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THREE YEARS AFTER THE PROTESTS OF 11-12 JULY 2021: CUBAN AUTHORITIES MUST RELEASE THOSE UNJUSTLY IMPRISONED AND REPEAL REPRESSIVE LAWS

In a context of humanitarian crisis and increased protest, Cuban authorities have continued to perfect a sophisticated machinery of repression of the rights of freedom of expression and peaceful assembly. The new Penal Code, which entered into force in December 2022, regulates the crimes of contempt, public disorder, instigation to commit a crime, insult to patriotic symbols and foreign financing in a vague and excessively broad manner, facilitating the discretionary and abusive application of these criminal offences to activists, journalists, human rights defenders, and demonstrators for simply exercising their rights.

PROTEST IS HERE TO STAY: DEMONSTRATIONS POST 11 JULY 2021

Three years after the historic protests of 11 and 12 July 2021, Amnesty International's continued monitoring of the situation in Cuba shows that the protests in Cuba have not only continued but have intensified,¹ with regular protests taking place almost throughout the country. Of special relevance are those that took place in the cities of Nuevitas (August) and Maisí (October) in 2022, Caimanera in May 2023, and recently in Bayamo and Santiago de Cuba in March 2024.

These protests are taking place in a context of systematic repression. Restrictions on the exercise of the rights to freedom of expression and peaceful assembly have intensified following the entry into force of a new Penal Code in December 2022 that poses additional risks to independent journalists, activists, human rights defenders and those critical of state authorities and policies. Repressive tactics include criminalization, arbitrary detention and harassment of activists, journalists and human rights defenders, blanket and selective internet shutdowns, and the application of administrative sanctions on the basis of legislation such as Decree 370 on cybersecurity.

The protests are linked to the context of Cuba's persistent economic crisis, which has structural causes and is not solely attributable to US government sanctions. The "Ordering Task" – a series of measures aimed at unifying the currency, setting a new official exchange rate, and fixing of prices, salaries and pensions – and other economic measures have had a severe impact on access to food and to increasingly dilapidated and precarious basic services. Triggers for the protests include power cuts and shortages of food and medicine.

The protests have been largely autonomous, spontaneous and self-convened, with virtually no prior local organization. Although the food and public services crisis has been a central trigger, protests have included demands for structural changes in the country's governance, complaints about the inefficiency of the authorities, and persistent demands for freedom and "Motherland and Life" (*Patria y Vida*).

THE NEW PENAL CODE AND ABUSE OF CRIMINAL LAW TO REPRESS HUMAN RIGHTS

The approval of a new Penal Code in April 2022, and its entry into force on 1 December 2022, is part of the package of penal reforms resulting from the adoption of Cuba's new Constitution in 2019. The penal reform also includes a new criminal procedural law, adopted in January 2022, new court laws, and an important set of instructions and provisions on criminal policy. Although some of these changes have introduced new concepts into Cuban criminal law that may have a positive impact – such as the criterion of opportunity,² the ban on approaching victims, and a more precise regulation of the

¹ The organization *Justicia 11J* compiles a database of protests over the last three years that confirms the increasing and sustained trend of protests in Cuba; <https://justicia11j.org/cronologia-de-protestas/>

² Article 17.1 of the Law of Criminal Procedure establishes that criteria of opportunity will be "applied in the case of a crime committed by imprudence or in cases of intentional crime for which the penalty does not exceed five years of deprivation of liberty, provided that it is not an act of corruption committed by a public official in the exercise of their office; a decision ordering the application of a criterion of opportunity will have the effect of terminating the public prosecution and precludes its subsequent submission before a court". [unofficial translation]

precautionary measure of preventive deprivation of liberty –, the reforms have led to a worrying use of this legislation to repress the right to freedom of expression and criminalize public protest, indicating a strategy by the authorities to silence dissenters.

Amnesty International has warned of the risks posed by the new Penal Code, particularly for activists, human rights defenders, journalists, artists and intellectuals, due to the persistence of crimes that have long been used by the Cuban authorities to criminalize dissidents and political opponents, the vagueness of the description of criminal offences that creates an enabling environment for their discretionary application, the way in which foreign funding and the use of social media are regulated in a manner that is incompatible with international norms and standards, and the restrictions on questioning the way in which the authorities carry out their public duties. All of this in a context of lack of impartiality and independence of the judiciary.

Its entry into force and application during 2023 and the first half of 2024 show that it has provided the Cuban state with a more sophisticated tool with which to confer the appearance of “legality” on clear human rights violations and has facilitated the escalation of state repression and repeated arbitrariness in its application.

Criminal policy provisions, including the instructions of the People's Supreme Court, provide elements the courts can use to interpret legal provisions, almost always to the detriment of the accused. For example, Instruction 273 of the People's Supreme Court, dated 21 November 2022, sets out guidelines to be taken into account in the prosecution of judicial matters that significantly affect the proper functioning of society in the current context and includes provisions that set strict penalties for certain types of crimes, based on the identification of priority offences in the country's current situation.³ The figure of priority offences allows, in a legal but veiled manner, to conduct exemplary public trials, to apply legal provisions in a discriminatory manner, and to sentence certain convicted persons more severely than others, stigmatizing them and limiting their access to traditional penal benefits. This includes restrictions on access to extrajudicial licences (release permits) and early release within the time limits recognized by current legislation.

Instruction 273, based both on its preamble and its various sections, can be used to punish those accused of participating in protests, since it establishes the need for measures to deal more effectively with “social indiscipline” and prevent unlawful and violent actions by individuals who promote and incite acts of vandalism and aggression against institutions and authorities, with the deliberate aim of altering public order and undermining the constitutional order in force.⁴ These are the ways in which the Cuban state has traditionally referred to protests and to the actions of the people who participate in them.

REPRESSION OF PROTEST: CRIMINALIZATION, ARBITRARY DETENTION, ILL-TREATMENT, STATE HARASSMENT AND DENIAL OF CRIMINAL BENEFITS

The Cuban state has sought to reinforce a culture of fear so that people do not dare to exercise their rights to freedom of expression and peaceful assembly. The passing of harsher criminal laws has allowed it to criminalize many of those who have taken part in peaceful protests, arbitrarily detaining them and charging them with offences such as “public disorder”, “contempt”, “assault”, “disobedience”, crimes against the “constitutional order” and even “sedition”.

As of June 2024, human rights organizations such as Justicia 11J, Prisoners Defenders and the Cuban Observatory for Human Rights have documented between 963 and 1113 people detained for political reasons. In connection with 11 July 2021, at least 671 people are in prison for their participation in these protests. The same organizations have documented alarming patterns of human rights violations against those detained, including denial of scheduled visits, denial of medical care and access to medicines, detention in punishment cells, and inhuman and degrading treatment, including some practices that may amount to torture. In addition, Amnesty International has received reports of harassment and ill-treatment by prison officials of prisoners who have expressed dissent, with the denial of adequate medical care resulting in the deterioration of the health of persons detained in Cuba for their dissenting views and participation in protests.⁵ In

³ For example, the Instruction states that special attention shall be given to prosecutions brought to “combat criminal conduct related to attacks on legality and public and constitutional order, and other conduct that significantly undermines public order and public tranquillity” [*unofficial translation*].

⁴ Included in the second point of Instruction 273 of the People's Supreme Court.

⁵ Cuba: Open Letter to President Miguel Díaz-Canel on Human Rights of Prisoners of Conscience – Amnesty International (amnesty.org)

2022, the UN Committee against Torture expressed concern⁶ about overcrowding, unsanitary conditions and lack of ventilation, deficient medical care, malnutrition and insufficient drinking water and medicine in Cuban prisons.

The authorities have regularly resorted to deploying police in areas where protests are taking place or in other areas of interest such as the country's capital. State harassment as a measure of prevention and deterrence has been widespread, including summonses for questioning, police visits, home surveillance, and visits by state security agents or local authorities to activists, human rights defenders, relatives of political prisoners and members of opposition groups.

This is compounded by the prosecution and conviction of individuals solely for taking part in peaceful protests, the discriminatory denial of criminal benefits (such as parole or early release) to those convicted for taking part in protests, the holding of trials without due process guarantees for exemplary and deterrent purposes, and the public stigmatization of dissenters by the authorities.

In April 2024, 14 people were convicted for taking part in the peaceful protests of August 2022 in the municipality of Nuevitas. They were sentenced to a total of 138 years in prison on charges including sedition, “continued enemy propaganda”, and acts against state security. According to available information, the harshest sentence, with a total of 15 years' imprisonment, was handed down to a young woman, Mayelín Rodríguez Prado, who was charged with sedition and enemy propaganda for streaming the protests from her Facebook profile.

In May 2024, the People's Municipal Court of Niceto Pérez ratified the prosecution of the people charged for taking part in the Caimanera protests of May 2023. This includes sentences of up to 9 years in prison for the crimes of “public disorder”, “assault” and “incitement to commit a crime”. It is clear that the pattern of criminalization for simply exercising the rights to freedom of expression and peaceful assembly continues unabated to this day.

Denial of rights and sentences designed to act as deterrence and create exemplary cases

Over the past year, prisoners of conscience, political activists and human rights defenders sentenced to prison terms have been subjected to the denial of criminal benefits for exemplary purposes, with the aim of intimidation and as a deterrent to potential mobilization for future protests or civil actions to demand and defend human rights.

In March 2023, the authorities denied the conditional release on health grounds of prisoner of conscience Loreto Hernández, a Yoruba priest. The request for conditional release, a criminal benefit recognized under Cuban law, had been submitted in October 2022 by Loreto's family members, on the grounds of his deteriorating health, including high blood pressure, diabetes and heart problems. The medical evaluation commission reportedly recommended that the authorities grant the conditional release, and the authorities' refusal to do so confirms a pattern of repression in which those imprisoned for political reasons or for taking part in protests are denied the benefits of the criminal justice system.

In December 2023, an enforcement judge revoked the sentence of “restriction of liberty” – a legal figure that allowed him to serve his sentence outside prison – given to Pedro Albert, a teacher, activist and prisoner of conscience, for his participation in the protests of 11 July 2021. Pedro Albert was arrested on 23 November 2023 while on his way to the offices of the European Union in Havana to deliver a letter to Eamon Gilmore, the EU's Special Representative for Human Rights, who was visiting the country, in which he called for the release of all persons unjustly imprisoned. Since his arrest, Pedro Albert has spent more than 50 days in punishment cells, and has been denied adequate medical care, including access to medication.

In February 2024, the People's Provincial Court of Artemisa rejected the request for conditional release submitted on behalf of prisoner of conscience and artist Luis Manuel Otero Alcántara. Conditional release, a criminal benefit established under Cuban law, allows for the early release of convicted persons subject to certain conditions and criteria, such as the length of the sentence and an assessment of their behaviour. In their decision, the authorities state that the conviction was for an offence recognized in Instruction 273 of 2022 of the People's Supreme Court, although this instruction does not explicitly mention the crimes for which the artist was convicted, namely contempt, public disorder and insulting patriotic symbols. The decision also states that the convicted person “has not achieved the purpose of the sentence and is unfit for social reintegration”. Although not explicitly stated, given the documented pattern, this could refer to the ongoing denunciation and activism that Luis Manuel Otero continues to engage in, even while in prison.

Prisoner of conscience and opposition leader José Daniel Ferrer has been held in solitary confinement, isolated from other prisoners, since 14 August 2021, and has additionally been held incommunicado for long periods of time since 17 March

⁶ UN, Committee against Torture, Concluding observations on the third periodic report of Cuba, 9 June 2022, CAT/C/CUB/CO/3 Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FCUB%2FCO%2F3&Lang=es

2023. During the last year, his family have been systematically denied visiting rights and have only been able to have direct contact with him for a few minutes on two occasions. Detention without access to the outside world – incommunicado detention – facilitates torture or other ill-treatment and enforced disappearances. In certain circumstances, both prolonged solitary confinement and incommunicado detention may in themselves constitute forms of torture or cruel, inhuman or degrading treatment.

HARASSMENT AND REPRESSION AGAINST ACTIVISTS, JOURNALISTS, HUMAN RIGHTS DEFENDERS AND FAMILY MEMBERS OF THOSE IMPRISONED FOR POLITICAL REASONS

In addition to exemplary trials and unjust sentences, activists, human rights defenders, relatives of those imprisoned for political reasons, journalists and members of the opposition are subjected to continuous harassment and intimidation. Over the last three years, the state has also intensified the systematic use of its media strategy to delegitimize and minimize the protests, blaming the policies of other countries and certain groups in the Cuban exile community as the instigators of the protests. This strategy has included the labelling of activists and journalists as “common criminals, mercenaries and foreign agents”, as well as the systematic public disclosure of personal documents, private communications and video recordings of detained or threatened individuals in which they appear to be forced to confess to acts they did not commit. The authorities have even gone so far as to label independent media, communicators and *influencers* as “financial terrorists” and “media terrorists”.

The authorities have subjected artists, intellectuals and other critical voices to alarming levels of surveillance and arbitrary detention, without any legal basis, including in their homes, with serious implications for their privacy, their right to freedom of movement and their ability to carry out their daily work and activities.

Migratory regulation⁷ and forced exile have been persistent patterns of repression affecting activists, human rights defenders, artists and journalists. The Cuban Observatory for Human Rights documented that at least 123 people had left the country in 2023 for reasons related to their activism.⁸ Recently, punk musician and graphic artist Gorki Águila, who had been banned from leaving the country for more than five years, was finally able to leave and denounced the harassment and intimidation he had been subjected to by the authorities and state security agents to force him to leave the country, under threat of imprisonment if he did not. Journalist Yuri Valle Roca, who was serving a sentence of 5 years imprisonment for the crime of “continued enemy propaganda” as a result of his work as an independent communicator, was also released and forced to leave the country.

In addition, the families of those deprived of their liberty for political reasons suffer constant harassment by the Cuban authorities, as one of the strategies used to silence voices critical of their policies. Wilber Aguilar Bravo, the father of Walnier Aguilar Rivera, the 11 July protester who was sentenced to 12 years in prison for sedition, has been [systematically monitored](#) and harassed by the police and state security agents because of his activism in defence of his son's freedom and his links with the “*Cuba de luto*” (Cuba in mourning) movement, which brings together the families of those imprisoned for political reasons. He has been called in by the authorities for “interviews” and interrogations and has been prevented from leaving his home on scheduled dates or from attending meetings with international delegations visiting the country. He has also been [arbitrarily detained and fined](#). Wilber has also spoken out about prison conditions. According to his testimony, his son has been subjected to [human rights violations, including torture](#), and other ill-treatment during his imprisonment.

Historians Alina Barbara López and Jenny Pantoja were arbitrarily detained on 18 June 2024 as they travelled from Matanzas to Havana to take part in a civil action in the city's central park to demand “the democratic election of a National Assembly to draft a new constitution, freedom for political prisoners without forced exile, an end to the harassment of citizens who exercise freedom of expression, and that the state not ignore the critical situation of the elderly, pensioners, and retired people and families living in extreme poverty”. This action was part of a permanent action of peaceful protest called by Alina Bárbara López on the 18th of every month since March 2023. The activists reported that they were arrested without a warrant, violently beaten and taken to a police unit in the province of Matanzas. Both are being [charged](#) with “assault”, which carries a sentence of 2 to 5 years' imprisonment. This offence, due to its vagueness and discretionary interpretation by prosecutors and judges, has been used repeatedly against activists and human rights defenders. In recent years, these two intellectuals have been subjected to police summons, surveillance and undue restrictions on their right to freedom of

⁷ Migratory regulation is a discretionary concept used by the Cuban authorities to limit the mobility of individuals, preventing them from travelling outside the country. It does not normally require written notification, nor does it establish a process through which to present the grounds for the case or appeal the decision.

⁸ Cuban Observatory for Human Rights, “*Informe Anual Derechos Humanos en Cuba 2023* [Annual Report on Human Rights in Cuba 2023]”. Available at <https://observacuba.org/wp-content/uploads/2024/05/InformeAnualOCDH2023.pdf>

movement. In [November 2023](#), Alina Barbara López was sentenced to a fine for “disobedience” for refusing to comply with a police summons that did not meet legal requirements.

CONCLUSIONS AND RECOMMENDATIONS

Three years after the historic protests of 11 and 12 July 2021, hundreds of people remain in prison in Cuba for exercising their freedom of expression and peacefully defending their rights. As the authorities continue to repress peaceful protest, we are witnessing one of the largest waves of forced migration from Cuba in recent history, with those affected attempting to build a new and better life in another country.

In the context of a human rights crisis and an increase in the number and diversity of protests, Amnesty International urges the Cuban authorities to stop subjecting activists, human rights defenders, artists, intellectuals and journalists to surveillance and arbitrary detention, including in their homes. The Cuban authorities must repeal the articles of the new Penal Code that go against international human rights norms and standards, including by criminalizing dissent and unduly restricting the rights to freedom of expression and peaceful assembly.

Amnesty International urges Cuba to immediately and unconditionally release all those detained solely for exercising their rights to freedom of expression and peaceful assembly, including prisoners of conscience José Daniel Ferrer García, opposition leader, artists Luis Manuel Otero Alcántara and Maykel Osorbo, Yoruba priests Loreto Hernández García and Donaida Pérez Paseiro, and teacher and activist Pedro Albert.