

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Ref.: AL CUB 2/2024
(please use this reference in your answer)

April 3, 2024

Excellence,

We have the honor to address you in our capacity as Special Rapporteur on the independence of judges and lawyers; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 53/12, 51/8, 54/14, 52/9, 50/17 and 52/7.

In this context, we would like to bring to the urgent attention of Your Excellency's Government the information we have received regarding the lack of fair trial guarantees in Cuba, and other serious violations committed, such as forced disappearances, against persons detained in July 2021.

In this regard, we would like to recall that on July 11, 2021 and during the following days, a series of peaceful demonstrations took place in practically the entire Republic of Cuba. They began in the municipality of San Antonio de los Baños at around 10 a.m. and quickly spread throughout the country.

Concerns related to the prosecutions of excessive use of force by police and military against demonstrators, journalists and human rights defenders in the context of such peaceful protests have already been communicated to Your Excellency's Government (CUB 3/2021). During the demonstrations, concerns were also raised about reports of suspension of Internet and telecommunications service, as well as arbitrary arrests and enforced disappearances. We appreciate the responses received on August 5, 2021, however, concerns persist in these cases.

According to the information received:

Hundreds of thousands of people initiated a series of peaceful and spontaneous demonstrations throughout the Republic of Cuba on July 11, 2021. The information indicates that the protests were triggered by structural problems linked to high rates of poverty and unemployment, food shortages, limitations on the enjoyment of human rights, the lack of mechanisms for citizen participation, and the criminalization of human rights defenders, pro-democracy activists and other government critics.

In the following days, the forces of the State Security Department, the police and agents of the Ministry of the Interior and the Ministry of the Armed Forces reportedly violently broke up these demonstrations and arrested between 5,000 and 8,000 people throughout the country.

The information suggests that, from July 2021 to date, thousands of Cubans deprived of their liberty have not had access to an independent and impartial court, nor to the guarantees of due process and fair trial, including those related to having an independent lawyer of their choice.

In addition, the information suggests that all of those detained were reportedly subjected to arrest and pretrial detention for periods ranging from 24 hours to more than six months. The information further suggests that most of the detainees did not appear before a judge until many days, weeks or months after their initial detention in connection with the demonstrations. Before being brought before a judicial authority, the fate and whereabouts of the detainees remained unknown, which may have led to acts of enforced disappearance.

Criminal legislation and prolonged pretrial detention

On January 1, 2022, a new Criminal Procedure Act came into force by virtue of Act 143 on Criminal Procedure (hereinafter referred to as the "New Criminal Procedure Act"¹). Criminal cases occurring before January 1, 2022 are governed by the Criminal Procedure Act applicable at that time, Act 5 of 1977 (hereinafter referred to as the "Old Criminal Procedure Act"²).

The police officers currently in charge of investigations in cases of detained persons, in accordance with Articles 124 and 127 of the New Criminal Procedure Law, are officers of the Ministry of the Interior, whose duties are performed by agents operating under the orders of the Department of State Security.

The New Criminal Procedure Law granted full powers to the investigating police officers called "Instructors", a figure outside the Instructing Judge, to keep a detainee in police custody for 24 hours (based on Article 245), and then hold him/her in custody for a longer period of time, imposing another precautionary measure of partial deprivation of liberty. This means that the individual would be detained for up to seven days without judicial supervision and without contact with the outside world. People close to the detainees reportedly went to look for them, but they did not obtain information on their fate and whereabouts until they were brought before a judicial authority.

In fact, after the initial 24-hour police detention, the Instructors would have an additional 72 hours (under Article 246), in addition to the initial 24 hours, to keep the detained person in custody and make a new decision to extend such detention. Subsequently, the prosecutor, in turn, would have an additional 72 hours to make a decision to extend the detention.

¹ Law 143/2021 "On Criminal Procedure" (GOC-2021-1073-O140), Official Gazette No. 140 Ordinary of December 7, 2021.

² Criminal Procedure Law (Updated), Law No. 5 of August 13, 1977.

detention on the recommendation of the Instructor (based on Article 247). As defined by Cuban law, in no case, during those 168 hours (initial 24 hours + 72 hours under the instructor + 72 hours under the prosecutor), or 7 days, would any judge intervene in the determination of the legality of the detention. During the aforementioned extensions, there would be no official record of detention, and neither his relatives nor any legal representation of his choice would have been informed of his fate and whereabouts.

The entire investigation phase has a maximum estimated term of 6 months, during which the accused are held in preventive detention, or other measures of partial or total deprivation of liberty, decreed first by the police, then by the Instructor and, subsequently, by the prosecutor of the Public Prosecutor's Office (article 107).

In addition, the time of the investigation - and the pre-trial detention that is closely linked to it - can be extended by law, for as long as necessary, from six months, with no more than the approval of the attorney general (Article 107).

Under current legislation, the judge's intervention would only begin when the case is referred to the court at the end of the Preparatory Phase File or, under the new Criminal Procedure Law, only if the prosecutor agrees, at the request of the defense, to have a judge review the precautionary measure.

The judiciary in Cuba

The information alleges that the legal framework and administrative arrangements in Cuba do not allow these detainees to be brought before impartial judges, as required by international fair trial standards.

There are two categories of judges in the Republic of Cuba³, lay judges and professional judges. In both cases, the requirements to be a judge are:

(a) possession of high "morals" -according to the assessment of the Communist Party of Cuba- and (b) possession of "public prestige" (professional judges) or "public concept" (lay judges), regulated by the Assembly of People's Power and the Superior Council of the Supreme People's Court, both subordinated to the Communist Party.

In the case of lay judges, it is stated that "the proposal of candidacy corresponds to a commission presided by the Central de Trabajadores de Cuba and integrated, in addition, by the rest of the mass and social organizations of the country⁴; their election is for a period of five years, and their reelection follows the same procedure".

The information suggests that, consequently, the appointment of judges in the Republic of Cuba would not be elaborated according to criteria of academic excellence or by means of an independent examination for access to the judicial career. In the case of lay judges, neither would it respond to a random selection among the

³ <https://www.tsp.gob.cu/jueces>.

⁴ No registered social organization in Cuba can be independent from the government, since the Law of Associations, Law 54, Article 8 obliges compliance with Article 13, which mandates dependence on a government agency, at the discretion of the government.

population. The method of entry into the judicial career would then correspond to the administrative verification of the monitoring of "morale" and "prestige/concept" evaluated and monitored by the Communist Party of Cuba.

The information also suggests that the judges would have been chosen for their functions due to their "moral" proximity to the Cuban Communist Party, and the suitability that "public prestige" or "public concept" would grant them.

The information then indicates that Cuban judges would not have freedom in the interpretation and application of the Law independently of the political power, since they would have to orient their professional practice to the dictates of the Communist Party hierarchy.

In addition, it is indicated that in addition to ruling in favor of the justified dismissal of a case due to lack of evidence or any other circumstance, the judges would put at risk their condition as public servants by incurring in the possible perception of a loss of suitability for the position before the Communist Party of Cuba.

Equality of arms

The information alleges in addition that the legal framework and institutional arrangements in Cuba do not guarantee equality of arms for these detainees in the preparation of their defense, as required by international fair trial standards.

As a first example, the information highlights that according to the provisions of Article 7(b) of Law 83 (also referred to as the Law of the Office of the Attorney General of the Republic of Cuba)⁵ one of the objectives of the Office of the Attorney General of the Republic is to act against dissidents or "counterrevolutionaries" who are directed "against the independence and sovereignty of the State, as well as against the political, economic and social interests of the State".

Regarding the presentation of experts and witnesses, the information highlights that the experts, who are necessarily appointed by the prosecutor or the criminal investigator for the practice of any expert procedure, in accordance with the provisions of articles 286 paragraph 1 and 288 paragraph 1 of the New Criminal Procedure Law, belong to "specialized institutions" controlled by the Government of the Republic of Cuba, the main entity being the Central Laboratory of Criminalistics attached to the Ministry of the Interior.

Article 286.1 of the new Criminal Procedure Law mentions that "in all expert proceedings recourse is made to the experts appointed by the competent authority", which according to Article 288.1 are the "criminal instructor or the prosecutor", both being dependent on the State and also subject to the influence of the Communist Party of Cuba due to its mere condition as a public body.

⁵ Law No. 83 of the Office of the Attorney General of the Republic, Official Gazette, July 14, 1977.

The Cuban legal system recognizes two types of witnesses, those who: (a) the court considers relevant regardless of the interests of the parties, and (b) a second type of witnesses, who are proposed by the parties in defense of their own interests.

The new Criminal Procedure Law establishes, in its section 2, that experts are those who have "officially recognized academic training in a science, art, technique or profession whose exercise is legally regulated". However, the Cuban State requires that according to Article 1 of Resolution no. 2 of the Ministry of Higher Education published on June 21, 2018, in the Official Gazette of the Republic of Cuba (in force until December 2022), the training of professionals is a process that involves "a solid formation [...] of high ideological, political, ethical and aesthetic values, to achieve revolutionary professionals."

The current resolution no. 47/2022, of the Ministry of Higher Education of Cuba, published on December 19, 2022 in the Official Gazette of the Republic of Cuba, continues the wake of the previous resolution on the subject, reaffirms in its article 3.1 the training of professionals as the process that materializes in "a solid scientific-technical, humanistic training and high ideological, political, ethical and aesthetic values; in order to achieve revolutionary professionals".

On the other hand, Law No. 54 "Law of Associations" published on December 27, 1985 in the Official Gazette of the Republic of Cuba, does not allow the creation, existence or operation of associations independent from the Government of the Republic of Cuba and its dependencies.

The information suggests that, following the demonstrations of July 11, 2021, most of the persons arrested have been charged with the crime of Public Disorder and there have been no private witnesses, private prosecutions or private injured parties other than government officials or members of the government.

The testimonies given by State officials have been used on numerous occasions during the trials and were considered sufficient evidence to conclude on the deprivation of liberty of the accused.

Summary trials for direct attestation and prosecution of civilians by military tribunals

The information indicates that, in many cases, the persons charged have been prosecuted by the Military Prosecutor's Office and tried by military courts.

In addition, in Cuba, summary trials by direct attestation are applied in more than 50% of criminal cases in the municipal courts, which is where more than 80% of the island's criminal activity is centered.

The Direct Attestation is based on articles 359 to 383 of the Old Criminal Procedure Law, in force until January 1, 2022, as clarified and extended by Supreme Court instruction 238. Apparently,

Neither the accused, nor a possible defense attorney, have real and effective access to the investigation file, nor is the possibility of presenting evidence guaranteed before or after the trial.

Only the defense attorney, if any, may leaf through the file minutes before the hearing in the presence of police officers who are guarding the file and who may intimidate the attorney.

The summary criminal process by Direct Attestation, in the civil sphere, is a police process, not a judicial one. The police officer arranges the hearing with the judge in less than 96 hours, and the accused attends, in the vast majority of cases, without a lawyer (it is not necessary by definition) and, if he attends, he will not have access to the prosecution until a few minutes before the hearing, without knowing the cause of the accusation and without the legal procedural possibility of presenting evidence of contradiction. In the process the prosecutor does not attend either in most cases, because it is not necessary, and where the judge acts as prosecutor and judge at the same time.

Sentences are oral, immediate, and there is no written record of the sentence, nor are the arguments of the criminal condemned reflected, which makes any future defense through appeals impossible. Generally, they are sentenced without the family members knowing about the trial, behind closed doors. Appeals must be filed, despite the fact that there is no written record of the sentence or sentencing arguments, in a maximum of only 3 days and the relatives usually know the result of the trial after that time, when the decisions are final.

The legal profession in Cuba and access to a lawyer of one's own choice

The information also alleges that the detainees reportedly did not have adequate access to a lawyer of their choice, as required by international fair trial standards.

Every lawyer authorized to practice law and act before the Courts of Justice in the Republic of Cuba must not only have a law degree, but also be a member of the so-called National Organization of Collective Law Firms of Cuba (Organización de la Abogacía del Estado de Cuba, hereinafter "ONBC"), a governmental entity legally subject to the dictates of the Communist Party of Cuba and ultimately dependent on the Ministry of Justice of the Republic of Cuba.

According to Article 3 paragraph b) of Decree-Law No. 81 "On the Practice of Law and the National Organization of Lawyers' Collective Law Firms" published on June 8, 1984 in the Official Gazette of the Republic of Cuba, with respect to the practice of law in Cuba, the practice of law as an independent professional is prohibited.

A professional may not hold the professional title of attorney unless he/she works under the umbrella of the National Organization of Collective Law Firms or is authorized by the Minister of Justice under "exceptional" conditions (Articles 3, second paragraph and Article 4 of Decree-Law No. 81).

Decree-Law no. 81 affirms the necessary "admission" to the Collective Law Firms, but does not mention, nor other laws or regulations, the requirements or mechanism for admission, thus denying lawyers their right against denial of admission.

Article 25 of Decree-Law No. 81, on the other hand, does provide that "disciplinary proceedings may be initiated against members of the Organization [...] by the Provincial Director of Justice and the Minister of Justice".

In the Particular Provisions of Decree-Law No. 81, it is specified that "it is incumbent upon the Ministry of Justice to exercise the high inspection, supervision and control of the activity of the ONBC and its members. It also corresponds to the Ministry of Justice to issue the Regulations of this Decree-Law, as well as any other provision or regulation necessary for its application", and that "it corresponds to the provincial bodies of the People's Power, through the provincial directorates of Justice, to inspect the units of the collective law firms located in their respective territories, and to participate, at the request of the Ministry of Justice, in the inspections elaborated by the latter".

Consequently, it is the Ministry of Justice which defines the remuneration of lawyers and their services and to which the activities, disciplinary measures and dismissals of members are reported, and which has absolute control over the activity of the ONBC and its members. Since, in addition, the members receive their remuneration from public funds of the Ministry of Justice and the State, the members are, de facto and in all possible dimensions, employees of the Ministry of Justice.

The lack of an independent legal profession in Cuba has been denounced on numerous occasions by the United Nations WGAD⁶ and the United Nations Committee Against Torture⁷.

The information suggests that, given the circumstances described:

1. A lawyer in Cuba could not freely and adequately defend a defendant when his defense strategy clashes with the influence of the Cuban Communist Party and/or the governmental narrative, a circumstance more than plausible in the case of the defendants in the July 11, 2021 demonstrations, essentially because the lawyer could eventually lose the ability to practice his profession, and his tenure is subordinated to the decision of senior officials of the Ministry of Justice and the ONBC, appointed, in turn, by officials of the Executive and the Cuban Communist Party.
2. A lawyer who works and receives the main part of his salary directly from the State, cannot boast the basic qualities of his profession.

⁶ Views adopted by the Working Group on Arbitrary Detention at its eighty-sixth session, 18-22 November 2019, A/HRC/WGAD/2019/63, 18 February 2020, para. 107; and Human Rights Council, Views adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15-19 November 2021, A/HRC/WGAD/2021/63, 4 February 2022, para. 88.

⁷ CAT/C/CUB/CO/3, dated June 9, 2022.

when your counterpart is precisely your employer and lacks absolute independence and is in a potential conflict of interest situation.

Without prejudging the veracity of the information received, we would like to express our concern regarding the information received which would indicate that after the demonstrations of July 11, 2021 and the days following, all the persons detained would have been subjected to incommunicado preventive detention without judicial control and, additionally, presumably new provisional measures of deprivation of liberty were imposed on them, or other measures, which would not have been dictated by a judge, but by the Instructor, or the Public Prosecutor's Office, both being interested parties in a process that would not comply with international standards in terms of judicial guarantees.

The exercise of jurisdictional functions by personnel outside an independent judiciary is not compatible with international human rights standards of fair trial. For this reason, we are seriously concerned that no judge has even been informed of the detentions elaborated by the police, the Instructor and the Prosecutor's Office. We are also concerned about the existence of summary trials, and cases in which civilians have been tried by military courts. We would like to recall that the Human Rights Committee has stated that the fact that a court was composed of officials of the Executive Branch or active military personnel in a case under review violated the right to an independent tribunal⁸.

With regard to military tribunals as such, we take this opportunity to recall that the Human Rights Committee noted that the trial of civilians in military or special courts can pose serious problems with regard to the fair, impartial and independent administration of justice. For this reason, it is important to take all necessary measures to ensure that such trials are conducted in conditions that truly provide all the guarantees of the international standard on the right to a fair trial.

International standards establish that the right to be tried by ordinary courts of law in accordance with legally established procedures constitutes a basic principle of due process. We express our concern about the large number of protesters who have been tried in summary trials since it appears that the right to know the facts of the prosecution has been violated, the right of defense has been restricted, without giving the accused a real possibility to articulate evidence that discredits the facts for which he is accused. In this sense, we are concerned about the allegation of lack of equality of arms with respect to the testimonial evidence.

The human rights guarantees and principles also state that lawyers have the right to perform their professional functions without any threat, intimidation, harassment or interference, and without suffering or being threatened with prosecution or administrative or disciplinary sanctions for actions taken in accordance with professional duties and ethical standards. Therefore

⁸ Opinion of November 6, 1997, Communication No. 577/1994, Case of Victor Alfredo Polay Campos v. Peru, CCPR/C/61/D/577/1994, January 9, 1998, para. 8.8. See also: Opinion of October 27, 1987, Communication N°159/1983, Case of Raúl Cariboni, v. Uruguay, para. 10.

Therefore, we are also alarmed by the prosecutions regarding the lack of availability of independent lawyers in the country. If these prosecutions are confirmed, they would also demonstrate a violation of fair trial guarantees.

Due to the potential risks of torture when the aforementioned procedural guarantees are not respected, it is important to emphasize that the due process guarantees reflected in this letter are accepted as necessary measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, an obligation reflected in Article 2 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Cuba has been a State Party since May 17, 1995. The lack of procedures respectful of human rights applied to persons arrested and/or detained, and the absence of timely judicial oversight, increase the risk of actual threats or ill-treatment, and it is therefore necessary to adopt measures to prevent such harm.

If the above allegations were confirmed, there would have been numerous international human rights norms and standards enshrined, inter alia, in the Universal Declaration of Human Rights and the Declaration on the Protection of All Persons from Enforced Disappearance.

We reiterate that the prohibition of forced disappearance and the right to life are peremptory norms, of *jus cogens* and applicable *erga omnes*, in accordance with conventional and customary international law.

The United Nations Declaration on the Protection of All Persons from Enforced Disappearance⁹ establishes the necessary protections by the State including, in its articles 9, 10 and 12 the following rights: to a prompt and effective judicial remedy as a means of determining the whereabouts of persons deprived of their liberty; access by competent national authorities to all places of detention; to be held in officially recognized places of detention and to be brought promptly before a judicial authority after apprehension; to be provided promptly with accurate information about the person's detention and the place or places where he is being held to members of his family, his counsel, or any other person having a legitimate interest in knowing such information; and to maintain in any place of detention an up-to-date official register of all persons deprived of their liberty. The Declaration also stipulates that persons responsible for these acts shall be tried only by ordinary courts and not by other special courts, in particular military courts (Article 16); they shall not benefit from any amnesty law (Article 18); and victims or relatives shall have the right to obtain redress, including adequate compensation (Article 19).

For their part, the Guiding Principles for the Search for Missing Persons of the United Nations Committee on Enforced Disappearances¹⁰ establish that the search for missing persons should be elaborated without delay (principle 2); have a differential approach (principle 4); respect the right to participation of the family of the missing person (principle 5); be considered a permanent obligation (principle 7); and be interrelated with the criminal investigation (principle 13).

⁹ [A/RES/47/133](#)

¹⁰ [CED/C/7* CED/C/7* CED/C/7* CED/C/7* CED/C/7* CED/C/7](#)

In connection with the above allegations, please find attached the **Annex of references to international human rights law** which summarizes the relevant international instruments and principles.

It is our responsibility, in accordance with the mandates given to us by the Human Rights Council, to attempt to clarify the allegations brought to our attention. In this regard, we would be very grateful to have your cooperation and comments on the following matters:

1. Please provide any additional information or comments regarding the above allegations.
2. Please explain how the proposed analysis is consistent with Your Excellency's Government's obligations under Articles 7, 8, 9, 9, 10 and 11 of the UDHR and Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Declaration on the Protection of All Persons from Enforced Disappearance.
3. Please describe the measures taken to ensure that the legislation complies with the international human rights obligations assumed by the Republic of Cuba.
4. Please provide information on the measures taken to ensure that any person with a legitimate interest in such information, including relatives of the person deprived of liberty and his or her lawyer, have access to information on, at a minimum, the place where the person deprived of liberty is being held and elements relating to his or her state of health. Also, please provide information on the measures taken to ensure that any person deprived of liberty may communicate with and be visited by his or her family, a lawyer or any other person of his or her choice.
5. Please indicate the measures taken by your Excellency's Government to ensure that individuals can exercise their right to freedom of peaceful assembly, association and expression without fear of arrest.
6. Please provide information on the measures taken by your Excellency's Government to investigate and punish, through independent authorities, human rights violations committed during arrests and deprivation of liberty of persons as well as measures to repair the damage.

We would appreciate receiving a response within 60 days. After this deadline, this communication and any response received from your Excellency's Government will be made public through the communications reporting [website](#). They will also be made available at a later date in the regular report to be submitted to the Human Rights Council.

Pending your response, we would like to urge your Excellency's Government to take all necessary measures to protect the rights and freedoms of the following persons and organizations

the aforementioned persons and to investigate, prosecute and impose appropriate sanctions on any person responsible for the alleged violations. We would also urge you to take effective measures to prevent the recurrence of such events, if they have occurred.

Furthermore, we wish to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also refer a case through its regular procedure for a ruling on whether the deprivations of liberty were arbitrary or not. The present communication does not prejudice in any way the opinion that the Working Group may render. The Government is obliged to respond separately to the allegation letter and to the regular procedure.

We may publicly express our concerns in the near future, as we believe that the information received is sufficiently reliable to indicate that there is an issue that warrants immediate attention. In addition, we feel that the public needs to be informed of the potential implications related to the above allegations. The press release will indicate that we have been in contact with Your Excellency's Government to clarify the relevant issues.

Please accept, Your Excellency, the expression of our most distinguished consideration.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Matthew Gillett
Vice-Chairman for Communications of the Working Group on Arbitrary Detention

Aua Baldé
Chairperson-Rapporteur of the Working Group on Enforced or Involuntary
Disappearances

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
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Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Alice Jill Edwards
Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or
Punishment

Annex

References to international human rights law

In connection with the allegations, we would like to draw Your Excellency's Government's attention to the international standards and norms applicable to the issues set forth above. In the following, we refer to the Universal Declaration of Human Rights (hereinafter "UDHR") and the American Declaration of the Rights and Duties of Man (hereinafter "American Declaration"). We also refer to the International Covenant on Civil and Political Rights (hereinafter "ICCPR") signed by Cuba on February 28, 2008. We remind Your Excellency's Government that, after signing a treaty, the State must refrain from acts contrary to the object and purpose of the treaty, according to the Vienna Convention on the Law of Treaties, Article 18.

We reiterate that the prohibition of enforced disappearance and the right to life are peremptory norms, of *jus cogens* and applicable *erga omnes*, in accordance with conventional and customary international law. In this regard, we would like to refer to the [International Convention for the Protection of All Persons from Enforced Disappearance](#)¹¹, ratified by Cuba on February 2, 2009, which establishes that each State Party shall ensure that any person who alleges that someone has been subjected to enforced disappearance has the right to file a complaint with the competent authorities, who shall promptly and impartially examine the complaint and, if necessary, proceed without delay to elaborate a thorough and impartial investigation. It also provides that no one shall be held in secret, that only in cases where a person is under the protection of the law and the deprivation of liberty is under judicial control may the right to information be restricted, and that each State party shall take the necessary measures to ensure that the release of a person is carried out in a manner that makes it possible to verify with certainty that he or she has in fact been released (arts. 17-21). Each State party shall also take the necessary measures to prevent and punish acts that hinder the conduct of the investigation. We also recall that each victim has the right to know the truth about the circumstances of the enforced disappearance, and that each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to search for, respect and return their remains (art. 24.2-3). States Parties shall also ensure that their legal system guarantees the victim of an enforced disappearance the right to redress and to prompt, fair and adequate compensation and the obligation to make appropriate arrangements concerning the legal situation of disappeared persons whose fate has not been clarified and of their next of kin, in such areas as social protection, economic matters, family law and property rights (art. 24.4-6).

We would also like to remind Your Excellency's Government of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance¹², Article 7 of which states that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other state of emergency, may be invoked as a reason for enforced disappearance -----.

¹¹ [International Convention for the Protection of All Persons from Enforced Disappearance.](#)

¹² [A/RES/47/133](#)

justify enforced disappearances. The Declaration also provides for the necessary protections by the State, including, in Articles 9, 10 and 12, the following rights: to a prompt and effective judicial remedy as a means of determining the whereabouts of persons deprived of their liberty; access by the competent national authorities to all places of detention; to be held in officially recognized places of detention and to be brought promptly before a judicial authority after apprehension; to be provided promptly with accurate information about the person's detention and the place or places where he is being held to members of his family, his counsel, or any other person having a legitimate interest in knowing such information; and to maintain in every place of detention an up-to-date official register of all persons deprived of their liberty.

We would like to recall that Articles 3, 9, 10 and 11 of the Universal Declaration protect the right of everyone to life and liberty and not to be arbitrarily deprived of them; as well as the right to a fair trial before an independent and impartial tribunal with guarantees for the defense. In addition, Articles 19, 20 and 21 protect the right of everyone to freedom of opinion and expression, freedom of peaceful assembly and association, and political participation in public affairs.

We recall that under Article 19 of the ICCPR, the State must ensure that everyone has the right to hold opinions without interference and to express himself or herself freely, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his or her choice.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in Article 19(3), i.e. they must be provided by law, pursue a legitimate aim and be necessary and proportionate. The State has the burden of proof to demonstrate that such restrictions are compatible with the ICCPR.

In this regard, the Human Rights Committee in its General Comment no. 34 has held that "under no circumstances may an attack against a person on account of the exercise of his freedom of opinion or expression, including forms of attack such as arbitrary detention, torture, death threats and death threats, be compatible with Article 19 (...) All such attacks must be vigorously investigated in a timely manner, and the perpetrators prosecuted (...)".

Article 7 of the UDHR guarantees the right to equality before the law and non-discrimination.

Article 8 of the UDHR guarantees everyone the right to an effective remedy.

I would also draw your attention to Article 9(3) of the International Covenant on Civil and Political Rights: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to safeguards of

appear at trial, at any other stage of the judicial process, and, if the occasion arises, at the execution of the sentence."

The right to a fair trial is protected in both the UDHR and the ICCPR. Article 10 of the UDHR recognizes that everyone has the right to a fair and public hearing by an independent and impartial tribunal. Article 14 of the ICCPR states that: "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

In addition, I would like to emphasize that the Human Rights Committee, in its General Comment No. 32, stated that the right to equality before the courts and tribunals, in addition to the principles mentioned in the second sentence of Article 14(1), guarantees, in general terms, equal access and equality of arms, and ensures that the parties to the proceedings in question are treated without any discrimination whatsoever.

In addition, in its General Comment No. 32, it indicated that "lawyers should be able to advise and represent persons accused of a criminal offense in accordance with generally recognized professional ethics, without undue restraint, influence, pressure or interference from any party."

The commentary also indicates that the requirement of competence, independence and impartiality of a court within the meaning of Article 14(1) is an absolute right that is not subject to any exception. The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and to guarantees concerning their security of tenure until the mandatory retirement age or until the end of their term of office, where it exists, the conditions governing promotion, transfer, suspension and termination of their functions, and the effective independence of the judiciary from political interference by the executive and the legislature. States should take specific measures to ensure the independence of the judiciary by protecting judges from any form of political influence on their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of members of the judiciary and disciplinary sanctions imposed against them. A situation in which the functions and powers of the judiciary and the executive are not clearly distinguished or in which the latter can control or direct the former is incompatible with the notion of an independent court. Judges need to be protected against conflicts of interest and intimidation.

In addition, trials of civilians before military courts should be exceptional, i.e., limited to cases where the State party can demonstrate that resorting to such trials is necessary and justified by objective and serious reasons, and where, with regard to the specific class of persons and offenses In the case at hand, ordinary civilian courts cannot conduct trials.

Article 11 states that everyone charged with a criminal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense and that no one shall be held guilty of any offense.

The penalty for any act or omission that did not constitute a criminal offense, under national or international law, at the time it was committed shall not be imposed. Nor shall a more severe penalty be imposed than that which was applicable at the time the criminal offense was committed.

The rights to equality before courts and tribunals, equality before the law, non-discrimination, fair trial and effective remedies are key elements of human rights protection and serve as procedural means to safeguard the rule of law.

As stated by the Human Rights Committee, the requirement of competence, independence and impartiality of a court is an absolute right, and is not subject to any exception.

The Basic Principles on the Independence of the Judiciary, adopted by the United Nations in 1990, state that all governmental and other institutions should respect and conform to the independence of the judiciary (principle 1) and that judges shall decide cases impartially, on the basis of the facts and in accordance with the law, "without any restrictions and without undue influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason" (principle 2).

In the 2009 report to the United Nations Human Rights Council, the Special Rapporteur on the mandate of independence of judges and lawyers recalled that "the principle of separation of powers, together with the rule of law, are key to the administration of justice with a guarantee of independence, impartiality and transparency." In addition, in the 2017 report to the Human Rights Council, the Special Rapporteur with the same mandate stressed that "respecting the rule of law and promoting the separation of powers and the independence of justice are prerequisites for the protection of human rights and democracy."

In addition, the United Nations Working Group on Arbitrary Detention (WGAD) has already indicated in several opinions that: "the Office of the Prosecutor cannot be considered an independent and impartial judicial authority for the purposes of Article 10 of the Universal Declaration. This body fulfills the function of investigation and prosecution, essential to justice, but incompatible with the power to decide independently and impartially on the legal merits of the deprivation of liberty".

In connection with the alleged violations of the freedom of peaceful assembly and the right to a fair trial, we would like to draw the attention of your Excellency's Government to Articles 21, 22, 28 of the American Declaration, and Article 21 of the ICCPR.

Article 21 of the ICCPR guarantees the right to freedom of peaceful assembly. The right to freedom of peaceful assembly must be enjoyed by all, as provided for in Article 2 of the ICCPR and Human Rights Council resolutions 15/21, 21/16 and 24/5. In its resolution 24/5, the Council reminded States of their obligation to fully respect and protect the rights of all persons to assemble peacefully and associate freely, including persons holding minority or dissenting opinions or beliefs and defenders of human rights.

human rights (A/HRC/26/29, para. 22). The right to freedom of peaceful assembly is of fundamental importance to the functioning of democratic societies. The exercise of this right may only be restricted in very specific circumstances, when the restrictions serve a legitimate public purpose recognized by international standards, and the restrictions must be a necessary and proportionate means to achieve that purpose within a democratic society, with a sound and objective justification.

The Human Rights Committee stated that "article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies can take many forms, including demonstrations, protests, assemblies proper, processions, rallies, sit-ins, candlelight vigils and *flashmobs*. They are protected under article 21, whether static, such as picketing, or in motion, such as processions or marches" (CCPR/C/GC/37, para. 6).