

PUBLIC

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UA 237/08 Fear of unfair trial

CUBA Gorki Águila (m), musician and dissident

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A Cuban musician who is an outspoken critic of the Cuban government has been arrested and faces up to four years in prison. Amnesty International is concerned that Gorki Águila may have been arrested solely for exercising his right to freedom of expression and may not receive a fair trial.

Gorki Águila, a musician in the band *Porno Para Ricardo* was arrested in Havana on 25 August and has been charged with "dangerousness" (*peligrosidad*), an offence which carries a prison sentence of up to four years. This is a pre-emptive measure defined as the "special proclivity of a person to commit crimes". Behaviour such as drunkenness, drug addiction and "anti-social behaviour" is criminalized under this legislation. However, it is almost exclusively used as a pretext to imprison political dissidents, independent journalists and critics of the government. Gorki Águila may be tried in the next few days. As courts and all lawyers are under government control in Cuba, Amnesty International believes he is unlikely to receive a fair trial.

*Porno Para Ricardo's* lyrics have been highly critical of the Cuban government. The band is not allowed to perform publicly in Cuba and their music has been banned from Cuban television and radio.

#### **BACKGROUND INFORMATION**

The Cuban legal framework places unlawful restrictions on internationally-recognised rights. Article 72 of the Cuban Criminal Code, entitled "The Dangerous State", states: "The dangerous state is considered to be the special proclivity of a person to commit crimes as demonstrated by behaviour that manifestly contradicts the norms of socialist morals." (*Se considera estado peligroso la especial proclividad en que se halla una persona para cometer delitos, demostrada por la conducta que observa en contradicción manifiesta con las normas de la moral socialista*).

The right to a fair trial is limited in Cuba, with courts and prosecutors under government control. Cuba's National Assembly elects the President, 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 over internationally recognised standards for fair trial and the right to trial by an independent and impartial tribunal. The right to a fair and proper defence is also unlikely as lawyers are employed by the Cuban government and as such may be reluctant to challenge prosecutors or evidence presented by the state intelligence services.

Freedom of expression and association is heavily restricted in Cuba. All legal media outlets are under government control and independent media are banned. Independent journalists who attempt to beat this censorship by publishing articles outside Cuba face intimidation, harassment and imprisonment. Human rights defenders and dissidents also face intimidation and politically motivated and arbitrary arrests. The laws used to arrest and imprison dissidents, relating to defamation, national security and disturbing public order, severely limit the exercise of civil and political liberties.

#### **RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in Spanish or your own language:**

-urging the government to release Gorki Águila immediately and unconditionally, unless he is to be charged with a recognizable criminal offence and tried according to international standards for fair trial;

-calling on the authorities to cease the harassment, intimidation and persecution of citizens who seek to peacefully exercise their right to freedom of expression, assembly and association;  
- calling on the authorities to eliminate from the Criminal Code provisions regarding "dangerousness" and all other provisions that might contribute to arbitrary detentions.

**APPEALS TO:**

Head of State and Government

Raúl Castro Ruz

Presidente

La Habana, Cuba

**Fax: + 53 7 8333085 (c/o Ministry of Foreign Affairs) or + 1 2127791697 (c/o Cuban Mission to UN)**

**Email: cuba@un.int (c/o Cuban Mission to UN)**

**Salutation: Su Excelencia/ Your Excellency**

Attorney-General

Dr Juan Escalona Reguera

Fiscal General de la República,

Fiscalía General de la República, San Rafael 3, La Habana, Cuba

**Fax: + 53 7 860 4268**

**Salutation: Señor Fiscal General / Dear Attorney General**

Minister of Foreign Affairs

Sr Felipe Pérez Roque

Ministro de Relaciones Exteriores

Ministerio de Relaciones Exteriores, Calzada No. 360, Vedado, La Habana, Cuba

**Fax:+ 53 7 8333 085**

**Email: cubaminrex@minrex.gov.cu**

**Salutation: Señor Ministro / Dear Minister**

Interior Minister

General Abelardo Coloma Ibarra

Ministro del Interior y Prisiones

Ministerio del Interior, Plaza de la Revolución, La Habana, Cuba

**Email: webmaster@one.gov.cu**

**Salutation: Señor Ministro / Dear Minister**

**COPIES TO:** diplomatic representatives of Cuba accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.** Check with the International Secretariat, or your section office, if sending appeals after 2 October 2008.