent trade union organizations that guarantee and defend the rights of all workers (including self-employed workers), and ensure the exercise of collective rights, such as the right to collective bargaining and the right to go on strike.

**Regarding access to justice, due process and judicial protection:**

19. Adopt all necessary measures to respect and realize the procedural guarantees of workers, such as the right to be tried by an impartial authority, the right of defense, the motivation and justification of decisions, and the possibility of accessing suitable and effective remedy.

**In particular, the IACHR and its REDESCA recommend that the Cuban State:**

20. Adopt the necessary measures to ensure the impartiality and autonomy of the members of Labor Justice Bodies; and refrain from interfering, directly or indirectly, in their decisions.
21. Adopt effective measures so that judges have guarantees to carry out their work independently and impartially, in accordance with the law, and without instruction or interference from other State powers.

22. Ensure that workers under its jurisdiction have access to prior and detailed communication of the accusations made in cases of disciplinary labor proceedings.
23. Guarantee that, within the framework of administrative procedures and judicial processes, adequate time and means are granted to prepare workers' defense.
24. Facilitate legal assistance to workers by a lawyer of their choice, at all stages of proceedings before the Labor Justice Bodies and the Judiciary.
25. Guarantee conditions for lawyers and legal representatives so they can act freely and with autonomy, without fearing retaliation or harassment because of their legal defense work.
26. Guarantee to all persons under its jurisdiction the right to a simple, swift and effective judicial remedy before a competent judge or court. It is not enough for this guarantee to be provided by the Constitution or the law, or for it to be formally admissible. Rather, this guarantee must be truly suitable and effective to establish whether a violation of human rights has occurred and to provide necessary remedy.

### **Regarding business and human rights:**

#### **To the State:**

27. Adapt its internal legal system to the applicable inter-American standards on business and human rights with a focus on indivisibility, intersectionality, and gender, paying special attention to any impact on the human rights of individuals or groups of individuals who may be at greater risk of vulnerability or historical marginalization.
28. Fulfill its international obligations of due diligence through prevention, supervision, control, accountability and reparation against the effects of the business sector, ensuring access to justice for workers who are victims of abuses in the labor context. For this, it will be necessary to strengthen the national mechanisms for judicial and extrajudicial complaints.
29. Adopt specific legal frameworks that require state and non-state companies operating in the country to act with due diligence in human rights, guaranteeing that their activities do not generate differentiated negative impacts on workers and vulnerable groups.
30. Adopt effective measures to prevent labor exploitation and discrimination in hiring and during employment, both by state

companies (with the intervention of employment entities) and non-state companies.

31. Strengthen the mechanisms to access public information as a guarantee of transparency and accountability in matters related to the impact of business on labor and trade union rights. This allows the creation of solid legal frameworks and concrete public policies for better supervision and investigation of the State, in the face of the effects of the business sector.
32. Strengthen international cooperation and mutual assistance actions with the home countries of foreign companies operating in Cuban territory and promote concrete actions in the field of business and human rights.

**To the companies:**

33. Adapt their business practices in accordance with the internal regulations established and with international standards, applying the guidelines and recommendations of the IACHR's and its REDESCA's Report on Businesses and Human Rights, based on the principles of equality and non-discrimination, with an intersectional and differential human rights approach, that includes the gender perspective and that takes into account the possible aggravation and frequency of human rights violations, due to vulnerability or historical discrimination suffered by individuals and groups in Cuba, based on ethnic origin, sex, age, sexual orientation, or gender identity.
34. Adapt corporate management policies to a human rights approach that transcends the vision of corporate social responsibility.