



RESTRICTIONS ON FREEDOM OF EXPRESSION IN CUBA

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1. INTRODUCTION

‘Personally, I think the most important thing is not the possibility of my release or my continued imprisonment, but rather – and this is crucial – the establishment of a framework in which the fundamental freedoms of human beings are fully respected, for all Cubans.’

Pedro Argüelles Morán, prisoner of conscience, provincial prison of Canaleta, Ciego de Ávila, May 2010¹

In recent years the Cuban government has taken some limited steps to address long-standing suppression of freedom of expression in the country. While welcome, these changes have had only a limited effect. The legal, bureaucratic and administrative infrastructure built up over the years to silence government opponents and maintain the one party system remains largely intact. Those who voice views beyond those permitted by the authorities continue to be intimidated and harassed, arbitrarily detained² or imprisoned after unfair, often summary, trials.

The principle that no one should be imprisoned for the peaceful expression of their opinions is one of the most widely accepted norms of international human rights law. Yet over the years, hundreds of prisoners of conscience have been imprisoned in Cuba for the peaceful expression of their views. Some were imprisoned following large-scale crackdowns on political dissent; others were individually targeted. At the time of writing, 54 prisoners of conscience continued to be held by the Cuban authorities for peacefully exercising their right to freedom of expression. Harassment, intimidation, arbitrary detention and criminal prosecutions, all continue to be used to restrict the expression of views critical of the government. Those targeted are dissidents and critics, in many cases independent journalists and political and human rights activists.

Cubans use the possibilities offered by the internet and new communications technologies to bypass state censorship in order to express ideas and opinions and to seek, receive and impart information. Independent reporting by individuals or small groups, including independent press agencies, continues to defy government control. However, the virtual state monopoly on the broadcast media and the press remains intact; private ownership of mass media is prohibited under the Constitution. Similar restrictions apply to the internet, despite

some relaxation of state control over the past year. As a result, most Cubans are denied ready access to information that is independent of government sources or to opinions that differ from state ideology.

The current legal framework and the way in which it is enforced by the authorities seriously limits freedom of expression. A range of laws are used to curb the legitimate expression of opinion and dissent. People continue to face unfounded criminal prosecution, as well as harassment and intimidation by state security and police officials, for expressing and distributing information or opinions critical of the government. Unlawful restrictions on freedom of expression are underpinned by other restrictions on human rights, such as the rights to freedom of association, of peaceful assembly and of movement. Arbitrary detention, interrogations and warnings at police stations, and other forms of temporary arrests are frequently used by the authorities to intimidate individuals critical of the prevailing state system. The cumulative effect of such practices has been to create a climate of fear in Cuban society and inhibit the development of freedom of expression.

The judiciary is neither independent nor impartial and allows criminal proceedings to be brought against those critical of the government as a mechanism to prevent, deter or punish them for expressing dissenting views. The complicity of the state judicial system in prosecuting government critics, often in summary trials that fail to meet international fair trial standards,³ has a profound chilling effect on freedom of expression, association and peaceful assembly.

Political dissidents and other critics of the government were in many cases harassed and intimidated by organized groups of government supporters; these may include local members of the communist party and members of pro-government mass organizations, in particular Committees for the Defence of the Revolution and Rapid Response Brigades. There are reports of combined activities between government supporters, state officials and law enforcement agencies to harass dissidents.

Although the government has taken some small steps towards enhancing respect for human rights, such as signing up to the International Covenant on Civil and Political Rights (ICCPR), restrictions to freedom of expression remain largely intact. The Cuban government has sought to justify failings in the protection of human rights by pointing to the undoubted negative effects of the US embargo. No matter how detrimental its impact, the US embargo is a lame excuse for violating the rights of citizens, as it can in no way diminish the obligation on the Cuban government to protect, respect and fulfil the human rights of all Cubans.

As Cuba embarks on the long and challenging process of legal and political reform, it will need to consider “the depth and complexity of the interrelationship between the various aspects of social structures that will need to be modified.”⁴ However, the respect, protection and fulfilment of all human rights – civil, political, economic, social and cultural – must be a primary and urgent objective of that process.

This report is based on information from independent sources, both within and outside Cuba, on the nature and extent of restrictions on freedom of expression and their impact on individuals. However, Amnesty International was unable to conduct first-hand research in Cuba as it has not been allowed to enter the country by the Cuban government since 1990.⁵ The report outlines international human rights standards guaranteeing freedom of expression and the main provisions of Cuban legislation that limit this and other human rights. It also looks at the challenges and obstacles faced by individuals who seek to provide independent

information and communication. The report ends with recommendations to the Cuban government on the measures that must be taken urgently to ensure that everyone is able to exercise their right to peacefully express their views without fear of repression or reprisal.

2. RESTRICTIONS ON FREEDOM OF EXPRESSION

“Freedom of speech and expression consists primarily not only in the liberty of the citizen to speak and write what he chooses, but in the liberty of the public to hear and read what it needs”.

Chief Justice of Sri Lanka’s Supreme Court, 25 May 1987⁶

Restrictions on freedom of expression in Cuba are systematic and entrenched. The Cuban authorities frequently quote threats to national security, independence and sovereignty as their justification for taking action against those peacefully expressing criticisms of government policies or exposing human rights violations. In particular, they highlight decades of interference in Cuban domestic affairs by the US government. In the 2007 *White Book* outlining Cuba’s official position on foreign policy and human rights, the government asserts the limits to freedom of opinion and expression that it considers applicable:

“The exercise of freedom of opinion and expression has as sole restriction the limits defined by the defence of national independence and sovereignty, and by the protection of the right to self-determination of the Cuban people.”⁷

Three key elements deployed by the authorities to impose restrictions are the state’s virtual monopoly of the media (including television, radio, the press and internet service providers); the requirement that all practising journalists join the national journalists’ association, which is effectively under the control of the ruling Cuban Communist Party; and a number of provisions in the Constitution and the Penal Code that are so vague that they lend themselves to abuse by state officials such as the police and the judiciary to restrict freedom of expression. Over the years, Amnesty International has documented hundreds of detentions and prosecutions of political dissidents, independent journalists and human rights activists. Many were sentenced to long prison terms for peacefully exercising their right to freedom of expression following trials that did not meet international fair trial standards.

STATE MONOPOLY OF THE MEDIA

The media is a key arena in which the right to freedom of expression is exercised. It plays a critical role in any society, for example raising awareness of human rights and exposing human rights violations. The media has the potential to help shape public opinion and to monitor and assess the performance of those holding public office at all levels; it is an important tool for scrutinizing government practices in all societies no matter their political ideology. The absence of an independent media is a serious obstacle to the enjoyment of freedom of expression and the adequate review of corrupt and abusive official practices.

Restrictions on the Cuban media are stringent and pervasive and clearly stop those in the country from enjoying their right to freedom of opinion and expression, including freedom to seek, receive and impart information and ideas through any media and regardless of frontiers.⁸ The state maintains a total monopoly on television, radio, the press, internet service providers, and other electronic means of communication.⁹ According to official figures, there are currently 723 publications (406 print and 317 digital), 88 radio stations, four national TV channels (two devoted to educational programming), 16 regional TV stations and an international TV channel. All are financed and controlled by the government.¹⁰ Three newspapers provide national coverage: *Granma*, which is the organ of the Cuban Communist Party, *Juventud Rebelde* and *Trabajadores*.

Article 53 of the Cuban Constitution recognizes freedom of the press but expressly prohibits private ownership of the mass media:

“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.”

Although this article would appear to promote freedom of expression, by making the exercise of freedoms conditional on furthering the “objective of socialist society” it imposes indirect restrictions. The prohibition of private ownership of media affects the right of individuals to express themselves and to impart and receive information and ideas independently of the state. The state also maintains a monopoly on news agencies (Prensa Latina and Agencia Cubana de Noticias). Myriad independent news agencies do operate in Cuba, but they are not officially recognized and they are barred from obtaining legal status because the law only allows organizations linked to the Communist Party to be registered.

The Constitution does not allow for open plurality and diversity of ideas. It therefore effectively subjects all Cuban citizens and the media to prior censorship, imposing illegitimate restrictions on the exercise of the right to freedom of expression.

On 18 October 2009, an editorial article from the official newspaper *Juventud Rebelde* was posted on the paper’s website; it was removed by the editor after just three hours without explanation. The short text addressed the issue of censorship in the Cuban press pointing out that *“information is a public good and cannot be substituted by permitted expedient information”*.

The expression of criticism is tolerated by the government in specific contexts, such as government-organized public assemblies or within government-controlled organizations.¹¹ In Cuba’s report to the UN Human Rights Council’s Universal Periodic Review in February

2009, the government asserted that “a wide-ranging debate on Cuban reality was recently conducted across the country. More than 5 million Cubans from all sectors of society attended 215,687 meetings and more than 1.3 million suggestions, criticisms and proposals were put forward.”¹²

Despite this apparent openness to criticism, the expression of opinions considered critical of the government or the political and economic system is not permitted outside state-controlled arenas. Those who voice such views outside these forums risk being subjected to intimidation, surveillance and harassment. This can take the form of repeated summons by the police, arbitrary arrest or unfounded criminal prosecution and imprisonment.

“The situation of freedom of expression in Cuba in 2009 has changed very little in recent years, and is the reason why the Commission has systematically pointed out that Cuba is the only country in the Americas where it can be systematically affirmed that there is no freedom of expression.”

Inter-American Commission on Human Rights, Annual Report 2009, para. 297

Just as the concentration of the media in private hands harms the exercise of the right to freedom of expression, so too a state monopoly restricts the full exercise of people’s right to information by limiting the plurality and diversity of ideas.¹³

In 1985, the Inter-American Court of Human Rights issued an authoritative statement on the concentration of control of the media:

“If freedom of expression requires, in principle, that the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media, it must be recognized also that such media should, in practice, be true instruments of that freedom and not vehicles for its restriction. It is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, inter alia, a plurality of means of communication, the barring of all monopolies thereof, in whatever form, and guarantees for the protection of the freedom and independence of journalists.”¹⁴

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has argued against state-owned media being “used as a communication or propaganda organ for one political party or as an advocate for the Government to the exclusion of all other parties and groups.”¹⁵ The state has a responsibility to guarantee freedom of expression and a free press. By maintaining total control of the press, the Cuban government limits the free flow of information and restricts freedom of expression.

CONTROL OF INTERNET ACCESS

The internet has greatly increased the opportunity for people to participate actively in discussions and exchanges of information, ideas and opinions. In addition to its potential for strengthening freedom of expression and information, it has also proved an increasingly important tool for the promotion of human rights and for the mobilization of activists by human rights organizations. However, according to the assessment of various international experts, “the significant potential of the Internet as a tool to promote the free flow of information and ideas has not been fully realised due to efforts by some governments to control or limit this medium.”¹⁶

In Cuba, access to the internet remains under state control. It is regulated by the Law of Security of Information, which prohibits access to internet services from private homes. The Cuban government argues that the US embargo, which does not allow Cuba access to the fibre-optic underwater networks connecting the Caribbean islands, means that it has to rely on satellite connections. These provide the island with limited bandwidth and at a much higher cost. Therefore, the internet in Cuba has a social vocation and remains accessible at education centres, work-places and other public institutions. Internet can also be accessed in hotels but at a high cost. In October 2009, the government adopted a new law allowing the Cuban Postal Services to establish cyber-café in its premises and offer internet access to the public. However, home connections are not yet allowed for the vast majority of Cubans and only those favoured by the government are able to access the internet from their own homes. In March 2010, the US Department of the Treasury authorized the export of certain personal internet-based communications services – such as instant messaging, chat and email, and social networking – to Cuba.¹⁷ However, at the time of writing, it was too early to tell what the consequences of this decision might be.

Although access to the internet in Cuba remains limited and very costly, it does offer new possibilities for some Cubans to express their views and share their ideas, especially through blogs. However, many blogs are not accessible from within Cuba because the Cuban authorities have put in place filters restricting access. The blogs affected are mainly those that openly criticize the Cuban government and its restrictions on freedom of expression, association, peaceful assembly and movement. For example, *Generation Y* is one of the dozens of blogs that are filtered or intermittently blocked by the government and are not accessible inside Cuba. In *Generation Y*, Yoani Sánchez, an outspoken advocate for freedom of expression and unrestricted access to the internet, writes about daily life in Cuba. She has been awarded a number of international prizes for her work, but the authorities have refused to give her permission to travel abroad to receive them.

COMPULSORY MEMBERSHIP OF THE JOURNALISTS' ASSOCIATION

Although there is no censorship law that explicitly regulates the functioning of the press or establishes what is published, journalists must join the Cuban Journalists Association (*Unión de Periodistas Cubanos*, UPEC) in order to practice journalism in the state-owned media. UPEC is self-governing, however, in its statutes it recognizes the Cuban Communist Party as “the highest leading force of society and of the state” and agrees to abide by Article 53 of the Constitution (see above).¹⁸

Compulsory membership of a professional association for the practice of journalism is an unlawful restriction on freedom of expression and a violation of the right to freedom of association. Article 20 of the Universal Declaration of Human Rights (UDHR) states that “no one may be compelled to belong to an association”. In the particular case of UPEC, whose members are employees of the government of Cuba, compulsory membership is a means of exerting political control in the field of communications. Only journalists expressing views in line with official government policies are accredited by UPEC; independent journalists are barred from joining. This has far reaching consequences. Without official accreditation, independent journalists are unable to access information held in public offices or by the government because the authorities only recognize UPEC-accredited journalists as entitled to seek and access information from the government.

In July 2008, during UPEC's VIII Congress, the Vice-president of the Council of State of Cuba (the executive branch of the government), Esteban Lazo Hernández, stated "*the party, at different levels, systematically organizes and guides the work of the media. It exercises that function by virtue of its condition as the directing force of the Cuban state and society ... In other words, the Party guides the revolution and among its most important instruments is the press*".¹⁹

The Inter-American Court of Human Rights has stated that "the compulsory licensing of journalists is incompatible with Article 13 of the American Convention on Human Rights if it denies any person access to the full use of the news media as a means of expressing opinions or imparting information".²⁰ Similarly, Principle 6 of the Inter-American Declaration of Principles on Freedom of Expression establishes that the right to practice journalism must not be conditional on membership of any association. It states:

*"Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirement of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State."*²¹

Numerous associations have been created to provide unofficial information on Cuba, primarily for audiences abroad. These independent press agencies operating on the island rely on the limited access to the internet to channel their information to websites hosted abroad which are, for the most part, only accessible with difficulty in Cuba. These associations are not only barred from obtaining legal status, but their members are harassed, intimidated, arbitrarily detained and on occasion sentenced to long prison terms on politically motivated charges. In the context of the US embargo against Cuba and the tensions it has generated between the two countries, independent journalists disseminating information to Cuban exiles can face serious repercussions as they are viewed by the Cuban authorities as supporting US foreign policy towards Cuba.

LAWS RESTRICTING FREEDOM OF EXPRESSION

The Cuban legal framework provides for certain rights and freedoms. However, their exercise is subject to the ideology embraced by the state. 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."

This seriously limits in practice the exercise of freedom of expression, association and peaceful assembly. The Cuban authorities have explicitly justified restrictions on fundamental freedoms by citing the need to protect sovereignty against a perceived external threat.

"The Cuban people only restrict the "freedom" of opinion and expression of the few individuals who would sell their services and act as mercenaries in support of the policy of hostility, aggression and genocidal blockade adopted by the United States government against Cuba. In applying such restrictions, Cuba is acting in accordance not only with national legislation, but also with numerous international human rights instruments and successive resolutions passed by the United Nations General Assembly, that have demanded

respect for the free self-determination of peoples and the cessation of the economic, commercial and financial blockade being applied by the government of the United States against Cuba.”

Ministry of Foreign Affairs, 2007 White Book²²

The Cuban Penal Code contains several provisions that have been used by national tribunals to curb legitimate exercise of the right to freedom of expression. The Cuban authorities have prosecuted hundreds of political dissidents, independent journalists and human rights activists. The courts have sentenced them to long prison terms for peacefully exercising their right to freedom of expression, following trials that did not meet international fair trial standards.

“[T]he imposition of legal mechanisms to exercise control over the media and other social communicators has a negative effect on the respect for and protection of freedom of expression. Such impositions deny individuals their fundamental right to participate fully in social, political, economic and cultural life.... Any obstacle to the free discussion of ideas and opinions restricts freedom of expression. Prior conditioning of expression, such as truthfulness, timeliness or impartiality, among other conditions, is incompatible with the rights provided for in international instruments. The Special Rapporteur believes that the prohibition of speech that does not conform with the purpose of a socialist society is a form of prior conditioning.”

Inter-American Commission on Human Rights, Annual Report 2001²³

Article 62 of the Constitution limits the protection of freedoms recognized by the Constitution itself when they are exercised “contrary to what is established in the Constitution and by 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.” By adding that “[v]iolations of this principle can be punished by law”, this article also allows for the criminalization of numerous peaceful activities and the legitimate exercise of human rights. However, the Cuban authorities have asserted that no one has ever been detained for political reasons or for exercising their freedom of expression:

“In Cuba, nobody has ever been punished for merely expressing a difference of opinion or point of view, even when these have been contrary to those of the authorities. The acts for which a citizen may face punishment are precisely defined in the criminal law. In criminal law, someone is considered to be a political prisoner if he or she is detained or sentenced for actions aimed at furthering progress and social improvement, or for fighting for social justice and freedom, fairness, solidarity, democracy, human rights, in brief, for the well-being of the individual, the community and humanity as a whole. In Cuba, we have never arrested, tried or punished anyone for these reasons.”

Ministry of Foreign Affairs, 2007 White Book

The Penal Code offers the Cuban authorities an array of criminal provisions to suppress dissent and punish those overtly critical of the government.²⁴ For example, charges of enemy propaganda (propaganda enemiga), contempt of authority (desacato), rebellion (rebelión), acts against state security (actos contra la seguridad del estado), clandestine printing (clandestinidad de impresos), distribution of false news (difusión de noticias falsas), pre-criminal social dangerousness (estado peligroso predelictivo), illicit associations, reunions and demonstrations (asociaciones, reuniones y manifestaciones ilícitas), resistance

(resistencia), defamation (difamación) and libel (calumnia) have been used to restrict the peaceful exercise of freedom of expression, and freedom of peaceful assembly and association; some continue to be used. The Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) has stated that “numerous sections of the Penal Code are used to suppress journalists and others who speak out against the government. Many of the offences, which subject the accused to prison terms, are vaguely defined so as to apply to a wide range of speech.”²⁵

The lack of independence and impartiality of the judiciary means that these vaguely-worded offences have been used to punish the legitimate exercise of freedom of expression. In some cases those found guilty have been sentenced to lengthy prison terms.

The offences listed above are set out in the Penal Code under five different headings: 1) the dangerous disposition and security measures; 2) crimes against the security of the state; 3) crimes against the administration and jurisdiction; 4) crimes against public order; and, 5) crimes against honour.

1) THE DANGEROUS DISPOSITION AND SECURITY MEASURES

The Penal Code divides security measures into two categories: pre-criminal security measures (Articles 78-84), which are applied to prevent an offence; and post-criminal security measures (Articles 85-90), which are applied after a person convicted of a crime has completed their sentence. The security measures are imposed by a tribunal when “an individual shows any indication of dangerousness”. Key to the imposition of security measures is the concept of “dangerous disposition” which is defined in Article 72 of the Penal Code:

“A dangerous disposition 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.”

A person considered to have a “dangerous disposition” because of their “anti-social behaviour” is described as *“one who habitually violates the rules of social co-existence by acts of violence, or who, by other provocative actions, violates the rights of others or who, by their general behaviour, damages the rules of co-existence or disturbs the order of the community or who lives, like a social parasite, from the work of others or exploits or practises vices that are socially unacceptable.”*²⁶

In 1996, the IACHR concluded that the provisions concerning dangerous disposition, pre-criminal security measures and the terms “socialist legality”, “socially dangerous”, and “rules of socialist co-existence”, should be eliminated because “their lack of precision and their subjective nature constitute a source of juridical insecurity which creates conditions permitting the Cuban authorities to take arbitrary action.”²⁷ Furthermore, provisions foreseeing the punishment of individuals not because of their actions or attitudes, but because of the likelihood of potential, future and uncertain actions breach the principle of legality.²⁸

Article 75.1 of the Penal Code provides that any police officer can issue a warning (*acta de advertencia*) for “dangerousness”. A warning can also be issued for associating with a “dangerous person.”²⁹ Municipal tribunals³⁰ have the authority to declare someone to be in a

dangerous pre-criminal state. They can do so summarily within pre-set timeframes which are so short – less than 11 days from charge to sentence – that they effectively “deprive the accused of the possibility of mounting an adequate legal defense”.³¹

Security measures are imposed on those found to have a “dangerous disposition” by a municipal tribunal. These measures may include therapy,³² police surveillance³³ or “re-education”. The latter may consist of internment in a specialized work or study establishment for a period of between one and four years.³⁴ In most cases, internment is changed to imprisonment, even though in the Penal Code “dangerousness” is not punishable by imprisonment. In the past five years, there appears to have been an increasing trend for People’s Municipal Courts (Tribunales Municipales Populares)³⁵ to rely on these provisions to punish peaceful political activities and hinder freedom of expression.

2) CRIMES AGAINST THE SECURITY OF THE STATE

Articles 91 to 109 of the Penal Code deal with activities that pose a threat to the security of the state. Certain provisions in this section, mostly aimed at the punishment of crimes against the external security of the state, define offences in such broad and vague terms that they can be used to impose long prison sentences for the legitimate exercise of fundamental freedoms.

“Article 91: Any person who, in the interests of a foreign Government, commits an act aimed at harming Cuba’s independence or territorial integrity shall be sentenced to between 10 and 20 years’ imprisonment or death.”

Most of the 75 dissidents imprisoned for peaceful activities in a government crackdown in March 2003 were charged and sentenced under Article 91, which was often used in conjunction with Law 88 (see below).

3) CRIMES AGAINST THE ADMINISTRATION AND JURISDICTION

Articles 129 to 173 of the Penal Code regulate the performance of and protect the administration. Several provisions in this section deal with protecting state officials from various forms of abuse. However, the crimes of disrespect and resistance, among others, are often used to curb peaceful criticism of government policies and to shield state officials from legitimate criticism.

Article 144 of the Penal Code defines the crime of contempt (desacato), making all forms of disrespect of state officials an offence and providing for longer prison terms where the disrespect is directed against government members or other top state officials.

“Article 144. 1. Anyone who threatens, slanders, defames, insults, harms or in any way outrages or offends, orally or in writing, the dignity or honour of an authority, public official, or their agents or auxiliaries, in the exercise of their functions or on the occasion of or because of them will incur a penalty of between three months and one year’s loss of liberty or a fine... or both.

2. If the deed established in the previous paragraph is directed against the President of the Council of State, the President of the National Assembly of Popular Power, the members of the Council of State and the Council of Ministers or the deputies at the National Assembly of Popular Power, the penalty will be between one and three years’ loss of liberty.”

This provision, which is often used to silence dissent and to shield public officials from legitimate criticism, constitutes an illegitimate restriction on freedom of expression. In the words of the IACHR: “[a] law that targets speech that is considered critical of the public administration by virtue of the individual who is the object of the expression, strikes at the very essence and content of freedom of expression” and “may affect not only those directly silenced, but society as a whole.”³⁶

CALIXTO RAMÓN MARTÍNEZ ARIAS

Calixto Ramón Martínez Arias is an independent journalist and correspondent of news agency Hablemos Press. On 23 April 2010, he went to cover an activity in a private house in Havana in honour of Orlando Zapata Tamayo, a Cuban prisoner of conscience who died in February 2010 after several weeks on hunger strike.

One of the people taking part in the meeting told Amnesty International that at around 8am, scores of people gathered outside the house. He identified some of them as members of the Rapid Response Brigades (Brigadas de Respuesta Rápida), an unarmed group of official volunteers who report crime and signs of opposition to the authorities. The group included several state security officials who forced their way into the house and detained 11 people taking part in the vigil and Calixto Ramón Martínez. All were released unconditionally by the following day.

Moments after Calixto Ramón Martínez’s release he was detained again a few blocks away from the police station. He was told that his release had been the result of a mistake, as he had been confused with someone else. He was detained at the police station for seven days. Then he was transferred to Valle Grande maximum security prison, on the outskirts of Havana, where he was held until his release on 14 May. Initially, he was told that he would be charged with contempt of authority and aggression. During his detention he had access only once to a lawyer, who did not have access to the judicial file. Calixto Ramón Martínez fears that charges against him may still be open.

On the day of his release, Calixto Ramón Martínez was driven to his house by two security officials, who warned him that the investigation process against him had not been closed. They recommended he leave Havana for a few months and abandon his reporting activities. One of the state security officials told him: “I am saying this as an advice, stop writing news and criticizing the Cuban government “

Article 143 deals with the offence of resistance (*resistencia*) to public officials carrying out their duties and is often used to deal with alleged cases of resisting arrest. It states:

“1. An individual who resists an authority, a public official or his agents or auxiliaries, in the exercise of their official functions will be sentenced to a term of imprisonment of between three months and a year, or a fine...

2. If the act is carried out against a public official, his agents or auxiliaries, or a military officer while carrying out their duties detaining criminals, or guarding individuals under arrest, they will be sentenced to between two and five years’ imprisonment.”

Article 143 is broad enough to encompass non-violent forms of resistance and it is sometimes used in ways that unlawfully restrict freedom of expression.

4) PUBLIC ORDER OFFENCES

The Penal Code criminalizes a broad range of activities under the provisions dealing with public order (Title IV). Some Title IV provisions are worded and interpreted by the courts in ways that allow the imposition of unlawful restrictions on freedom of expression.

The Penal Code gives a very broad interpretation of public order, allowing the authorities to invoke this provision to arbitrarily restrict freedom of expression in both public and private spaces. Article 200 states:

“1. Any person who, without justifiable cause raises the alarm or makes threats against the general public in public places or at shows or large meetings, shall be subject to between three months and a year’s imprisonment or a fine... or both.

2. If the acts referred to in the previous paragraph are carried out with the intention of causing panic or disorder, or in any other way affect public order, the punishment will be imprisonment of between one and three years or a fine... or both.”

Public disorder charges are commonly used to punish the exercise of free speech and criticism of the authorities. Under international human rights law, governments must justify measures that limit the right to freedom of expression, particularly when such measures can result in detention and imprisonment. They are required to provide specific evidence that such measures are necessary. The UN Human Rights Committee has consistently condemned violations of the right to freedom of expression committed by states by arresting or detaining individuals for alleged threats to public order without providing adequate evidence that such measures were necessary.³⁷

CARLOS SERPA MACEIRA

“The Cuban government want to silence my voice, they do not want people to know what is happening in Cuba”.

Carlos Serpa Maceira is an independent journalist and the director of the Union of Free Cuban journalists (Unión de periodistas libres de Cuba) news agency. He also collaborates with media outlets abroad, such as *Miscelaneas de Cuba*, and has his own blog, *Guayacan cubano*.

In 2007, he started to report on the activities of the Ladies in White (Damas de Blanco), an unofficial group of women relatives and friends of individuals imprisoned during the March 2003 crackdown. Among other activities, the Ladies in White attend mass every Sunday at the Santa Rita Church and then hold a demonstration in Havana to call for the release of their relatives.

Carlos Serpa Maceira told Amnesty International that in April 2010 he was intimidated and harassed by the authorities over three consecutive weeks when he tried to cover the weekly march by the Ladies in White. During interrogation while in detention, state security officials asked how much he was paid to cover these events and by whom, and about why he was taking part in “counter-revolutionary” acts.

They threatened him with deportation to his province of origin, Isla de la Juventud, and told him that if he continued with his activities he could face an official warning for “social dangerousness” or charges of “disobedience”. They also warned him not to report from the streets again. On each of the three occasions, he was prevented from taking part in events organized by the Ladies in White either because he was arbitrarily detained until they were over or because he was taken back to his home.

The following table contains a summary of the main offences categorised under Cuban law as crimes against public order. The table also provides a summary of the punishments for each offence, which have the effect of limiting freedom of expression, association and peaceful assembly.

PENAL CODE: PUBLIC ORDER OFFENCES		
Legislation	Conduct criminalized	Penalty
Insulting national symbols (Article 203)	Insulting or showing contempt for the national flag, anthem or emblem	3-12 months' imprisonment or a fine
Defamation of national institutions, organizations, heroes and martyrs of the nation (Article 204)	Public defamation, insulting or showing contempt for public institutions, mass, political and social organizations, or heroes and martyrs of the nation	3-12 months' imprisonment or a fine
Conspiracy to commit a crime (Article 207)	Joining a group with three or more members to plan an illegal act.	1-3 years' imprisonment
	If the only objective of the group is to provoke disorder or interrupt family or public parties, spectacles or other community events or to commit other anti-social acts	3-12 months' imprisonment or a fine
Illicit associations, meetings or demonstrations (Articles 208, 209).	Membership of an association not legally registered	1-3 months' imprisonment or a fine
	Leading or promoting unregistered associations	3-12 months' imprisonment or a fine
	Participating in illicit meetings or demonstrations	1-3 months' imprisonment or a fine
	Organizing illicit meetings or demonstrations	3-12 months' imprisonment or a fine
Clandestine printing (Article 210).	Making, spreading, circulating, reproducing, storing or transporting publications that do not mention the press or the place of impression, or do not identify the author or their origin	3-12 months' imprisonment or a fine

Defamation of public institutions, organizations, martyrs and heroes of the nation is also considered a public order offence. Article 204 of the Penal Code states:

“ An individual who publicly defames, denigrates or belittles the institutions of the Republic, the political, popular or social organizations of the country, or the heroes and martyrs of the motherland, shall be sentenced to a term of imprisonment of between three months and a year or a fine...”

5) CRIMES AGAINST HONOUR

Defamation is a criminal offence in Cuba and is punishable by between three months and one year's imprisonment (Penal Code, Article 318). According to international law, the only legitimate purpose of defamation laws is to protect individual reputations. It is also well established in international human rights law that public officials should tolerate more, rather than less criticism.³⁸ However, in Cuba, most of the criminal prosecutions for defamation refer to the defamation of public institutions, organizations, national heroes and martyrs (Article 204, see above) which is often used in conjunction with other provisions to curb freedom of expression by preventing public debate and criticism of the authorities and of government policies.

Amnesty International does not believe the criminal justice system is the appropriate channel for resolving defamation cases better settled under civil law. Where penalties are severe, including heavy fines or imprisonment, defamation cases can result in grave violations of the right to freedom of expression.

LAW 88

In February 1999, Cuba's National Assembly passed tough legislation criminalizing direct and indirect support of US policy regarding Cuba as set out in the Helms-Burton Act. Law 88 For the Protection of National Independence and the Economy of Cuba, also known by dissidents as the “Gag law”, provides for prison terms up to 20 years for those found guilty of passing information to the US government, or looking for classified information, “in order to achieve the objectives of the Helms-Burton Law, the blockade and the economic war against our people, aimed at breaching the internal order, destabilizing the country and ending the Socialist State and the independence of Cuba”.³⁹

Provisions included in Law 88 have been used on several occasions to restrict the legitimate exercise of the right to freedom of expression. Article 7.1, in particular, provides for up to five years in prison for collaborating with any foreign radio and TV station, printed publication or other media. While accredited foreign journalists are exempted,⁴⁰ independent or freelance journalists receiving a fee for providing information to the foreign press are subject to up to eight years' imprisonment.

Law 88 was used to charge and sentence many of those arrested during the March 2003 crackdown on dissidents, considered by Amnesty International as prisoners of conscience.⁴¹

PABLO PACHECO AVILA

Pablo Pacheco is one of 12 imprisoned Cuban journalists who are recognized as prisoners of conscience by Amnesty International. He works for the Avileña Co-operative of Independent Journalists, in the town of Ciego de Avila, an unofficial press agency. He was arrested in March 2003 and charged under Law 88. In April 2003 he was sentenced to 20 years' imprisonment. According to the judgement, Pablo Pacheco's criminal activities consisted of writing articles for foreign and online newspapers, being interviewed by foreign radios, and publishing information through the internet. Physical evidence confiscated in his house consisted of a radio, a camera, a walkman, videocassettes, batteries and cables, a fax machine, a typewriter and several books. Amnesty International believes that Pablo Pacheco's arrest and sentencing were politically motivated, relating to his legitimate activities as a journalist and the peaceful exercise of his rights to freedom of expression and association.

This was not the first time Pablo Pacheco had been arbitrarily detained while he was carrying out his work as a journalist. For example, he was reportedly detained in November 2002 for six hours after attempting to video police officers ill-treating two women, and in March 2002 he was reportedly detained for the third time in a month for providing news coverage of the meeting of an unofficial group.

Leaving Cuba without authorization is considered a public order offence and is punishable by between one and three years' imprisonment or a fine. The restrictions imposed by Cuban law on the legitimate exercise of freedom of movement, which violate international standards,⁴² are often used by the authorities to punish or threaten political dissidents. Indeed, the Cuban authorities routinely deny independent journalists, bloggers, and human rights and political activists permission to leave the island.

3. HARASSMENT AND INTIMIDATION OF INDIVIDUALS

“We were hoping that the government understood that what we were doing was exercising a right, we didn’t hurt anyone... We tried very hard to give information about what was happening in the country. They considered this to be dangerous”.

Yosvani Anzardo Hernández, director of the online newspaper *Candonga*, May 2010⁴³

Dissidents, such as independent journalists, political activists and human rights advocates, face severe restrictions on their freedom of expression in Cuba.⁴⁴ Government officials continue to denigrate and obstruct their legitimate activities and they continue to be arbitrarily detained for short periods and threatened with being brought to trial if they do not give up their activities.

Cuban law limits the space in which dissidents can exercise their legitimate activities and a complex state machinery has been put in place to restrict and monitor people’s activities in order to enforce control over the dissemination of information and ideas.

State bodies working to control and restrict the dissemination of ideas that contradict governmental policies operate in virtual secrecy. Furthermore, their actions are often supported by activities by non official brigades of government supporters. Dissidents are often the target of “repudiation acts” (“actos de repudio”), demonstrations intended to target and publicly repudiate an individual or small group of individuals. Such acts, which result in the intimidation and social stigmatization of individuals who have publicly criticized governmental policies, are performed by groups of government supporters.

The extent of the difficulties, harassment and attacks faced by individuals exercising their freedom of expression in Cuba reflects the lack of commitment and willingness of the Cuban government to make improvements in human rights protection and promotion.

Trials in political cases fall short of international fair trial standards, particularly with regard to access to defence counsel. In cases of crimes against state security, which are tried in provincial courts, the defendant can be held for several weeks or months with limited or no access to a lawyer. The right to legal representation and other procedural rights under Cuban

and international law are frequently ignored when people are prosecuted for exercising freedom of expression or association, or for other offences that have a bearing on politically sensitive issues.

Most current prisoners of conscience were arbitrarily detained during the March 2003 crackdown and charged with security offences under Article 91 of the Penal Code and Law 88. According to the information available at the time of writing, no one has been imprisoned using this legislation since 2003. However, since 2005 dozens of people have been brought to trial and sentenced for contempt of authority, defamation, pre-criminal social dangerousness, and enemy propaganda. Other dissidents have been arrested on the basis of fabricated criminal charges.

The following case studies are emblematic of the way in which journalists and political and human rights activists continue to be routinely harassed and intimidated by the Cuban authorities.

LUIS FELIPE ROJAS ROZABAL

“Our work of independent journalism is a commitment to people in prison, we need the world to know what is going on in Cuba”.

Luis Felipe Rojas Rozabal is a 38-year-old poet, writer, independent journalist and blogger. Four of his poetry books have been published in Cuba and awarded national prizes and his short stories have been published in national and international magazines. He works as an independent journalist for *Diario de Cuba*, an online newspaper and keeps a blog *Cruzar las Alambradas* (Crossing wire fences) where he reports on demonstrations and activities by dissidents. His blog is not accessible in Cuba and in order to update it he has to dictate articles by phone or send them by email.

On 10 September 2009, Luis Felipe Rojas was arrested arbitrarily at his home in San Germán, Holguín province, by state security officials. He was taken to a police station and held for five hours before being released without charge. He had sent reports to two radio stations based in Miami, USA, about a meeting of the Eastern Democratic Alliance the previous day. During detention, he was told that his blog was damaging the revolution's image internationally. State security officials told him that at the time there were more than 50 prisoners charged under Law 88 who were serving lengthy prison sentences and threatened that the same would happen to him if he continued with his work as an independent journalist and blogger.

On 25 December 2009, Luis Felipe Rojas was arbitrarily arrested again at his home in San Germán and taken to a police station where he was held for 11 hours; no reasons were given. He was then released without charge. On 27 December he was arbitrarily detained again for eight hours, again without justification, before being released without charge. The following day, police officials went to his home and told him that he could not leave his house and that he would be charged with disrespect if he disobeyed. His detention prevented him from travelling to Holguín city to cover a protest calling for the release of prisoner of conscience Orlando Zapata Tamayo. On 7 February 2010 state security officials forbade him again from leaving his house, preventing him from reporting on a demonstration taking place in Camagüey.

More recently, on 11 May 2010, Luis Felipe Rojas was arbitrarily detained by the police and taken to a police station in San Germán, where he was kept for 6 hours. When he went back to his house after his release, he found it surrounded by police officers. He was informed that he would need to be accompanied by two police

officers whenever he decided to leave the house and that he was forbidden to travel outside his town. Anyone trying to enter the house was required to show identity documents and their bags were searched. The police presence outside the house lasted for five days.

Luis Felipe Rojas has been subjected to harassment and intimidation by the Cuban authorities for his work as an independent journalist and blogger for several years. In 2006 he founded a cultural magazine called *Bifronte*. The magazine did not have official authorization and contributors were writers banned from publishing in official publications. On 30 June 2006, he presented the magazine at a public reading in an independent library in the town of Jibara, Holguín Province, where he was subjected to an act of repudiation (demonstrations staged by government supporters targeting political dissidents and critics) and physically assaulted by government supporters.

Following this incident, he was dismissed from his job as information officer in a production company making community documentaries. His books were removed from all book stores in Cuba and none has been published since. His wife, Exilda Arajona Palmer, was also removed from her post as director of a radio programme.

DARSI FERRER

Darsi Ferrer is Director of the Juan Bruno Zayas Health and Human Rights Centre in Havana. He has also worked as an independent journalist and been critical of the Cuban health system. Since July 2009 he has been arbitrarily detained in pre-trial detention in a maximum security prison intended for inmates convicted of violent crimes, on spurious charges of receiving illegally obtained goods. Amnesty International believes he is a prisoner of conscience and has called for his unconditional release.

In July 2009, Darsi Ferrer organized a demonstration to campaign against repression in Cuba. The event was scheduled to take place on 9 July 2009 at 7.30pm on the Malecón, Havana's sea front. A few hours before the march, six officers from the National Revolutionary Police and a police officer from the Ministry of the Interior arrived at Darsi Ferrer's house. They said they had a search warrant, but when Darsi Ferrer and his wife Yusnaimy asked to see the warrant, the police refused to show it, claiming it still needed a prosecutor's signature. When the couple refused to let the officers enter their home, they were taken to Aguilera Police Station, in Lawton, central Havana, where they were interrogated for several hours. Darsi Ferrer was handcuffed and beaten by more than eight police officers, one of whom simulated strangling him. Around midnight, the couple were released without charge. When they arrived home, they noticed that two bags of cement and some iron girders they had in their yard were no longer there and two window frames had also been removed from the walls. According to neighbours, at around 7.30pm police officers had returned to search the home and taken the construction materials and the windows.

On 21 July, four police officers asked Darsi Ferrer to accompany them to a police station to answer questions about the confiscated materials. Instead, he was driven to Valle Grande maximum security prison, on the outskirts of Havana and charged with receiving illegally obtained goods and violence or intimidation against a state official or official witness. The latter charge was apparently brought following a statement by a neighbour claiming that Darsi Ferrer shouted that "an injustice was being committed" and that "sooner or later, things are going to change in Cuba and this could not happen any more".

Darsi Ferrer claims he was given the building materials by a colleague who had left the country and had not finished refurbishing his own house. The bags and girders had been on the porch of the house, in full view, months before the authorities confiscated them.

Ordinarily, an individual accused of these crimes would be bailed awaiting trial. Furthermore, although the charges relate to minor offences usually handled by local judicial officials, Darsi Ferrer's case has been referred to the Central Prosecutor's Office in Havana, which is under the control of the Council of State and, therefore, of the national government.

Darsi Ferrer has been arbitrarily detained on several occasions. For example, every 10 December since 2006 he has been arbitrarily detained or summoned to a police station to prevent him from participating in activities celebrating Human Rights Day.

Darsi Ferrer is currently being held in Valle Grande maximum security prison in Havana. During the first few weeks of his imprisonment he was held in a section with inmates suffering from tuberculosis. Following a hunger strike, he was transferred to another section of the prison.

YOSVANI ANZARDO HERNÁNDEZ

Yosvani Anzardo Hernández, is the director of the online newspaper Candonga and a correspondent for Miami-based news website Payo Libre. He was arbitrarily arrested by police officers on 10 September 2009 at his home in Holguín and taken to a Criminal Law Enforcement Unit (Unidad de Procesamiento Penal), where he was held until 23 September, when he was released without charge. Yosvani Anzardo told Amnesty International that during detention he was interrogated by the state security agents almost every day and threatened with criminal prosecution under Law 88.

At the time of his arrest, police also confiscated Yosvani Anzardo's personal computer, which hosted the Candonga server, other office equipment and books deemed "subversive", and disconnected his landline. The site allowed readers in Cuba access using a dial-up system. It also allowed visitors to download books, documents and programmes not widely available in Cuba. The digital publication of the newspaper had started only six months before it was shut down.

Although Yosvani Anzardo is resigned to not continuing with the site, he still does not understand why the site was closed in the first place: "We were hoping that the government understood that what we were doing was exercising a right, we didn't hurt anyone. They shouldn't have banned us, we didn't attack any religious beliefs or political ideals. We tried very hard to give information about what was happening in the country. They considered this to be dangerous"

On 24 April 2010, state security officials arbitrarily arrested Yosvani Anzardo at his house in Holguín and held him for over six hours. During that time he was interrogated about a display of anti-governmental signs in Holguín. He also reported how he was threatened by officials: "You know that we can put you in prison, we have the law on our side". They told him that, although they were releasing him, they would continue to investigate him.

Yosvani Anzardo told Amnesty International about the impact of arbitrary detention on him and his work: "Waiting for the next detention is psychological torture. Worrying about being detained again can stop you from writing, so you need to adapt and not let this affect you". Yosvani Anzardo has been punished by the Cuban authorities for the peaceful exercise of his right to freedom of expression in the past. He used to work as a mathematics teacher in a secondary school while writing for an unofficial publication in his spare time. In 2006, he was subjected to an "act of repudiation" by government supporters. After that, his contract as a teacher was not renewed by the educational authorities.

Yosvani Anzardo told Amnesty International, “We are nobody’s enemies. My wish would be for everyone within the limits of respect to be able to publish their ideas; for anyone who wants to be able to have their own media on this island”.

THE EASTERN DEMOCRATIC ALLIANCE

The Eastern Democratic Alliance (Alianza Democrática Oriental) is made up of civil society organizations from Cuba’s five eastern provinces. On 16 February 2010 members were due to meet in the town of Antilla, eastern Cuba, to mark their sixth anniversary. However, several members were subjected to harassment, intimidation and arbitrary detention by state security officials to prevent them from taking part.

On 15 February, the day José Cano Fuentes and Rolando Rodríguez Lobaina were supposed to travel to Antilla, the two men were arbitrarily detained by state security officials at their homes in the province of Guantánamo. They were taken to a police station, where they remained in custody until 19 February, when they were released without charge.

Christian Toranzo and Mildred Infante were also arbitrarily detained by the state security officials on 15 February at their homes in Antilla. They were taken to a police station and released after a few hours. They were told that if they left their houses to take part in activities with the Eastern Democratic Alliance, they would be charged with disrespect (Article 144 of the Penal Code), a charge which can carry a sentence of up to three years’ imprisonment. The next day, Miguel Ángel Vega Batista and Roland Ruz Rojas were arbitrarily detained at their homes in Antilla and taken to a police station. They were released without charge the same day.

At least six other members of the Eastern Democratic Alliance in other provinces reported that state security officials visited their homes on 15 and 16 of February. In most cases, the activists had already left for Antilla.

SAYLÍ NAVARRO

SaylÍ Navarro, a law student and independent journalist working for Patria Agency News, was expelled from university in January 2010; she had been reading law at her local university in the town of Perico, Matanzas province (100km east of Havana).

On the morning of 12 January, the Vice-rector of Matanzas University and the Director of University City in Perico, Matanzas province, went to SaylÍ Navarro’s house. They asked her whether she had participated in a journalism course organized by the US Interest Section in Havana.⁴⁵ When she confirmed that she had, the university officials explained that the aim of the University in Cuba is to form revolutionary professionals and that by taking part in an unapproved course SaylÍ Navarro had violated her duties and she was, therefore, expelled from the university.

SaylÍ Navarro started to work as an independent journalist in 2003 after her father, prisoner of conscience Felix Navarro, was sentenced to 25 years’ imprisonment under Law 88. She told Amnesty International that she felt compelled to report the stories of those imprisoned in Cuba to the outside world. Her articles have been published in media outlets mainly based in the USA.

YOEL AND RUBEN MARÍN CÁRDENAS

Yoel Marín Cárdenas, a 39-year-old farm labourer, has been the target of repeated harassment by the authorities because of his dissenting political opinions and his work of human rights promotion through the independent library “20th of May”.

On 20 March 2009, Yoel Marín was detained by the police while walking on Calle Alameda, Municipio Cespedes, allegedly for not carrying identity documents. Outraged at his treatment, and assuming that he was being selectively targeted because of his political opinions, known to the police, Yoel Marín protested, shouting “Respect for human rights” and “Down with Fidel and Raúl”. He was immediately handcuffed and taken to the local police station, where he says he was arbitrarily detained for 11 days without access to a lawyer or to his family. On 1 April he was tried for contempt to authority and public disorder by the Cespedes Municipal Tribunal, which sentenced him to one year of compulsory labour in a state-run cooperative farm, Batey Las Mercedes.

On 6 August, Yoel Marín organized a demonstration in Batey Las Mercedes, to protest that farm labourers of the cooperative had not been paid for more than three months. As a consequence, the Cespedes municipal tribunal converted his sentence from compulsory labour to a prison term. On 13 August he was arrested and taken first to the Ceramica prison, and on 14 September to the Kilo 9 prison, both in Camagüey. He was allegedly refused bed, mattress and sheets, and his family visits were reduced.

On 22 January 2010 Yoel Marín was transferred again, this time to the Kilo 7 prison, allegedly for protesting about prison conditions. He was eventually released on 29 March 2010.

Ruben Marín Cárdenas, Yoel Marín’s brother and director of the independent library “20th of May”, has also been targeted for his peaceful activities.

On 18 February 2010, he put placards outside the library, reading “Camagüeyan union for human rights” and “Do not let Orlando Zapata Tamayo die”. At around 7pm the same day a group of about 20 government supporters, including various local members of the Communist Party, gathered in front of the library. Reportedly carrying sticks and machetes, they entered the house and started shouting threats against Ruben Marín’s life. They then broke the placards and carried them away.

4. INTERNATIONAL STANDARDS

“I am fanatical about respect for other people’s freedom and ideas, even those of the most wretched: if I die, or if they kill me, it will be because of this.”

José Martí, Complete Works, Editorial de Ciencias Sociales, Havana⁴⁶

Freedom of opinion and expression, which also includes freedom of the press and freedom of information, gives citizens the power to hold the authorities to account, whereas with no accountability human rights violations run rife. Its full realization is “fundamental for strengthening democracy, facilitating peace and fostering sustainable human development.”⁴⁷ All its components are paramount to develop empowerment, good governance and transparency and to eradicate corruption.

Freedom of expression is guaranteed under Article 19 of the UDHR:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Although the UDHR is not legally binding on States, it “is a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of international community”.⁴⁸ Most of its provisions are considered to be part of international customary law. The right to freedom of expression is widely regarded as a general principle of law guaranteed by a number of international human rights instruments and national legislation. In February 2008, Cuba signed the ICCPR.⁴⁹ Article 19 of the ICCPR states:

*“1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”*

The right to freedom of expression carries with it duties and responsibilities and may be subject to limitations. However, the grounds for restrictions must fall within the parameters

set out in international law. Article 29(2) of the UDHR states that the exercise of rights and freedoms “shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

Article 19(3) of the ICCPR is considered the international standard for the permissible restrictions on the right to freedom of expression.⁵⁰ This states:

“The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;*
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.”*

Any restriction to the right to freedom of expression must meet three conditions:⁵¹

- It must be provided by law and such law(s) must be “formulated with sufficient precision to enable the citizen to regulate his conduct” and to “foresee, to a degree that is reasonable in the circumstances, the consequences which a given situation may entail”.⁵²
- The restriction must pursue one of the legitimate aims listed in Article 19(3) of the ICCPR. Restrictions on freedom of expression for any other purposes are not permitted. The Human Rights Committee has stated that “when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself”.⁵³
- The restriction must be necessary for the achievement of one or more of these legitimate aims and it must be proportionate to the legitimate aim pursued. International jurisprudence on freedom of expression has determined that any restriction must “serve a pressing social need” and the reasons given to justify it must be “relevant and sufficient”.⁵⁴

As a member of the Human Rights Council, in October 2009 Cuba joined the consensus that led to the adoption without a vote of the *Resolution on the right to freedom of opinion and expression*. The resolution reaffirmed the rights contained in Article 19 of the ICCPR and called on *all* states to ensure the right to freedom of expression, including by refraining from imposing restrictions that are not consistent with Article 19(3) of the ICCPR on:

*“(i) Discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups; (ii) The free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship; (iii) Access to or use of information and communication technologies, including radio, television and the Internet”.*⁵⁵

Cuba has yet to ratify the ICCPR and so is not bound by its provisions. However, as a signatory, it has an obligation “not to defeat the object and purpose” of ICCPR.⁵⁶

In addition to the guarantees of freedom of expression set out in international and regional human rights treaties,⁵⁷ a set of international and regional principles has been developed for the protection of freedom of expression. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (Johannesburg Principles) established standards to promote the fullest protection of the right to freedom of expression in the context of national security laws.⁵⁸ Based on international and regional law and standards concerning human rights, the Johannesburg Principles also incorporate state practice and jurisprudence emanating from national court judgements. They have been referred to extensively at both the regional and international level.⁵⁹

Laws relating to national security have been widely used by governments around the world to curb criticism and impose unlawful restrictions on freedom of expression and information. The Johannesburg Principles state that a “legitimate national security interest” must be narrowly defined and involve no less than a threat to “a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force”.⁶⁰ The Principles also clearly state that restrictions imposed “to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest” are unlawful.⁶¹

In 2000, the IACHR approved the Declaration of Principles on Freedom of Expression. This affirmed the need for a legal framework to regulate the protection of freedom of expression that incorporates the principal doctrines set forth in different international instruments.⁶²

THE STATE'S POSITIVE OBLIGATIONS

States are obliged not only to respect rights by ensuring that their officials do not commit human rights violations, but also to protect rights from abuses by private individuals or groups (non-state actors) and to promote the enjoyment of human rights by all.

Under international law, governments have an obligation to use their power to ensure that human rights are respected, protected and fulfilled.⁶³ This includes not only ensuring that their own officials comply with human rights standards, but also acting with “due diligence” to address abuses committed by private individuals or groups.⁶⁴ Indicators of the lack of due diligence include: failure to punish or prevent the abuses; failure by officials to intervene; the absence of legal prohibition or other measures to eradicate the abuses; and the failure to provide reparation or compensation to victims. When states know, or ought to know, about violations of human rights and fail to take appropriate steps to prevent them, they, as well as the perpetrators, bear responsibility. The principle of due diligence – developed through state practice and also in international human rights standards and jurisprudence – provides a way to measure whether a state has acted with sufficient effort and political will to fulfil its human rights obligations.⁶⁵

In the context of freedom of expression, the state has the obligation not only to refrain from illegitimate interference with freedom of expression, but also to protect this right from interference from private individuals or groups.⁶⁶ The state must take positive measures to

protect the free flow of ideas in order to protect the right to freedom of information. To do so, it must ensure that the public has access to a wide range of opinions by promoting pluralism and equal access to the media for everyone. The principles of pluralism and equality are essential for the formation and circulation of opinions and ideas.

For freedom of expression to be fully developed, it must be reinforced by the political will of those who govern, by appropriate legislation laying the legal foundation for its defence and by an independent and effective judiciary that guarantees that it can be exercised to the fullest extent.

5. CONCLUSION AND RECOMMENDATIONS

Harassment, intimidation, arbitrary detention and imprisonment of critics of the government remain commonplace in Cuba. The government, in its determination to curb criticism and maintain its control on all aspects of Cuban society, continues to resort to repressive tactics and criminal proceedings to restrict and punish the free expression of opinions. The restrictions and the systematic interference with the exercise of freedom of expression, opinion and information has a chilling effect not only on the individuals and organizations targeted, but also on Cuban society as a whole which is denied exposure to information and ideas beyond those sanctioned by the authorities.

National legislation, including criminal law, severely restricts the legitimate exercise of the right to freedom of expression, in violation of international human rights standards. Provisions in the Cuban Constitution unlawfully restrict the exercise of fundamental freedoms, while vague definitions of offences in the Penal Code and Law 88 lend themselves to misuse. The judiciary, which lacks impartiality and independence, is complicit in the unlawful repression of human rights and fundamental freedoms of Cuban citizens. State institutions and mechanisms established to enforce and uphold government policy and ideology have not yet been dismantled, and remain largely the same as they were several decades ago.

An important additional component of the restrictions on freedom of expression is the fact that Cuba is closed to many outside organizations, in particular international human rights organizations such as Amnesty International. Amnesty International believes this lack of cooperation with international human rights organizations is short sighted and unnecessary in a country that claims to aspire to the highest human rights standards. Governments cannot be selective about which human rights to respect; they must respect all human rights.

Amnesty International urges the Cuban government to embark on and expedite the human rights reforms needed to make all human rights a reality for all Cubans.

RECOMMENDATIONS

Amnesty International calls on the Cuban government to:

Laws and practices restricting freedom of expression

- Review all legal provisions, including Articles 53 and 62 of the Constitution and other legal provisions which unlawfully limit the right to freedom of expression and association, with the aim of bringing them into line with international standards contained in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

- Amend provisions of the Penal Code, such as Article 91, that are so vague that they lend themselves to abuse by state officials such as the police and the judiciary to restrict freedom of expression.
- Revoke Law 88 for the Protection of National Independence and the Economy of Cuba, that facilitates the imprisonment of prisoners of conscience by unlawfully restricting the exercise of fundamental freedoms.
- Lift all unlawful restrictions on peaceful political activities and guarantee freedom of expression, peaceful assembly and association, including by allowing unhindered access to the media and other forms of information.
- Refrain from using criminal defamation as a means to silence dissent. Ensure that defamation laws do not provide special protection for public officials, and that their purpose is to protect the reputations of individuals and not to prevent criticism of the government. Reform legislation so that any punishment for defamation is limited to what is necessary to compensate harm to reputation and does not include imprisonment.
- Ensure that all provisions regulating access to the internet are in full compliance with international standards protecting the right to freedom of expression, including the right to seek, receive and impart information and ideas regardless of frontier.
- Allow the publication of and circulation of the independent press and other printed materials without unlawful restrictions.
- Allow independent journalists to operate freely, without fear of reprisals and unlawful restrictions and abolish the requirement of mandatory accreditation for the exercise of journalism.
- Allow independent TV and radio broadcasters to operate in Cuba without unlawful restrictions.

End harassment of dissidents

- Immediately cease harassment and intimidation, in particular arbitrary detention, interrogation and repudiation acts, against government critics.
- Immediately and unconditionally release all prisoners of conscience who have been imprisoned solely for exercising their right to freedom of expression.
- Ensure that no criminal charges or other reprisals are brought against government critics on account of them expressing legitimate views and opinions and exercising freedom of expression.

International human rights treaties and monitoring

- Ratify immediately and without limiting reservations, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

- Extend an invitation to visit the country to the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the UN Special Rapporteur on the Independence of Judges and Lawyers, and the Special Rapporteur for Freedom of Expression of the Inter-American Commission of Human Rights, and allow them unfettered access to all individuals and groups of civil society.

ENDNOTES

¹ <http://vocescubanas.com/voztraslasrejas/2010/05/25/si-yo-fuera-el-ultimo/>

² According to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), no one may be subjected to arbitrary arrest, detention or imprisonment. The UN Working Group on Arbitrary Detention describes deprivation of liberty as “arbitrary” in three kinds of cases:

- 1) Where there is no legal basis for detention. This includes those held without charge or trial or despite a judicial order for their release, or those still in prison after the expiry of their sentence.
- 2) An arrest or detention which is lawful under national standards may nonetheless be arbitrary under international standards, for example if the law under which the person is detained is vague, excessively broad, or is in violation of other fundamental standards such as the right to freedom of expression.
- 3) When violations of the fair trial rights of the detained person, such as the right to legal counsel, are sufficiently grave.

See: Working Group on Arbitrary Detention, *Fact Sheet No. 26, The Working Group on Arbitrary Detention*, available at www.ohchr.org/Documents/Publications/FactSheet26en.pdf

³ Amnesty International, *Cuba: “Essential measures”? Human rights crackdown in the name of security* (Index: AMR 25/017/2003) pp34-41.

⁴ Raúl Castro, *Discurso pronunciado por el General de Ejército Raúl Castro Ruz, Presidente de los Consejos de Estado y de Ministros, y Segundo Secretario del Comité Central del Partido Comunista de Cuba, en la clausura del IX Congreso de la Unión de Jóvenes Comunistas*, Havana, 4 April 2010.

⁵ It is Amnesty International’s policy not to visit countries clandestinely; it considers the agreement and co-operation of the government to be vital.

⁶ *M Joseph Perera & Ors. v. Attorney-General*, quoted in Article 19, *The Article 19 Freedom of Expression Handbook, International and Comparative Law, Standards and Procedures*, p56.

⁷ Unofficial translation. Ministry of Foreign Affairs, White Book 2007, Chapter IX, *The legal guarantees of civil and political rights in Cuban legislation*. Available at: http://europa.cubaminrex.cu/derechos%20humanos/articulos/consejoderechoshumanos/libro_blanco/capitulo-ix.html

⁸ In 2009, Reporters Without Borders classed Cuba in the 170th position (out of 175) in terms of press freedom. Source: <http://en.rsf.org/press-freedom-index-2009,1001.html>

⁹ The last privately-owned journal, *El Mundo*, was nationalized in 1968.

¹⁰ Instituto Cubano de Radio y Televisión, www.tvcubana.icrt.cu/noticias/el-instituto-cubano-de-radio-y-television-icrt/ accessed on 1 June 2010. Human Rights Council, Working Group on the Universal Periodic Review, fourth session, National Report submitted by Cuba, 4 November 2008, A/HRC/WG.6/4/CUB/1, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CU/A_HRC_WG6_4_CUB_1_E.pdf

¹¹ Mass organizations are recognized and supported by the state. Article 7 of the Constitution states that “[t]he Cuban socialist state recognizes and stimulates the social and mass organizations, which arose from the historic process of struggles of our people. These organizations gather in their midst the various

sectors of the population, represent specific interests of the same and incorporate them to the tasks of the edification, consolidation and defense of the socialist society.” Among the mass organizations are the Committee for the Defense of the Revolution (Comités de Defensa de la Revolución, CDR), Cuban Women’s Federation (Federación de Mujeres Cubanas), National Association of Small Farmers (Asociación Nacional de Pequeños Productores), Cuban Workers Federation (Confederación de Trabajadores Cubanos), and Youth Communist Union (Unión de Jóvenes Comunistas).

¹² Human Rights Council, Working Group on the Universal Periodic Review, fourth session. National Report submitted by Cuba, para47.

¹³ “Of all the means of ensuring that these values [pluralism and diversity] are respected, a public monopoly is the one which imposes the greatest restrictions on the freedom of expression, namely the total impossibility of broadcasting otherwise than through a national station and, in some cases, to a very limited extent through a local cable station. The far-reaching character of such restrictions means that they can only be justified where they correspond to a pressing need.” European Court of Human Rights, *Informationsverein Lentia and Others v. Austria* (1994) 17 EHRR 93 93/52, para39. Available at: <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=55199437&skin=hudoc-en&action=request>.

¹⁴ Inter-American Court of Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Articles 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85, 13 November 1985, Inter-American Court of Human Rights (Ser. A) No. 5 (1985), para34.

¹⁵ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, E/CN.4/1999/64, 29 January 1999, para16.

¹⁶ The UN Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the OAS Special Rapporteur for Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information in Africa, *Tenth Anniversary Joint Declaration: Ten Key Challenges To Freedom Of Expression In The Next Decade*, Washington, D.C., 2 February 2010, para9.

¹⁷ US Department of the Treasury, *Treasury Department Issues New General License to Boost Internet-Based Communication, Free Flow of Information in Iran, Sudan and Cuba*, Press Release, TG 577, 8 March 2010. Available at: www.treas.gov/press/releases/tg577.htm

¹⁸ Unión de Periodistas de Cuba, Estatutos, July 2008, Article 4. Available at: www.upec.cu/upec/estatutos1.html

¹⁹ Unión de Periodistas de Cuba, “Un Congreso para refundar”. Transcript from audio recording. Unofficial translation.

²⁰ Inter-American Court of Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, para.85.

²¹ Inter-American Commission on Human Rights (IACHR), *Inter-American Declaration of Principles on Freedom of Expression*, 108th session, 2000. Available at: www.cidh.oas.org/declaration.htm.

²² Ministry of Foreign Affairs, *White Book 2007*, Chapter IX.

²³ IACHR, *Annual Report 2000*, Volume III, pp66-67. See also IACHR, *Annual Report 2009*, Chapter IV, paras223-4 and 227.

²⁴ UN Committee against Torture, Concluding observations, Cuba, 21 November 1997, A/53/44, para113.

²⁵ IACHR, *Annual Report 2001*, OEA/Ser.L/V/II.114, 16 April 2002, Chapter IV, para27. See also IACHR, *Annual Report 2008*, Volume II, *Report of The Office of The Special Rapporteur for Freedom of Expression*, OEA/Ser.L/V/II.134, 25 February 2009, para87.

²⁶ Law no. 62, *Penal Code*, National Assembly of Popular Power, 1987, Article 73.2. Unofficial translation.

²⁷ IACHR, *Annual Report 1996*, OEA/Ser.L/V/II.95, 14 March 1997, Chapter V, para96.

²⁸ The principle of legality, recognized in international instruments including Article 11(2) of the UDHR and Article 15(1) of the ICCPR, establishes that no one can be found guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. According to international jurisprudence and doctrine, crimes should be clearly defined, without room for equivocal or ambiguous interpretations. This requirement cannot be fulfilled by provisions criminalizing potential, future and uncertain activities.

²⁹ Article 75.1, Cuban Criminal Code.

³⁰ Article 415, Criminal Procedure Code (Ley de Procedimiento Penal), as modified by Decree 128, Article 1, 18 June 1991 (G.O.Ext. No. 7, 18 June 1991, p29).

³¹ IACHR, *Annual Report 1998*, OEA/Ser.L/V/II.102, Chapter V, para29.

³² Therapeutic measures, as defined in Article 79.1, Cuban Criminal Code, include medical treatment, admittance to a psychiatric or rehabilitation institution or enrolment in a specialized education centre.

³³ Police surveillance, as stated in Article 81.1, Cuban Criminal Code, consists of "orientation and control of the conduct of the subject in dangerous disposition"

³⁴ Article 80.1, Cuban Criminal Code.

³⁵ People's Municipal Courts have jurisdiction over offences punishable with up to a year's imprisonment. They are composed of one professional and two honorary judges. See Law 82 on People's Courts (Ley No. 82 De Los Tribunales Populares), 11 July 1997, Chapter 4.

³⁶ IACHR, *Annual Report 1994*, OEA/Ser.L/V.88, 17 February 1995, Chapter V, *Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights*, para4. Available at: www.cidh.oas.org/annualrep/94eng/chap.5.htm

³⁷ See for example: Human Rights Committee, Communication No. 132/1982, Decision of 6 April 1985, 24th Session, *M Jaona v. Madagascar*, Committee Report, 1985, Annex IX, para14. Available at : [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/ef3e0bd958c2b818c1256ab9003294ad?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/ef3e0bd958c2b818c1256ab9003294ad?Opendocument); and, Human Rights Committee, Communication No. 28/1978, views adopted 29 October 1980, 11th Session, *L Weinberger Weisz v. Uruguay*, Committee Report, 1981, Annex IX, paras16-17. Available at: www.unhcr.ch/tbs/doc.nsf/0/367ae61eb74efefc1256ab20042b749?Opendocument

³⁸ See for example European Court on Human Rights, *Lingens v. Austria*, Judgement of 8 July 1986, Series A no. 103, which states: "The limits of acceptable criticism are wider as regards a politician than

as regards a private individual. A politician inevitably and knowingly lays himself open to close scrutiny of every word and deed and must consequently display a greater degree of tolerance.”

³⁹ Law 88 for the Protection of National Independence and Economy in Cuba (Ley No. 88 de Protección de la Independencia Nacional y la Economía de Cuba), 16 February 1999, Articles 4.1 and 5.1.

⁴⁰ In December 1996, the Cuban National Assembly had adopted the Law of Reaffirmation of Cuban Dignity and Sovereignty (Law No. 80, Ley de Reafirmación de la Dignidad y Soberanía Cubana) which made it illegal for anyone in Cuba to collaborate directly or indirectly in favour of the application of the US Helms-Burton Act.

⁴¹ For an analysis of Law 88, see: Amnesty International, *Cuba: “Essential measures”? Human rights crackdown in the name of security*, (Index: AMR 25/017/2003) pp28-32.

⁴² Article 13, UDHR

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

⁴³ Extract from a conversation with Amnesty International.

⁴⁴ See IACHR, *Annual Report 2009*, para297.

⁴⁵ The US Interest Section in Cuba is a US government office, based in the former US Embassy building in Havana, responsible for consular and other services in the country.

⁴⁶ Volume 22, p114, Volume 3, p66.

⁴⁷ UNESCO, Address by Mrs Irina Bokova, Director-General of UNESCO, on the occasion of the University of Queensland Centenary Oration, Opening Ceremony for World Press Freedom Day Celebrations, Brisbane, Australia, 2 May 2010. Available at: http://portal.unesco.org/ci/en/ev.php-URL_ID=30329&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁴⁸ Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3 (1968), point 2.

⁴⁹ Upon signature of the ICCPR, Cuba declared that “[t]he rights protected under this Covenant are enshrined in the Constitution of the Republic and in national legislation”. At the same time, it emphasized that “[w]ith respect to the scope and implementation of some of the provisions of this international instrument, Cuba will make such reservations and interpretative declarations as it may deem appropriate”.

⁵⁰ Human Rights Council, *Resolution on the right to freedom of opinion and expression*, adopted without a vote, 2 October 2009, para5(p), A/HRC/RES/12/16.

⁵¹ This three-part test is defined in Human Rights Committee, General Comment No. 10, Freedom of Expression (Article 19), 29 June 1983.

⁵² European Court of Human Rights, *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para.49. The principle of legality is enshrined in Article 15 of the ICCPR, which requires provisions of criminal law to be sufficiently precise.

⁵³ Human Rights Committee, General Comment No. 10, para4.

⁵⁴ European Court of Human Rights, *Lingens v. Austria*, 8 July 1986, 8 EHRR 407, paras39-40.

⁵⁵ Human Rights Council, *Resolution on the right to freedom of opinion and expression*.

⁵⁶ Article 18 of the Vienna Convention on the Law of Treaties states: "A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed." (UN Doc. A/CONF.39/27 (1969), 1155 U.N.T.S. 331). Cuba ratified the Vienna Convention in September 1998.

⁵⁷ For example, the American Convention on Human Rights (Article 13), the African Charter on Human and People's Rights (Article 9) and the European Convention on Human Rights (Article 10) all guarantee the right to freedom of expression in similar terms to Article 19 of the ICCPR.

⁵⁸ The Johannesburg Principles were developed and adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by the NGO Article 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of Witwatersand, South Africa. See www.article19.org.

⁵⁹ The IACHR stated in 2002: "The Johannesburg Principles constitute a set of voluntary principles drafted by a committee of international experts on human rights and media law, and are frequently invoked by the UN Commission on Human Rights (see, e.g., Commission on Human Rights Resolution 2002/48, UN Commission on Human Rights, 58th Sess., UN Doc. E/CN.4/RES/2002/48 (2002), Preamble; Resolution 2001/47, UN Commission on Human Rights, *supra* note 676), the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (See, e.g., Report of the Special Rapporteur, Mr. Abid Hussain, pursuant to Commission on Human Rights resolution 1993/45, UN Commission on Human Rights, 52nd Sess., E/CN.4/1996/39, 22 March 1996, para. 4.), the UN Special Rapporteur on the independence of judges and lawyers (See, e.g., Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Kumaraswamy, Addendum, Report on the mission to Peru, UN Commission on Human Rights, 54th Sess., E/CN.4/1998/39/Add.1, 19 February 1998, introduction.) and the Special Representative of the Secretary-General on human rights defenders (See, e.g., Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders in accordance with Commission resolution 2000/61, UN Commission on Human Rights, 57th Session, E/CN.4/2001/94, 26 January 2001, para. 14)." See IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rec. 1 corr., footnote 687. Available at: www.cidh.org/Terrorism/Eng/toc.htm

⁶⁰ Johannesburg Principles, Principle 2(a).

⁶¹ Johannesburg Principles, Principle 2(b).

⁶² On 31 January 1962 the government of Cuba was excluded from participating in the inter-American system through Resolution VI adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs held in Uruguay. However, in spite of the Cuban official exclusion from the Organization of American States (OAS) and its bodies, the IACHR has reiterated its competence to evaluate the human rights situation in Cuba. Indeed, the IACHR stated that it "has also considered that the purpose of the OAS in excluding Cuba from the inter-American system was not to leave the Cuban people without protection. That government's exclusion from the regional system in no way means that it is no longer

bound by its international human rights obligations.” The Resolution that excluded the government of Cuba from participation in the OAS was rendered null and void by the General Assembly of the OAS on 3 June 2009, during the VIII Meeting of Consultation of Ministers of Foreign Affairs in Honduras. Nevertheless, the Cuban government ratified its decision not to return to the OAS. See: IACHR, *Annual Report 2009*, OEA/Ser.L/V/II. Doc. 51, corr. 1, 30 December 2009, paras 212-218. Available at: www.cidh.org/annualrep/2009eng/TOC.htm

⁶³ See, for example, Article 2 of the ICCPR.

⁶⁴ “An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.” Inter-American Court of Human Rights, Judgement in the case of *Velásquez Rodríguez*, 29 July 1988, Series C No. 4, para172. See also Judgement in the case of *Godínez Cruz*, 20 January 1989, Series C No. 5, paras181, 182 and 187.

⁶⁵ In looking at the obligations of the state of Honduras under the American Convention on Human Rights, the Court held that states have a duty to “organize the governmental apparatus, and in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.” Inter-American Court of Human Rights, Judgement in the case of *Velásquez Rodríguez*, para166.

⁶⁶ A ruling from the European Court of Human Rights stated that “[g]enuine effective exercise of th[e] freedom [of expression] does not depend merely on the State’s duty not to interfere, but may require positive measures of protection even in the sphere of relations between individuals”. European Court of Human Rights, *Özgür Gündem v Turkey (2001)* 31 EHRR 49, para42.



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RESTRICTIONS ON FREEDOM OF EXPRESSION IN CUBA

In recent years, the Cuban government has taken some limited steps to address long-standing human rights concerns in the country. However, the legal framework and the complex state machinery built up over the years to silence government opponents remain largely intact. The state has a virtual monopoly of press and broadcast media and tight restrictions apply to the internet. As a result, it is virtually impossible for most Cubans to express their ideas and opinions or to gain access to information free from censorship.

Journalists and political and human rights activists continue to try to use the possibilities offered by new technology to bypass state censorship and defy government control. However, anyone who expresses views critical of the government runs the risk of harassment, arbitrary detention and criminal prosecution. Dozens of prisoners of conscience continue to serve long prison sentences in Cuba for exercising freedom of expression.

While the tentative steps taken so far to enhance respect for human rights are welcome, much more needs to be done to address the plight of hundreds of government critics facing continued repression. The government must fulfil its obligation to ensure that all those living in Cuba are able to exercise their right to peacefully express their views without fear of reprisal. Amnesty International calls on the authorities to stop the harassment and intimidation of dissidents, release prisoners of conscience, amend repressive legislation, and enable greater exchange of information through the internet and other media.

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