

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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USA: Amnesty International seeks review of case of the 'Cuban Five'

In a report sent to the US government and released today, Amnesty International outlines its concerns about the fairness of the trial of five men convicted in 2001 of acting as intelligence agents for Cuba and related charges. The five are serving terms ranging from 15 years to life in US federal prisons.

The five -- Cuban nationals Fernando González, Gerardo Hernández and Ramón Labañino, and US nationals Antonio Guerrero and René González -- were tried in Miami and convicted on various counts, including acting and conspiring to act as unregistered agents of the Republic of Cuba, fraud and misuse of identity documents and, in the case of three of the accused, conspiracy to transmit national defence information. Gerardo Hernández was further convicted of conspiracy to murder, based on his alleged role in the 1996 shoot-down by Cuba of two planes operated by a US anti-Castro organization, Brothers to the Rescue, in which four people died.

In a letter to US Attorney General Eric Holder on 4 October, enclosing its report -- *The Case of the 'Cuban Five'*, AI Index AMR 51/093/2010 -- Amnesty International said that, while it did not take a position on whether the five men were guilty or innocent of the charges against them, it believed there were doubts about the fairness and impartiality of the trial which have not been resolved on appeal.

A central, underlying concern related to the fairness of holding the trial in Miami, given the pervasive hostility to the Cuban government in that area and media and other events before and during the trial. As described in Amnesty International's report, there was evidence to suggest that these factors made it impossible to ensure a wholly impartial jury.

Other concerns included questions about the strength of the evidence to support the conspiracy to murder conviction in the case of Gerardo Hernández, and whether the circumstances of the pre-trial detention of the five men, in which they had limited access to their attorneys and to documents, may have undermined their right to defence.

Amnesty International has called on the government to review the case and mitigate any injustice through the clemency process or other appropriate means, should further legal appeals prove ineffective.

Amnesty International has also reiterated its concern about the repeated denials by the US government of temporary visas to allow the Cuban wives of two of the prisoners, René González and Gerardo Hernández, to visit their husbands. The organization is concerned that such a blanket or permanent bar on visits with their wives constitutes additional punishment and is contrary to international standards for the humane treatment of prisoners and states' obligation to protect family life. Amnesty International continues to urge the government to grant the wives temporary visas on humanitarian grounds.

Further background:

The five prisoners were arrested in Miami in 1998. They have not denied acting as agents for the Cuban government; however, they have denied the most serious charges against them and contend that their role was to focus on Cuban exile groups in Miami responsible for hostile acts against Cuba rather than to breach US national security. No evidence was presented against them at trial to show that the accused had actually handled or transmitted any classified information.

In May 2005, the United Nations (UN) Working Group on Arbitrary Detention adopted an opinion on the case in which it concluded that the US government had failed to guarantee the Cuban five a fair trial under Article 14 of the International Covenant on Civil and Political Rights (ICCPR). It based its opinion on a number of grounds, including prejudicial impact of holding the trial in Miami. It also

found that the circumstances of the pre-trial detention of the accused and the initial classifying of all documents in the case as “secret” weakened the possibilities of an adequate defence and undermined the equal balance between the prosecution and defence.

In August 2005, a three-judge panel of the US Court of Appeals for the 11th Circuit unanimously overturned the convictions of the five on finding that pervasive community prejudice in Miami against the Castro government merged with other factors to prejudice their right to a fair trial. The decision was appealed by the US government and subsequently reversed by the full (en banc) court of appeal by a 10-2 majority. Their convictions were upheld by the court of appeal in June 2008, although life sentences imposed on two of the defendants were vacated and later reduced. Gerardo Hernández is the only one of the five still serving life in prison (he was sentenced to two life prison terms). In June 2009 the US Supreme Court denied a petition for leave to appeal against the convictions of the five without giving reasons.

In June 2010, a new appeal was filed before the district (trial) court, based, in part, on newly discovered evidence that journalists who had written prejudicial articles and commentary about the case at the time of the trial were paid employees of the US government while working for anti-Castro media outlets in the USA. A hearing on the appeal has not yet taken place.

For further information see: USA: The Case of the ‘Cuban Five’, AI Index 51/193/2010, <http://www.amnesty.org/en/library/info/AMR51/093/2010/en>

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