EXTERNAL (for general distribution)

AI Index: AMR 25/01/78
Distr: NS/CO/AD

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Date of issue: Thursday, 9 November 1978

MEMORANDUM SUBMITTED TO THE GOVERNMENT OF THE REPUBLIC OF CUBA BY MR THOMAS HAMMARBERG, CHAIRPERSON OF THE INTERNATIONAL EXECUTIVE COMMITTEE AND MR ROGER PLANT OF THE INTERNATIONAL SECRETARIAT OF AMNESTY INTERNATIONAL

Introduction

Between 28 November and 6 December 1977, we paid a nine day visit to Cuba. We were received by the Cuban Government in our personal capacity. We very much appreciate the courtesy with which we were received, and the willingness of the government and legal officials to answer our numerous questions and to provide detailed information on a broad number of issues which have been the concern of Amnesty International. At the end of this visit we informed Vice-President Carlos Rafael Rodriguez that we would send this memorandum, outlining the issues which continue to cause us concern. We look forward to holding further discussions with Cuban officials on each of these issues.

1. The Extent of our Concerns

Although we visited Cuba in a private capacity, our concerns were of course those of our organization Amnesty International. Amnesty International's objects are defined in the first paragraph of its Statute as:

(a) Irrespective of political considerations working towards the release of and providing assistance to persons who in violation of the aforesaid provisions are imprisoned, detained, restricted or otherwise subjected to physical coercion or restriction by reason of their ethnic origin, sex, colour or language provided that they have not used or advocated violence (ie "Prisoners of Conscience");

(b) Opposing by all appropriate means the detention of Prisoners of Conscience or any political prisoners without trial within a reasonable time or any trial procedures relating to such prisoners that do not conform to recognized norms to ensure a fair trial;

/2...

(c) Opposing by all appropriate means the imposition and infliction of death penalties and torture or other cruel, inhuman or degrading treatment or punishment of prisoners or other detained or restricted persons whether or not they have used or advocated violence.

Amnesty International has recognized that torture is not practised in Cuba, and has publicly stated so. But it has maintained that there have been, and still are, many political prisoners. During our visit we were frequently informed that the Cuban Government does not accept the status of "political prisoners" for those people detained on the charge of committing offences against the Revolution. In official terminology, they are known as "counter-revolutionaries". But, however described, there can be no questioning the fact that the acts of these individuals were indeed politically motivated. Act 425 of July 1959, while derogating the articles of the Code of Social Defence providing for special status for political prisoners, did nevertheless acknowledge the category of "political offences". While we therefore prefer to use the term "political prisoner" throughout this memorandum, we again emphasize that the concerns of Amnesty International are not to work for the freedom of all political prisoners, but of Prisoners of Conscience as defined above. We are also concerned that the United Nations Standard Minimum Rules for the Treatment of Prisoners should be enforced; and that all prisoners should have the right to a fair trial with full guarantees for an adequate legal defence.

2. Long Term Prisoners

We appreciate that the number of political prisoners has decreased very substantially in the course of the 1970s. We nevertheless remain concerned at the number of people who remain in prison, on political charges or for politically motivated offences. It was explained to us in Havana that these persons were detained and sentenced for such offences as sabotage, arson or armed uprising. But it also appears that many were sentenced not for specific acts, but for membership of the numerous political organizations which opposed the Revolutionary Government in the early 1960s. From the information available to us, we understand that members of these political movements (as MRR, MRP, 30 de Noviembre, etc) did regularly resort to violence and armed sabotage. We do not therefore claim that these people can necessarily be considered Prisoners of Conscience. We are nevertheless concerned by the following issues:

(1) From the information currently available to us, it does seem that certain individuals may have been arrested and sentenced to long terms of imprisonment more because of their ideological opposition to the Revolutionary Government, than on account of any specific offence. If the Cuban Government does not accept this viewpoint, we believe that it should explain the precise charges against these persons, together with the evidence to substantiate these charges.

/3...

(2) In the early years of the Revolution, procedures before the Revolutionary Tribunals have been criticized as summary with certain restrictions on the rights of legal consultation and defence: sentences passed by these tribunals were in many cases extremely severe, and were arguably out of proportion to the alleged offence.

We are acutely aware that a substantial number of Cuban prisoners are now among the longest term political prisoners to be found anywhere in the world of today. We were informed by Cuban officials of the reasons against a general amnesty at this time. These included the continuation of externally based acts of terrorism, with particular reference to the sabotage of the Cubana airline in Barbados in October 1976. We deplore these acts of terrorism, yet we very strongly doubt that there could be any causal connection between an amnesty and the continuation of such terrorist acts.

Leaving aside the question of a general amnesty, we were informed on several occasions by both governmental and judicial officials that in accordance with Law 993 of 1961, and in accordance with the overall principles of the "Progressive Plan", those prisoners who obey the existing prison regulations and whose conduct is deemed satisfactory may be granted conditional freedom after serving at least one quarter of their sentences. While noting the release of several hundred political prisoners from both within and outside the "Progressive Plan" over the course of the past year, we were concerned to see that there are still 3,000 in prison within the "Progressive Plan", many of them long term prisoners who have served very much more than one quarter of their sentences. We would therefore like to know more of the exact procedures by which conditional release is given or denied to people in this category.

We are also concerned that precise statistics of the number of political prisoners or "counter-revolutionary offenders" should be readily available. It was stated by numerous officials that numbers have been grossly exaggerated outside Cuba. It was suggested by more than one official that these exaggerations should be rectified, and the true picture presented. But the Cuban Government has not, as far as we know, given out precise statistical information concerning the number of prisoners, their sentences and places of detention. The several public references over the past year have only given very general information. In Havana we were informed that the number of "counter-revolutionary offenders" was slightly in excess of 3,000. We were, however, given precise statistics concerning the number of releases since 1959, the sentences which had been imposed on these persons now released, and the exact number of prisoners still in detention to whom medidas de seguridad post-delictiva had been applied. We would appreciate it if on our next visit we could be provided with precise statistics on those still in prison.

3. Prison Regime. Rights and Obligations

We very much appreciate the detailed information given by prison officials, concerning the rights and obligations of all categories of

prisoners. This included: rights of visits, correspondence and recreation; the work regime; remuneration for work and the rights of home leave.

With regard to those political prisoners outside the "Progressive Plan" we maintain a number of concerns:

(1) Although we were informed by prison officials that the prisoners in this group have the rights to visits and correspondence at least once every three months, their close relatives abroad have stated that they have received correspondence extremely irregularly and sometimes not at all. It is not clear to us whether these prisoners have the right to correspond with their relatives when resident abroad, as well as those relatives within Cuba.

(2) Information received at the International Secretariat of Amnesty International suggests that certain prisoners in this group have been denied visits over a long period, sometimes in excess of one year. If there is truth in these allegations, and if such shortcomings have indeed occurred in the past, we are concerned that in the future all prisoners should be granted these rights in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

While we welcome the significant improvements provided for the majority of prisoners since the introduction of the "Progressive Plan" in 1971, we are concerned that the minority who have remained outside the Plan on account of their political beliefs should not be made to suffer unnecessarily for this reason. Relatives of this sub-group have claimed that they indeed suffered, either through the denial of certain rights and privileges, or through an extension of their sentences after the original sentence has expired. In the light of adverse reports, we do not believe it sufficient for the Cuban Government merely to state that the "rebellious" category of prisoners receive these rights. It should be clarified beyond all reasonable doubt. During our visit to Cuba, our repeated requests to meet with some members of this group of prisoners were denied, on the grounds that the Cuban government did not wish to make any concessions to them. We were deeply disappointed by this decision because (as we stated many times in Havana) we wish to be in a position to speak authoritatively on the true situation in Cuba and feel unable to do this if we are unable to meet with any members of that group which (although small) has nevertheless been the subject of most international concern. We therefore repeat our request to meet with a cross section of these individuals in private, during our next visit to Cuba. We would not, of course, wish to meet only with members of this intransigent group, but would also appreciate the opportunity to talk with prisoners from the various regimes within the "Progressive Plan".

4. The Situation of Released Prisoners

A substantial number of persons detained for political reasons have been released in recent years. It is reasonable to assume that many more can expect to be released in the near future. We are aware that the

/5...

reintegration of long term prisoners into society can at times prove difficult. Some of these ex-prisoners enjoy unconditional freedom, others have been granted conditional freedom after early release. We would like to know more about:

(1) Conditional freedom
(2) Post-institutional care
(3) The possibilities of reunification with families resident abroad
(4) The identification of ex-prisoners

We have been informed by prison officials that conditional freedom has been revoked. An example given was that of the lawyer and writer Angel Cuadra Landrove whose conditional freedom was revoked when a manuscript written by him was sent outside Cuba without official permission. We would like to know if there are other prisoners whose conditional freedom has been revoked. We would also like to know whether prisoners in conditional freedom can only be re-arrested after committing an offence, or whether this can also occur in cases on non-criminal conduct which is considered anti-social. We should like to know whether, when conditional freedom has been revoked, the prisoners are then expected to serve out the full terms of their sentences.

We understand that many prisoners and ex-prisoners have expressed a desire to leave Cuba. Some, as for example the former journalist Pablo Castellanos Caballero, are now old and have their closest relatives outside Cuba. Likewise, some of the women released in December 1977 have their closest relatives outside the country. We strongly urge that those ex-prisoners who have expressed the desire to leave Cuba be permitted to do so at the earliest possible opportunity. Our request is consistent with the article of the United Nations International Covenant on Civil and Political Rights (Article 12.2) stating that all people should be free to leave any country including their own. Although we appreciate that Cuba has not as yet ratified this Covenant, we were officially informed that ratification is now being seriously considered.

We have been concerned at reports that former prisoners are easily identified through a special mark on their identity cards. These reports have not been officially confirmed. But, if true, we suggest that such a practice might provide certain psychological problems for the ex-prisoner, and seriously hamper his reintegration into society. We would appreciate the opportunity to discuss the forms of identification of ex-prisoners, during our next visit. In this regard, we also hope to be able to meet with a select group of recently released prisoners.

5. The Legal Situation

We again repeat our sincere appreciation of the large number of interviews granted us by high-ranking members of the Cuban judiciary: and the very full information given on the new organization of the judicial system, and the safeguards guaranteed by both the 1976 Constitution and the 1977 Law of Penal Procedure.

/6...

We are concerned at unofficial reports that, despite these safeguards, certain individuals have been held incommunicado before trial, or have been held in pre-trial detention, for more than the maximum six-month period provided for by law. These are a few isolated cases which have been brought to the attention of Amnesty International, and which we hope to discuss in more detail.

We are concerned at the implications of Law 1262 of January 5, 1974, adding certain articles to the Code of Social Defence. We refer particularly to the additions to Article 140 of the CDS, providing:

(a) For terms of up to twelve years imprisonment for those who create, distribute or possess written or oral propaganda against the socialist order, international solidarity or the Revolutionary state

(b) For terms of up to four years imprisonment for those who divulge false information or malicious predictions tending to cause alarm or discontent in the population, or public disorder

(c) For terms of up to fifteen years imprisonment for those who utilise the mass media to distribute this propaganda or "malicious information".

We should like to know:

(1) How many people have been sentenced under these new articles of the CDS since January 1974, with examples given

(2) Whether similar articles appear in the new draft Criminal Code which is now under discussion.

We are also concerned at the substantial number of offences for which the death penalty can in principle be applied under existing Cuban legislation (as Articles 128, 129, 130, 131, 135, 154, 158, 168, 420, 431, 432, 465, 468, 469, 482, 483, 517 of the Code of Social Defence as amended to 1975: also for the numerous "counter-revolutionary" offences as defined in Law 425 of 1959). New legislation enacted early in 1978 brought robbery with violence into the category of crimes punishable by the death penalty. Despite the wide range of offences which can in principle incur the death penalty, we were admittedly told in Havana that executions have numbered no more than two or three per year in recent years. Amnesty International opposes the death penalty, as the ultimate degrading punishment against which there can be no recourse. We strongly urge that very serious consideration be given to the consequences of increasing the range of offences which can incur the death penalty and that equally serious consideration be given to formulating steps which could eradicate this penalty at the earliest possible opportunity.

In this regard, we remind you of the United Nations General Assembly resolution 32/61 of December 8, 1977, which "Reaffirms that, as established by the General Assembly in resolution 2857 (XXVI) and by the Economic and Social Council in resolution 1574 (L), 1745 (LVI) and 1930 (LVIII), the main objective to be pursued in the field of capital punishment is that of

progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment."

On several occasions we discussed the concept of the estado de peligrosidad post-delictiva , and the application of medidas de seguridad with members of the Supreme Popular Tribunal and the Attorney General. Before our arrival in Havana, we had received allegations from unofficial sources that prisoners outside the "Progressive Plan" had been sentenced anew, upon the expiry of their original sentences, by means of the application of these security measures. We were informed in Havana that the number of people to whom these measures were currently applied was twenty six; and we were given full details concerning names, sentences and places of detention. We were informed that in the past, security measures had been applied to prisoners who refused to work under the terms of the Ley de Vagancia, but that this law was no longer enforced. In the case of the twenty six, we were not given specific information concerning the acts and attitudes which had motivated the application of security measures. From the information given to us, we note that the twenty six persons currently serving medidas post-delictivas were held in prisons (Carcel de Guayo; Carcel de Boniato; Combinado del Este; Carcel de Aguica; Camaguey). But if our interpretation of Article 586.1 of the Code of Social Defence is correct, then people sanctioned by these measures should be held not in prisons but in separate establishments set aside for this purpose. We should appreciate clarification of this. We should also like to know whether the prisoners carrying out medidas post-delictivas have committed specific offences within prison punishable by the laws of the country; or have only contravened prison regulations, or maintained poor conduct during their term of imprisonment. At all events, we profess concern at the possible implications of a law which might be loosely interpreted to the disadvantage of the prisoners. We hope that some consideration can be given to our concerns, during the discussions of the new draft Criminal Code.

Finally, we urge that serious consideration be given to the possible revision of all cases where sentences of extreme severity (as thirty years imprisonment) were passed by the Revolutionary Tribunals in the early years of the Revolution.