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# amnesty international

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## Cuba

### Submission to the UN Universal Periodic Review

Fourth session of the UPR Working Group of the Human  
Rights Council  
February 2009



## **Executive summary**

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*.<sup>1</sup>

- Under section B, Amnesty International raises concern over restrictions on fundamental freedoms, limitations on the right to fair trial and urges ratification of international human rights standards.
- Section C highlights Amnesty International's concerns about prisoners of conscience; restrictions on the rights to freedom of expression, association and movement; arbitrary arrests, detention without charge or trial, and unfair trials; harassment and intimidation of dissidents and critics; the death penalty; restrictions on human rights monitoring; and the impact of the US embargo.
- In section D, Amnesty International makes a number of recommendations for action by the government to address the areas of concern.

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<sup>1</sup> Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

# Cuba

## Amnesty International submission to the UN Universal Periodic Review

Third session of the UPR Working Group, December 2008

### B. Normative and institutional framework of the State

#### Unlawful restriction of fundamental freedoms

The Cuban legal framework places restrictions on human rights guaranteed in international law. Fundamental freedoms such as right to assembly, association or expression are recognised in the Cuban Constitution; however, it places excessive limitations on the exercise of these rights: *"None of the freedoms which are recognized for citizens can be exercised contrary to what is established by the Constitution and the laws, or contrary to the existence and objectives of the socialist state, or contrary to the decision of the Cuban people to build socialism and communism. Violations of this principle can be punished by law."*<sup>2</sup> Therefore, the exercise of fundamental freedoms in ways that are perceived to be "contrary to" the system is not constitutionally protected.

Amnesty International is also concerned that the description of a number of proscribed acts within the Cuban legal system is so general and vague as to risk being interpreted in a manner which infringes upon fundamental freedoms. This is the case, for example, with provisions in Cuba's Criminal Code (Law 62). Article 91 provides for sentences of ten to 20 years or death<sup>3</sup> for anyone *"who in the interest of a foreign state, commits an act with the objective of damaging the independence or territorial integrity of the Cuban state"*.<sup>4</sup> The behaviour which this article is meant to prohibit is ill-defined and open to interpretation.

Further, according to article 72 *"any person shall be deemed dangerous if he or she has shown a proclivity to commit crimes demonstrated by conduct that is in manifest contradiction with the norms of socialist morality"*, and according to Article 75.1 any police officer can issue a warning (*acta de advertencia*) for such *"dangerousness"*<sup>5</sup>. A warning may also be issued for associating with a *"dangerous person"*.<sup>6</sup> A person who has received one or more warnings can be convicted of *"dangerousness"* and sentenced by a Municipal Tribunal to up to four years in prison.

Further limitations were placed on fundamental freedoms when in 1999 Cuba's National Assembly passed the Law for the Protection of the National Independence and Economy of Cuba, also known as Law 88. This legislation, intended as a counter measure to legislation adopted in the United States, the Cuban Liberty and Democratic Solidarity Act, also known as the "Helms-Burton Act" after the lawmakers who sponsored it. This act condemned recent events in Cuba,<sup>7</sup> tightened the US embargo, and discouraged investment in Cuba by providing for penalties against foreign companies investing there. It also provided for claims of confiscation of property and for US assistance to 'democracy-building efforts' in Cuba.

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<sup>2</sup> Article 62, Constitution of 1976.

<sup>3</sup> Law 87 of 1999, which modifies the Penal Code, changes the provisions regarding sentencing to provide for life imprisonment.

<sup>4</sup> Law 62, Cuban Criminal Code, National Assembly of Popular Power, 1987, Article 91. Unofficial translation.

<sup>5</sup> The declaration of a dangerous pre-criminal state can be decided summarily according to Decree No. 129, issued in 1991

<sup>6</sup> Article 75.1, Cuban Criminal Code, Law 62 of 1987.

<sup>7</sup> In section 116, the text of the law explicitly condemns a February 1996 incident in which two planes belonging to a Cuban exile group were shot down by the Cuban airforce. Cuban authorities claim that this was an act of self defence prompted by violation of its airspace, while supporters of the exile group maintain that it was an act of aggression committed over international waters. The text also condemns government repression against *Concilio Cubano* (see below).

In response to the US Act, Law 88 provides for seven to 15 years' imprisonment for passing information to the United States that could be used to bolster anti-Cuban measures, such as the US economic blockade. This would rise to 20 years if the information is acquired surreptitiously. The legislation also bans the ownership, distribution or reproduction of 'subversive materials' from the US government, and proposes terms of imprisonment of up to five years for collaborating with radio, TV stations or publications deemed to be assisting US policy. Amnesty International considers that the law imposes unacceptable limits on the rights to freedom of expression, association and assembly.

#### **Lack of freedom of expression**

Freedom of expression is very restricted in Cuba because of the complete control by the government, provided in the Constitution, on all media outlets. Private ownership of press, radio, television and other means of communication is prohibited by law, thus restricting the exercise of the right to freedom of expression by independent media.

#### **Lack of freedom of association**

All human rights, civil and professional associations and unions in Cuba outside the state apparatus and mass organizations controlled by the government are barred from gaining legal status. This often puts individuals belonging to such associations at risk of harassment, intimidation or criminal charges for the legitimate exercise of their rights to freedom of expression, association and assembly. According to Article 208 of Cuba's Criminal Code, members of unofficial organizations can face sentences of one to three months of imprisonment, and three to nine months for directors of these organizations.

#### **Limitations on the right to fair trial**

The right to a fair trial is limited in Cuba, with courts and prosecutors firmly under government control. The National Assembly elects the President, the Vice-President and the other judges of the Peoples' Supreme Court, as well as the Attorney General and the Deputy Attorney General. In addition, all courts are subordinate to the National Assembly and the Council of State, raising concerns with regard to the right to trial by an independent and impartial tribunal as stipulated in international standards for fair trial.<sup>8</sup> The fact that lawyers are employed by the government, and as such may be reluctant to challenge prosecutors or evidence presented by the state intelligence services, also impacts on the likelihood of a fair and proper defence.

#### **Ratification of international human rights standards**

Amnesty International welcomes Cuba's signing of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights at the end of February 2008, and hopes that the government will be able to ratify both treaties as soon as possible and without reservations.

### **C. Promotion and protection of human rights on the ground**

#### **Prisoners of conscience**

At least 58 prisoners of conscience<sup>9</sup> – including teachers, journalists and human rights defenders detained for their peaceful activities – are currently held in prisons across Cuba, following trials that failed to uphold international standards for fair trial. Seventeen of them are serving their sentences outside prison because of health concerns.

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<sup>8</sup> Article 14 of the UN International Covenant on Civil and Political Rights.

<sup>9</sup> People who are imprisoned, detained or otherwise physically restricted because of their political, religious or other conscientiously-held beliefs or because of their ethnic origin, sex, colour, or language and who have not used or advocated violence are considered by Amnesty International to be prisoners of conscience.

Fifty-five of the prisoners of conscience were arrested during March 2003, when after a period of apparent movement towards a more open and tolerant approach, the authorities carried out a crackdown on the dissident movement on the island. With the exception of half a dozen well-known figures critical of the regime, most of the mid-level leadership of the dissident movement were detained. Many of them had been involved in dissident activities for a decade or more. They were subjected to summary trials and sentenced to long prison terms of up to 28 years.<sup>10</sup>

Among them is Orlando Zapata Tamayo. He was arrested on 20 March 2003 while taking part in a hunger strike at the Fundación Jesús Yáñez Pelletier in Havana to demand the release of Oscar Elías Biscet and other political prisoners. Orlando was sentenced to three years' imprisonment on charges of showing "contempt to the figure of Fidel Castro", "public disorder" and "resistance". In November 2005, he was sentenced to an additional 15 years for "contempt" and "resistance" while in prison. In May 2006, he was again tried on the same charges and sentenced to an additional seven-year term. He is now serving a 25 years and six months sentence.

Amnesty International welcomes the release in February 2008 of four prisoners of conscience, although this appears to be on health grounds and the persons concerned were required to go into exile.

#### **Freedom of expression, association and movement**

The severe restrictions on the rights to freedom of expression, association and movement affect thousands of people across Cuba. Those who attempt to express views, organize meetings or form organizations that contradict government policy and/or the aims of the state are likely to be subjected to punitive measures, such as imprisonment, loss of employment, harassment or intimidation.

On 29 November 2006, independent journalist Raymundo Perdigón Brito was detained by police and reportedly asked to close down his recently opened independent news agency, *Yayabo Press*. When he declined to do so, he was sentenced to four years in prison for "social dangerousness" at a summary trial held only six days after his arrest.

Foreign correspondents based in Cuba also suffer limitations to their work. During 2007, the International Press Centre (CPI) of the Foreign Ministry denied the renewal of working visas to a number of foreign journalists. The CPI informed the correspondents that their visas would not be renewed because "the way they approach the Cuban situation is not acceptable to the Cuban government".<sup>11</sup>

Between 3-6 July this year, the authorities prevented scores of dissidents from participating in several events taking place in Havana, including the civil society meeting "Agenda for the Transition" (*Agenda para la Transición*) and an event organized by the United States Interests Section to celebrate US Independence Day. Some were prevented from travelling to the capital, others in Havana were prevented from leaving their homes and around 30 were detained by the police, and then released a few hours later or the following morning. The following weekend, 12-13 July, at least 15 dissidents were detained for up to 24 hours. Among those detained was former prisoner of conscience Francisco Chaviano. Sunday 13 July was the anniversary of the "13 de Marzo" tugboat disaster of 1994, in which some 35 people died while attempting to flee Cuba when their boat was reportedly rammed by the Cuban authorities.

#### **Arbitrary arrests, detention without charge or trial, and unfair trials**

Amnesty International has received many reports of human rights defenders, political dissidents and independent journalists being arrested for carrying out dissident activities or reporting on the human rights

<sup>10</sup> For more information on the March 2003 events please see the report entitled "Essential measures? Human rights crackdown in the name of security". This report was updated on the anniversary of these events in 2004, 2005 and 2006.

<sup>11</sup> Inter American Press Association. Cuba country report. Midyear Meeting 2007, Cartagena de Indias, Colombia

situation in Cuba. In some cases they are detained for a few hours; in others they are held for months without charge and sometimes without trial on suspicion of counter-revolutionary activities or on similarly unclear charges.

In some cases the dissidents are tried and sentenced within a few days in summary trials. José Oscar Sánchez Mádán, one of the spokespersons of the dissident Independent Alternative Option Movement (*Movimiento Independiente Opción Alternativa*), was summarily tried in April 2007 and sentenced to four years' imprisonment for "social dangerousness" by the Municipal Court of Union de Reyes. His trial took place four hours after his arrest and no family member was informed of the trial or allowed to participate.

### **Harassment and intimidation of dissidents and critics**

Amnesty International continues to be concerned at reports of harassment and intimidation of critics and political dissidents and their families by quasi-official groups in so-called acts of repudiation ("*actos de repudio*"). The organization believes that such acts of "repudiation" may amount to psychological torture given the strain they can cause on the victims and their relatives. Physical aggression has also been reported during some acts of "repudiation". Lawyer and human rights defender, Juan Carlos González Leiva, who is also the President of the Cuban Foundation for Human Rights, was the target of several acts of repudiation at his home in the city of Ciego de Avila in November 2006, including repeated threats against him and his family by demonstrators.

### **The death penalty**

Cuba retains the death penalty for serious crimes, such as acts of terrorism. However, in recent years it has only rarely been applied, and Cuba abstained in the December 2007 vote at the UN General Assembly on a resolution calling for a moratorium on the use of the death penalty. In April 2008, the Cuban President announced the decision by the State Council to commute the death sentences of a group of prisoners to 30 years imprisonment. However, he also clarified that this measure did not imply the abolition of the death penalty.

The last known execution took place in April 2003 of three young men sentenced to death for hijacking a boat in order to flee the island. There was international concern that the death penalty would be used when two army soldiers were arrested following a failed attempt to hijack a plane on 3 May 2007, which resulted in the death of an army colonel. However, in September 2007 the two men were sentenced to life imprisonment. Amnesty International considers the death penalty to be the ultimate cruel, inhuman or degrading treatment or punishment and opposes its use in all circumstances.

### **Restrictions on human rights monitoring**

Amnesty International believes that independent monitoring is key for protection of and respect for human rights. The organization welcomes the visit in November 2007 by the Special Rapporteur on the right to food at the invitation of the Cuban government. On that occasion, the Minister of Foreign Affairs stated that the government was committed to co-operate with international human rights mechanisms "systematically and continuously, as long as Cuba is treated in a non-discriminatory way".

Amnesty International remains concerned, however, that human rights monitoring in Cuba continues to be very restricted. Local non-governmental organizations have great difficulty in reporting on human rights violations due to restrictions on their rights to freedom of expression, association and movement. At the same time, international independent human rights organizations are not allowed to visit the island, which contributes to the limitation of human rights monitoring.

### **Impact of the US embargo**

Amnesty International has called for the US embargo against Cuba to be lifted, as it is highly detrimental to Cubans' enjoyment of a range of economic, social and cultural rights, such as the right to food, health and

sanitation – particularly affecting the weakest and most vulnerable members of the population. Unfortunately, due to the lack of access to the country, Amnesty International has been unable to document at first hand the impact of the embargo on the enjoyment of these rights. According to UNICEF, the availability of medicines and basic medical materials has decreased in Cuba as a consequence of the US embargo against the island.<sup>12</sup> Amnesty International also believes that the embargo has undermined freedom of movement between Cuba and the US and restricted family reunifications. However, the organization is also concerned that the Cuban government uses the embargo, and the political antagonism with the US government, as a pretext for violating the human rights of the Cuban people.

## **D. Recommendations for action by the State under review**

### **Amnesty International calls on the government to:**

#### *National legislation and institutions*

- Eliminate from the Criminal Code provisions regarding “*dangerousness*” and all other provisions that might contribute to arbitrary arrest and detention;
- Create an independent mechanism of accountability to ensure all state institutions, including the security services, respect human rights;
- Reform laws, regulations and administrative practices relating to freedom of expression, association and assembly in accordance with international standards.

#### *Unfair trials*

- Provide full judicial guarantees, in accordance with international human rights standards, to ensure that all detainees have access to a fair trial, including the right to be heard by an independent tribunal and immediate access to a lawyer of their choice;
- Undertake a judicial review of all the sentences and cases where there is evidence that the fundamental right to a fair trial has been violated, ensure that a thorough and impartial retrial takes place and victims have access to reparation.

#### *Ratification of international human rights standards*

- Ratify without reservations the International Covenant on Civil and Political Rights, including its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights.

#### *Prisoners of conscience*

- Immediately release all prisoners of conscience and all others detained or imprisoned solely for the peaceful exercise of their rights to freedom of expression, association and assembly.

#### *Harassment and intimidation of dissidents and human rights defenders*

- Cease the harassment, intimidation and persecution of human rights defenders, independent journalist and political dissidents who exercise their rights to freedom of expression, assembly and association, and to grant legal status to their organizations;
- Uphold rights pertaining to the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms to ensure that human rights defenders are able to carry out their legitimate work freely and without fear of reprisals.

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<sup>12</sup> Report of the UN Secretary-General to the UN General Assembly on Item 27 of the provisional agenda “Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States of America against Cuba”, 20 September 1995.

*The death penalty*

- Abolish the death penalty.

*International human rights monitoring*

- Permit international government and non-government human rights bodies to visit the country to independently investigate violations of international human rights, to facilitate its operation and to consider its recommendations.

## Appendix: Amnesty International documents for further reference<sup>13</sup>

- Cuba: “Essential measures”? Human rights crackdown in the name of security, AI Index: AMR 25/017/2003
- Cuba: One year too many: prisoners of conscience from the March 2003 crackdown, AI Index: AMR 25/005/2004
- Cuba: Prisoners of conscience: 71 longing for freedom, AI Index: AMR 25/002/2005
- Cuba: Fundamental freedoms still under attack, AI Index: AMR 25/001/2006
- Cuba: Amnesty International’s human rights concerns, AI Index: AMR 25/003/2007

### *Urgent Actions*

- Cuba: Fear for safety / Fear of torture / Intimidation / Harassment. AI Index: AMR 25/002/2006
- Cuba: Possible prisoner of conscience/ harassment/ intimidation: Ahmed Rodríguez Albacia (m) AI Index: AMR 25/003/2006
- Cuba: Fear of unfair trial/possible Prisoners of Conscience. AI Index: AMR 25/004/2006
- Cuba: Further information on Possible prisoner of conscience/ harassment/ intimidation: Ahmed Rodríguez Albacia (m). AI Index: AMR 25/005/2006
- Cuba: Further information on Fear for safety / Fear of torture / Intimidation / Harassment. AI Index: AMR 25/001/2007
- Cuba: Fear for safety/Fear of arbitrary detention: Martha Beatriz Roque Cabello (f). AI Index: AMR 25/004/2007
- Cuba: Fear of unfair trial: Gorki Águila (m). AI Index: AMR 25/001/2008
- Cuba: Further information on fear of unfair trial: Gorki Águila. AI Index: AMR 25/003/2008

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<sup>13</sup> All of these documents are available on Amnesty International’s website: <http://www.amnesty.org/en/region/americas/caribbean/cuba>