

Premeditated Convictions:

Analysis of the Situation of the Administration of Justice in Cuba

Executive Summary



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- I. In collaboration with our Cuban counterparts, Race and Equality has investigated the administration of justice in Cuba, particularly the criminalization of human rights defenders, journalists, and other political activists (hereinafter “independent activists,” to refer to the three groups of people). We have conducted a thorough study of Cuban laws and the Cuban state’s international obligations.
- ii. We have found that Cuban laws lack the necessary protections to ensure respect for due process and other human rights of persons accused of committing crimes. The guarantees that do exist are not respected by authorities in the majority of cases of independent activists.
- iii. The Cuban State uses its Penal Code to criminalize people who express opinions against the State, in violation of its international human rights obligations. Specifically, authorities use charges that are not clearly defined in the Penal Code, such as “contempt,” “assault,” “disobedience,” and the determination that someone has a “dangerous state,” in order to impose lengthy sentences after trials that lack basic due process guarantees.
- iv. While detained before or after their conviction, political prisoners are frequently subjected to inhumane prison conditions. In some cases, the State denies visits or telephone calls with friends and family. The State has also denied medical assistance and treatment to prisoners.
- v. Independent activists are also frequently prohibited from leaving Cuba. In particular, authorities forbid travel in order to prevent independent activists from participating in international events where they expose the human rights violations committed by the Cuban regime. This practice contributes to Cuba’s isolation from the rest of the world.

- vi. The State exercises particularly strong repression against two groups of independent activists: the Ladies in White and the Patriotic Union of Cuba (UNPACU). These groups are internationally recognized and speak out strongly against the Cuban government. Their members are frequently subjected to both short-term and long-term arbitrary detentions.
- vii. Cuba recently approved a new constitution that includes more due process protections than its predecessor. However, drastic changes in the current laws and in the behavior of authorities are necessary to achieve real progress. Additionally, the new constitution represents a setback regarding respect for the international treaties that Cuba has signed, given that Article 8 states: "The Constitution of the Republic of Cuba takes precedence over these treaties." ¹.

¹. POLITICAL CONSTITUTION OF THE REPUBLIC OF CUBA [C.P.R.C. 2019], Art. 8 (2019), available at <http://www.granma.cu/file/pdf/gaceta/Nueva%20Constitución%20240%20KB-1.pdf>.

Introduction

1. Cuba has been under the control of a repressive dictatorship since the 1960's, governed by just one political party that has taken strong measures to control every aspect of the lives of the island's inhabitants. This supreme power has dominated the media and the means of economic production as well as the executive, judicial, and legislative branches of the government, and has designed and implemented programs to spy on citizens on the island. Under the constitution that was in effect from 1976 to 2019 (reformed in 1978, 1992, and 2002), exercising any of the freedoms found in the constitution "contrary to the existence and objectives of the socialist state" or "contrary to the decision of the Cuban people to build socialism and communism"² was punishable by law. To maintain its control, the Cuban government seeks to silence the voices of people who express critical opinions. The government hides these abuses, glorifying the ideals and "successes" of the Cuban Revolution before the international community and blaming all problems on foreign powers that supposedly want to end socialism or interfere with the country's interior politics.
2. The Cuban State exerts strong repression against human rights defenders, independent journalists, political activists, and any other person that expresses opinions against the government ("independent activists") in order to retain its power. The repression of opposition voices in Cuba is not new. After the Cuban Revolution, for example, the Inter-American Commission on Human Rights ("the Commission," or IACHR) reported hundreds of extrajudicial executions for political reasons.³ During the "Black Spring" in 2003, 75 independent activists were detained, summarily prosecuted, and subjected to long prison sentences.⁴

2. CONSTITUTION OF THE REPUBLIC OF CUBA, as amended [C.R.C. 1976], Art. 62 (1976), available at <http://pd-ba.georgetown.edu/Constitutions/Cuba/vigente.html>.

3. Inter-American Commission on Human Rights [IACHR], Report on the Situation of Human Rights in Cuba, OEA/Ser.L/V/II.4 (Mar. 20, 1962).

4. Amnesty International, Cuban activists talk about lack of basic freedoms, 10 years on from mass crackdown, Mar. 18, 2013, available at <https://www.amnesty.org/en/latest/news/2013/03/cuban-activists-talk-about-lack-basic-freedoms-years-mass-crackdown/>.

Additionally, Cuba has been identified by the IACHR almost every year for the last 35 years as a country with severe problems with regard to the protection of human rights.⁵

3. In recent years, repression against independent activists in Cuba has taken many different forms. One of the main forms of repression is the use of the Penal Code to criminalize these citizens and their activities. This criminalization is possible in part because Cuban laws deny fundamental civil and political rights to the population. In addition, Cuban laws directly criminalize the expression of ideas and opinions against the government, or authorities make up facts and circumstances to convict independent activists for crimes that they have not committed. All of these actions are grave violations of the Cuban State's international human rights obligations.
4. The purpose of this report is to document and explain the steps in the criminal process and the way in which these steps are being used to criminalize the work of human rights defenders and other activists. The report will also analyze Cuba's international obligations with respect to due process and other related rights, and discuss the experience of independent activists who suffer other forms of repression at the hands of Cuban authorities.
5. To complete this report, Race and Equality worked closely with independent lawyers in Cuba, examining specific cases of political prisoners and victims of repression by police authorities and the manner in which Cuban laws were applied in these cases. We also maintained a list of people associated with independent civil society organizations who were convicted of crimes under circumstances that suggest that there were political motives for the conviction. Crimes such as "contempt" and "assault," which are not clearly defined in the Cuban Penal Code, have permitted the criminalization of the expression of opinions against the government. The criminalization of independent activists for these and other crimes is inconsistent with Cuba's obligations under international and regional human rights treaties signed by the country and that are binding on the government.

5. See e.g., [Part III(A)(1)] IACHR, Annual Report of the Inter-American Commission on Human Rights 1970, OEA/Ser.L/V/II.25, doc. 9 (Mar. 12, 1971); [Cap. IV] IACHR, Annual Report of the Inter-American Commission on Human Rights 1988/1989, OEA/Ser.L/V/II.76, doc. 10 (Sept. 18, 1989); [Chap. IV] IACHR, Annual Report of the Inter-American Commission on Human Rights 1999, OEA/Ser.L/V/II.106, doc. 3 (Apr. 13, 2000); [Chap. IV: Cuba] IACHR, Annual Report of the Inter-American Commission on Human Rights 2009, OEA/Ser.L/V/II, doc. 51.1, ¶ 206-359 (Dec. 30, 2009); [Chap. IV(B): Cuba] IACHR, Annual Report of the Inter-American Commission on Human Rights 2017, OEA/Ser.L/V/II, doc 210 (Dec. 31, 2017).

6. Cuba has gone through many changes in the last year, yet repression and harassment of independent activists has not ceased. In April 2018, for the first time in nearly⁶ six decades, a president that was not part of the Castro family assumed power. In July 2018, the National Assembly of Cuba approved a proposal for a new constitution. Through a referendum carried out in February 2019, the new constitution was approved and now replaces the constitution that was in effect from 1976 to 2019 (Constitution of 1976). This report analyzes the criminalization of independent activists that occurred while the Constitution of 1976 was in effect; therefore, that constitution is used as the basis of the analysis. However, throughout the report, we present an analysis of how the new constitution (Constitution of 2019) could influence the authorities and the criminalization of independent activists. Given that the new constitution has been in effect for only a short period at the time of this report's publication, its long-term effects are still unknown. Nevertheless, if the approval process of the constitution indicates what is to come,⁷ the increase in repression of dissident voices during this process bodes poorly.

⁶ EFE and AFP, Díaz-Canel, el nuevo presidente de Cuba en sustitución de Raúl Castro [Díaz-Canel, the New President of Cuba, Substituting Raul Castro], EL PAÍS, Apr. 19, 2018, Available at <https://www.elpais.com.uy/mundo/diaz-canel-nuevo-presidente-cuba-sustitucion-raul-castro.html>.

⁷ Sonia Osorio, Reportan aumento de la represión en Cuba durante referendo [Increase in Repression in Cuba is Reported During the Referendum, NUEVO HERALD, Mar. 3, 2019, available at <https://www.elnuevoherald.com/noticias/mundo/america-latina/cuba-es/article227053549.html>.

General Conclusions

1. In spite of the change in the presidency and the new constitution, Cuba remains under the control of a single political party that has a strong machinery of control and repression. Cuban laws and the structure of the government itself are designed to maintain this control and silence any person that threatens it.
2. The Cuban state routinely uses various aspects of domestic law to criminalize and/or harass human rights defenders, independent journalists, and others who criticize the government. This has been possible in part because criminal laws and criminal procedure laws are not clearly defined and therefore give wide discretion to authorities to use them to silence independent activists. In other cases, authorities simply exaggerate or invent evidence to insure a conviction, as in the case of Dr. Eduardo Cardet Concepcion. Furthermore, Cuban laws do not provide sufficient procedural protections to persons accused of crimes to ensure due process, and authorities frequently disregard the protections that do exist.
3. Although the Constitution of 2019 contains various protections for due process, it does not fundamentally change the structure of the Cuban state that permits the repression of independent activists. The Constitution of 2019 also contains many provisions that allow the system of repression to be maintained, including a lack of independence of the judicial branch and limitations on freedom of expression.
4. The State particularly utilizes the crimes of “contempt” and “assault” to criminalize independent activists. Given that these crimes are defined in vague terms, the State can invoke them to justify the criminalization of any person who expresses opinions it does not like. This also creates a situation where it is impossible to know which acts are criminally punishable and which are not. When this situation is combined with the lack of guarantees such as immediate access to an independent lawyer, independent activists do not have the ability to defend themselves adequately against these accusations.

5. The use of short-term arbitrary detentions and of searches and seizures serves to interrupt and impede the work of independent activists. These acts occur in violation of Cuba's international obligations. High-profile groups are especially vulnerable, such as the Ladies in White and the Patriotic Union of Cuba (UNPACU). When members of these and other organizations try to participate in events hosted by international and regional human rights mechanisms, authorities prohibit them from leaving the island. If they are able to leave, they suffer reprisals upon their return.
6. After investigating various cases of persons deprived of liberty who are also members of opposition groups, it is clear that the real reasons behind their convictions are not that they have actually committed the common crime with which they are charged, but that they are being punished because of their political activism.
7. The situation for independent activists is even worse considering that Cubans are very isolated from the rest of the world due to the government's repression and, in most cases, do not have the ability to denounce the violations of their rights to the international community or even to others on the island. As a result, these violations continue with impunity. However, this situation cannot be maintained if the international community turns its attention to Cuba and exposes the human rights violations committed by the Cuban state. Therefore, it is the responsibility of the international community to acknowledge this situation and require that the Cuban government recognize and rectify its violations and dismantle its system of repression.

Recommendations

To the Cuban State:

1. Immediately ratify the International Covenant on Civil and Political Rights and its Optional Protocol.
2. Amend the Penal Code to eliminate the crimes of “contempt” and “pre-criminal dangerousness,” and better define crimes such as “assault” and “resistance,” so that they cannot be used to criminalize the expression of ideas. Ensure that all crimes are defined in a manner that complies with Cuba’s international obligations.
3. Amend the Criminal Procedure Law to guarantee the right to consult an attorney from the moment a person is detained and to guarantee that the detention is quickly reviewed by an independent tribunal. Require a detention order signed by an independent judge to detain a person accused of a crime.
4. Modify and/or eliminate internal legal norms that disproportionately and unjustifiably restrict the right to freedom of opinion and expression, among them Law 88/99.
5. Permit the free exercise of the law by independent attorneys and give defense attorneys the necessary access to their clients to present an adequate defense.
6. Immediately free all persons deprived of liberty for political motives, especially those that are convicted of crimes that prima facie violate the right to freedom of expression, such as “contempt” and “social dangerousness.”
7. Implement the new constitution in a manner that ensures the right to due process as it is understood according to the International Covenant on Civil and Political Rights.
8. Refrain from executing arbitrary detentions and carrying out illegal searches.

9. Respect the rights of people deprived of liberty, especially those who are deprived of liberty for political reasons despite being in prison for common crimes.
10. Participate in thematic hearings before the Inter-American Commission on Human Rights.
11. Ratify the American Convention on Human Rights and recognize the jurisdiction of the Inter-American Court of Human Rights.

To Cuban civil society:

1. Systematically document in detail the human rights violations committed by the Cuban State and share these violations with the rest of the world, especially in the case of political prisoners.
2. Continue denouncing human rights violations committed by the Cuban State before international and regional mechanisms.

To international civil society:

1. Come together in solidarity and support for independent Cuban civil society and speak out against human rights violations
2. Strengthen the capacity of independent civil society organizations so that they can defend the human rights of Cubans.
3. Denounce human rights violations committed by the Cuban State before human rights protection mechanisms, especially the arbitrary detention and criminalization of independent activists.

To the Inter-American Commission on Human Rights:

1. Continue monitoring the situation of human rights in Cuba and including Cuba in Chapter IV(B) of the Annual Report.
2. Continue issuing precautionary measures to Cuban independent activists in danger of suffering violations to their fundamental rights.
3. Respond to petitions denouncing human rights violations in Cuba.
4. Publish a country report on Cuba.

To the United Nations:

1. Take into account repression against independent civil society in Cuba, including travel restrictions, which frequently prevent independent activists from presenting reports to treaty bodies, special procedures, or the Universal Periodic Review.
2. Continue monitoring the situation in Cuba and pressuring the Cuban State to comply with its international obligations.
3. Continue sending communications from the Special Procedures Mandate Holders to the Cuban State when they receive information on human rights violations.
4. Pressure the Cuban State to extend an open invitation to the Special Procedures Mandate Holders in order to monitor progress and setbacks in human rights on the island.