

CUBA

**Freedom of assembly and
expression limited by
government policies**

*Amnesty International
Submission to the UN Universal
Periodic Review*

**AMNESTY
INTERNATIONAL**



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INTRODUCTION

In this submission, prepared for the UN Universal Periodic Review of Cuba in April 2013, Amnesty International assesses the implementation of a number of recommendations that Cuba supported during its previous UPR.

Amnesty International sets out its human rights concerns in the country, including the continued restrictions imposed on the rights to freedom of expression and assembly, thereby limiting the ability of Cuban citizens to seek, impart and receive information from independent sources.

Amnesty International also raises grave concern about the increased use of arbitrary detention, including short-term and incommunicado detention and harassment of those expressing views contrary to those of the government

FOLLOW UP TO THE PREVIOUS REVIEW

At the time of its first Universal Periodic Review in February 2009, Cuba accepted 60 recommendations of the 89 commendations made to it by other States.¹

Most of the recommendations accepted by Cuba concerned economic and social rights policies that had already been implemented.² However, Cuba also accepted several recommendations on issues that Amnesty International believes are key to improving the human rights situation in the country, including as regards the promotion and protection of human rights and freedoms,³ the death penalty,⁴ cooperation with UN human rights mechanisms,⁵ and the Standard Minimum Rules for the Treatment of Prisoners.⁶

PROMOTION AND PROTECTION OF HUMAN RIGHTS

With respect to advancing the promotion and protection of human rights, Amnesty International notes that Cuba's repressive legal framework - limiting the rights to freedom of expression, association, assembly and movement - remains unchanged.

Cuba has also yet to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which Cuba signed in February 2008. At the time of the Human Rights Council's adoption of the outcome of Cuba's first review, Cuba noted that it needed sufficient time to assess the provisions of the Covenants and its own political and judicial system to ensure their compatibility.⁷

In practice, Amnesty International has noted that respect for fundamental human rights has not progressed in Cuba since its first review. In fact, during this period, repression of the peaceful exercise of civil and political rights has increased. Independent journalists, human rights activists and political opponents have often been harassed by state security services, and some have been detained and sentenced. Moreover, there has been a steady increase in the number of arbitrary detentions since 2009.

ABOLITION OF DEATH PENALTY

During its first review, Cuba accepted a recommendation to refrain from applying the death penalty, and took under consideration a recommendation to reduce the number of criminal offences punishable by the death penalty, or to take measures towards its abolition.⁸ In setting out its view on the recommendations taken under consideration, Cuba noted that it was “philosophically” against the punishment and in favour of “eliminating [the death penalty] when conditions are right”. However, Cuba also stated that it needed to maintain the death penalty in its legislation in order to defend its national security against terrorist attacks.⁹

In 2010, the People’s Supreme Court commuted the death sentences of the last two political prisoners on death row.¹⁰ At the time of this writing, Amnesty International believes that no prisoners are on death row.

COOPERATION WITH UN SPECIAL PROCEDURES AND TREATY BODIES

Regarding the recommendation supported by Cuba to strengthen its cooperation with UN Special Procedures and treaty bodies, Amnesty International acknowledges Cuba’s efforts to submit periodic reports to the treaty bodies.¹¹ However, Cuba has shown no commitment to working with UN Special Procedures; a visit of the Special Rapporteur on torture was agreed in 2009, but has not yet gone ahead. So far, Cuba has failed to issue an invitation to the Special Rapporteur on freedom of association and assembly, who requested to visit in 2003 and again in 2011, or to the Special Rapporteur on freedom of religion, who requested to visit in 2006.

APPLICATION OF THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Amnesty International receives regular reports that could indicate a breach of the Standard Minimum Rules for the Treatment of Prisoners, including ill-treatment of common and political prisoners. The organization has concerns based on interviews with former prisoners of conscience who were released between 2009 and 2011; however, it is unable to verify the validity of current reports first hand. For this reason, Amnesty International believes that it is paramount that Cuba allows the Special Rapporteur on torture to visit the country and have unrestricted access to the prison population.

SHORTCOMINGS IN CUBA’S FIRST UNIVERSAL PERIODIC REVIEW

In Amnesty International’s view, Cuba’s first review in February 2009 was highly politicized and resulted in a weak review of Cuba’s human rights record. With few exceptions, most of the recommendations made by other states did not address the human rights situation in Cuba.

Amnesty International also regrets that Cuba rejected some of the recommendations by claiming that existing national institutions and legislation offer full protection of human rights and do not require further change. On these grounds, Cuba rejected the need to establish a national human rights institution in accordance with the Paris Principles¹² and refused to ratify the Optional Protocol to the Convention against Torture.¹³ Cuba also rejected a recommendation to provide full access to the International Committee of the Red Cross to prisons,¹⁴ and to establish a system of review of its prisons by the UN and other international observers.¹⁵

NORMATIVE AND INSTITUTIONAL FRAMEWORK IN CUBA

LEGAL RESTRICTIONS TO FUNDAMENTAL FREEDOMS

The legal framework provides for certain rights and freedoms. However, their exercise is criminalized if perceived to be contrary to Cuba's political system.¹⁶ Amnesty International is concerned that the description of a number of proscribed acts within the 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 the Criminal Code (Law No. 62), which in Article 91 provides for sentences of ten to 20 years 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".¹⁷ The behaviour which this article is meant to prohibit is ill-defined and open to interpretation.

The Law for the Protection of the National Independence and Economy of Cuba (Law No. 88) imposes further limitations to the exercise of civil and political rights.¹⁸ Law No. 88 provides for terms of imprisonment of up to five years for collaborating with radio, TV stations or publications deemed to be assisting US policy. It also provides for seven to 15 years' imprisonment for passing information to the United States of America that could be used to bolster anti-Cuban measures, such as the US economic blockade, rising 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. Amnesty International considers that the law imposes unacceptable limits on the rights to freedom of expression, association and assembly.

The right to freedom of expression is also limited by the Constitution. The state has a complete monopoly on all media outlets: television, radio, the press, internet service providers, and other electronic means of communication; private ownership is prohibited by law. Article 53 of the Constitution recognizes and limits freedom of the press, but expressly prohibits private ownership of the mass media.¹⁹ This limits the capacity of Cuban citizens to seek, impart and receive information from independent sources, outside state and government control. Independent journalists in Cuba are systematically subjected to harassment, intimidation, and detention for reporting information that is not sanctioned by the state apparatus.

LACK OF FREEDOM OF ASSOCIATION

All human rights, civil and professional associations, and unions in Cuba that lie 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 the Criminal Code, members of unofficial organizations may be sentenced to one to three months' imprisonment, and directors of such organizations may be sentenced to three to nine months' imprisonment.

Trade unions and bar associations independent from those affiliated to the Cuban Communist Party are also not permitted to operate legally, and their members are subject to repressive measures.

INDEPENDENCE OF THE JUDICIARY AND RIGHT TO A FAIR TRIAL

In Cuba, the judicial system is firmly under political control. Due to this, the right to trial by an independent and impartial tribunal, as stipulated in international standards for fair trial, is gravely undermined.²⁰ The fact that lawyers are employed by the government, and therefore may be reluctant to challenge prosecutors or evidence presented by the state intelligence services, clearly impacts on the likelihood of a fair and proper defence.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

ARBITRARY ARRESTS INCLUDING SHORT-TERM AND INCOMMUNICADO DETENTION

The government wages a permanent campaign of harassment, including short-term detentions, against political opponents to stop them from demanding respect for civil and political rights. Since 2009, the situation has further deteriorated with a year-over-year increase in the number of short-term arbitrary detentions.²¹

Peaceful demonstrators and human rights activists are routinely detained for exercising their rights to freedom of expression, association, assembly and movement. Activists are often detained as a preventive measure to stop them from attending public demonstrations or private meetings. The restrictions to the exercise of these rights are continuously challenged across Cuba, resulting in thousands of detentions. Independent journalists reporting on these detentions are themselves subjected to arbitrary detentions, intimidation and harassment by the authorities.

Reports of incommunicado detentions are becoming more frequent. For days at a time, the whereabouts of those detained are unknown to their relatives. The authorities fail to inform them of the reasons and the place of detention even when relatives go to different police stations enquiring about the whereabouts of those detained. This often creates anxiety amongst family members who do not know what has happened.

PRISONERS OF CONSCIENCE

Amnesty International has adopted as prisoners of conscience brothers Antonio Michel Lima Cruz and Marcos Máique! Lima Cruz. Both men are independent journalists and civil society activists. They were arrested on 25 December 2010 during a Christmas celebration with family and friends at their home in the city of Holguín, eastern Cuba. They were playing songs criticising the lack of freedom of expression in the country, and were dancing on the street in front of their house while holding the Cuban flag. Shortly after midnight, officials from the Department of State Security and police officers arrived, accompanied by about 40 government supporters. The police entered by force and arrested the brothers. Following a summary trial in 2011, Antonio Michel and Marcos Máique! were sentenced to two and three years imprisonment respectively for “insulting symbols of the homeland” (ultraje a los símbolos de la patria) and “public disorder” (desórdenes públicos). They are currently held at La Ladrillera prison in Holguín Province. Amnesty International believes their sentences to be politically motivated, relating to their peaceful exercise of freedom of expression, and disproportionate to the alleged offences.

Amnesty International has also adopted as prisoners of conscience Yasmín Conyedo Riverón and her husband Yusmani Rafael Álvarez Esmori. Both were released pending trial on 5 April 2012 after nearly three months in prison.²² They were originally detained on 8 January 2012 at their home in the city of Santa Clara, in the province of Villa Clara, and charged with using “violence or intimidation” against a state official (atentado). An official from the Cuban Communist Party had falsely accused Yasmín Conyedo Riverón of slapping her in the face, and later withdrew the accusation. Yasmín Conyedo Riverón is the representative of the Ladies in White in the province of Villa Clara and also an independent journalist. Yusmani Rafael Álvarez Esmori is a member of the Las Villas Democratic Youth League. At the time of this writing no date had been set for their trial. Amnesty International believes their detention and possible sentencing is in response to their peaceful dissident activities and is intended to send a message of intimidation to other government critics.

HARASSMENT AND “ACTS OF REPUDIATION”

Cuba does not tolerate any criticism of the state outside the official mechanisms established under government control. Laws on “public disorder”, “contempt”, “disrespect”, “dangerousness” and “aggression” are used to prosecute government opponents, many of whom then become subject to politically motivated criminal prosecutions and other forms of harassment.

Amnesty International also believes that official encouragement is being given to pro-government supporters, who harass and intimidate with impunity those who are advocating political change by peaceful means. Acts of repudiation (actos de repudio) are government coordinated demonstrations, usually carried out in front of the homes of political opponents, and attended by government supporters, state officials and law enforcement agencies. Such acts are aimed at harassing and intimidating opponents and are often used to prevent them from travelling to participate in activities. Political opponents and human rights activists are subjected to verbal and physical abuse by groups of people chanting pro-government slogans. Police are usually present, but fail to intervene to stop the assaults.

Acts of repudiation are normally followed by the arrest of those targeted. In January 2012, 40 political opponents were arrested following such events. Journalists reporting on the acts of repudiation and taking pictures have also been arrested. On 17 December 2011, Eynor Díaz Allen, reporter for ‘Hablemos Press’ Information Centre in Guantánamo, was detained for 48 hours and had his camera seized by officials of the Department of Security of State. He was documenting an act of repudiation against Obayemi Grant Guerra, member of the Cuban Youth Movement for Democracy (Movimiento Cubano de Jóvenes por la Democracia).

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government Cuba to:

Promotion and protection of human rights

- Ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights without reservations or further delay;
- Review national legislation, including the Constitution, and bring these in line with international human rights standards.

The death penalty

- Abolish the death penalty for all crimes.

Cooperation with UN Special Procedures

- Make all the necessary arrangements to immediately facilitate the visit of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, as per the invitation that was extended in 2009;
- Respond to the outstanding visit requests by the UN Special Procedures by extending invitations to the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Special Rapporteur on freedom of religion;
- Issue a standing invitation to all UN Special Procedures to demonstrate its willingness to cooperate with these mechanisms.

Legal restrictions to fundamental freedoms

- Cease the harassment, intimidation, persecution and arbitrary detention of human rights activists, independent journalists and government critics who peacefully exercise their rights to freedom of expression, assembly and association;
- Allow independent media outlets and journalists to operate freely, without fear of reprisal, unlawful restrictions and arbitrary prosecutions;
- Revoke or amend all laws that criminalize, or are used to criminalize, freedom of expression, in particular Articles 53 and 62 of the Constitution, Article 91 of the Criminal Code, Law No. 88 for the Protection of National Independence and the Economy of Cuba, and other legal provisions which unlawfully limit the right to freedom of expression.

Independence of the judiciary and the right to a fair trial

- Provide full judicial guarantees and fair trials, in accordance with international human rights standards, including the rights to be heard by an independent tribunal and to immediate access to a lawyer of 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, to ensure that a thorough and impartial retrial takes place and victims have access to redress.

Arbitrary arrests including short-term and incommunicado detention

- Ensure that no one is detained or imprisoned solely for the peaceful exercise of the right to freedom of opinion and expression, association and assembly. Anyone so detained should be released immediately and unconditionally;
- Ensure that everyone is informed, at the time of detention, of the specific reasons for their arrest;
- End the practice of incommunicado detention as it violates the rights of people deprived of their liberty;
- Ensure access for all detainees to a lawyer of their choice immediately upon arrest and throughout the period of pre-trial detention, as well as to their family and, if necessary, to a doctor;
- Ensure that interrogation of detainees takes place in the presence of an independent defence counsel to ensure that statements taken in evidence from a detainee are given freely and not as a result of coercion.

Prisoners of conscience

- Immediately and unconditionally release all prisoners of conscience who have been imprisoned solely for exercising their right to freedom of expression.

ENDNOTES

¹ Human Rights Council, *Report of the Human Rights Council on its eleventh session*, A/HRC/11/37, 16 October 2009, paragraph 410 (A/HRC/11/37).

² Several recommendations called on Cuba to extend its solidarity programmes or share its experience on promoting the right to health and education. Although Amnesty International acknowledges Cuba's international cooperation programmes in promoting access to health and education in developing countries, the organization does not monitor Cuba's solidarity programmes or to what extent its knowledge-base on health and education has been shared with other states, and therefore cannot comment on whether these recommendations have been implemented.

³ Human Rights Council, *Report of the Working Group on the Universal Periodic review on Cuba*, A/HRC/11/22, 29 May 2009, recommendation 130.4 (Jamaica), (A/HRC/11/22).

⁴ A/HRC/11/22, recommendation 130.42 (Brazil).

⁵ A/HRC/11/22, recommendations 130.34 (Brazil) and 130.37 (Chile).

⁶ A/HRC/11/22, recommendation 130.45 (The Netherlands).

⁷ Human Rights Council, *Informe del Grupo de Trabajo sobre el Examen Periódico Universal, Adición*, A/HRC/11/22, 29 May 2009, Add.1, page 2 (A/HRC/11/22).

⁸ A/HRC/11/22. Cuba accepted recommendation 130.42 (Brazil), and took under consideration recommendation 131.13 (Italy).

⁹ Human Rights Council. *Report of the Working Group on the Universal Periodic Review of Cuba – Addendum*. A/HRC/11/22/Add.1, 29 May 2009, page 10 (A/HRC/11/22/Add.1).

¹⁰ In December 2010, the People's Supreme Court commuted the death sentences of Salvadoran nationals Raúl Ernesto Cruz León and Otto René Rodríguez Llerena to 30 years in prison. They were both convicted of terrorism charges in 1999. On 28 December, Humberto Eladio Real Suárez, a Cuban national sentenced to death in 1996 for the killing of a police officer in 1994, had his sentence commuted to 30 years in prison.

¹¹ At the moment of writing, Cuba has overdue reports only on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the initial report to the Committee on the Rights of Persons with Disabilities (overdue since June 2010).

¹² A/HRC/11/22/Add.1, paragraph 6.

¹³ A/HRC/11/22/Add.1, paragraph 3.

¹⁴ A/HRC/11/22/Add.1, paragraph 10.

¹⁵ A/HRC/11/22/Add.1, paragraph 14.

¹⁶ Article 62 of the Constitution states: "None of the freedoms which are recognized for citizens can be exercised contrary to what is established in the Constitution and law, 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."

¹⁷ Law No. 62, Cuban Criminal Code, National Assembly of Popular Power, 1987, Article 91.

Unofficial translation.

¹⁸ This legislation was adopted in 1999 as a counter measure to legislation adopted in the United States reinforcing the embargo against Cuba, the Cuban Liberty and Democratic Solidarity Act, also known as the "Helms-Burton Act".

¹⁹ Article 53 of Constitution provides: "Citizens have freedom of speech and of the press in keeping with the objectives of socialist society. Material conditions for the exercise of that right are provided by the fact that the press, radio, television, cinema, and other mass media are state or social property and can never be private property. This assures their use at exclusive service of the working people and in the interests of society. The law regulates the exercise of those freedoms."

²⁰ Article 14 of the UN International Covenant on Civil and Political Rights.

²¹ The 'Hablemos Press' Information Centre (Centro de Información Hablemos Press, CIHPRESS), an unofficial news agency monitoring human rights abuses across Cuba has recorded a four-fold increase in the number of reported arrests from 2009 to 2010 and a two-fold increase from 2010 to 2011. In 2011, the organization – which, like all groups deemed to be critical of the government, is denied official recognition – received reports of 3,835 detentions, varying monthly from 181 to 576 cases. Similarly, the Cuban Commission of Human Rights and National Reconciliation (Comisión Cubana de Derechos Humanos y Reconciliación Nacional, CCDHRN), received reports of 2,784 incidents of human rights abuses from January to September 2011, mostly short-term and arbitrary detentions. For the year 2010 the CCDHRN documented 2,074 such incidents. See Amnesty International, *Routine Repression. Political short-term detentions and harassment in Cuba* (Index AMR 25/07/2012).

²² See Amnesty International, *Routine Repression. Political short-term detentions and harassment in Cuba* (Index AMR 25/07/2012).

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

The US embargo against Cuba: its impact on economic and social rights (Index: AMR 25/007/2009)

Restriction of freedom of expression in Cuba (Index: AMR 25/005/2010)

Routine repression: Political short-term detentions and harassment in Cuba (Index AMR 25/007/2012)

Transforming pain into hope: Human rights defenders in the Americas (AMR 01/006/2012)

¹ All of these documents are available on Amnesty International's website:
<http://www.amnesty.org/en/region/cuba>