

OEA/Ser.L/V/II

Doc. 92

June 9, 2023

Original: Spanish

REPORT No. 83/23

CASE 14.196

ADMISSIBILITY AND MERITS REPORT (PUBLICATION)
OSWALDO JOSE PAYÁ SARDIÑA AND OTHERS

CUBA

Approved electronically by the Commission on June 9, 2023

Cite as: IACHR, Report No. 83/23. Case 14.196. Admissibility and Merits (Publication). Oswaldo José Payá Sardiña et al. Cuba. June 9, 2023.



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INTRODUCTION

1. On April 15, 2013, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "the IACHR") received a petition filed by the Robert F. Kennedy Center for Human Rights (hereinafter "the petitioning party"). The petition alleged the international responsibility of the Republic of Cuba (hereinafter "the State" or "Cuba") for the deaths of political dissidents and human rights defenders Oswaldo Payá and Harold Cepero, as well as the situation of impunity for the events.

2. On October 20, 2020, the Commission informed the parties that, in accordance with Resolution 1/16, it decided to defer the treatment of the admissibility of the matter until the discussion and decision on the merits, since the State did not submit information during the admissibility stage¹. The Commission placed itself at the disposal of the parties in order to initiate a friendly settlement process without the conditions for such effect being met. The parties were given the statutory time limits to submit their observations on the case. All the information received was duly transmitted between the parties. The State did not submit observations on admissibility or merits².

I. ARGUMENTS OF THE PARTIES

A. Position of the petitioner

3. The petitioner alleges the international responsibility of the State for the deaths of political dissidents and human rights defenders Oswaldo Payá and Harold Cepero, as well as the situation of impunity for the events. It explains that their deaths occurred in a context of persecution and harassment of political dissidents and human rights defenders in Cuba.

4. The petitioner alleges that Mr. Payá and Mr. Cepero died because of a premeditated collision with the vehicle in which they were riding. The petitioner explains that the collision was caused by an official vehicle and therefore the State is responsible for the violation of the life and integrity of the alleged victims. He argues that before the premeditated accident there were two other attacks against Mr. Payá and his family members. It explains that this affected the rights to freedom of expression, association, and assembly. This was due to the multiple acts of harassment and follow-up by public authorities.

5. He alleges that the State did not investigate any of the facts, thus affecting his rights to judicial guarantees and judicial protection. It explains that the next of kin were prevented from accessing the files and could not participate in the judicial investigation, as they were never recognized as having legal standing to participate in it.

6. The petitioner claims that in the collision that caused the death of Mr. Payá and Mr. Cepero, the leader Ángel Carromero was also present. He claims that he was injured and taken to a hospital where he was drugged, beaten, and forced to make a false confession by the Cuban authorities. He alleges that he was detained illegally and arbitrarily and was not immediately brought before a judge. He explains that a criminal proceeding was

¹ IACHR. Communication from the IACHR sent to the State of Cuba on October 20, 2020, by which it notifies its decision to implement Resolution 1/16 of October 18, 2016.

² On April 23, 2019, the IACHR forwarded the relevant parts of the petition. The State did not submit observations on the petition, despite the fact that said request was reiterated. After the adoption and notification of Resolution 1/16, the State also did not submit observations on the admissibility or merits of the case. On April 22, 2021, the petitioner submitted its observations on the merits.

initiated against him for the crime of homicide, which violated due process. This inasmuch as he was not allowed to have an adequate technical defense, the trial was not public, and a statement made under duress was used against him. He adds that he suffered subhuman conditions during his detention.

7. In addition, the petitioner alleged that the State is responsible for the violation of the right of residence against Oswaldo Payá, Harold Cepero and their next of kin. This inasmuch as they were not allowed to move freely through Cuban territory due to harassment and threats. He adds that some of Mr. Payá's family members were not authorized to leave the country without any justification.

8. Finally, the petitioner alleges that the Cuban State was responsible for the violation of the personal integrity of the alleged victims' next of kin for failing to conduct a serious investigation into the facts and for the suffering caused.

B. Position of the State

9. The State has not provided its observations on the admissibility or merits of the case.

II. ADMISSIBILITY ANALYSIS

A. Jurisdiction, duplication of proceedings and international res judicata

Competence <i>Ratione personae</i>:	Yes
Competition <i>Ratione loci</i>:	Yes
<i>Ratione temporis</i> jurisdiction:	Yes
<i>Ratione materiae</i> jurisdiction:	Yes, American Declaration (deposit of the instrument of ratification of the OAS Charter on July 16, 1952).
Duplication of proceedings and international res judicata	No

B. Exhaustion of domestic remedies and filing deadlines

10. Article 31(1) of the IACHR Rules of Procedure requires prior exhaustion of the remedies available under domestic law in accordance with generally recognized principles of international law, as a requirement for the admission of the claims presented in the petition. The purpose of this requirement is to allow the national authorities to take cognizance of the alleged violation of a protected right and, if appropriate, to resolve the situation before it is heard by an international body. For its part, Article 31(2) of the Rules of Procedure provides that the requirement of prior exhaustion of domestic remedies is not applicable when: i) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights alleged to have been violated; ii) the alleged victim has not been allowed access to domestic remedies or has been prevented from exhausting them; or iii) there has been unwarranted delay in rendering a decision on the aforementioned remedies³.

11. In the instant case, the Commission notes that a criminal proceeding was initiated in connection with the deaths of Mr. Payá and Mr. Cepero. According to the information provided by the petitioner, a conviction was handed down on October 15, 2012. The IACHR observes that there are no other remedies pending at the domestic level, and therefore considers that the petitioner has exhausted domestic remedies in accordance with Article 31(1) of the IACHR Rules of Procedure. Furthermore, taking into account that the

³ IACHR. Report No. 71/16. Petition 765-09. Admissibility. Q'eq'ob Community of the Municipality of Santa María Nebaj. Guatemala. December 6, 2016, para. 27; IACHR. Report No. 77/20. Petition 1756-10. Inadmissibility. Ismael Estrada. United States of America. March 25, 2020, para. 8.

petition was lodged on April 15, 2013, the Commission considers that it was lodged within the six-month period in accordance with Article 32(1) of its Rules of Procedure.

C. Characterization of the alleged facts

12. In view of the allegations presented by the petitioner, the IACHR considers that violations of the rights protected in Articles I (Right to life, liberty and personal security), IV (Right to freedom of investigation, opinion, expression and dissemination), V (Right to protection of honor, personal reputation, and private and family life), VIII (Right to residence and movement), IX (Right to inviolability of the home), X (Right to the inviolability and transmission of correspondence), XVIII (Right to a fair trial), XXI (Right of assembly), XXII (Right of association), XXIV (Right of petition), XXV (Right of protection from arbitrary arrest) and XXVI (Right to due process of law) of the American Declaration of the Rights and Duties of Man can be characterized.

III. FINDINGS OF FACT

A. Context of persecution of political dissidents and human rights defenders in Cuba

13. The Commission emphasizes that in the framework of its monitoring functions, as well as in the system of petitions and cases, it has pronounced itself on the situation in Cuba in relation to the persecution of political dissidents, journalists, artists and human rights defenders. Thus, it has considered that in Cuba there is a legal framework and an exercise of political power by state forces that limit political pluralism⁴. This has generated a lack of spaces that allow the participation of a plurality of lines of thought and expression⁵. The Commission has maintained that in Cuba there is an absence of essential elements of representative democracy and its institutions that "allow genuine political participation of sectors of diverse lines of thought; in particular, the holding of elections lacking plurality and independence, obstacles that prevent free access to diverse sources of information"⁶.

14. Likewise, the Commission has identified that violations of the rights to freedom of expression and association have been institutionalized "as a policy of the Cuban State to prevent any critical position contrary to the regime or to the political, labor, educational, etc. situation"⁷. Consequently, the Commission has determined that "intolerance continues to be the rule of the Cuban authorities towards any form of criticism or opposition, and the main limitation to fundamental rights and freedoms"⁸.

15. The Commission has also received information on the situation of political dissidents and human rights defenders who face repressive tactics by the Cuban government for denouncing "the lack of political rights and freedoms or simply for seeking to express their opinions and participate in political affairs"⁹. Thus, for decades the Cuban government has maintained a strict policy of repression against individuals and groups that attempt to criticize the regime or seek a free exercise of human rights. Thus, it has maintained that in Cuba "it can be categorically stated [...] that there is no right to freedom of expression"¹⁰. The Commission has noted the lack of progress in the situation over a prolonged period of time¹¹.

16. Among the documented practices, the Commission has indicated that "there have been reports of harassment, threats and reprisals; arbitrary detentions; house searches and confiscation of property, generally

⁴ IACHR, Report No. 297/21. Case 13.639. Admissibility and Merits (Publication). Yoani María Sánchez Cordero. Cuba. October 30, 2021; Report No. 67/06, Case 12.476, Merits, *Oscar Elías Biscet et al. v. Cuba*, October 21, 2006; Report No. 27/18, Case No. 12.127. Vladimiro Roca Antúnez and Others. Cuba. February 24, 2018; and Country Report 2020, Cuba. Situation of Human Rights in Cuba.

⁵ IACHR, Country Report 2020, Cuba. Situation of Human Rights in Cuba. Para. 25.

⁶ IACHR, Annual Report 2018, Chapter IV.B, "Cuba," para. 20.

⁷ IACHR, Annual Report 1997, Chapter V, "Development of Human Rights in the Region," para. 5.

⁸ IACHR Office of the Special Rapporteur for Freedom of Expression, Special Country Report (2019), para. 246.

⁹ IACHR Office of the Special Rapporteur for Freedom of Expression, Special Country Report, (2019), para. 147.

¹⁰ IACHR, Report No. 67/06, Case 12.476, Merits, *Oscar Elías Biscet et al. v. Cuba*, October 21, 2006, para. 189.

¹¹ See, for example, IACHR, Annual Report 2012, Chapter IV, "Cuba," para. 69.

linked to 'fabricated' criminal cases; obstacles to political meetings; undue restrictions on leaving the country and deportations from Havana to other provinces in the interior; as well as stigmatization and discrediting¹².

17. In particular, the Commission has identified two types of restriction and interference that are relevant to this case: a systematic pattern of arbitrary arrests and imprisonment¹³ and the misuse of criminal law - criminalization - as a mechanism of subsequent liability to the detriment of dissidents and those who express criticism on issues of public or government interest¹⁴.

B. Regarding Oswaldo Payá and Harold Cepero, and acts of violence, harassment and threats

18. Oswaldo José Payá Sardiñas was born on February 29, 1952 in Havana, Cuba. He resided in Cuba and was a citizen of Cuba and Spain. His family consisted of Ofelia Acevedo Maura (wife), and his three children: Oswaldo José, Rosa María, and Reynaldo Isaías. In 1988, he founded the Christian Liberation Movement (MCL or Movimiento) with the objective of promoting democracy and a political system in Cuba that would allow the existence of more than one political party¹⁵. Mr. Payá was known as one of Cuba's most important political and human rights activists, for his proposals in favor of democracy, political participation and freedom of expression.¹⁶

19. Harold Cepero Escalante was born on January 29, 1980 in Camagüey, Cuba. His family consisted of: Sabat Cepero (father) and Hanner Cepero (brother). In 2002, Mr. Cepero developed his activity as a prominent leader of the MCL. Mr. Cepero traveled throughout the country visiting other leaders and members of the MCL, promoting the movement's proposals and assuming greater and greater leadership, recognition and work within the organization.

20. In relation to his work in the MCL and other political and human rights activities, as well as acts of harassment, violence and threats, the IACHR takes note of the following facts:

- In 1990, Oswaldo Payá was detained for several days by the Cuban police¹⁷. He was interrogated and threatened that "if he continued in his civic and peaceful struggle, he would face several years in prison"¹⁸.
- In June 1991, Mr. Payá opened his house to collect signatures for a bill and State Security agents organized an act of repudiation; they assaulted him and ransacked the house. The phrases "Payá CIA agent", "worm", "Viva Fidel" and "down with Payá" were painted on the facade of the house¹⁹. To protect his family, Mr. Payá moved his wife and children to his in-laws' house and they were in "internal exile" for 8 years. During these years, Cuban authorities did not allow him to leave Cuba to participate in human rights events, conferences and forums.²⁰
- In 1992, Oswaldo Payá publicly expressed his desire to run for deputy to the National Assembly of the Cuban People's Power. A few days before the provincial assemblies to ratify the candidates for deputies, the regime's police arrested Mr. Payá at his home and then took him to one of the centers of the "Committees for the Defense of the Revolution". While he was in that center, a large group of Communist Party members, as well as members of the political police, informants and collaborators surrounded Oswaldo Payá and after offending him, they threatened him with death, telling him that blood would run in the streets.²¹

¹² IACHR. Country Report 2020, Cuba. Situation of Human Rights in Cuba. Para.158.

¹³ IACHR, Report No. 67/06, Case 12.476, Merits, *Oscar Elías Biscet et al. v. Cuba*, October 21, 2006, para 129; IACHR, Annual Report 2012, Chapter IV, "Cuba," paras 42-43; IACHR Office of the Special Rapporteur for Freedom of Expression, Special Country Report (2019), para 445.

¹⁴ IACHR Office of the Special Rapporteur for Freedom of Expression, Special Country Report (2019), para. 446.

¹⁵ CADAL and KAS Foundation, *Oswaldo Payá Sardiñas and the Varela Project: The Peaceful Struggle for the Democratic Opening in Cuba*, Annex 3 of the Expansion of the Petition, p. 17.

¹⁶ New York Times. *Oswaldo Payá, Cuban Leader of Petition Drive for Human Rights, Dies at 60*. Available at: <https://www.nytimes.com/2012/07/23/world/americas/oswaldo-paya-60-cuban-human-rights-fighter-dies.html>; and CADAL and KAS Foundation, *Oswaldo Payá Sardiñas y el Proyecto Varela: La lucha pacífica por la apertura democrática en Cuba*.

¹⁷ Petitioner's written observations on the merits, April 21, 2021.

¹⁸ *Oswaldo Payá Sardiñas and the Varela Project: The Peaceful Struggle for the Democratic Opening in Cuba*, p. 18.

¹⁹ Petitioner's written observations on the merits, April 21, 2021.

²⁰ *Oswaldo Payá Sardiñas and the Varela Project: The Peaceful Struggle for the Democratic Opening in Cuba*, p. 18.

²¹ *Oswaldo Payá Sardiñas and the Varela Project: The Peaceful Struggle for the Democratic Opening in Cuba*, p. 19.

- In 1997, Mr. Payá and other members of the MCL collected hundreds of signatures in support of their candidacies for deputies²². Faced with the government's refusal to proceed with their registrations, the "Varela Project" was created, a legislative initiative that sought to promote multi-party democracy in Cuba.²³
- On May 10, 2002, Oswaldo Payá presented, together with other members of the MCL and other opponents, more than 11,020 signatures supporting the Varela Project²⁴. The Cuban State did not allow the project to be made public and debated by the Assembly²⁵. This situation placed Oswaldo Payá at the forefront of the dissident opposition against the Cuban regime. This situation caused Mr. Payá to be harassed and constantly watched, as well as his family²⁶. Attacks were registered against his home, recurrently at night by individuals or groups organized by the State security²⁷.
- Between March 18 and 21, 2003, the Cuban government imprisoned and subjected to summary trials approximately 75 dissidents, many of whom were promoters of the Varela Project²⁸. Oswaldo Payá became recognized as a leader of the Cuban democracy movement for his work with the Varela Project²⁹. Consequently, surveillance, periodic detentions of Oswaldo and members of the MCL and death threats against him by State Security increased. Because of their work, several members of the MCL and other political opponents were victims of arbitrary detentions, confiscation of documents and personal belongings, and temporary prohibition by the Cuban authorities to leave the country³⁰.
- According to the petitioner, the Cuban authorities kept Mr. Payá "under constant surveillance and harassment"³¹; they chased him through the streets in various cars, followed him to church, to work, and agents were stationed at the door of his house³². In 2008, Oswaldo Payá publicly denounced this situation³³. Among the controls and harassment suffered by Oswaldo Payá were: being followed at close range by State Security agents, even being rammed so that he would lose control of his car or bicycle and have an accident³⁴. State agents even went so far as to loosen the lug nuts on the tires of his car, seriously endangering his life and that of his family.³⁵

²² Oswaldo Payá Sardiñas and the Varela Project: The Peaceful Struggle for the Democratic Opening in Cuba, p. 19.

²³ IACHR. Annual Report 2002, Chapter IV Cuba. Available at: cidh.oas.org/annualrep/2002sp/cap.4a.htm and IACHR, Report No. 67/06, Case 12.476, Merits, *Oscar Elías Biscet and Others v. Cuba*, October 21, 2006, para. 251-253.

²⁴ IACHR, Report No. 67/06, Case 12.476, Merits, *Oscar Elías Biscet et al. v. Cuba*, October 21, 2006, para. 251-253.

²⁵ See, Christian Liberation Movement, "Strategic Initiatives," Available at: <http://www.oswaldopaya.org/es/up/mcl- inic.pdf>. (Accessed April 22, 2021).

²⁶ IACHR. Public Hearing. Case 14.196. Oswaldo Paya Sardinias and Harold Cepero et al. v. Cuba; Interview by Jorge Ramos with Oswaldo Payá in January 2003, Available at: https://www.youtube.com/watch?v=q8BfmbEKvGs&feature=emb_imp_woyt (last visited July 12, 2022) and Oswaldo Payá Sardiñas y el Proyecto Varela: La lucha pacífica por la apertura democrática en Cuba, p. 16.

²⁷ Political Prisoners in Cuba. *Opposition leader Oswaldo Payá denounces an "increase in persecution* in Cuba. March 12, 2007. Available at: <http://cubaprespoliticos.impela.net/2007/03/el-opositor-oswaldo-paya-denuncia-un-aumento-de-la-persecucion-en-cuba/>.

²⁸ IACHR. Report 2003. Ch. VI. Para. 21. See also: Radio Televisión Martí. Hace 19 años el Proyecto Varela hizo historia (The Varela Project made history 19 years ago). Available at: <https://www.radiotelevisionmarti.com/a/hace-19-a%C3%B1os-el-proyecto-varela-hizo-historia/294895.html> (visited May 30, 2022).

²⁹ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba; Interview by Jorge Ramos with Oswaldo Payá in January 2003, Available at: https://www.youtube.com/watch?v=q8BfmbEKvGs&feature=emb_imp_woyt (last visited July 12, 2022) and Oswaldo Payá Sardiñas y el Proyecto Varela: La lucha pacífica por la apertura democrática en Cuba, p. 16; European Parliament, Video Reception of the Sakharov Human Rights Prize at the European Parliament. Strasbourg December 17, 2002, available at: <https://www.youtube.com/watch?v=Tjx47JMd208> (last visited July 22, 2022).

³⁰ IACHR. Report 2003. Chap. VI. Para. 23.

³¹ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba and Oswaldo Payá Sardiñas and the Varela Project: The Peaceful Struggle for Democratic Opening in Cuba, p. 16.

³² IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba; Interview by Jorge Ramos with Oswaldo Payá in January 2003, Available at: https://www.youtube.com/watch?v=q8BfmbEKvGs&feature=emb_imp_woyt (last visited July 12, 2022) and Oswaldo Payá Sardiñas y el Proyecto Varela: La lucha pacífica por la apertura democrática en Cuba, p. 16.

³³ El Mundo. Payá denounced in 2008 that his vehicle had been the target of a "sabotage. Available in: <https://www.elmundo.es/america/2012/08/10/cuba/1344584364.html> and Oswaldo Payá Sardiñas, Sabotaje al Auto en el que viajaban Oswaldo Payá y su Familia, January 30, 2008. Annex to the Petitioner's Brief of observations on the merits, April 21, 2021. Mr. Payá stated the following: On an almost permanent basis, State Security watches my house, pursues me when I travel on foot, by bicycle or by car, interferes with our telephones and listens to everything we talk about, completely interferes with my work and also frequently disturbs many of our human relations. This persecution includes direct intrusion to disturb doctors and hospital institutions on some of the occasions when we have needed to attend to someone in the family, including my children. This last form of harassment is becoming more frequent and direct.

³⁴ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba; Brief of observations on the merits of the petitioner, April 21, 2021; and Video: The Truth About the murder of Oswaldo Payá and Harold Cepero, May 19, 2022. Available at: https://www.youtube.com/watch?v=-MaAb2d_Dc8&t=160s/

³⁵ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba, Europa Press, "Payá denounced in 2008 that his vehicle had been the target of a 'sabotage'" Diario El Mundo. August 10, 2012. Available at: <http://www.elmundo.es/america/2012/08/10/cuba/1344584364.html>; and Oswaldo Payá Sardiñas, Sabotaje al Auto en el que viajaban Oswaldo Payá y su Familia, January 30, 2008. Annex to the Petitioner's Brief of observations on the merits, April 21, 2021.

The petitioner also indicates that she received threats at the door of her house, and threatening and offensive phone calls³⁶.

- In December 2004, Oswaldo Payá discovered more than seven microphones hidden inside the connection boxes of the telephone terminals, in the case of his home, one was in the room shared by Oswaldo and his wife Ofelia³⁷, these microphones captured everything that was said in that private room, another was found in the kitchen-dining room where the family meets most of the time they are at home. The petitioners have affirmed, without being contradicted by the State, that others were found in the homes of MCL members where they used to meet³⁸. They also found microphones in the living room of the home of Josefina Paya, Oswaldo's aunt, where he received fellow opposition members and trusted friends³⁹.

- According to the petitioner, on January 27, 2008, Cuban authorities sabotaged the car in which Oswaldo Payá, his wife Ofelia Acevedo Maura and their three children were traveling after finishing a visit to the home of a family friend. He explained that they had loosened the nuts that hold the wheel of their vehicle⁴⁰.

21. In addition, the Commission takes note of the information on an attack that occurred months before Mr. Payá's death. According to the petitioner, on June 2, 2012, Oswaldo Payá Sardiñas and his wife, Ofelia, were hit by another car in Havana. He explained that the impact was so intense that the car in which they were traveling flipped over into the other lane⁴¹. Mr. Payá stated the following:

[s]igo with the green [light], maybe when passing it was in the 7 or 8 seconds. I can't prove it. [He] doesn't speed up because he's going with enough time. He doesn't brake because he doesn't see anyone. When [he] feel[s] some very short braking and the impact, the car tilts immediately. They [notice] that the car slides longitudinally towards the other lane⁴².

22. Ofelia Acevedo stated the following:

(...) on June 2, 2012, his car came out of nowhere and hit our car in the back, causing it to overturn and fall into the oncoming lane. Oswaldo was driving as usual slowly and miraculously there was no car coming in the other direction, that saved us. Mysteriously the police appeared there and immediately took us away from the scene, rushing us to a hospital that was taken over by state security agents. They held us there for four hours, that day it became clear to us that they were trying to eliminate us⁴³.

23. The petitioner maintained that Ofelia Acevedo and Oswaldo Payá were taken to a hospital, where State Security agents went. She indicated that although Mr. Oswaldo Payá claimed that he was fine and that he was not injured, the hospital staff insisted on performing tests on his internal organs. Oswaldo Payá Acevedo noted that at the place where the incident occurred, the police filled out a report with the statements of alleged persons present at the scene and after making their statements they all left together in the same car that had hit Oswaldo Payá and Ofelia Acevedo's car. He indicated that after the incident, the vehicle involved in the accident was preserved by the police and therefore they did not have the opportunity to inspect it. It was also indicated that Mr. Payá learned that he was denounced by the other driver for having caused the accident. Oswaldo Payá told his family that the officer did not take statements regarding the accident and was unable to give his version of events⁴⁴. The Commission has no information as to whether it initiated an investigation against Mr. Payá.

³⁶ Petitioner's written observations on the merits, April 21, 2021.

³⁷ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba.

³⁸ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba, Declaration of Ofelia Acevedo and Brief of the petitioner on the merits, April 21, 2021.

³⁹ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba, Declaration of Ofelia Acevedo.

⁴⁰ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba, Declaration of Ofelia Acevedo; and Europa Press, "Payá denounced in 2008 that his vehicle had been the target of a 'sabotage'" Diario El Mundo. August 10, 2012. Available at: <http://www.elmundo.es/america/2012/08/10/cuba/1344584364.html>.

⁴¹ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba; Declaration of Ofelia Acevedo.

⁴² Petitioner's Merits Brief, April 21, 2021, p. 26 and *Atentado sorpresivo contra nuestro auto, Anotaciones por Oswaldo Payá Sardiñas*, transcribed by Ofelia Acevedo Maura, November 3, 2013. Annex C to the Closing Brief.

⁴³ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba, Declaration of Ofelia Acevedo.

⁴⁴ Petitioner's Merits Brief, April 21, 2021, p. 26; and *Atentado sorpresivo contra nuestro auto, Anotaciones por Oswaldo Payá Sardiñas*, transcribed by Ofelia Acevedo Maura, November 3, 2013. Annex C to the Closing Brief.

C. On the death of Oswaldo Payá and Harold Cepero

24. On July 22, 2012, Oswaldo Payá Sardiñas and Harold Cepero Escalante died when the vehicle in which they were traveling was involved in a car crash while they were driving on the central highway towards the city of Bayamo, in Cuba⁴⁵. The vehicle was driven by Angel Francisco Carromero Barrios and the co-driver was Jens Aron Modig. Mr. Carromero was Deputy Secretary General of the New Generations of the Popular Party of Madrid and Mr. Modig was a member of the Christian Democratic Youth of Sweden (KDU). The two went to Cuba as part of a trip organized by the *Christian Democratic International Center* (KIC), a non-governmental organization related to the Swedish Christian Democratic Party⁴⁶. Mr. Carromero and Mr. Modig were in Cuba to support other members of Christian Democratic movements and to provide financial support to the families of Cuban dissidents linked to the Varela Project⁴⁷. It was indicated that since their arrival in Cuba, Mr. Carromero and Mr. Modig were permanently followed by police agents⁴⁸.

25. The Commission takes note of contradictory positions on the causes of the accident. On the one hand, the petitioner indicated that, according to the testimony of Ángel Francisco Carromero Barrios, a human rights defender, who was driving the vehicle in which the alleged victims were, a car followed them from the moment they left Havana. He said that another car, which was an official and state security car, rammed into them, causing the accident. It was added that Mr. Carromero and Mr. Modig survived the collision with minor injuries⁴⁹.

26. Mr. Carromero publicly stated that the vehicle was followed by a white car from the beginning of the trip when they left Havana⁵⁰. He stated that he stopped to fill up with gasoline, observed that the car following them stopped and when they started driving again, it was following them again⁵¹. He stated that when they returned to the highway, they again detected the presence of another vehicle following them, this time a red Lada car that began to harass them, getting very close⁵². According to Ángel Carromero, "[he] was going faster and they were following behind. And [he] braked and they braked. They did not overtake them"⁵³. Oswaldo Payá

⁴⁵ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ángel Carromero; Judgment against Ángel Carromero. First Criminal Chamber of the People's Court of Granma. Judgment No. 573/2012 of October 12, 2012; See also: *See also* Cuba Debate In video, Press conference by Jens Aron Modig. Available at: <http://www.cubadebate.cu/noticias/2012/07/31/en-video-conferencia-de-prensa-de-jens-aron-modig-fotos/#.VDat0fldXkU>. (last visited May 30, 2022).

⁴⁶ Video: Jens Aron Modig press conference, Available at: <http://www.cubadebate.cu/noticias/2012/07/31/en-video-press-conference-jens-aron-modig-fotos/#.VDat0fldXkU>. (last visited May 30, 2022).

Complaint filed by Ofelia Acevedo Maura and Rosa Maria Payá Acevedo before the National Court of Spain, August 14, 2013, p.11. Annex to the Petitioners' Petition.

⁴⁷ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Statement of Ángel Carromero; Interview with Jens Aron Modig on Swedish Radio P1, 4 March 2013, by Maria Persson-Löfgren, *available at* <http://sverigesradio.se/sida/artikel.aspx?programid=1637&artikel=5461993>.

⁴⁸ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ángel Carromero;

⁴⁹ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ángel Carromero. See also: New York Times Inquiry Is Sought Into Death of Castro Critic. April 4, 2013. Available at:

https://www.nytimes.com/2013/04/05/world/americas/inquiry-is-sought-into-death-of-oswaldo-paya-cuban-dissident.html?_r=1 (last visit July 20, 2022) The Washington Post, *Ángel Carromero speaks out on Cuba crash that killed Oswaldo Payá*. March 5, 2013. Available in English at: https://www.washingtonpost.com/opinions/Ángel-carromero-speaks-out-on-cuba-crash-that-killed-oswaldo-paya/2013/03/05/05/1080077a-85b6-11e2-98a3-b3db6b9ac586_story.html. and statement by Ángel Carromero on the Program "Al Punto" with Jorge Ramos on Univision. October 14, 2014. Available at <https://www.youtube.com/watch?v=BSe2CDQCLnM> (last visited May 30, 2022).

⁵⁰ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ángel Carromero and Brief of the Petitioners supplementing the Initial Petition of March 2, 2013, p. 15. Case file before the IACHR.

⁵¹ The Washington Post, *Ángel Carromero speaks out on Cuba crash that killed Oswaldo Payá*. March 5, 2013. Available in English at: https://www.washingtonpost.com/opinions/Ángel-carromero-speaks-out-on-cuba-crash-that-killed-oswaldo-paya/2013/03/05/05/1080077a-85b6-11e2-98a3-b3db6b9ac586_story.html.

⁵² Brief of the Petitioners supplementary to the Initial Petition of March 2, 2013, p. 15. Case file before the IACHR. See also Ángel Carromero, *Muerte bajo sospecha: toda la verdad sobre el caso* (Editorial Oberón 2014).

⁵³ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ángel Carromero. Brief of the Petitioners supplementary to the Initial Petition of March 2, 2013, p. 15. Case file before the IACHR. See also Ángel Carromero, *Muerte bajo sospecha: toda la verdad sobre el caso* (Editorial Oberón 2014).

affirmed to Ángel Carromero that "they were from the communist", that it was a Cuban government vehicle because it had a blue license plate like those used by state vehicles⁵⁴.

27. On the other hand, and as will be indicated in the following section, within the framework of the investigation into the death of Mr. Payá and Mr. Cepero, the People's Court of Granma issued a sentence in which it determined that Ángel Carromero was responsible for the accident. This is because he drove at high speeds and did not follow the traffic signs on the road at that time⁵⁵.

28. In addition, the Commission takes note of the information from the petitioner and statements from the survivors about what happened after the accident. Mr. Carromero indicated that he was taken to the Carlos Manuel de Céspedes Hospital in Bayamo, where he was drugged, beaten, and forced to make a false confession by Cuban authorities while in detention that he was at fault for the accident⁵⁶. He explained that the first person who spoke to Mr. Carromero was a uniformed officer of the Ministry of the Interior and recalled that the civilian hospital "had been militarized"⁵⁷.

29. Mr. Carromero explained that at the hospital he was questioned about what had happened, to which he responded: "[that] they had been hit by another car and run off the road"⁵⁸. Moments later, a group of soldiers surrounded Ángel Carromero's bed and asked him again how they had been involved in the accident⁵⁹. Although Mr. Carromero responded by explaining again that another car had rammed them from behind, the military insisted that there had been no collision. Ángel Carromero stated the following:

One of them spoke to me and stated categorically that it was not a collision. No car [had] hit them. What he claimed simply had not happened. Of course, I replied, that was a lie, that no accident had occurred, but a blatant attack. He punched me in the face. In a calm tone, which contradicted the slaps, he stressed: "You are too young to stay on the island for years, you must decide whether to collaborate or not. We can treat you well or badly, but you alone will be responsible. Your future will depend on your confession"⁶⁰.

30. He stated that one of the soldiers recited the official version that Mr. Carromero had to learn to collaborate with the authorities because "If [he] accepted it, nothing would happen to him"⁶¹. That version implied that "fba[n] circulating at high speed and [they] entered an embankment, [the driver] brake[d] because there was a

⁵⁴ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ángel Carromero and Brief of the Petitioners supplementing the Initial Petition of March 2, 2013, p. 15. Case file before the IACHR.

⁵⁵ Sentence against Ángel Carromero. First Criminal Chamber of the People's Court of Granma. Judgment No. 573/2012 of October 12, 2012. Annex to the initial petition.

⁵⁶ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Statement by Ángel Carromero; Statement by Ángel Carromero on the Program "Al Punto" with Jorge Ramos on Univisión. October 14, 2014. Available at <https://www.youtube.com/watch?v=BSe2CDQCLnM> (last visited May 30, 2022); and Brief of the Petitioners supplemental to the Initial Petition of March 2, 2013, pp. 15 and 16. Case file before the IACHR.

⁵⁷ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Statement by Ángel Carromero; and The Washington Post, *Ángel Carromero speaks out on Cuba crash that killed Oswaldo Payá*. March 5, 2013. Available in English at: https://www.washingtonpost.com/opinions/Ángel-carromero-speaks-out-on-cuba-crash-that-killed-oswaldo-payá/2013/03/05/05/1080077a-85b6-11e2-98a3-b3db6b9ac586_story.html.

⁵⁸ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Statement of Ángel Carromero Petitioners' Brief Supplemental to the Initial Petition of March 2, 2013, p. 16.

⁵⁹ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ángel Carromero.

⁶⁰ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ángel Carromero; Brief of the Petitioners supplementary to the Initial Petition of March 2, 2013, p. 16. See also Ángel Carromero, *Muerte bajo sospecha: toda la verdad sobre el caso* (Editorial Oberón 2014), p. 116. Also Statement by Ángel Carromero on the Program "Al Punto" with Jorge Ramos on Univisión. October 14, 2014. Available at <https://www.youtube.com/watch?v=BSe2CDQCLnM> (last visited May 30, 2022).

⁶¹ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ángel Carromero

pothole and, therefore, [he] lost control of the vehicle."⁶² Ángel Carromero explained that this version is false and that he was forced to say so publicly and to be recorded, during his imprisonment⁶³.

31. The petitioner indicated that Mr. Carromero and Mr. Modig had conversations with Cayetana Muriel and Annika Rigö in which they claimed to have suffered an attack when they were hit by another vehicle. Mr. Modig even sent a text message that read: "Help, surrounded by military"⁶⁴. It was added that Mr. Modig sent another message stating: "Angel said someone tried to push us off the road"⁶⁵.

32. It was indicated that Aron Modig was taken by another transport to the same hospital, but that they were allowed to communicate with each other during their time at the hospital⁶⁶. It was argued that the only exchange they had was when they had just arrived at the hospital and the staff left the two foreigners alone⁶⁷. As recounted by Angel Carromero, he commented to Mr. Modig, "Aron, we've been hit from behind. They're going to kill us"⁶⁸. "Probably," replied Mr. Modig⁶⁹.

33. After 24 hours, Mr. Carromero and Mr. Modig were transferred to the Bayamo barracks, where for the first time they were able to speak with the diplomatic representatives of their respective countries⁷⁰. Once the death of Oswaldo Payá and Harold Cepero was confirmed, Mr. Carromero was informed shortly thereafter that the prosecutor's office was going to charge him for the accident⁷¹.

D. On the situation of family members after the death of Oswaldo Payá and Harold Cepero

34. Ofelia Acevedo Maura stated that her daughter Rosa María called her father and that a police officer answered the phone and informed her that the person had suffered a vehicular accident and had died. It was indicated that when the family arrived at the airport to go to the place where the accident occurred, the competent authorities told them that "there was no space on either of the two flights, not even for one person". Mrs. Acevedo stated that the Cuban authorities were following them and monitoring the calls⁷².

⁶² IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Statement of Ángel Carromero Petitioners' Brief Supplemental to the Initial Petition of March 2, 2013, p. 16. See also: Cuba Debate. Statement by Ángel Carromero to the media in Cuba. July 30, 2012. Available at: <https://www.youtube.com/watch?v=EB0phUw5RM8>

⁶³ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Statement by Ángel Carromero. See also Statement of Ángel Carromero on the Program "Al Punto" with Jorge Ramos on Univisión. October 14, 2014. Available at <https://www.youtube.com/watch?v=BSe2CDQCLnM> (last visited May 30, 2022).

⁶⁴ Photograph with images of text messages Annex Supplemental Brief of the Petitioners to the Initial Petition of March 2, 2013; IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Statement of Ángel Carromero Petitioners' Brief Supplemental to the Initial Petition of March 2, 2013, p. 16.

⁶⁵ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ángel Carromero; and Brief of Final Arguments of the Petitioners. Case file. Case file, p. 38.

⁶⁶ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ángel Carromero; Brief of the Petitioners supplementary to the Initial Petition of March 2, 2013, p. 16.

⁶⁷ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Statement by Ángel Carromero; and The Washington Post, *Ángel Carromero speaks out on Cuba crash that killed Oswaldo Payá*. March 5, 2013 https://www.washingtonpost.com/opinions/Ángel-carromero-speaks-out-on-cuba-crash-that-killed-oswaldo-paya/2013/03/05/05/1080077a-85b6-11e2-98a3-b3db6b9ac586_story.html.

⁶⁸ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ángel Carromero and Brief of the Petitioners supplementary to the Initial Petition of March 2, 2013, p. 16.

⁶⁹ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Statement by Ángel Carromero; Statement by Ángel Carromero on the Program "Al Punto" with Jorge Ramos on Univisión. October 14, 2014. Available at <https://www.youtube.com/watch?v=BSe2CDQCLnM> (last visited May 30, 2022), and Brief of the Petitioners supplementary to the Initial Petition of March 2, 2013, p. 16. Case file before the IACHR.

⁷⁰ Brief of the Petitioners supplementary to the Initial Petition of March 2, 2013, p. 16. Also Statement by Ángel Carromero on the Program "Al Punto" with Jorge Ramos on Univisión. October 14, 2014. Available at <https://www.youtube.com/watch?v=BSe2CDQCLnM> (last visited May 30, 2022).

⁷¹ Petitioners' Supplemental Brief to the Initial Petition of March 2, 2013, p. 16.

⁷² IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ofelia Acevedo, and Brief of Final Arguments of the Petitioners of April 22, 2021. Case file. P. 33.

35. According to the petitioner, Dr. Ciro Estrada, together with a colonel from the Cuban Ministry of the Interior, told them that all the refrigeration chambers in the morgue were broken. He maintained that they offered a friend of the family to accompany them to show them the body. He explained that Oswaldo Payá's body had his pants down and that he had a syringe stuck in his groin. He added that the authorities returned Mr. Payá's washed clothes to them⁷³.

36. It was noted that the family members demanded that the hospital team find another way to preserve the corpse and Mrs. Acevedo requested that an autopsy be performed⁷⁴. Ofelia Acevedo Maura stated that she tried, without success, to obtain a copy of the autopsy report. She added that it has been requested on multiple occasions, but she has not received a response⁷⁵.

37. It was reported that Mr. Payá's body was taken to Havana and on July 23, his relatives arrived at the Institute of Legal Medicine. He indicated that they were not allowed to enter the premises of the institute and that there were state agents guarding the place⁷⁶. He explained that an officer told them that the investigation showed that the driver of the car had lost control of the car and crashed into a tree⁷⁷. He maintained that on the day of the funeral, State agents surrounded his relatives and did not allow them to approach the coffin⁷⁸.

38. Regarding Mr. Cepero, the petitioner stated that his family never received an autopsy certificate, nor did they receive details about his death. It was noted that at Harold Cepero's funeral, a State security colonel was present⁷⁹.

E. About the investigation

39. The State did not provide the Commission with detailed information on the investigation into the deaths of Mr. Payá and Mr. Cepero. Notwithstanding the foregoing, the Commission will now refer to the information presented by the petitioner.

40. The IACHR notes that the investigation initially linked Ángel Carromero, the driver of the vehicle, to reckless driving. On July 28, 2002, the Ministry of the Interior published a digital recreation of its version of the accident that was presented to the media⁸⁰. It indicated that Mr. Carromero was driving at a very fast speed on a section of the road that was "under repair and for about two kilometers the road surface is not paved, which makes it a kind of embankment with abundant gravel; therefore, very slippery"⁸¹.

41. The Commission notes that according to the judgment issued in this case, statements were taken from three eyewitnesses, who reportedly indicated that "the car entered the embankment at excessive speed"⁸². It

⁷³ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ofelia Acevedo, Declaration of Rosa Matía Payá; and Brief of Final Arguments of the Petitioners of April 22, 2021. Case file. P. 33.

⁷⁴ Petitioners' Closing Brief. Case file. P. 34, and IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ofelia Acevedo

⁷⁵ Petitioner's written observations on the merits, April 21, 2021. P. 45.

⁷⁶ Petitioners' Closing Brief. Case file. P. 34, and IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ofelia Acevedo

⁷⁷ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ofelia Acevedo and Brief of Final Arguments of the Petitioners. Case file. P. 35.

⁷⁸ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Statement of Ofelia Acevedo.

⁷⁹ Petitioners' Closing Brief. Case file. P. 35.

⁸⁰ Note from the Ministry of the Interior, July 28, 2012, reproduced at: <http://www.cubadebate.cu/noticias/2012/07/27/nota-oficial-del-ministerio-del-interior/#.WMGLexIrJE5>.

⁸¹ Sentence against Ángel Carromero. First Criminal Chamber of the People's Court of Granma. Sentence No. 573/2012 of October 12, 2012; and CubaDebate, Official note from the Ministry of the Interior on the accident of last July 22 (+ Infographic and Video). July 27, 2012. Available at: http://www.cubadebate.cu/noticias/2012/07/27/nota-oficial-del-ministerio-del-interior/#.U5HuZi_TkoY

⁸² Sentence against Ángel Carromero. First Criminal Chamber of the People's Court of Granma. Judgment No. 573/2012 of October 12, 2012.

was noted that Mr. Modig stated that he was asleep at the time of the accident and that he does not remember the events leading up to the crash⁸³.

42. In contrast to the official version, the IACHR notes that Mr. Carromero has consistently indicated before the media after the events, and also before the Inter-American Commission itself, that he was forced to give a false version⁸⁴. He explained the following:

[...] what I remember is when [he] was taken to a room where there was a military man, a television crew, and where they wanted him to record another video saying that [they] had not been taken off the road and that it had been an accident. There they made a mistake and that is that since [he] was being forced to say what they wanted, they used terms in Latinisms, in Cuban, terms that do not exist in Spain, they are not used. So all the shots they were taking of me, [...] they made me read, they held up signs of what I had to say. One of the things they made him say was that it had been a traffic accident. This is used in Cuba, in Spain never, [...] I had never heard of this term. [In Spain [they say] traffic accident, nobody, but it is nobody, says traffic accident, [...] because traffic accident, [...] is what they [made him] say. In the same way that neither [...] do we say to apply the brake pedal, [...] we say directly to brake"⁸⁵.

43. Additionally, Angel Carromero stated that there was other evidence to contrast the official version given by the government. He indicated that a police officer took the statement of an eyewitness who mentioned that another car was involved in the accident⁸⁶. The petitioner added that this statement was not taken into account during the process, nor was the pattern of harassment and surveillance of Oswaldo Payá analyzed, nor the history of accidents or attacks when Oswaldo Payá was traveling in his vehicle and attempts were made to harm them. He also explained that they were not allowed to have access to the file or to actively participate in the process⁸⁷.

44. Mr. Carromero stated that he was not provided with a court-appointed attorney at the beginning of the investigation. He explained that it was only later that his family hired a private attorney. He indicated that his right to defense was affected since he did not have any access to the evidence or procedures gathered by the authorities. He stated that all requests for evidence or expert reports were rejected, and that the only authorized experts were the military personnel designated by the prosecutor⁸⁸.

45. The Commission notes that the family of Oswaldo Payá consistently maintained that they did not accept the official version. It explained that Mrs. Acevedo and her children had a meeting with the head of the Technical Department of Investigations. He explained that they were asked to sign a document indicating that the accident had been the fault of Ángel Carromero and that he had a personal obligation to compensate the family for the expenses incurred. He added that Mrs. Acevedo replied that she did not believe the official version of the accident⁸⁹. The Cepero family maintained that they were not informed about the lawsuit against Mr. Carromero⁹⁰. It was added that although some authorities mentioned that the trial was going to be public, this did not happen⁹¹. It was explained that it took place under conditions of maximum secrecy and the police and

⁸³ Petitioners' Closing Brief. Case File. P. 39, and Note from the Ministry of the Interior, July 28, 2012, reproduced at: <http://www.cubadebate.cu/noticias/2012/07/27/nota-oficial-del-ministerio-del-interior/#.WMGLexlrJE5>.

⁸⁴ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Statement of Ángel Carromero Petitioners' Brief Supplemental to the Initial Petition of March 2, 2013, p. 16.

⁸⁵ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ángel Carromero.

⁸⁶ Petitioners' Closing Brief. Case file. P. 38, contrasts Video in CubaDebate, Official Note from the Ministry of the Interior on the accident of July 22 (+ Infographics and Video). July 27, 2012. Available at: http://www.cubadebate.cu/noticias/2012/07/27/nota-oficial-del-ministerio-del-interior/#.U5HuZi_TkoY;

Statement by Ángel Carromero, speech to UN Watch, June 27, 2014, available at:

<https://www.youtube.com/watch?v=pmoGn8aojKA&list=UU0BEdfpLEGzPtPD308-XgQ&index=26>

⁸⁷ Ángel Carromero, speech before UN Watch, June 27, 2014, available at:

<https://www.youtube.com/watch?v=pmoGn8aojKA&list=UU0BEdfpLEGzPtPD308-XgQ&index=26>

⁸⁸ Petitioners' Closing Brief. Case file. P. 39.

⁸⁹ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Statement of Rosa María Payá.

⁹⁰ Petitioner's written observations on the merits, April 21, 2021. P. 44.

⁹¹ Petitioner's written observations on the merits, April 21, 2021. P. 45.

State Security forces prevented the family of Oswaldo Payá Sardiñas from entering the courtroom, despite their attempts⁹².

46. On October 12, 2012, the First Criminal Chamber of the People's Provincial Court of Granma issued a conviction against Ángel Carromero for the crime of simple homicide by vehicle. The court sentenced Mr. Carromero to a four-year prison term and concluded the following:

The vehicle driven by ANGEL FRANCISCO entered the unpaved stretch at a speed of more than 100 kilometers per hour, at which time the accused perceived that he was traveling on a slippery surface and made a sharp turn to the right, abruptly applying the brakes, causing the loss of transverse stability and control of the vehicle, which made a curved trajectory to the right, skidding its four tires, spinning on its own axis 155 degrees, traveling a distance of more than 55 meters, until it violently impacted the left side of the car, specifically the rear door of the car, The vehicle made a curved trajectory to the right, with skidding of its four tires, making a turn on its own axis of 155 degrees, moving a distance of more than 55 meters, until it violently impacted on the left side of the car, specifically on the rear door, with a *sweet pithecellobium* tree, commonly known as Chinese tamarind or sweet inga, whose wood has a solid or resistant consistency.⁹³

47. Mr. Carromero was held for two and a half months in the Cien y Aldabó prison in Havana, Cuba⁹⁴. In the framework of a bilateral agreement between the governments of Cuba and Spain, Mr. Carromero returned to Spain on December 29, 2012 to serve the remainder of his sentence⁹⁵. Regarding Mr. Carromero's detention conditions in Cuba, he stated that he remained isolated and was only visited by state agents who interrogated him and urged him to plead guilty⁹⁶. He explained that he was initially held in a special cell for foreigners but that during that time he could not leave "not even to eat, not even to walk, not even for anything".⁹⁷

F. On threats and harassment against family members

48. The IACHR takes note of information provided by the petitioner and testimonies related to acts of threats and harassment against Mr. Payá's family members.

49. It was indicated that days after the death of Oswaldo Payá, his family was the victim of another act of persecution and harassment by state agents. He explained that when they went to visit Harold Cepero's family in the province of Ciego de Avila, state agents waited for them at the bus station. He said that when they entered the bus they found on their seats a piece of paper with the names of the two of them written in ink, and that the bus closed its doors, even though there were still passengers to board, and began to circle around the terminal building at a certain speed, for no apparent reason. He added that the security agents continued to follow them during their stay in the town of Ciego de Avila⁹⁸.

50. The petitioner explained that the next of kin have been subjected to harassment by the government through telephone surveillance, intimidating phone calls, and following by official vehicles. The petitioner explained that these events increased after the death of Mr. Payá and, in particular, due to their rejection of the official version of what happened, and the investigation carried out⁹⁹. He added that they were able to identify that some of the numbers that made calls or sent threatening messages came from the armed forces, the police or

⁹² Petitioner's written observations on the merits, April 21, 2021. P. 45.

See for example La Opinión, "Impiden a hijos de Oswaldo Payá asistir a juicio de Carromero," October 5, 2012. Available at: http://www.laopinion.com/Impiden_a_hijos_de_Oswaldo_Paya_asistir_juicio_Carromero

⁹³ Sentence against Ángel Carromero. First Criminal Chamber of the People's Court of Granma. Judgment No. 573/2012 of October 12, 2012.

⁹⁴ Petitioner's written observations on the merits, April 21, 2021. P. 44.

⁹⁵ Agreement between the Kingdom of Spain and the Republic of Cuba on the Execution of Criminal Judgments, art. 3, November 7, 1998, BOE No. 267, 36387-89.

⁹⁶ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba. Declaration of Ángel Carromero

⁹⁷ Petitioners' Closing Brief. Case file. P. 38.

⁹⁸ Petitioner's written observations on the merits, April 21, 2021. P. 46.

⁹⁹ IACHR. Public Hearing. Case 14.196. Oswaldo Payá Sardiñas and Harold Cepero et al. v. Cuba, and Brief of observations on the merits of the petitioner, April 21, 2021. P. 46.

the Ministry of the Interior, that is to say, from the Cuban State Security. Since then, the press has maintained a regime of silence with the Payá Acevedo family despite all the attention their cause has attracted in the international press¹⁰⁰.

IV. ANALYSIS OF LAW

51. Preliminarily, the Commission recalls that Article 20 of the Commission's Statute and Article 23 of its Rules of Procedure authorize it to examine alleged violations of the American Declaration by OAS Member States. The IACHR emphasizes that the American Declaration is a source of legal obligations based on the commitment of the States to promote the defense of human rights. This is in accordance with the provisions and definition of the OAS Charter¹⁰¹.

52. In addition, the Commission has held that it is necessary to consider the provisions of the American Declaration in the broader context of the inter-American system and the international human rights system, in light of developments that have occurred in the field of international human rights law since the adoption of the Declaration and in relation to other relevant rules of international law applicable to Member States against whom complaints of violations of the Declaration are properly brought¹⁰². Developments in the body of international human rights law relevant to the interpretation and application of the American Declaration are also reflected in provisions of other current international and regional human rights instruments, in particular the American Convention on Human Rights, which, in many cases, could be considered to represent a reliable expression of the fundamental principles embodied in the American Declaration. While the Commission clearly does not apply the American Convention to Member States that are not parties to it, its consideration of legal standards relating to migrants' rights in the application of the provisions of the Convention may well be relevant in interpreting the Declaration¹⁰³.

A. Right to life, liberty, security and integrity of the person; right to freedom of research, opinion, expression and dissemination; right to protection of honor, personal reputation and private and family life; and right of association (Articles I, IV, V and XXII of the American Declaration).

1. General considerations on duties of respect and guarantees

53. The Commission emphasizes that the international responsibility of the State may be based on acts or omissions of any power or organ of the State that violate the American Declaration, and is generated immediately with the international wrong attributed. In these cases, it is not necessary to determine, as in domestic criminal law, the guilt of the perpetrators or their intent, nor is it necessary to identify individually the agents to whom the violations are attributed¹⁰⁴. It is sufficient to demonstrate "that there have been actions

¹⁰⁰ Ibid.

¹⁰¹ IACHR Court. *Interpretation of the American Declaration of the Rights and Duties of Man under Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989 [hereinafter "*Interpretation of the American Declaration*"], para. 47 ("the Member States have understood that the Declaration contains and defines those essential human rights to which the Charter refers, so that the Charter of the Organization cannot be interpreted and applied in the field of human rights without integrating the relevant norms of the Charter with the corresponding provisions of the Declaration, as is the practice followed by the organs of the OAS").

¹⁰² IACHR. Report No. 50/16, Case 12.834. Merits (Publication). *Undocumented workers*. United States of America, November 30, 2016, para. 68. See I/A Court H.R., *Interpretation of the American Declaration*. Advisory Opinion OC-10/89 of 14 July 1989, para. 37. See also ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*. Advisory Opinion, ICJ, Reports 1971, p. 16 and 31 (stating that "an international instrument must be interpreted and applied within the general framework of the legal system in force at the date of interpretation").

¹⁰³ IACHR. *Report on the Human Rights Situation of Asylum Seekers under the Canadian Refugee Status Determination System (2000)*, para. 38; IACHR. *Garza v. United States*. Case No. 12.275. IACHR Annual Report 2000, paras. 88 and 89.

¹⁰⁴ IACHR. Case 13.051. Report 157/18. Merits. Vicky Hernández and Family. Honduras. December 7, 2018, para. 48.

or omissions that have allowed the perpetration of these violations or that there is an obligation of the State that has been breached by it".¹⁰⁵

54. Likewise, the IACHR has defined the contents of the obligations to respect and to guarantee. Regarding the obligation to respect, a failure to comply with this duty occurs when a State organ or official violates any of the rights established in the instrument to be analyzed. The international responsibility of a State may also be engaged either because the violation is perpetrated by its own agents or -although in principle they are not directly attributable to the State because they were committed by a private individual- when it has not been possible to determine who the perpetrator was due to the State's lack of diligence in reasonably preventing the violation. Thus, what is important is to determine whether the unlawful act has had the participation, support or tolerance of State agents or has resulted from the State's failure to comply with its obligation to reasonably prevent human rights violations, to investigate seriously in order to identify and punish those responsible and to adequately compensate the victim or his next of kin for the harm caused¹⁰⁶.

55. The obligation to guarantee implies the duty of States to organize the entire governmental apparatus and, in general, all the structures through which the exercise of public power is manifested, in such a way that they are capable of legally ensuring the free and full exercise of human rights. As a consequence of this obligation, States must prevent, investigate and punish any violation and also seek the reestablishment, if possible, of the violated right and, if necessary, the reparation of the damages caused by the violation of human rights¹⁰⁷.

2. General considerations on State obligations regarding to human rights defenders.

56. With respect to human rights defenders, the IACHR has pointed out that acts of violence, threats and harassment against them are usually aimed at diminishing their physical and mental capacity, as well as intimidating them to prevent them from continuing their work, which leads to an affectation of their right to personal integrity¹⁰⁸. Thus, States may also incur international responsibility by not adopting reasonable measures to prevent these attacks against human rights defenders¹⁰⁹. In this sense, the Commission has emphasized that "the State's obligation is not limited to providing material measures to protect (...) [human rights defenders], but also entails the obligation to act on the structural causes that affect [their] security"¹¹⁰.

57. The Commission emphasizes that compliance with the duty to create the necessary conditions for the effective enjoyment of the rights established in the American Declaration is intrinsically linked to the protection and recognition of the importance of the role played by human rights defenders. This is because their work is fundamental to the strengthening of democracy and the rule of law.

58. The monitoring, denunciation and education activities carried out by human rights defenders make an essential contribution to the observance of human rights, as they act as guarantors against impunity¹¹¹. In view of the above, States have the duty to facilitate the necessary means for them to freely carry out their activities¹¹²; protect them when they are subject to threats to prevent attacks on their lives and integrity; refrain from imposing obstacles that hinder the performance of their work; and seriously and effectively investigate violations committed against them, combating impunity.

¹⁰⁵ IACHR Court. *Case of González Medina and family members v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 133; I/A Court H.R., para. 133. *Case of the Pueblo Bello Massacre v. Colombia*, Judgment of January 31, 2006. Series C No. 140, para. 112.

¹⁰⁶ IACHR. Case 11.073. Report No 65/01. Merits. Juan Humberto Sánchez. Honduras. March 6, 2001, para. 88.

¹⁰⁷ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 166.

¹⁰⁸ IACHR. Cases 12.595, 12.596 and 12.621. Report No. 86/13, Merits. Ana Teresa Yarce and Others (Comuna 13), Colombia. November 4, 2013. Paras. 276.

¹⁰⁹ IACHR. Cases 12.595, 12.596 and 12.621. Report No. 86/13, Merits. Ana Teresa Yarce and Others (Comuna 13), Colombia. November 4, 2013. Paras. 276.

¹¹⁰ IACHR. Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006. Para. 47

¹¹¹ IACHR Court. *Case of Digna Ochoa and family members v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2021. Series C No. 447, para. 100.

¹¹² IACHR Court. *Case of the Guatemalan Forensic Anthropology Foundation*. Provisional Measures. Resolution of the Inter-American Court of Human Rights of February 9, 2006, Twelfth Whereas.

59. The above duties of the State, in addition to ensuring that human rights defenders can carry out their fundamental work, are also related to the enjoyment of several rights contained in the American Declaration, such as the rights to life, freedom of expression, freedom of association and protection of honor. These rights, as a whole, allow for the free exercise of the activities of defense and promotion of human rights.

60. In relation to the right to life, this right is a prerequisite for the enjoyment of all other human rights, without respect for which the others are meaningless¹¹³. Furthermore, not only does it presuppose that no person shall be arbitrarily deprived of his or her life, but it also requires that States take all appropriate measures to protect and preserve the right to life, under their duty to ensure the full and free exercise of the rights of all persons under their jurisdiction¹¹⁴.

61. With respect to the right to honor and dignity, it recognizes that everyone has the right to respect for his or her honor and prohibits any unlawful attack on honor or reputation. It also imposes on States the duty to provide the protection of the law against such attacks. In general terms, it has been indicated that the right to honor relates to self-esteem and self-worth, while reputation refers to the opinion that others have of a person¹¹⁵. Likewise, the Special Rapporteur on the situation of human rights defenders has pointed out that a "perverse way" of attacking human rights defenders is to damage their "honor" or reputation under various labels¹¹⁶. The harmful impacts on the exercise of these rights are accentuated when the stigmatizing labels are issued by official voices and amplified through public channels.

62. In relation to the right to freedom of thought and expression, the Commission has held that this right allows the free exercise of the activities of human rights defenders¹¹⁷. Thus, this right cannot be exercised when people are victims of aggressions or other acts of harassment¹¹⁸. This is because such acts can silence or intimidate those who exercise their right to express themselves critically or to denounce alleged human rights violations¹¹⁹. Additionally, the importance of opposition voices in a democratic society has been highlighted¹²⁰.

63. With respect to the right to freedom of association, the Commission recalls that it has two dimensions: an individual and a social one. On the one hand, this implies that "those who are under the protection of the Convention have (...) the right and freedom to associate freely with other persons, without intervention by public authorities that limit or hinder the exercise of the respective right"¹²¹. On the other hand, the IACHR has pointed out that individuals "enjoy the right and freedom to seek the common realization of a lawful purpose, without pressure or interference that could alter or distort its purpose"¹²². In this sense, States must create legal and factual conditions for its exercise, which includes, where appropriate, the duty to prevent attacks on free association, including organizations for the protection of human rights¹²³.

¹¹³ IACHR. Report No. 33/13. Case 11.576. Admissibility and Merits. José Luis García Ibarra and family. Ecuador, July 10, 2013, para. 129. I/A Court H.R., Case of the "Street Children" (Villagrán Morales et al. v. Ecuador). *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 144.

¹¹⁴ I/A Court H.R., Case of Zambrano Vélez et al. v. Ecuador. *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 80; *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Judgment on the Merits, Reparations and Costs. Judgment of November 19, 1999. Series C No. 63, para. 144.

¹¹⁵ IACHR Court. *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 57.

¹¹⁶ UN. Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/40/60 of 10 January 2019, para. 37.

¹¹⁷ IACHR. Basic Guidelines for the Investigation of Crimes against Human Rights Defenders in the Northern Triangle. June 1, 2021, para. 24.

¹¹⁸ I/A Court H.R., Case of Vélez Restrepo and family members v. Colombia. *Case of Vélez Restrepo and family members v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. 248, para. 209.

¹¹⁹ IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. December 31, 2011, para. 98.

¹²⁰ I/A Court H.R., Case of Manuel Cepeda Vargas v. Colombia. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, paras. 172-173.

¹²¹ IACHR Court. *Case of Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005, Series C No. 121, para. 6.

¹²² IACHR, Report No. 56/12, Case 12.775, Merits, Florentín Gudiel et al, Guatemala, March 21, 2012, para. 21.

¹²³ IACHR Court. Case of Yarce et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325, para. 271.

3. Case analysis

64. The Commission takes note of the information presented to it that Oswaldo Payá and Harold Cepero were prominent figures in the pro-democracy and human rights movement in Cuba, who had been visible since the late 1990s and during the 2000s, in the framework of the Varela Project and the struggle and defense of democratic participation and sought to influence the process of opening and democratization in Cuba. The IACHR also notes that both persons died in a car crash. In relation to the circumstances of this event, there are contradictory positions. On the one hand, the petitioner alleged that a state vehicle was responsible for the collision with the car in which the alleged victims were riding. On the other hand, according to the internal investigation, it was concluded that the collision was the result of a vehicular accident caused by the driver, Ángel Carromero.

65. In this regard, the Commission has indicated that, in the face of indications that would imply a direct attribution of international responsibility to the State, it is incumbent upon the authorities in charge of the investigation to deploy all necessary efforts to clarify the possible responsibilities or links of State authorities in a violation of the right to life¹²⁴. Thus, the State has the obligation to carry out a thorough, serious, and diligent investigation to determine the veracity or disprove the indications of the participation of State agents. Otherwise, the Commission has granted evidentiary force to such indications that have not been adequately investigated. Along the same lines, it is reasonable to grant probative value to the series of indications that emerge from the case file regarding the participation of State agents in these events. To conclude otherwise would imply allowing the State to take refuge in the negligence and ineffectiveness of the criminal investigation in order to evade its responsibility¹²⁵.

66. In light of the foregoing, the IACHR takes note of multiple pieces of evidence related to the participation of state agents in the death of Mr. Payá and Mr. Cepero.

67. First, Angel Carromero has repeatedly maintained that he was driving the vehicle where the alleged victims were. He explained that he was followed and subsequently hit by an official car.

68. Secondly, it was indicated that there was an eyewitness who corroborated Mr. Carromero's version. It was pointed out that he stated that it was not a vehicular accident, but that another car was involved in the collision.

69. Third, the Commission, as it will point out in the following section, identified multiple irregularities and omissions in the investigation. In particular, the IACHR notes that immediately after the incident occurred, the State authorities maintained an official position that what happened was a vehicular accident. This without any diligence, expertise or evaluation of the statements of the survivors, as well as the follow-up of lines of investigation related to the participation of state agents in the events. On the contrary, according to Mr. Carromero's statements, which have not been contested by the State, he was threatened so that he would confess that he was solely responsible for the accident.

70. Fourth, the IACHR takes note of the multiple acts of violence, harassment and threats committed against Mr. Payá and Mr. Cepero prior to their deaths. In particular, the Commission notes that among these acts are some related to vehicular accidents. In 2008, the Payá family reported that state agents loosened the lug nuts on the tires of their vehicle. Also, only a month and a half before his death, Mr. Payá suffered an attack when a car collided with his car. As his relatives have stated, the collision was provoked by a state agent in an official car. The petitioner has argued that although they tried to report these events, the authorities never processed

¹²⁴ IACHR, Report No. 120/10, Case 12.605, Merits, Joe Luis Castillo González, Venezuela, October 22, 2010, para. 109.

¹²⁵ I/A Court H.R., Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, para. 97.

them, indicating that this happens with persons who oppose the government. Likewise, despite this situation of risk in which they found themselves, the State did not adopt any protective measures in their favor.

71. Fifth, the Commission emphasizes that the background against Mr. Payá and Mr. Cepero is part of a context of violence against political dissidents and human rights defenders, in particular, acts of violence, harassment and stigmatization that they face. This context, referred to in the previous section, highlights that these people are in a situation of special risk and danger. They face state repression with the aim of hindering or paralyzing their work in the defense and promotion of human rights.

72. Sixth, the Commission emphasizes that the State has not denied the petitioner's allegations, which has legal effects in accordance with Article 38 of the Rules of Procedure.

73. In view of the foregoing, the Commission considers that there is serious and sufficient evidence to conclude that State agents participated in the death of Mr. Payá and Mr. Cepero. Consequently, the IACHR concludes that the State is responsible for the violation of the right established in Article I of the American Declaration to the detriment of Oswaldo Payá and Harold Cepero.

74. In addition, the Commission emphasizes that, as previously indicated, at the time of the facts of this case, there was a context of reprisals and human rights violations against human rights defenders and persons who expressed dissent against government policies. The IACHR notes that such elements were present in this case. As previously established, Mr. Payá was a highly visible human rights defender and political leader, while Mr. Cepero was also a political dissident and human rights defender. Both were subjected to various acts of violence, harassment, threats, attempts on their lives, and finally, a car crash that caused their deaths. The Commission emphasizes that both persons were members of the Christian Liberation Movement, affecting the functions carried out by that organization. Thus, the Commission identifies that this case was framed within the contextual elements of state repression of human rights defenders in Cuba.

75. By virtue of the foregoing, the Commission considers that there are multiple elements to consider that the various affectations suffered by Mr. Payá and Mr. Cepero were linked to their work in defense of human rights, and that these were aimed at stigmatizing them, intimidating them and preventing them from continuing with such activities, thus affecting their right to honor as well as their right to freedom of expression. Consequently, the Commission concludes that the State is responsible for the violation of the rights established in Articles IV, V and XXII of the American Declaration.

B. Right of residence and transit; right to the inviolability of the home; right to the inviolability and circulation of correspondence; and right to freedom of research, opinion, expression and dissemination (Articles IV, VIII, IX and X of the American Declaration).

1. General considerations

76. With respect to the right of residence and transit, the Commission recalls that every person lawfully within the territory of a State has the right to move and reside freely within it, and the right to enter, remain in, and leave the territory of the State without unlawful interference¹²⁶. Likewise, this right may be affected when a person is the victim of threats or harassment and the State does not provide the necessary guarantees for him to move and reside freely in the territory in question, even when the threats and harassment come from non-State actors¹²⁷.

¹²⁶ I/A Court H.R., Case of Valle Jaramillo et al. v. Colombia. *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 138.

¹²⁷ I/A Court H.R., Case of Vélez Restrepo and family members v. Colombia. *Case of Vélez Restrepo and family members v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. 248, para. 220.

77. In relation to the right to inviolability of correspondence, the IACHR emphasizes that such protection covers telephone communications¹²⁸. Thus, the protection of communications includes data that tends to identify the communication, such as, for example, the numbers of the recipients, the frequency of the calls and their duration. These data constitute an integral part of the communication, as much as the content, and their storage also constitutes an interference or intrusion in the privacy and communications of the individual. In addition, the Commission emphasizes that not only interception is prohibited, but also the right to secrecy with respect to what is produced in this reserved space with the consequent prohibition of disclosure or circulation of the information captured, without the consent of the owner, in this space of protection reserved for the person¹²⁹.

78. In addition, the right that no one may be subjected to arbitrary or abusive interference with his or her home or correspondence is a prerequisite for the exercise of the right to freedom of expression, which must be protected by law and strictly promoted in public policy. This is linked to the state's obligation to create a protected environment for the exercise of the right to freedom of expression, since the violation of the privacy of communications has a chilling effect and affects the full exercise of the right to communicate¹³⁰.

79. The permissible instances and conditions of surveillance must be expressly, explicitly, specifically, precisely and clearly established in advance in a law, both in the formal and material sense. In view of the intrinsic risk of abuse of any surveillance system, these measures must be based on particularly precise legislation, with clear and detailed rules. The purposes for which the monitoring or interception of communications is enabled should be expressly stated in the law and in all cases the laws should establish the need for a prior court order¹³¹. The nature of the measures, as well as their scope and duration must be regulated, establishing the facts that could give rise to such measures and the bodies competent to authorize, implement and supervise them¹³².

80. Finally, the Commission emphasizes that the right that no one may be subjected to arbitrary or abusive interference with his or her home or correspondence is a prerequisite for the exercise of the right to freedom of expression. This right is linked to the State's obligation to create a protected environment for the exercise of the right to freedom of expression, particularly for certain groups of persons such as human rights defenders. This is because the violation of the privacy of communications has a chilling effect and affects the full exercise of the right to communicate¹³³.

2. Case analysis

81. In the instant case, the IACHR takes note of the information presented by the petitioner that, due to Mr. Payá's work, both Mr. Payá and his family members were restricted from moving freely within the territory of the Cuban State. In particular, the IACHR observes that Mr. Payá had to travel to different areas of the State in his capacity as a human rights defender and that, as a result, he was prevented from traveling on numerous occasions by State authorities.

¹²⁸ IACHR. Report No. 67/06. Case No. 12.476. Merits. Oscar Elías Biscet et al. Cuba. October 21, 2006, para. 242.

¹²⁹ IACHR. Report No. 67/06. Case No. 12.476. Merits. Oscar Elías Biscet et al. Cuba. October 21, 2006, para. 242; IACHR. Office of the Special Rapporteur for Freedom of Expression. *Standards for a free, open and inclusive Internet*. March 5, 2017, paras. 189 and 191.

¹³⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Standards for a free, open and inclusive Internet*, March 5, 2017, para. 10; IACHR. Office of the Special Rapporteur for Freedom of Expression. *Special Report on the Situation of Freedom of Expression in Cuba*. December 31, 2018, para. 243.

¹³¹ UN. Human Rights Council. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. UN Doc. A/HRC/23/40. April 17, 2013, para. 81.

¹³² IACHR. Office of the Special Rapporteur for Freedom of Expression. *Standards for a free, open and inclusive Internet*, March 5, 2017, para. 217.

¹³³ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Standards for a free, open and inclusive Internet*, March 5, 2017, para. 10; IACHR. Office of the Special Rapporteur for Freedom of Expression. *Special Report on the Situation of Freedom of Expression in Cuba*. December 31, 2018, para. 243.

82. In addition, Mr. Payá's next of kin also suffered traffic interference. The Commission notes that after Mr. Payá's death, his relatives were prevented from traveling to the place where the vehicle crash occurred in order to pick up his body. The IACHR notes that due to multiple harassments and threats, the family members had to leave the country. They feared that something might happen to them. Even Ofelia Acevedo stated that after the public hearing held at the IACHR headquarters in the United States, when she returned to Cuba, she was prevented from entering.

83. The Commission emphasizes that the petitioner alleged that these transit impediments had no legal basis and that there was no justification whatsoever for them. It was alleged that this was done in retaliation for Mr. Payá's activities and in order to make his work more difficult. This information was not disputed by the State.

84. In view of the foregoing, the Commission concludes that the State is responsible for the violation of the right established in Article VIII of the American Declaration to the detriment of Oswaldo Payá and his next of kin. The Commission does not have sufficient information to pronounce on the violations of this right to the detriment of Harold Cepero and Ángel Carromero.

85. In addition, the Commission takes note of the information presented by the petitioner regarding the telephone interceptions carried out by State agencies to the detriment of Mr. Payá and his family. This is due to his human rights defense work, as well as his high profile as a political dissident. The State did not dispute this information, nor did it present any documentation justifying the legality, compelling purpose, necessity, and proportionality of said interceptions.

86. To this is added the information presented by the petitioner regarding the entry of state authorities into the homes of Mr. Payá and his family members. This was for the purpose of placing microphones and listening to their conversations. The State did not dispute this information, nor did it present documentation to justify the legality, imperative purpose, necessity, and proportionality of the interference in their homes.

87. The Commission notes that these State actions against political dissidents and human rights defenders in Cuba have been identified by the Commission in the framework of its system of petitions and cases. The IACHR concluded that they are part of a context of state harassment and persecution, which has increased and reveals the use of surveillance by the State as an instrument and means to identify the activity of political dissidents and human rights defenders¹³⁴.

88. In view of the foregoing, the Commission concludes that the State is responsible for the violation of the rights established in Articles IX and X of the American Declaration to the detriment of Oswaldo Payá and his next of kin. Likewise, taking into account his status as a political dissident and human rights defender, the IACHR considers that these violations were linked to his work and that they were aimed at stigmatizing him, intimidating him, and preventing him from continuing his activities, which constitutes a violation of his right to freedom of expression. Consequently, the IACHR concludes that the State is responsible for the violation of the right established in Article IV of the American Declaration to the detriment of Oswaldo Payá.

89. Finally, the Commission does not have sufficient information to rule on the violations of this right to the detriment of Harold Cepero. Likewise, the IACHR does not have sufficient information to rule on violations related to the right to assembly.

¹³⁴ IACHR, Report No. 102/21. Case 13.639. Admissibility and Merits. Yoani María Sánchez and family. Cuba. June 26, 2021. Paras. 157-161, and IACHR. Report No. 67/06. Case 12.476. Oscar Elías Biscet et al. Cuba. October 21, 2006, paras. 241-243.

C. Right to justice; right to due process; and right to petition (Articles XVIII, XXI and XXIV of the American Declaration).

1. General considerations

90. The Commission recalls that States have the duty to provide effective judicial remedies to the victims of human rights violations, which must be substantiated in accordance with the rules of due process of law¹³⁵. This obligation, which is one of means and not of result, must be assumed by the State as its own legal obligation and not as a mere formality condemned in advance to be fruitless¹³⁶.

91. In cases of attacks against human rights defenders, the Court has held that States have the obligation to ensure impartial, timely and informal justice, which implies an exhaustive search for all information to design and carry out an investigation that leads to a proper analysis of the hypotheses of perpetration, by action or omission, at different levels, exploring all relevant lines of investigation to identify the perpetrators¹³⁷. Consequently, when faced with indications or allegations that a certain act against a human rights defender may have been motivated precisely by his or her work in the defense and promotion of human rights, the investigating authorities must take into account the context of the facts and his or her activities to identify the interests that could have been affected in the exercise of those activities, in order to establish and exhaust the lines of investigation that take into account his or her work, determine the hypothesis of the crime, and identify the perpetrators¹³⁸.

92. In relation to the right to petition, the IACHR notes that everyone has the right to request access to information under the control of the State. In this sense, such information must be provided without the need to prove a direct interest in obtaining it or a personal affectation, except in cases where a legitimate restriction applies¹³⁹. In accordance with the right to petition, the State has the obligation to provide the requested information, or if the refusal to provide it is appropriate, it must give a reasoned response that allows to know the reasons and rules on which it bases its refusal to provide the information¹⁴⁰.

93. In addition, the Commission recalls that the person subjected to criminal proceedings must be able to defend his or her interests or rights effectively and under conditions of procedural equality. This is so that the person subjected to the punitive power of the State may present his or her defense with all the necessary information. For its part, the Inter-American Court has held that from the beginning of the first proceedings of a criminal proceeding there must be the maximum procedural guarantees to safeguard the right of the accused to a defense¹⁴¹. Likewise, the necessary elements must be present so that there is the greatest balance between the parties, for the due defense of their interests and rights, which implies, among other things, that the principle of adversarial proceedings should govern¹⁴².

2. Case analysis

¹³⁵ IACHR Court. *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, para. 435.

¹³⁶ IACHR Court. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177.

¹³⁷ IACHR Court. *Case of Digna Ochoa and family members v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2021. Series C No. 447, para. 100.

¹³⁸ IACHR Court. *Case of Defensor de derechos humanos et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283, paras. 131, 216, 219.

¹³⁹ I/A Court H.R., *Case of Gomes Lund et al. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 211.

¹⁴⁰ I/A Court H.R., *Case of the Kaliña and Lokono Peoples v. Suriname. Case of the Kaliña and Lokono Peoples v. Suriname*. Merits, Reparations and Costs. Judgment of November 25, 2015. Series C No. 309, para. 265.

¹⁴¹ IACHR Court. *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, paras. 174 and 175.

¹⁴² IACHR Court. *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 132.

94. The Commission will now analyze two aspects: i) the right of access to justice for the relatives of Mr. Payá and Mr. Cepero; and ii) the observance of judicial guarantees in favor of Mr. Carromero's trial.

95. With regard to the first aspect, the Commission takes note of the petitioner's allegations regarding the lack of access to the proceedings conducted and the investigation file by the next of kin of the alleged victims. Despite multiple requests, the next of kin never had access to the autopsy reports or to the content of the proceedings carried out. The IACHR notes that the State did not present any information to justify its refusal to provide the requested information. The authorities also denied their possibility to participate in the process by requesting evidence. The next of kin alleged that they were also prevented from appealing the conviction on the grounds that the investigation was conducted without due diligence.

96. In addition, the Commission observes that according to the documentation presented to it, due diligence was not carried out and the lines of investigation were not exhausted. The IACHR notes that the investigation conducted by the authorities was only aimed at linking Mr. Carromero as the responsible party. This despite the multiple elements of evidence regarding the possible participation of State agents, as indicated in the previous section, the authorities in charge of the investigation omitted any type of investigation in this regard. On the contrary, as Mr. Carromero himself stated, without being contested by the State, immediately after the vehicular collision and while he was in the hospital, the authorities threatened him so that he would confess that he was solely responsible for the events.

97. In addition, the next of kin were prevented from participating in the trial that eventually resulted in a conviction against Mr. Carromero. In this regard, the Commission notes that restrictions to the principle of publicity of the process are exceptional in nature and must be objectively justified by the courts in the specific case¹⁴³. The IACHR notes that in the present case, not only the family members did not have access to the trial, but also the media, diplomatic personnel and the general public. The State did not present any type of information that would justify the restriction to the publicity of the trial.

98. In view of the foregoing, the Commission concludes that the investigation into the death of Mr. Payá and Mr. Cepero failed to comply with the State's obligations of due diligence, exhaustion of logical lines of investigation, publicity of the process, and access to information. In this sense, the IACHR concludes that the State is responsible for the violation of the rights established in Articles XVIII and XXIV of the American Declaration, to the detriment of the next of kin of Oswaldo Payá and Harold Cepero.

99. With respect to the second aspect, the Commission notes the allegations of the petitioner regarding the violations of the due process afforded to Mr. Carromero. These allegations were not contested by the State. Preliminarily, the IACHR notes that in the framework of its monitoring functions, it has compiled information on the effects on accused persons during the trials, in particular on political dissidents or human rights defenders. Among such affectations are: i) lack of legal defense in the preliminary stages of investigation; ii) lack of time to prepare the defense before trial; iii) lack of impartiality and judicial decisions influenced by public authorities outside the Judiciary¹⁴⁴.

100. In the instant case, the IACHR takes note of the allegations presented by the petitioner regarding the multiple violations of due process against Ángel Carromero, which was not contested by the State. In this regard, it was alleged that Mr. Carromero did not have a defense attorney from the beginning of the investigation, that he was not allowed to present evidence in his defense or to request that proceedings be carried out, and that the entire trial up to his conviction was conducted in a framework of secrecy and lack of publicity. To this must be added his consistent statements that he was threatened by state authorities so that

¹⁴³ IACHR, Report 67/06, Case 12.476. Merits. Oscar Elías Biscet et al. Cuba. October 21, 2006, para. 171.

¹⁴⁴ IACHR. [Report on the Situation of Human Rights in Cuba](#). February 3, 2020, chapter 4.

he would confess that he was the only person responsible for the vehicle crash. This statement was used as evidence for the issuance of the conviction.

101. In this regard, the Commission highlights the prohibition of using any form of coercion to obtain the confession of a defendant. This measure includes confessions "to any type of coercion" capable of breaking "the spontaneous expression of a person's will", which "necessarily implies the obligation to exclude the respective evidence from the judicial process"¹⁴⁵. Despite the fact that Mr. Carromero denounced that he was coerced to make such confession, the authorities did not adopt any measure to the effect of not including such statement as evidence, nor to investigate to clarify what happened.

102. In view of the foregoing, the Commission concludes that Ángel Carromero's right to a fair trial was violated in the criminal proceedings against him. Consequently, the IACHR concludes that the State is responsible for the violation of the right established in Article XXVI of the American Declaration.

D. Right to life, liberty, security and integrity of the person; and right to protection against arbitrary detention (Articles I and XXV of the American Declaration).

1. General considerations

103. As for the right not to be deprived of liberty unlawfully, this right "recognizes the primary guarantee of the right to physical liberty: the reservation of law, according to which, only through a law can the right to personal liberty be affected"¹⁴⁶. The IACHR has held that the reservation of law required to affect the right to personal liberty must necessarily be accompanied by the principle of criminalization, which obliges States to establish, as concretely as possible and "in advance", the "causes" and "conditions" of the deprivation of physical liberty.

104. With regard to the non-arbitrariness of detention, the Commission recalls that "no one may be subjected to arrest or detention for reasons and by methods which, even if qualified as lawful, may be considered incompatible with respect for the fundamental rights of the individual because they are, inter alia, unreasonable, unforeseeable or lacking in proportionality"¹⁴⁷.

105. The right to know the reasons for detention has two aspects: i) information in oral or written form about the reasons for the detention, and ii) notification, which must be in writing, of the charges¹⁴⁸. The IACHR has indicated that the information of the "motives and reasons" for the detention must be given "when the detention takes place". This constitutes a mechanism to avoid illegal or arbitrary detentions from the very moment of deprivation of liberty and, in turn, guarantees the individual's right to defense¹⁴⁹.

106. In addition, every person subject to detention has the right to have that detention reviewed by a judicial authority, without delay, as a suitable means of control to prevent arbitrary and unlawful arrests¹⁵⁰. Likewise, the guarantee of prompt and effective judicial oversight of instances of detention is intended to protect the

¹⁴⁵ I/A Court H.R., Case of Cabrera García and Montiel Flores v. Mexico. *Case of Cabrera García and Montiel Flores v. Mexico*. Supervision of Compliance with Judgment. Judgment of the Inter-American Court of Human Rights of August 21, 2013, para. 166.

¹⁴⁶ I/A Court H.R., Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador. *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 56.

¹⁴⁷ I/A Court H.R., Case of Gangaram Panday v. Suriname. *Case of Gangaram Panday v. Suriname*. Judgment of January 21, 1994. Series C No. 16, para. 47; and *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 66.

¹⁴⁸ IACHR. Report No. 76/11. Case 11.769 A. J. Peru. July 20, 2011, para. 166. I/A Court H.R., Case of Cabrera García and Montiel Flores v. Mexico. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 106.

¹⁴⁹ IACHR. Report No. 76/11. Case 11.769. Merits. A. J. Peru. July 20, 2011, para. 166. I/A Court H.R. I/A Court H.R., Case of Juan Humberto Sánchez v. Honduras. *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, para. 82; and *Case of Yvon Neptune v. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, para. 107.

¹⁵⁰ IACHR. Report No. 40/14. Case 11.438. Merits. Herrera Espinoza et al. Ecuador. July 17, 2004, para. 138.

well-being of detained persons at a time when they are fully under the control of the State and are particularly vulnerable to abuses of authority¹⁵¹.

107. In relation to the content of the right to health of persons deprived of liberty, the Commission has held that States have the obligation to guarantee i) timely medical attention in order to make a comprehensive medical diagnosis; and ii) adequate treatment "in accordance with the principle of equivalence"¹⁵². The IACHR emphasizes that this principle consists in the fact that within the prison "the health service must be able to provide medical and nursing treatment as well as appropriate diets, physiotherapy, rehabilitation and other necessary specialized facilities in conditions comparable to those enjoyed by patients in the outside community".¹⁵³

2. Case analysis

108. The Commission takes note of the allegations presented by the petitioner and not contested by the State that Mr. Carromero was detained illegally, without being told the reasons for his detention and without being promptly brought before a judicial authority.

109. In this regard, the Commission notes that no documentation was presented to prove that Mr. Carromero's detention was in accordance with the grounds established in Cuba's domestic law. Furthermore, according to Mr. Carromero, no authority informed him of the reasons for his detention. He indicated that it was only three months after his arrest that he was brought before a judicial authority to begin the trial against him. Regarding this last aspect, the Commission reiterates that when a person is detained, he must be immediately brought before a judicial authority to review the legality of the arrest. In the instant case, the IACHR notes that the State failed to comply with this obligation, as Mr. Carromero was detained for three months until he was brought before a judge. The Commission considers that this period of time is clearly unreasonable, which leads to the arbitrariness of Mr. Carromero's detention.

110. In view of the foregoing, the Commission considers that the detention of Ángel Carromero was illegal and arbitrary, that he was not informed of the reasons for it, and that he was not immediately brought before a judicial authority. Consequently, the IACHR concludes that the State is responsible for the violation of the right established in Article XXV of the American Declaration.

111. Regarding Mr. Carromero's situation while he was deprived of liberty, the Commission takes note of various allegations presented by the petitioner. It was indicated that he was beaten at the time of his detention, and that he was held in poor conditions of detention as he had no access to sunlight or fresh air for prolonged periods of time. It was also alleged that the food was inadequate and that there was considerable weight loss. He added that during his detention he was not provided with adequate health care for the medical requirements he had, and that he was under medical prescriptions that undermined his will, judgment, and consent.

112. In this regard, the Commission emphasizes that the State, in its capacity as guarantor, has the obligation to safeguard the rights to personal integrity and health of persons deprived of liberty. In view of the foregoing, the State did not dispute these allegations, nor did it provide information that would dispute the beatings caused at the time of his detention, the deficiencies in the prison conditions, the lack of adequate food, and the lack of health care. Consequently, the Commission concludes that the State is responsible for the violation of the right established in Article I of the American Declaration.

¹⁵¹ IACHR. Report No. 8/14. Case 12.617. Merits. Luis Pollo Rivera. Peru. April 2, 2014, para. 197.

¹⁵² IACHR. Report No. 96/17. Case No. 12.818. Merits. José Luis Hernández. Argentina. September 5, 2017, para. 77.

¹⁵³ European Committee for the Prevention of Torture and Inhuman, Cruel, Degrading and Inhuman Treatment, Third General Report on Activities during the period 1 January to December 1992. Ref: CPT/Inf (93) 12 (EN) - Issued 4 June 1993, para. 39. cited in: European Court of Human Rights, Case of Kudhobin v. Russia, decision of 6 October 2006, para. 56.

E. Right to life, liberty, security, and integrity of the person (Article I of the American Declaration).

113. With respect to the next of kin of victims of certain human rights violations, the Commission has indicated that they can be considered, in turn, as victims¹⁵⁴. In this regard, the Court has ruled that their psychological and moral integrity may be affected as a consequence of the particular situations suffered by the victims, and the subsequent actions or omissions of the domestic authorities in the face of these facts¹⁵⁵.

114. Specifically, with respect to cases where there was a lack of complete and effective investigation of serious human rights violations, such as the present case, the Court has indicated that:

(...) the absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for the victims and their next of kin, who have the right to know the truth of what happened. Said right to the truth demands the procedural determination of the fullest possible historical truth, which includes the judicial determination of the patterns of joint actions and of all the persons who in various ways participated in said violations and their corresponding responsibilities¹⁵⁶.

115. The Commission considers that the death of a loved one in a situation such as the one described in the instant case, as well as the absence of a complete and effective investigation, which in turn causes suffering and anguish because the truth is not known, constitutes in itself an affectation of the psychological and moral integrity of the next of kin of Mr. Payá and Mr. Cepero. To this must be added the multiple affectations caused by the illegal restrictions on their communications and their homes, as previously analyzed. Consequently, the Commission concludes that the State violated the right established in Article I of the American Declaration, to the detriment of Mr. Payá and Mr. Cepero's next of kin.

V. REPORT NO. 357/22 AND COMPLIANCE INFORMATION

116. On December 19, 2022, the Commission adopted Admissibility and Merits Report No. 357/22 on the present case, which includes paragraphs 1 to 115 above, and made the following recommendations to the State:

1. Make full reparation for the human rights violations declared in this report, both in material and non-material aspects. The State shall adopt measures of economic compensation and satisfaction. The State shall disseminate the conclusions and recommendations of this report through the same official media in which reference has been made to the facts of the case and generate the conditions for the return of all persons who, as a consequence of the facts, have been forced to rebuild their life projects in other places, if they so wish.
2. Initiate an investigation in the ordinary criminal jurisdiction diligently, effectively and within a reasonable time in order to clarify the facts completely, identify all possible responsibilities and impose the corresponding sanctions with respect to the human rights violations declared in this report. This investigation should be carried out taking into account the seriousness of the violations declared and inter-American standards in this regard. The Commission emphasizes that the State may not invoke the guarantee of *ne bis in idem*, *res judicata* or the statute of limitations to justify its failure to comply with this recommendation.

¹⁵⁴ IACHR. Report No. 11/10. Case 12.488. Merits. Members of the Barrios Family. Venezuela. March 16, 2010, para. 91. IACHR. I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz v. Peru. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. para. 112.

¹⁵⁵ I/A Court H.R., Case of Vargas Areco v. Paraguay. *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155. para. 96.

¹⁵⁶ IACHR Court. *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007, Series C No. 163, para. 195.

3. To order the corresponding administrative, disciplinary or criminal measures against the actions or omissions of state officials that contributed to the denial of justice and impunity in which the facts of the case are found.
4. Promote mechanisms of non-repetition that include
 - 4.1. Adopt measures to strengthen the capacity to investigate acts of violence against human rights defenders in accordance with Inter-American standards;
 - 4.2. Adopt legislative, administrative or other measures to carry out an adequate diagnosis of the context of violence faced by human rights defenders in Cuba, including the collection of disaggregated and systematic data on its prevalence, and establish a comprehensive policy for its prevention and effective eradication, addressing its structural causes;
 - 4.3. Design education, awareness and training programs for State security forces on the Inter-American human rights system, including the protection and prevention of violence against human rights defenders; and
 - 4.4. Cease criminalization of those exercising the right to freedom of expression and association, including political dissidents and human rights defenders;
 - 4.5. Ensure that human rights defenders are able to carry out their work and cooperate freely with human rights mechanisms without fear of intimidation or reprisals, and without undue restrictions; and
 - 4.6. Adapt laws, procedures and practices to international human rights standards on due process, access to justice and freedom of expression within the framework of a plural, diverse and open conception of the public and media space, as well as in direct connection with the democratic principle.

117. On March 23, 2022, the Commission transmitted the report to the State with a one-month deadline to report on the measures adopted to comply with its recommendations. On that same date, the IACHR notified the petitioners of the approval of the report. The IACHR did not receive a response from Cuba in relation to Report No. 357/22.

VI. ACTIONS SUBSEQUENT TO REPORT NO. 50/23 AND INFORMATION ON COMPLIANCE

118. On May 11, 2023, the Commission adopted Admissibility and Merits Report No. 50/23 and transmitted it to the State and to the petitioning party on May 16 of the same year, granting them 15 days to inform the IACHR about the measures adopted to comply with its recommendations. To date, the Commission has not received a response from the State of Cuba with respect to Report No. 50/23.

119. On May 18, 2023, the petitioning party informed the IACHR that since the notification of the aforementioned report, the State has not implemented any of the recommendations.

VII. FINAL CONCLUSIONS AND RECOMMENDATIONS

120. Based on the findings of fact and law, the Inter-American Commission on Human Rights concludes that the State of Cuba is responsible for the violation of the rights established in Articles I, IV, V, VIII, IX, X, XVIII, XXII, XXIV and XXV of the American Declaration to the detriment of Oswaldo Paía; also is responsible for the violations of the rights established in Articles I, IV, V, XXII, XVIII and XXIV to the detriment of Harold Cepero; also is responsible for the violation of the rights established in Articles I, XXVI y XXV to the detriment of Ángel Carronero; and responsible for the violation of the rights established in articles VIII, IX and X in detriment of the relatives of Oswaldo Paya and Harold Cepero.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THAT THE STATE OF CUBA:

1. Make full reparation for the human rights violations declared in this report, both in material and non-material aspects. The State shall adopt measures of economic compensation and satisfaction. The State shall disseminate the conclusions and recommendations of this report through the same

official media in which reference has been made to the facts of the case and generate the conditions for the return of all persons who, as a consequence of the facts, have been forced to rebuild their life projects in other places, if they so wish.

2. Initiate an investigation in the ordinary criminal jurisdiction diligently, effectively and within a reasonable time in order to clarify the facts completely, identify all possible responsibilities and impose the corresponding sanctions with respect to the human rights violations declared in this report. This investigation should be carried out taking into account the seriousness of the violations declared and inter-American standards in this regard. The Commission emphasizes that the State may not invoke the guarantee of *ne bis in idem*, *res judicata* or the statute of limitations to justify its failure to comply with this recommendation.
3. To order the corresponding administrative, disciplinary or criminal measures against the actions or omissions of state officials that contributed to the denial of justice and impunity in which the facts of the case are found.
4. Promote mechanisms of non-repetition that include
 - 4.1 Adopt measures to strengthen the capacity to investigate acts of violence against human rights defenders in accordance with Inter-American standards;
 - 4.2 Adopt legislative, administrative or other measures to carry out an adequate diagnosis of the context of violence faced by human rights defenders in Cuba, including the collection of disaggregated and systematic data on its prevalence, and establish a comprehensive policy for its prevention and effective eradication, addressing its structural causes;
 - 4.3 Design education, awareness and training programs for State security forces on the Inter-American human rights system, including the protection and prevention of violence against human rights defenders; and
 - 4.4 Cease criminalization of those exercising the right to freedom of expression and association, including political dissidents and human rights defenders;
 - 4.5 Ensure that human rights defenders are able to carry out their work and cooperate freely with human rights mechanisms without fear of intimidation or reprisals, and without undue restrictions; and
 - 4.6 Adapt laws, procedures and practices to international human rights standards on due process, access to justice and freedom of expression within the framework of a plural, diverse and open conception of the public and media space, as well as in direct connection with the democratic principle.

VIII. PUBLICATION

121. In view of the foregoing and in accordance with Article 47.3 of its Rules of Procedure, the IACHR decides to make this report public and include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, in accordance with the rules contained in the instruments governing its mandate, will continue to evaluate the measures adopted by Cuba with respect to the foregoing recommendations until it determines that they have been fully complied with.

Approved by the Inter-American Commission on Human Rights on the ninth day of the month of June, 2023. (Signed:) Margarette May Macaulay, President; Esmeralda Arosemena de Troitiño, Vice President; Roberta Clarke, Second Vice President; Joel Hernández García; Julissa Mantilla Falcón; Stuardo Ralón Orellana; and Carlos Bernal Pulido, Commissioners.