



**“YOUR MIND IS IN PRISON”**

CUBA'S WEB OF CONTROL OVER FREE  
EXPRESSION AND ITS CHILLING EFFECT  
ON EVERYDAY LIFE

**AMNESTY  
INTERNATIONAL**





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EFFECT ON EVERYDAY LIFEAMNESTY INTERNACIONAL

Amnesty International

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# 1. INTRODUCTION

The past few years have been a bitter-sweet period for those hoping for the Cuban authorities to relax their iron grip on people's right to freedom of expression and assembly. High-profile visits by the International Committee of the Red Cross and Pope Francis in 2015, as well as by the UN Special Rapporteur on trafficking in persons, especially women and children and the UN Independent Expert on human rights and international solidarity in 2017, appeared to herald greater political openness and to offer some hope that Cuba might begin to open itself up to increased international scrutiny by independent human rights monitors. A tourism boom, the expansion of Wi-Fi-internet hotspots, even a first-time performance by the rock band the Rolling Stones (foreign rock music was deemed subversive in Cuba for decades) were other small signs that Cuba might be releasing its tight control on freedom of expression.

The re-establishment of diplomatic relations between Cuba and the USA starting in December 2014, followed by then President Obama's state visit to Cuba in 2016 also seemed to promise the beginning of an end to the economic embargo which for decades has perpetuated the Cold War rhetoric of "us" and "them" and undermined ordinary Cubans' enjoyment of economic and social rights.<sup>1</sup>

This optimism makes the jarring reality all the more marked.

Hours before President Obama landed in Cuba, dozens of activists and independent journalists were detained.<sup>2</sup> In a joint press conference with the US President, President Raúl Castro continued to flatly deny that there were any "political prisoners" in Cuba.<sup>3</sup> In contrast, in the past three years, Amnesty International has named 11 prisoners of conscience in Cuba, and there are likely many more. Further, a national human rights organization, not recognized by the Cuban authorities, reported an average of 762 politically motivated and arbitrary detentions a month between 2014 and 2016.<sup>4</sup>

Human rights lawyers from the organization Cubalex were harassed and intimidated,<sup>5</sup> despite having been granted precautionary measures by the Inter-American Commission on Human Rights (IACHR) to protect their lives, personal integrity and activities as human rights defenders.<sup>6</sup> In May 2017, at least 12 of its members were granted asylum in the USA after the Cuban authorities threatened to bring criminal charges against them related to a tax investigation.

The Committee to Protect Journalists (CPJ) ranked Cuba 10<sup>th</sup> on its 2015 list of the world's most censored countries and classified its laws on free speech and press freedom as the most restrictive in the Americas.<sup>7</sup> The dominant official

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<sup>1</sup> Amnesty International, *The US Embargo Against Cuba: Its impact on economic and social rights*, (Index: AMR 25/007/2009).

<sup>2</sup> *New York Times*, 'As Obama Arrives, Cuba Tightens Grip on Dissent,' 20 March 2016, available at: [www.nytimes.com/2016/03/21/world/americas/cuba-obama-visit-havana-dissidents.html](http://www.nytimes.com/2016/03/21/world/americas/cuba-obama-visit-havana-dissidents.html)

<sup>3</sup> Washington Post, 'Castro denies Cuba has political prisoners, demands list', 21 March 2016, Available at: [www.washingtonpost.com/video/world/castro-denies-cuba-has-political-prisoners-demands-list/2016/03/21/f38afede-ef9a-11e5-a2a3-d4e9697917d1\\_video.html?utm\\_term=.864db38ff92c](http://www.washingtonpost.com/video/world/castro-denies-cuba-has-political-prisoners-demands-list/2016/03/21/f38afede-ef9a-11e5-a2a3-d4e9697917d1_video.html?utm_term=.864db38ff92c)

<sup>4</sup> Comisión Cubana de Derechos Humanos y Reconciliación Nacional, 'Cuba: Algunos Actos de Represión Política en el mes de Julio de 2017'.

<sup>5</sup> Amnesty International, *Urgent Action: Human Rights Lawyers Under Threat*, (Index: AMR 25/5156/2016); IACHR, 'IACHR Concerned over Treatment of Human Rights Defenders in Cuba', 6 September 2016.

<sup>6</sup> MC 96/15 - Miembros del Centro de Información Legal Cubalex, Cuba AMPLIACIÓN, Available at: [www.oas.org/es/cidh/decisiones/cautelares.asp](http://www.oas.org/es/cidh/decisiones/cautelares.asp)

<sup>7</sup> Committee to Protect Journalists, 'Connecting Cuba; More Space for Criticism but Restrictions Slow Press Freedom Progress', New York, 2016, p.11, available at: [www.cpj.org/reports/2016/09/connecting-cuba-internet-bloggers-press-freedom-criticism.php](http://www.cpj.org/reports/2016/09/connecting-cuba-internet-bloggers-press-freedom-criticism.php)

media remains heavily censored and limited. While an increasing range of autonomous digital media projects has emerged,<sup>8</sup> alternative online news sources operate within a legal limbo that exposes journalists and media workers to the risk of harassment and arbitrary detention. Moreover, their webpages are often blocked by the authorities in Cuba.<sup>9</sup>

In early 2017, the expulsion of a journalism student reportedly pushed out of university for being a member of the group Somos+, considered a dissident organization by the authorities, received widespread international and independent national media coverage. According to press reports, one of Cuba's most famous singers, Silvio Rodríguez, called the expulsion an "injustice" and "clumsy and obtuse."<sup>10</sup>

In June 2017, President Trump's administration took an almost complete U-turn on US political rhetoric towards Cuba<sup>11</sup> reducing the likelihood that the US Congress will pass legislation to lift the economic embargo on Cuba. Despite the easing of some restrictions by the former Obama administration, which has allowed for increased travel and remittances between the two countries, and annual votes by a majority of UN member states to lift it, the embargo remains in place. Amnesty International has consistently recommended that the US embargo be lifted, based on its negative impact on the economic and social rights of the Cuban population.<sup>12</sup>

Meanwhile, a recent poll by the University of Chicago found that many Cubans "feel stuck in the current economic climate."<sup>13</sup> Few expect the economy will improve anytime soon and 46% described it as poor or very poor. Cuba's fragile economy has inevitably been impacted by the ongoing economic<sup>14</sup> and human rights crisis in Venezuela – a provider of significant economic aid to Cuba in recent years.

Exceptionally low salaries – the average monthly salary is approximately USD27 a month – are insufficient to cover basic needs.<sup>15</sup> Ordinary Cubans continue to struggle, despite the government's food ration system, taking additional jobs in the informal sector and receiving remittances from family members living overseas.<sup>16</sup>

In July 2017, the Secretary General of the Central Union of Cuban Workers (Central de Trabajadores de Cuba, CTC), the country's only officially recognized trade union, stated in an interview that average salaries are unable to meet workers' basic needs and create "apathy in work, lack of interest and significant labour migration", an issue that he said is being evaluated by decision-making bodies.<sup>17</sup>

While many Cubans interviewed for this briefing told Amnesty International that they felt Cuba has made important

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(hereinafter: 'CPJ, Connecting Cuba', 2016).

<sup>8</sup> T. Henken, 'Cuba's Digital Millennials: Independent Digital Media and Civil Society on the Island of the Disconnected', *Social Research: An International Quarterly*, Volume 84, No. 2, Summer 2017, pp.429-456.

<sup>9</sup> Amnesty International, *Cuba's Internet paradox: How controlled and censored Internet risks Cuba's achievements in education*, 29 August 2017.

<sup>10</sup> BBC Mundo, "Me expulsaron por no comulgar con las ideas comunistas": Karla María Pérez, la estudiante de periodismo a la que echaron de una universidad en Cuba por ser de un grupo disidente", 19 April 2017, available at: [www.bbc.com/mundo/noticias-america-latina-39647951](http://www.bbc.com/mundo/noticias-america-latina-39647951)

<sup>11</sup> BBC, 'Trump partially rolls back Obama's Cuba thaw', 16 June 2017, available at: [www.bbc.com/news/world-us-canada-40309598](http://www.bbc.com/news/world-us-canada-40309598)

<sup>12</sup> Amnesty International, *The US Embargo Against Cuba: Its impact on economic and social rights*, (Index: AMR 25/007/2009) documents the detrimental impact of the US embargo on the efforts by UN agencies and programmes supporting the Cuban government in the progressively realization of economic and social rights and particularly how trade and financial sanctions affect the provision of health care in Cuba.

<sup>13</sup> NORC at the University of Chicago, 'A Rare Look Inside Cuban Society: A New Survey of Cuban Public Opinion', 2017, p.2.

<sup>14</sup> See Ricardo Torres Pérez, 'Updating the Cuban Economy: The First 10 Years', *Social Research: An International Quarterly*, Volume 84, No. 2, Summer 2017, pp.268 and 271; also Associated Press, 'Cuba weathers storm in Venezuela but future looks uncertain', 26 April 2017.

<sup>15</sup> According to ECLAC, "Although there were nominal increases and several measures were taken to improve salaries, in real terms, in 2010 salaries were 27% of the 1989 level and the complementary safety net had deteriorated, therefore it is officially recognized that current wages are insufficient to cover basic needs." See C. Mesa-Lago, 'Social Protection Systems in Latin America and the Caribbean: Cuba,' Economic Commission for Latin America and the Caribbean (ECLAC), 2013, p.42 (hereinafter: C. Mesa-Lago, *Social Protection Systems in Latin America and the Caribbean: Cuba*); Also see G. Thale and C. Boggs, 'Labour Rights and Cuba's Economic Reform', WOLA, p.2.

<sup>16</sup> According to ECLAC: "Despite low and declining salaries, cuts in rationing and price increases, part of the population manages to cover basic needs because they have other sources of income: foreign remittances received by 65% of the population; payments in foreign currency to employees of enterprises with foreign investment; legal or illegal income of the selfemployed; lunches provided in work and school canteens (although the former have been eliminated and the latter reduced); and theft of State goods for sale or personal use. In addition, most people have their own housing, and education and health continue to be free." See C. Mesa-Lago, *Social Protection Systems in Latin America and the Caribbean: Cuba* p.16.

<sup>17</sup> Lissy Rodríguez Guerrero, 'Aporte y compromiso: variables claves en la movilización de los trabajadores', Granma, 30 June 2017

human rights advances in the provision of free health care and access to education and valued the fact that there is little organized crime in the country, many also described the day-to-day struggle of having to make difficult choices between feeding and clothing their families.

People interviewed by Amnesty International said that food rations – which have been progressively reduced – are insufficient to last the month. And while education is free, many Cubans find it difficult to buy the things their children need to attend school, such as uniforms, backpacks and other basic supplies. For example, an administrator in a state food factory told Amnesty International she earned USD20 a month at a time when shoes for her child could easily cost USD30. Many people interviewed said they had to break the law to make ends meet. The same administrator also described how one of her job responsibilities was to ensure that workers did not steal bread or other essentials they need to survive.

Former President Fidel Castro's death in November 2016, and President Raúl Castro's announcement that he would step down in 2018 continue to fill opinion columns with speculation about Cuba's future. But while in political quarters and international news rooms Cuba remains a hot topic, tens of thousands of Cubans continue to leave the country. Their individual reasons may vary, but common threads are disillusion with Cuba's changing international diplomacy, a lack of confidence that salaries will improve<sup>18</sup> and scepticism at the idea that a post-Castro administration will do anything to untangle the tight web of control on freedom of expression. Amnesty International's interviews with Cuban migrants highlight this widespread and profound lack of belief in the prospect of structural change.

This briefing examines limitations on freedom of expression that persist in Cuba despite the context of purported political openness, a tourism boom and a changing economic context. It is based on research carried out between December 2016 and September 2017, although Amnesty International's lack of access to Cuba has posed a significant limitation on providing an analysis of human rights issues in the country.<sup>19</sup>

The interviews the organization conducted with Cubans for this briefing have made it possible to identify the impact on a wide range of people of 50 years of serious restrictions on the rights to freedom of expression and peaceful assembly. The failure of the authorities to respect and ensure these rights has had an impact far beyond the ranks of those directly targeted for their activism or views and seeped into the everyday experiences and hopes of people from all walks of life. This briefing focuses on those wider influences and on the human rights advances that those affected would want to see.

As Cuba prepares for elections in 2018, the diverse Cuban voices at the centre of this research highlight the need for authorities to promote reforms that ensure the respect and protection of human rights, including a review of criminal laws and practices which are inconsistent with international human rights law and standards and that unduly limit freedom of expression. They also underscore the need for the authorities to adhere to international labour standards which Cuba has undertaken to uphold by ratifying International Labour Conventions. The briefing ends with a set of recommendations calling on the authorities to end unjust restrictions not only on those unfairly deprived of their physical freedom, but also on those who feel their minds are imprisoned and their lives stunted because they are deprived of their right to freedom of expression.

## METHODOLOGY

In March 2017, Amnesty International carried out a scoping mission to Nuevo Laredo on the Mexico-USA border, where many Cuban migrants were stranded, and conducted semi-structured interviews with 24 individuals, as well as several group interviews with a total of approximately 16 participants, in order to better understand the reasons why they were migrating and the human rights situation in Cuba. In May 2017, the organization conducted in-depth individual interviews with an additional 40 Cuban migrants in Tapachula, on the Mexico-Guatemala border.

The bulk of the information that follows is based on the 64 individual interviews. Interviewees ranged in age from 19 to 65 and most were men.<sup>20</sup> Informed consent principles were applied to each interview. For interviewees' safety and to mitigate the risk of reprisals towards their relatives still in Cuba, identifying details have been changed and pseudonyms used.

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<sup>18</sup> According to the National Office of Statistics and Information of the Republic of Cuba the average salary in 2015 was 687 pesos per month (approximately USD25). See Oficina Nacional de Estadística e Información, República de Cuba, 'Salario medio en Cifras: Cuba 2015', April 2016. More recent news reports place the average monthly salary at 740 pesos (approximately USD27 per month). See Cubadebate, 'El salario medio en Cuba crece a 740 pesos (+ Infografía)', 30 June 2017, available at: [www.cubadebate.cu/noticias/2017/06/30/ha-crecido-el-salario-medio-en-cuba-infografia](http://www.cubadebate.cu/noticias/2017/06/30/ha-crecido-el-salario-medio-en-cuba-infografia). See also G. Thale and C. Boggs, 'Labour Rights and Cuba's Economic Reform,' WOLA, p.2.

<sup>19</sup> Amnesty International has an internal policy of not accessing countries, in most circumstances, without authorization from the government.

<sup>20</sup> The majority of migrants which Amnesty International was able to interview were male. While the organization also interviewed women, many of those who had taken the dangerous route from Guyana, through eight or ten countries, including the Darien Gap jungle, were male.

To ensure thorough processing of the hours of interviews conducted, researchers used research software (NVIVO). The software facilitates codification of data and also permits pooling of large quantities of additional sources, such as news articles by official and independent Cuban media and academic articles by organizations that do have access to Cuba.

Amnesty International values the input and viewpoints of authorities in its analysis of the human rights situation in any given country. Regrettably, Cuba continues to be the only country in the Americas where the organization is denied access. Amnesty International's last official visit to Cuba was in 1990 and since then it has had only limited dialogue with the Cuban authorities abroad. President Raúl Castro has still not responded to the organization's request to visit the country, dated 14 April 2016. Further, Amnesty International wrote to the Cuban authorities to make specific inquiries related to this research, but at the time of publishing had not received an official response.

The transitory nature of migrant people represented an additional challenge in following up with people who were interviewed. The fact that Cuban authorities and lawyers rarely provide official court documents was a further barrier to documentation.

To mitigate these limitations in methodology, in the context of a highly polarized political environment, Amnesty International held over a dozen interviews and meetings with a wide number of sources with expertise on Cuba, including Cuban NGOs, activists, academics, independent trade unionists and journalists. Some only agreed to speak to the organization on the condition of anonymity, hence they have not been named in this briefing.



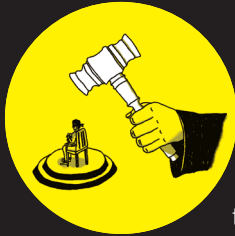
## 2. THE TIP OF THE ICEBERG

**“In Cuba everybody knows that if you get involved in an opposition party, you will always end up in prison. Always, always, always...”**

25-year-old pizza cook interviewed in Tapachula, Mexico, May 2017

When Amnesty International was established in 1961, the organization wrote a letter to the Cuban Embassy in London expressing concern about a prisoner of conscience. Since then, the organization has identified thousands of cases of people unjustly detained in Cuba solely for the peaceful exercise of their rights to freedom of expression and peaceful assembly. In the 1990s the Cuban authorities started to shift away from mostly using long-term imprisonment to silence political criticism and towards the use of frequent short-term arbitrary arrests and detention, a tactic that continues to this day; Amnesty International has consistently denounced this tactic of repression.

# FROM AMNESTY INTERNATIONAL'S ARCHIVES: CUBA'S 50-YEAR CAMPAIGN AGAINST FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY



**1961:** The Revolutionary Tribunals issue mass charges and hand down long sentences ranging from five to 30 years' imprisonment. In September, five people are sentenced to death and executed the same day.

**1977:** Amnesty International delegates visit Cuba and outline key concerns regarding prisoners of conscience and unfair trials.

**1979:** Hundreds of prisoners of conscience are released, including some *plantados*, prisoners known for their strong opposition to Fidel Castro and for refusing to participate in so-called "rehabilitation programmes".

**1981:** Amnesty International releases a special action raising concerns that the Penal Code allows for use of the death penalty as punishment for a substantial number of crimes deemed "counter-revolutionary".



**1988:** Amnesty International's Secretary General and staff visit Cuba and have wide access to government officials, prisons and the psychiatric hospital and release a report on their findings.

Members of the Association for Free Art, an unofficial organization of artists and intellectuals in Cuba, are detained in their homes and over a year later, seven are charged with "illegal association" and receive sentences ranging from nine to 18 months' imprisonment.



**1989:** Arrests are made as activists try to stage a peaceful demonstration during the visit of Mikhail Gorbachev, President of the Soviet Union.

**1990:** Amnesty International conducts an official visit to Cuba, and has not been allowed back by the authorities since.

**1990:** A number of foreign journalists are expelled for reports critical of the government. The authorities also

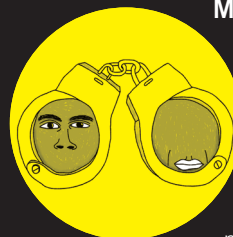
suspend the International Committee of the Red Cross' access to conduct periodic inspections of prisons.



**1992:** Amnesty International publishes *Silencing the Voices of Dissent* and a list of prisoners of conscience. Among them is a dissident film maker who was arrested as he tried to film an "act of repudiation" (demonstrations led by government supporters and involving state security officials) and subsequently charged with contempt.



**1994:** Hundreds are in prison on charges of "dangerousness". The numbers of people fleeing Cuba reaches levels not known since 1980. Amnesty International delegates visit the US Naval Base at Guantánamo Bay to investigate refugee protection for Cuban and Haitian people taken there after being intercepted at sea by the US authorities. The organization concludes that hundreds of Cuban migrants would be at risk of human rights abuses if returned.



**Mid 1990s:** The Cuban authorities shift tactics away from long-term imprisonment of political activists and human rights defenders and begin to subject them to different forms of harassment, mainly short-term arrests, frequent questioning by the police, fines, threats against them and their families, loss of employment and acts of repudiation.

**1995-1996:** Amnesty International issues a flurry of Urgent Actions for independent journalists and political activists subjected to arbitrary arrest and detention. In one case, an activist is detained an hour after speaking to the organization by phone.

**July 1996:** Amnesty International notes a deliberate policy by the authorities to force government critics into exile by threatening them with imprisonment if they do not leave the island; a tactic designed to rid the country of so-called "counter-revolutionaries".



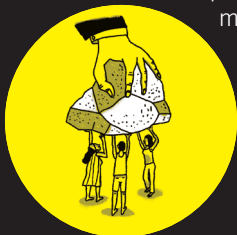
**1998:** Amnesty International and Reporters sans Frontières issue a joint statement welcoming the release of 90 political prisoners following the Pope’s visit, but express concern for those still detained.

**2002:** A group of 21 Cuban men crash a public bus into the Mexican Embassy grounds in Havana in an attempt to seek asylum. People gather spontaneously outside the Embassy and many are detained by the authorities. Days before, the Mexican Minister of Foreign Relations on a visit to the USA had indicated to the press in Miami that the doors of the Mexican Embassy were open to Cubans.



**2003:** Following a crackdown on the dissident movement, Amnesty International names 75 prisoners of conscience. Prison terms for those detained and subjected to summary trials range from 26 months to 28 years’ imprisonment.

**2009:** The Cuban government uses the denial of exit visas as a punitive measure against government critics and dissidents, impacting on their right to freedom of movement.



**2009:** Amnesty International calls on President Obama and the US Congress to lift the embargo on Cuba and details how it undermines economic and social rights, particularly the right to health.

**2012:** Routine repression and short-term political detentions and harassment continue. As Pope Benedict’s visit ends in Cuba, there is a clampdown on political activists and human rights defenders and a communications blockade.

**2014:** The Obama administration and Cuban government announce plans to restore diplomatic relations after decades of Cold War estrangement. The remaining members of the “Cuban Five” held in the USA on espionage charges are released.

**2015:** Amnesty International names graffiti artist, Danilo Maldonado Machado, (“El Sexto”) a prisoner of conscience after he is imprisoned for painting “Fidel” and “Raúl” on the backs of two pigs. He is held in detention for 10 months without charge or being presented before a judge.



**2017:** Yulier Perez, a graffiti artist known for painting dilapidated walls in Havana, was arbitrarily detained after months of intimidation and harassment from the authorities for freely expressing himself through his art.

The repression of dissent persists in today’s Cuba. Human rights defenders and political activists continue to be intimidated, harassed and detained at a dizzying pace. The Cuban Commission for Human Rights and National Reconciliation (Comisión Cubana de Derechos Humanos y Reconciliación Nacional, CCDHRN), a Cuban NGO not officially recognized by the state, recorded 8,616 arbitrary detentions in 2015 rising to 9,940 in 2016; a monthly average of 718 and 827 respectively.<sup>21</sup> According to news agency Hablemos Press, 94 of those arbitrarily detained in 2015 were members of the independent press.<sup>22</sup>

The Cuban authorities continue to use an array of provisions of the Penal Code to stifle dissent and punish those overtly critical of the government. Commonly used provisions include contempt of a public official (*desacato*), resistance to public officials carrying out their duties (*resistencia*) and public disorder (*desórdenes públicos*).<sup>23</sup>

<sup>21</sup> CCDHRN, ‘Cuba: Algunos Actos de Represión Política en el mes de Julio de 2017’.

<sup>22</sup> Arco Iris Libre de Cuba, Centro de Información Hablemos Press, Centro de Información Legal CubaLex, Mesa de Diálogo de la Juventud Cubana Plataforma Femenina Nuevo País, Situación del Derecho a la Libertad de Opinión y Expresión en Cuba; Reporte preparado para el Relator Especial de las Naciones Unidas sobre la Promoción y Protección del Derecho a la Libertad de Opinión y de Expresión, Sr. David Kaye, July 2016, p.12 (hereinafter: Arco Iris Libre de Cuba et al, Situación del Derecho a la Libertad de Opinión y Expresión en Cuba).

<sup>23</sup> See Amnesty International, *Restrictions on Freedom of Expression in Cuba*, (Index: AMR 25/005/2010), pp.8-16 for a summary of the laws which continue to be regularly used to restrict freedom of expression.

**“They [the government] dress the police up as civilians. They bring them from other provinces so the community doesn’t recognize them, and they beat up those women. It’s criminal to see, outrageous. And they simply take to the streets, without weapons, without anything - their weapons are their placards...asking for the freedom of Cuba.”**

A sportsman interviewed in Nuevo Laredo, Mexico, March 2017, talking about the Ladies in White

Representatives of the Ladies in White, a group of female relatives of prisoners detained on politically motivated grounds, continue to be arbitrarily detained, usually for several hours each weekend, solely for exercising their right to freedom of association and peaceful assembly, despite being beneficiaries of precautionary measures granted by the IACHR as well as repeated calls by Amnesty International and others for the intimidation against them to end.<sup>24</sup> According to the CCDHRN and dozens of Cubans who spoke to Amnesty International for this briefing, the Ladies in White remain one of the primary targets of repression by the authorities and their arrests are often accompanied by violent beatings by law enforcement officials and state security agents dressed as civilians.

**“[President] Raúl says there are no political prisoners in Cuba. That’s stupidity... Of course there aren’t any “political prisoners”, because if you participate in a protest, you get accused of altering public order, and that’s what you get imprisoned for. That’s why there aren’t any political prisoners in Cuba. But anyone knows that isn’t the case.”**

28-year-old informal restaurant worker interviewed in Tapachula, Mexico, May 2017

Political opposition and human rights groups continue to be another target of state oppression. At the time of writing, the Patriotic Union of Cuba (Unión Patriótica de Cuba, UNPACU), claimed that dozens of its members were detained for political motives. As the state continues to fabricate evidence and use trumped-up charges for common crimes as a way to harass, intimidate and detain political opponents, Amnesty International has been unable to independently assess each case. However, in March 2017, several UNPACU members were arbitrarily detained in an early morning raid in four of the leaders’ homes.<sup>25</sup> Former prisoner of conscience, Jorge Cervantes, a founder of UNPACU, was detained for approximately three months between May and August 2017.<sup>26</sup> At the time of writing, the leader of the pro-democracy Christian Liberation Movement, Dr Eduardo Cardet Concepción, a prisoner of conscience, remained in prison, having been given a three-year prison sentence in March 2017.<sup>27</sup> Eduardo Cardet was detained on 30 November, five days after Fidel Castro’s death, and subsequently convicted for attacking an official of the state during the detention. Various witnesses who spoke to Amnesty International counter the official account. Prior to his arrest, Eduardo Cardet gave a number of interviews published in international media in which he was critical of the Cuban government.

In 2016, the IACHR expressed concern that ever since its 1992-1993 Annual Report on Cuba it had observed the use of arbitrary arrests as a means of harassing and intimidating those critical of the government. It noted its particular alarm at the “sudden increase in summary arbitrary detentions” in 2016 and the “surge in the violence” with which the detentions were carried out.<sup>28</sup> Given the lack of official data on such detentions, the IACHR requested that the government provide further information. It did not receive a response.<sup>29</sup>

<sup>24</sup> See Amnesty International, *Cuba’s Ladies in White targeted with arbitrary arrest and intimidation*, 22 August 2011; Amnesty International, *Cuba: Routine Repression: Political Short-term detentions and harassment in Cuba*, (Index: AMR 25/007/2012).

<sup>25</sup> *El Mundo*, ‘Espectacular redada de la policía política contra la principal organización disidente cubana’, 9 March 2017, available at: [www.elmundo.es/internacional/2017/03/09/58c09654ca4741424a8b45bd.html](http://www.elmundo.es/internacional/2017/03/09/58c09654ca4741424a8b45bd.html)

<sup>26</sup> Amnesty International, *Urgent Action: Opposition Activist in Maximum Security Prison*, (AMR 25/6671/2017).

<sup>27</sup> Amnesty International, *Urgent Action: Human Rights Defender’s sentence upheld*, (AMR 25/6363/2017).

<sup>28</sup> IACHR, Cuba Annual Report, para.45.

<sup>29</sup> IACHR, Cuba Annual Report, para 47.



The judiciary continues to be 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 from expressing such views.<sup>30</sup> In 2012, the UN Committee against Torture noted with concern that there had been no significant changes in Cuba's justice system in recent years, and expressed particular concern about the lack of independence from the executive and legislative branches within the judiciary and legal profession.<sup>31</sup>

Articles 208-209 of the Penal Code prohibit so-called illicit associations, meetings or demonstrations of groups not legally registered. In practice, it is impossible for independent human rights organizations, trade unions and other groups not authorized by the state to legally register, meaning they operate in a murky legal environment which leaves them at high risk of prosecution. Additionally, all defence lawyers must belong to the National Organization of Collective Law Offices which multiple sources say is closely controlled by the state. Applications by organizations of independent lawyers to legally register are consistently denied.

For example, Cubalex, a group of independent human rights lawyers and the beneficiaries of precautionary measures from the IACHR,<sup>32</sup> has been unable to register for years.<sup>33</sup> In September 2016, the authorities searched its centre of operation without a warrant, confiscated laptops and documents and gave notice that the organization was under a tax investigation with potentially criminal consequences.<sup>34</sup> According to the Cubalex, on 3 May 2017, its president, Laritza Diversent, was summoned by the Prosecutor General and informed that members of the organization would be accused of breaking the law for receiving financial support for the provision of legal assistance, and for falsifying documents.<sup>35</sup> The organization had been receiving funding from a US institution to provide legal assistance and human rights monitoring. Human rights defenders who receive foreign, particularly US, funding are stigmatized because of the perception fostered that all dissidents are agents of the US government.<sup>36</sup>

People who have been detained for exercising their freedom of expression or peaceful assembly repeatedly told Amnesty International about the difficulties they face in accessing a lawyer of their choice and criticized the lack of independence of public lawyers who often fail to exercise due diligence in their cases. Defence lawyers almost never provide families with copies of court documents, creating significant barriers for victims in accessing justice at the national and international level.

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<sup>30</sup> In the chapter on Cuba in its 2016 Annual Report, the IACHR, states: "As regards the judicial guarantee regarding the independence of the courts from the other public authorities, the Commission has already referred to Article 121 of the Constitution of Cuba, which provides: 'The tribunals constitute a system of State organs, structured with functional independence from any other, and subordinate hierarchically to the National Assembly of the People's Power and the Council of State.' The powers of the Council of State include 'issuing general instructions to the courts through the Governing Council of the People's Supreme Court.' In the view of the Commission, the subordination of the courts to the Council of State, presided over by the Head of State, represents direct dependence of the judicial branch on the dictates of the executive branch. The IACHR has considered that this dependence on the executive does not provide for an independent judiciary capable of providing guarantees for the enjoyment of human rights."

<sup>31</sup> Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention: Cuba, 25 June 2012, para.18

<sup>32</sup> CIDH, Resolución 56/2016, Medida Cautelar No. 96-15, Ampliación de beneficiarios a favor de miembros de Cubalex con respecto a Cuba, 14 November 2016, available at: [www.oas.org/es/cidh/decisiones/pdf/2016/MC96-15-ES-ampliacion.pdf](http://www.oas.org/es/cidh/decisiones/pdf/2016/MC96-15-ES-ampliacion.pdf)

<sup>33</sup> Cubalex, 'Actualización de la situación de los miembros de Cubalex,' received by email 5 September 2017. According to Cubalex, the organization was denied registration by the Minister of Justice in September 2016 on the grounds that the organization had the aim of damaging social interests, violating Article 62 of the Constitution which limits freedom of expression to that which is consistent with the objectives of the socialist state.

<sup>34</sup> Amnesty International, *Urgent Action: Human Rights Lawyers under threat*, (Index: AMR 25/5156/2016); IACHR, Annual Report 2016, para.58.

<sup>35</sup> According to the Cubalex, the Prosecutor General refused to provide a written copy of the allegations but indicated that members of the organization would also be accused of falsifying documents and offering bribes to state officials to gain ownership of the property where Cubalex is based. (Another member of Cubalex, Julio Alfredo Ferrer Tamayo, is currently serving a three-year-sentence on similar charges.)

<sup>36</sup> G. Thale and C. Boggs, 'Labour Rights and Cuba's Economic Reform,' WOLA, p. 10.

## 2.1 THE RIGHTS TO FREEDOM OF EXPRESSION AND ASSOCIATION

Cuba, a founding member of the UN, voted in favour of the Universal Declaration of Human Rights (UDHR) adopted in 1948. The UDHR articulates the most basic rights that all UN member states are legally bound to promote and protect under the UN Charter, including the rights to freedom of expression, association and peaceful assembly. In 2008, the Cuban authorities signed, but did not ratify, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Signatory states are required to refrain from acts that would defeat the object and purpose of those treaties.<sup>37</sup> This includes compliance with the core obligations of the treaty, such as non-retrogression and non-discrimination.

Cuba is also a party to the Charter of the Organization of American States (OAS) and, as such, is committed to the implementation of the American Declaration of the Rights and Duties of Man.<sup>38</sup>

The right to freedom of opinion and expression, enshrined in Article 19 of the UDHR, is fundamental for the realization of other interconnected human rights, including economic, social and cultural rights and is an essential element in holding governments to account. According to international human rights law, the right to freedom of expression can only be restricted in very limited circumstances.<sup>39</sup> It is incompatible with international law to harass, intimidate, stigmatize, arrest, detain, trial or imprison a person solely on the grounds of an opinion they hold.<sup>40</sup>

Additionally, the Declaration on Human Rights Defenders, adopted by the UN General Assembly by consensus in 1998, protects the right of individuals to defend human rights, including by meeting or assembling peacefully and forming, joining and participating in NGOs, associations or groups, as well as by communicating with NGOs or intergovernmental organizations.<sup>41</sup> Article 12 of the Declaration further requires states to take all necessary measures to protect individuals against “violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action” due to their human rights activism and calls on states to ensure that these rights are protected effectively in national law.

Cuba’s Constitution, however, imposes undue restrictions on the rights to freedom of expression and association that are not in line with international law and standards. Article 62 restricts the right to freedom of expression to that which is consistent with the objectives of the socialist state, in practice subordinating the universal right to freedom of expression to state ideology. The state’s ongoing tactics of disproportionate, arbitrary and discriminatory use of the criminal law against political activists and human rights defenders further constitutes a form of discrimination based on political or other opinion.

The effective ban on the registration of independent human rights organizations, trade unions, and independent media outlets poses undue restrictions to the right to freedom of association, as recognized in Article 20 of the UDHR.<sup>42</sup> This ban imposes further obstacles for civil society groups trying to carry out their work and take collective action for the defence and promotion of human rights.

The criminalization of human rights defenders based on receiving foreign funding is also prohibited under international law.<sup>43</sup> Limitations on foreign funding are contrary to the right of association as they constitute an impediment for human rights defenders to perform their duties,<sup>44</sup> and funding is an essential tool for the existence and effective operation of any association.<sup>45</sup>

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<sup>37</sup> See Article 18, Vienna Convention on the Law of Treaties.

<sup>38</sup> While initially the Declaration was adopted without having a binding nature, the IACHR and the Inter-American Court of Human Rights have established that, despite having been adopted as a declaration and not as a treaty, today the American Declaration constitutes a source of international obligations for the member states of the OAS and an authoritative interpretation of the human rights provisions of the OAS Charter. See: Inter-American Court of Human Rights, Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights, Advisory Opinion, OC-10/89, 14 July 1989.

<sup>39</sup> Any restrictions to this right must meet all elements of a strict three-part test – they must be provided by law, necessary and proportionate for the purpose of protecting national security, public order, or public health or morals, or the rights or reputations of others. Additionally, to prevent abusive impositions of restrictions, there must be an effective appeal process in place to an independent body, or judicial review.

<sup>40</sup> Human Rights Committee, General Comment no. 34, para.9.

<sup>41</sup> UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 8 March 1999, Article 5.

<sup>42</sup> According to Cuban laws, founders of an organization should officially request registration of their organization through the Ministry of Justice. However, according to various sources, the Ministry in practice routinely denies registration of independent NGOs, political organizations and trade unions.

<sup>43</sup> IACHR, Criminalization of Human Rights Defenders, 2015, para.138, available at: [www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf](http://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf) (hereinafter: IACHR, *Criminalization of Human Rights Defenders*).

<sup>44</sup> IACHR, Criminalization of Human Rights Defenders, para.135.

<sup>45</sup> United Nations General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, (UN Doc. A/HRC/23/39), 2013.

The misuse of the criminal justice system to target and harass human rights defenders, political activists, journalists and artists critical of the authorities, undue restrictions on the right to freedom of association, and the lack of independence of the judiciary and public lawyers, remain the most visible indicators of how damaged the right to freedom of expression is in today's Cuba. But these restrictions are only the tip of the iceberg, the most visible part of severe and long-standing controls on the rights to freedom of expression and association.

## 2.2 “EVERYTHING IS ILLEGAL”

**“In Cuba you always have one foot in prison, and a foot outside.”**

Driver and owner of a classic car tour in Havana interviewed in Tapachula, Mexico, May 2017

### A FORMER STATE SECURITY AGENT

#### LEFT CUBA BECAUSE HE COULD NO LONGER STAND LIMITS ON FREE EXPRESSION

Trained in the military, Carlos described how he was selected in his late teens to be part of Cuba's state security. He said although he had a big house in Cuba and no serious financial needs, he left the country in 2016 because he could no longer stand the limitations on his freedom of expression. Amnesty International interviewed him in Tapachula, Mexico, in May 2017.

After his training as a state security official, Carlos says he took ordinary jobs: “You have to keep a normal profile. I worked as a chef... in a factory”. In those jobs he says he was asked to infiltrate and report on workers. Only his immediate family knew of his undercover work in Cuba.

He said that things started to change after he travelled overseas for work and on his return to Cuba he said he began to see things differently. He told Amnesty International that a lot of his friends are in prison due to information he passed to state security. “Everything is illegal in Cuba,” he said. Some were imprisoned for trafficking meat; some for trying to leave the country by boat. Carlos said: “In Cuba they put people in jail illegally, when they haven't done anything...In Cuba, supposedly there are no political prisoners. For them [the government] none of the prisoners are political, when for the rest of the world they are.”

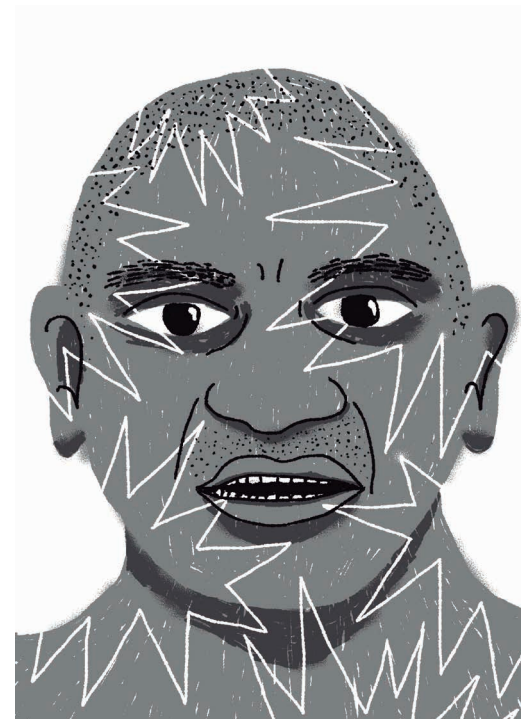
Carlos tried to leave Cuba twice by boat. The first time, the boat was badly constructed and the embarkation didn't work. The second time, ironically, a state security agent intercepted it. He says he spent several days in a prison cell.

After that, he tried to align himself with some political opposition groups in Cuba. But he, like many others, told Amnesty International that these have also been infiltrated.

Carlos said that in Cuba people have to steal from their employers to survive. “Workers are afraid to protest against the government because as soon as you do, you can no longer work with the state... you would lose the way to support your family.”

Carlos also had positive things to say about Cuba's human rights record. He believes that the high standard of education in Cuba prepares you well. And that while conditions in Cuban hospitals are dismal, it is an important human rights achievement that health care is free.

If returned to Cuba, Carlos says he cannot imagine what would happen to him; opposition activists are likely to be jailed if returned. Despite not having his immigration status regularized in Mexico, and despite having to hide in the countries where he worked along the way, he like dozens of other interviewees said that by leaving Cuba an enormous weight has been lifted from his shoulders.



#### “YOUR MIND IS IN PRISON”

CUBA'S WEB OF CONTROL OVER FREEDOM OF EXPRESSION AND ITS CHILLING EFFECT ON EVERYDAY LIFE AMNESTY INTERNACIONAL

During research for this briefing, Amnesty International found that a wide range of highly restrictive, vague and broadly defined laws, create a web of control over many aspects of the lives of ordinary Cubans, as well those overtly critical of the government.

**Approximately half of those interviewed for this research had been arrested and imprisoned at least once in Cuba. However, many had never been overtly critical of Cuba's political or economic system and were not involved in any form of activism. Nevertheless, they described how they felt a strong intrusion of the criminal law in their daily lives which they viewed as strict limitations on their rights.**

In dozens of cases, those interviewed told Amnesty International that they had served sentences, or in some cases multiple sentences, at some point in their life for “dangerous disposition”, covered by Articles 78-84 of the Penal Code. The IACHR, as well as national and international NGOs including Amnesty International, have repeatedly noted these provisions are imprecise and subjective, which allows the authorities to apply them arbitrarily.<sup>46</sup>

The Penal Code provides for a range of sanctions based on the proclivity of an individual to commit a crime, and the perceived likelihood of potential future actions that could be “anti-social”, an overly broad and vague provision that could cover almost any activity, breaching the principle of legality and other fair trial guarantees.<sup>47</sup> The Penal Code also provides for sanctions for individuals who have relations with people considered by the authorities as “potentially dangerous for society” or who “pose a threat to the social, economic or political order of the socialist state”.<sup>48</sup> Many people interviewed told Amnesty International that they were charged, or threatened with being charged, with this provision in a range of instances, including after trying to leave the country and when they were unemployed and unable to find work.

In practice, Article 75.1 of the Penal Code provides that a police officer can issue a warning for “dangerousness” or for associating with a “dangerous person.” Municipal tribunals have the authority to declare someone to be in a dangerous pre-criminal state and can do so summarily within pre-set timeframes which are so short that they effectively deprive the accused of the possibility of mounting an adequate legal defence.

Security measures are imposed on those found to have a “dangerous disposition” by a municipal tribunal. These measures may include “therapy”, police surveillance or “reeducation”. The latter may consist of internment in a specialized work or study institution for a period of between one and four years. In most cases, internment is changed to imprisonment.

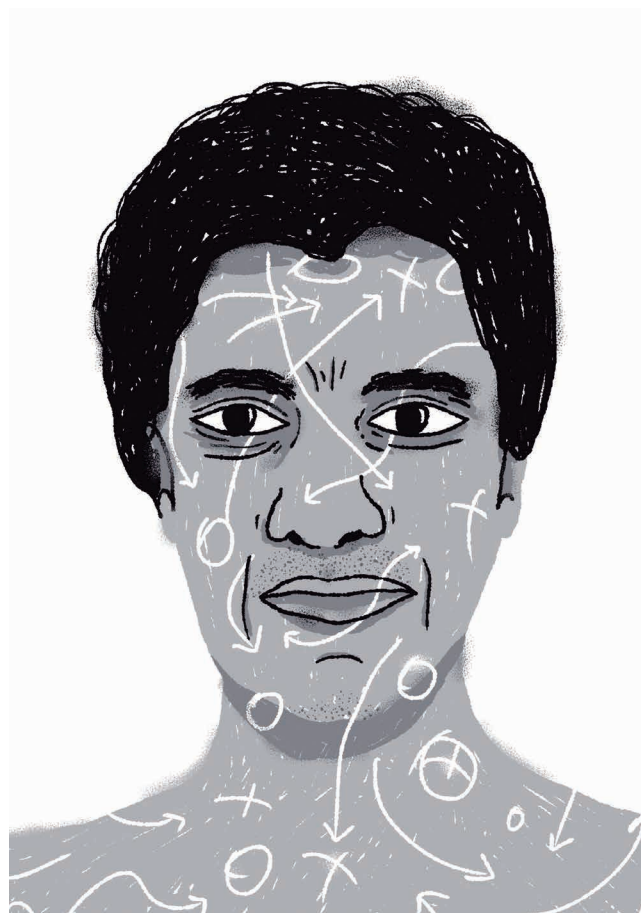
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<sup>46</sup> See Human Rights Watch, ‘New Castro, Same Cuba Political Prisoners in the Post-Fidel Era’, 18 November 2009; IACHR, Annual Report 2016, para.138; Arco Iris Libre de Cuba et al, ‘Situación del Derecho a la Libertad de Opinión y Expresión en Cuba, Julio 2016’, p.11.

<sup>47</sup> See Amnesty International, *Restrictions on Freedom of Expression in Cuba*, (Index: AMR 25/005/2010), pp.10-11. According to Article 73.2, a person in a “dangerous state” because of their “anti-social behavior” is 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 practices vices that are socially unacceptable.”

<sup>48</sup> Article 75.1 states: “Any individual who, although not subject to any of the dangerousness conditions referred to in article 73, could be susceptible to [committing a] crime due to their connections or relationships with individuals who are potentially dangerous to society and the social, economic, and political order of the socialist State, shall be issued with a warning by the relevant police authority in order to prevent them from committing socially dangerous or criminal activities.”





## A TOURIST GUIDE

### IN AND OUT OF PRISON FOR CRIMES INCONSISTENT WITH INTERNATIONAL HUMAN RIGHTS STANDARDS

Ivan studied languages and worked as a tourist guide in Havana. Never actually involved in political activism himself, he has been friends with people considered dissidents since his teens. After spending seven years in and out of jail on charges of “dangerousness”, “contempt” and “disobedience”, all vaguely defined crimes inconsistent with international human rights standards, he finally managed to leave Cuba in 2014 and lived and worked in Guyana and later Brazil.

Ivan was first sentenced to two years of house arrest for “dangerousness” in 1998, when he was 18, for being friends with people considered to be members of the political opposition. After a year and eight months of house arrest, the authorities said he wasn’t complying with the sentence, so it was altered and he was imprisoned with specialized work for another two years. Five months after being released, he was sentenced to another year of house arrest for “contempt” for allegedly arguing with a state security official. He told Amnesty International that at that point he saw things differently, so he tried to leave Cuba in a so-called “illegal” exit by boat via Punta Maisi, the closest point to Haiti. The boat was intercepted by the authorities and he was imprisoned for another eight months for “disobedience”, after giving a false name to avoid arrest. His last sentence for “dangerousness” was for four years between 2004 and 2008. Ivan said he spent a lot of his time in prison with political activists and shared their views, but he never became actively involved. He said he realized after serving his first few sentences that if did, he’d be an old man by the time he got out of prison.

In many other statements collected during research for this briefing, Cubans told Amnesty International they had been harassed or arrested under a range of other arbitrary and disproportionate provisions of the Penal Code, for actions that in many cases should not be considered an offence according to international standards. For example, a number of interviewees described having been harassed or arrested for only buying beef. Killing livestock without government authorization, selling, transporting or illegally acquiring livestock is prohibited by Article 240.1 of the Penal Code and carries a sentence of between six months and five years’ imprisonment and a fine. One woman, a former shop assistant, told Amnesty International that she had spent eight months in prison in 2011 for “illegally buying beef”, before a judge acquitted her after finding there was insufficient evidence for her detention.

## 2.3 HUMAN RIGHTS STANDARDS AND THE APPLICATION OF THE CRIMINAL LAW

States have autonomy to determine what type of behaviour is harmful to others and the community and merits criminal sanction. But as one of the strongest arms available to the state, policing power is not unrestrained and must be strictly regulated as it can result in the reduction, deprivation or alteration of the rights of individuals. International law and standards establish the limits to this power.

Article 3 of the UDHR establishes the right of everyone to liberty, which requires states to restrict deprivation of liberty to only certain prescribed circumstances and only to the extent that is necessary and proportionate to a legitimate aim. The criminal justice system should thus be used in a subsidiary manner once other legal and procedural options have proven not to work and it is only to be used as a last resort.

The principle of legality constitutes a fundamental limitation to the use of criminal law, which requires crimes and punishments to be clearly defined by law in a manner that is accessible to everyone, and must not be arbitrary or unreasonable. Crimes and punishments must be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application, in a manner that is accessible to the public and that clearly outlines what conduct is criminalized.

Restrictions on the exercise of human rights, including through the application of criminal law, must be for a legitimate purpose or aim. The list of what may constitute a legitimate aim is restricted to certain specific grounds such as the protection of national security, public order, public health or morals or the rights and freedoms of others. In order to be lawful, any restrictions on human rights, in addition to serving a legitimate aim or purpose, would also need to meet the principles of necessity and proportionality.

- (i) Necessity: Restriction of individuals' human rights can only be justified when other, less restrictive responses would be inadequate and unable to achieve the legitimate aim or purpose.
- (ii) Proportionality: A state should not apply more restrictive means than are required for the achievement of the purpose of the limitation, and is responsible for justifying any limitation on the right guaranteed. Deprivation of someone's liberty which results from the application of criminal law may not always meet the requirement of proportionality, especially if other less extreme measures could be similarly effective.

Over successive decades, provisions of the Cuban criminal law have repeatedly and arbitrarily interfered with the ordinary, day-to-day lives of Cubans.

The UN Working Group on Arbitrary Detentions has previously called on Cuba to amend their national legislation to comply with the principle of legality and other dispositions contained in the UDHR to ensure that no measures of deprivation of liberty are arbitrary. In particular, the UN Working Group considered that detentions in Cuba were arbitrary when "persons are deprived of their liberty for a long period on the basis of their alleged dangerousness, with no reference to specific acts defined with the rigour that has been required by international criminal law since at least the eighteenth century, and which is now enshrined in article 11, paragraph 2, of the Universal Declaration of Human Rights".<sup>49</sup>

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<sup>49</sup> Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session, 22 April-1 May 2014, No. 9/2014 (Cuba), para.23 and 24.

# 3. SILENCE—A CONDITION OF EMPLOYMENT

## 3.1 HARASSMENT AND WRONGFUL DISMISSALS IN THE STATE SECTOR

**“To keep a job in Cuba, you have to keep silent and take what they [the government] say. If not, they throw you out immediately and then you don’t work anymore in Cuba.”**

46-year-old fisherman, interviewed in Tapachula, Mexico, May 2017

The Cuban government is the country’s biggest employer. Approximately 72% of the labour force is employed in the public sector or the “state sector” as it is often referred to in Cuba.<sup>50</sup> The state retains strong control over all forms of employment, despite the economic reforms spearheaded by Raúl Castro since 2011, which have included the creation of a larger private, or “non-state” and “self-employed” sector, as well as increasing openness to foreign investors.

According to economists, the non-state sector in Cuba is composed of two sub-sectors, the private and cooperative sectors. The private sector consists of four categories: private farmers, the self-employed, usufructs (those who cultivate state-owned lands) and workers employed by the previous three groups.<sup>51</sup>

Legally permitted self-employed occupations are mostly limited to semi-skilled or unskilled workers and there is an effective prohibition on members of most professions, including university graduates, from practising their professions in the private sector.<sup>52</sup>

**Amnesty International does not take a position on economic or political models and recognizes the sovereign decision of states to determine how they develop their economy and political systems. However, such models must be consistent with international human rights law and standards.**

There have long been reports of discriminatory and politically motivated dismissals of Cuban professionals – including independent trade unionists, human rights defenders, journalists and academics – from state employment. The International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations (ILO Committee of Experts/CEACR) has raised concerns about discrimination in access to employment, education and training based on political

<sup>50</sup> C. Mesa-Lago et al, ‘Voces de cambio en el sector no estatal Cubano: Cuentapropistas, usufructuarios, socios de cooperativas y compraventa de viviendas,’ Iberoamericana, 2016, p.17 (hereinafter: Mesa-Lago et al, ‘Voces de cambio en el sector no estatal Cubano’). Prior to recent economic reforms more than 80% of the workforce was employed in the public sector. See C. Mesa-Lago, Social Protection Systems in Latin America and the Caribbean: Cuba, p.36.

<sup>51</sup> C. Mesa-Lago et al, ‘Voces de cambio en el sector no estatal Cubano’, pp.18-19.

<sup>52</sup> C. Mesa-Lago et al, ‘Voces de Cambio en el sector no estatal Cubano’. p.38; and C. Mesa-Lago, Social Protection Systems in Latin America and the Caribbean, p.37. See also: Ted Henken, ‘One Year Later: Cuba’s “Cuentapropistas”’, World Policy Blog, and ‘The Cuban Reset’, 17 December 2015.

opinion for nearly three decades. In its 1989 observations it stated: “access to training and employment and the evaluation of workers for their selection, placement or the assessment of their occupational merits and weaknesses depends, among other factors, on their political attitude.”<sup>53</sup> In subsequent observations throughout the 1990s and 2000s, the Committee repeatedly referenced allegations of discriminatory treatment and dismissals of university teachers, journalists<sup>54</sup> and professors.<sup>55</sup> This trend has continued over the past few years, with frequent reports of the discriminatory dismissals of students, academics, journalists, and independent trade unionists.<sup>56</sup>

During this research Amnesty International collected dozens of testimonies from Cubans from all walks of life that indeed demonstrate that the state uses its control – as the biggest employer in the country, and as regulator over the private sector – as a way to silence even the most subtle criticism. Those who engage in even delicate disapproval, or who are involved in political activism, or who have tried to leave Cuba in so-called “illegal” exits by rafts, are frequently wrongfully dismissed from their employment in the public sector, or are harassed by the state until they feel they have no option but to leave their jobs. People also told Amnesty International that the fact that they had a criminal record – which was often linked to the exercise of their right to freedom of expression, as described in the previous section – made it almost impossible for them to find employment in the public sector.

Evidence collected by Amnesty International suggests that authorities use their significant control over employment to censor criticism, whether subtle or overtly political. One political activist told Amnesty International that he had been arrested 36 times in a little over 10 years and was progressively demoted from a managerial position to a customer service job and then eventually arbitrarily dismissed from his job as the authorities learned more about his activism. He told Amnesty International that the head of the state company that he worked for received orders from state security to dismiss him. Like many others, he told Amnesty International, that opposition activists can almost never find employment.

In another case, a 24-year-old woman who sold clothes in Havana before leaving Cuba, told Amnesty International she had been arrested at the age of 16, along with other family members, for peacefully participating in marches of the Ladies in White. She said police beat them during the arrest but she and her relatives were charged with attacking state officials. In a typical account, she said the lawyer assigned to the case by the state did not defend her effectively in court and she was sentenced to house arrest for a year and a half. She told Amnesty International that after this she was never able to secure employment in the public sector because of her criminal record and because the local Committee for the Defence of the Revolution (local members of the Communist Party who collaborate with state officials and law enforcement agencies) provided poor references.

People told Amnesty International of instances where they believed they were dismissed for voicing criticisms that were not overtly political. Based on the statements collected, it appears that in some cases workers are dismissed by their employers. In other cases they are harassed and intimidated by the administration to the point that they have no choice but to resign.

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<sup>53</sup> ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) Observation – adopted 1989, published 76th ILC session (1989), Discrimination (Employment and Occupation) Convention, 1958 (Convention No. 111) – Cuba (Ratification: 1965)

<sup>54</sup> See CEACR Observation – adopted 1997, published 86th ILC session (1998), Discrimination (Employment and Occupation) Convention, 1958 (Convention No. 111) – Cuba (Ratification: 1965): paras 5 and 7.

<sup>55</sup> CEACR Observation – adopted 1999, published 88th ILC session (2000), Discrimination (Employment and Occupation) Convention, 1958 (No.111) – Cuba (Ratification: 1965): para.3.

<sup>56</sup> See for example: Human Rights Watch, ‘New Castro, Same Cuba Political Prisoners in the Post-Fidel Era’, 2009; ‘CPJ, Connecting Cuba’, 2016; Associated Press, ‘One of Cuba’s most renowned advocates of economic reform has been fired from his University of Havana think tank for sharing information with Americans without authorization, among other alleged violations’, 21 April 2016, available at: [www.usnews.com/news/world/articles/2016-04-21/renowned-cuban-pro-reform-economist-fired-as-chill-sets-in](http://www.usnews.com/news/world/articles/2016-04-21/renowned-cuban-pro-reform-economist-fired-as-chill-sets-in); *Washington Blade*, ‘Gay Cuban journalist, activist fired from radio station’, 8 September 2016, available at: [www.washingtonblade.com/2016/09/08/gay-cuban-journalist-activist-fired-radio-station](http://www.washingtonblade.com/2016/09/08/gay-cuban-journalist-activist-fired-radio-station); El Grupo Internacional para la Responsabilidad Social Corporativa en Cuba, Coalición Sindical Independiente de Cuba (GIASCC&CSIC), ‘Situación Laboral en Cuba: Violaciones Cometidas por el Gobierno Cubano’, September 2016, p.21, available at: <http://cubasindical.org/reporte-anual-2016> (hereinafter: GIASCC&CSIC, ‘Situación Laboral en Cuba: Violaciones Cometidas por el Gobierno Cubano’).





## **A SOCIAL WORKER EXCLUDED FROM HIS STATE-JOB FOR SUBTLE CRITICISM**

Elicer a social worker told Amnesty International his job was to help society. After he began to complain about the lack of resources for his clients, he started to be harassed by his employers. “They made me promise things (to clients) that they didn’t deliver,” he said. He said his employers also started to question him about his friends in the USA and said he should abandon those friendships. Eventually, he said he had to leave his job, because of the harassment, but afterwards he was denied other state employment and he was left unemployed for two months. Potential state sector employers simply told him he had a negative record in his previous job. “I am not against the revolution as such, I am against what the people of the government do, that’s different. Because society is one thing and the government is another, and what the government does is poor... Just because I am not part of a particular group like the Ladies in White, it doesn’t mean I don’t have my own way of thinking,” he told Amnesty International.

Nearly everyone Amnesty International interviewed who had been dismissed from employment in the state sector for expressing an opinion or for their political activism, or had left because of the harassment they faced, said they were unable to secure further employment in the state sector. On repeated occasions, those interviewed told Amnesty International that when they approached potential state employers, they were simply told “you aren’t trustworthy”. The phrase – explicitly used to mean an individual is not politically trustworthy in terms of state ideology – was frequently the only explanation the worker was given by potential employers for not getting a job. A number of interviewees told Amnesty International that the government holds files on them from university through their whole working life in state sector employment. While the government has stated that an employee’s file does not contain information on political opinions, the ILO has frequently received complaints that such information is held and has asked the government to ensure that employment files are not used to discriminate against workers.<sup>57</sup>

<sup>57</sup> CEACR Observation – adopted 2012, published 102nd ILC session (2013), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Cuba (Ratification: 1965).

## AN ENGINEER

### FROM A PRO-GOVERNMENT FAMILY, FIRED FOR WEARING A WRISTBAND SAYING 'CHANGE'

José, aged 33, said he never wanted to leave Cuba but the situation forced him to go. He comes from a family of Cuban Communist Party supporters. "All of them are party activists... except me." He says he began to see things differently as a young man. He expressed criticisms in school. Later, he stopped participating in elections and left the official trade union. When you do those things in Cuba, "they start closing doors", he said.

In 2014, José was detained for three days for attending a cultural festival and wearing a wristband that said "Change". He thinks he was only detained for such a short period because members of his family work in senior government positions. But afterwards he was fired from his job in a state-owned taxi company; he believes his firing was linked to his wearing of the wristband.

Following this, with the help of friends, José opened a mechanics workshop and became self-employed. His workshop eventually became a space for opposition activists and communists alike to meet and discuss political issues. He said his group didn't always agree with certain styles of opposition activism. He said, "Take USD50 for holding a placard saying 'Down with Fidel' is not opposition." He said his group tried to engage young people, but that that is difficult to do in Cuba.

He soon began to be harassed and intimidated. First, the authorities said they needed his workshop. Then the police arrived at his parents' home. Then one day, after a baseball game, the police were waiting for him. "I love my country.... but they were harassing me...I didn't want to stay and see what could happen". People advised him to leave Cuba. A friend helped him get a passport. After he'd left Cuba, he says the police came to look for him again and gave his family a hard time.

José still said he believes the Cuban revolution was done for a just cause. He believes that free education and health care are important successes. As one of eight siblings, he says the revolution educated them all. José said he never personally experienced hunger. But he knows there are people in Cuba who are sick because they don't eat well. He said he doesn't want his country to go through what he's seen in the countries he passed through. Images of dead people on the front pages of newspapers and people begging on the streets. But he does want people in Cuba to have a chance to say what they want.

José said that there are many people in Cuba that think like him, but are afraid to talk. "Especially those who have a good job... They are afraid that it will destroy their career. That they [the authorities] could do something to their families."

He said that he is now a marked man because he has emigrated. If returned to Cuba, he believes he won't be able to work. He thinks he could even be sent to prison for a period.

As of June 2014, there were 201 legalized self-employment occupations.<sup>58</sup> However, there are virtually no options for most university graduates or professionals to work on a self-employed basis.<sup>59</sup> As such once dismissed from state employment, many are effectively prohibited from pursuing their professions. While academics have noted that the exclusion of professionals from self-employment wastes the talents of Cuba's well-educated population

<sup>58</sup> Archibald R. M. Ritter and Ted A. Henken, 'Entrepreneurial Cuba: The Changing Policy Landscape', 2015, Appendix 2, p.327- (hereinafter: Archibald Ritter and Ted Henken, Entrepreneurial Cuba)

<sup>59</sup> See Archibald Ritter and Ted Henken, Entrepreneurial Cuba.



and blocks innovation,<sup>60</sup> this limitation also has implications for the work of human rights defenders. This was the case for lawyers at Cubalex who appear to have been targeted and harassed, among other things, for independently providing legal and human rights advice, a category of work not recognized in the self-employed sector.

Nearly all those interviewed told Amnesty International they were pressured in their workplace in the state sector to promote state ideology and to participate in pro-government activities.

A lawyer told Amnesty International that as a professor he was required to provide legal education consistent with the ideology of the revolution. In practice, he said this meant promoting socialism and criticizing capitalism, or his class would be poorly evaluated by the university administrators. He said this was difficult for him to do when it wasn't something he believed in. Training lawyers in this way clearly also has implications for safeguarding judicial independence and the separation of powers.

## **“A lawyer has to constantly respond to the interests of the ruling party in whatever role he practises.”**

Lawyer and former professor, interviewed in Nuevo Laredo, March 2017

A waiter employed in a state-owned restaurant also told Amnesty International that he was dismissed from work on the 2 May 2015, for not having participated in the Labour Day march the day before. Like most Cubans Amnesty International spoke to who described similar experiences, he wasn't given an official letter of termination. He says his boss just told him he couldn't work anymore, as he hadn't attended the march. He said that the trade union didn't intervene and doesn't function, and he didn't appeal to a tribunal. When he looked for other employment with state restaurants, potential employers told him they couldn't hire him because he hadn't attended the marches.

Similarly, a 31-year-old factory director told Amnesty International that if a worker did not participate in Labour Day marches she had to note this on the workers file, or she too would be disciplined. If the worker was found not to have attended the march, she could dismiss them. In turn, as a director she was compelled to participate in Communist Party meetings, meetings of the official trade union, and a series of other state-coordinated spaces, which she believed had little impact on working conditions. Likewise, various interviewees, including a teacher, told Amnesty International that at university they were pressured to participate as supposed members of the public in acts of repudiation against the Ladies in White or else risk being given poor grades. Indeed, many interviewees said that they had felt an obligation to participate in pro-government activities ever since university.

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<sup>60</sup> Archibald R. M. Ritter, 'Private and Cooperative Enterprise in Cuba's Economic Future', *Social Research: An International Quarterly*, Volume 84, No. 2, Summer 2017, p.285; and Archibald Ritter and Ted Henken, 'Entrepreneurial Cuba', p.12



### **A SPORTSMAN**

#### **EXCLUDED FROM HIS SPORT AND JOB FOR A CRITICAL INTERVIEW THAT NEVER AIRED**

Jorge Luis was a champion sportsman in Cuba. Interviewed in Nuevo Laredo in March 2017, he said he left Cuba in search of freedom. “Political problems are rarely detached from economic ones” he told Amnesty International.

He described how several years before leaving Cuba he was interviewed by a state television channel. During the interview he was critical of the government’s failure to financially support his sport and explained that his success was due to his own effort and his families’ support. The interview was never aired, but Jorge Luis said that following that the government began to progressively exclude him from his sport and his state employment. At work, he said he was told only that he didn’t meet the requirements anymore.

After Jorge Luis was pushed out of work, he said he was given 20 days to find another job, because otherwise the police said they would charge him with “dangerousness” for not working. He found it impossible to find another job, as everywhere he went potential employers told him he was a “counter-revolutionary”. Unable to support his family he decided to leave Cuba.

## **3.2 A VICIOUS CYCLE: HARASSMENT IN THE SELF-EMPLOYED SECTOR**

For many people who are pushed-out or dismissed from state employment for freely expressing themselves, the only remaining option is to enter the small and emerging, but highly regulated, “self-employed” sector.

Since taking power in 2008, President Raúl Castro has promoted changes to Cuba’s economic model. Entrepreneurship, or expansion of the “self-employed” sector has been one of the most visible reforms. These policy changes led to an estimated 500,000 workers being laid off in the public sector in an effort to revive the economy,<sup>61</sup> cut public spending and increase

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<sup>61</sup> BBC, ‘Cuba to cut one million public sector jobs’, 14 September 2010, available at: [www.bbc.com/news/world-latin-america-11291267](http://www.bbc.com/news/world-latin-america-11291267)

productivity and salaries.<sup>62</sup> The policy changes also led to a corresponding expansion of the private sector.<sup>63</sup> By 2015, the self-employed sector, composed of small business owners or independent workers accounted for 10.3% of the labour force,<sup>64</sup> and by 2016, 12%.<sup>65</sup>

Many economists and other observers have welcomed the expansion of the self-employed sector,<sup>66</sup> which according to different reports has benefited from the tourism boom prompted by the re-establishment of relations with the USA.<sup>67</sup> However, experts also recognize that the sector remains fraught with challenges, including limited access to start-up capital, lack of a wholesale market and excessive regulations.<sup>68</sup>

Without access to a wholesale market, many *cuentapropistas* must resort to buying goods and supplies on the illicit market, mostly goods stolen from state-owned businesses and resold. Such activities leave self-employed workers at risk of being fined or losing their licence. And as those in charge of imposing sanctions include both inspectors and the police,<sup>69</sup> this leaves many further vulnerable to being charged with criminal offences.

For those who are wrongfully dismissed from the state sector, self-employment offers an alternative. On the other hand, due to its heavily regulated nature, multiple sources told Amnesty International that the authorities often arbitrarily and disproportionately apply restrictions from the maze of regulations governing the private sector<sup>70</sup> against anyone deemed critical of the government. In fact, as this research was being conducted, the government temporarily suspended the issuing of certain licences to “perfect” the self-employment sector, after detecting wrongdoings, according to *Granma*, the Communist Party newspaper.<sup>71</sup>

In several cases documented by Amnesty International, after an apparently discriminatory dismissal from state employment, many were further harassed as self-employed workers. For example, the social worker cited above who described how he was pushed out of his job, later formed a food business with a partner. He said: “The government has a group in charge of food safety. They used to send me these people very often. They closed the business and gave me fines. For the same reason [as I’d been pushed out of work]. There was a moment when I said, ‘well now I am not going to be able to work anymore’... They did it as a way to repress me.”

### 3.3 IMPRISONED AND DISCRIMINATED FOR TRYING TO LEAVE THEIR OWN COUNTRY

**“Leaving Cuba is a crime to them.”**

46-year old sailor interviewed in Tapachula, Mexico, May 2017

Testimonies collected during research for this briefing demonstrate that despite recent changes to Cuba’s migration laws, emigration, or attempts to leave the country, are viewed by the authorities as an expression of discontent with the political or economic system. As such, Cubans who seek to leave the country are stigmatized and discriminated by the state – labelled as “deserters”, “traitors” and “counter-revolutionaries” – detained and excluded from access to state-employment in the same way as others who peacefully exercise their right to freedom expression.

<sup>62</sup> C. Mesa-Lago et al, ‘Voces de Cambio en el sector no estatal Cubano’, p.18.

<sup>63</sup> J. Mercader Uguina, ‘Las Últimas Reformas Laborales En Cuba (2009-2014)’, Universidad Carlos III de Madrid (hereinafter: J. Mercader Uguina, ‘Las Últimas Reformas Laborales En Cuba’).

<sup>64</sup> C. Mesa-Lago et al, ‘Voces de Cambio en el sector no estatal Cubano’, p.22.

<sup>65</sup> *Granma*, ‘Por la ruta de la actualización’, 1 August 2017.

<sup>66</sup> See Mesa-Lago, Archibald Ritter, Ted Henken and others.

<sup>67</sup> On Cuba, ‘Private Sector’s boom in Cuba, according to report,’ 3 July 2017, available at: [www.oncubamagazine.com/economy-business/private-sectors-boom-in-cuba-according-to-report](http://www.oncubamagazine.com/economy-business/private-sectors-boom-in-cuba-according-to-report); and C. Mesa-Lago et al, ‘Voces de Cambio en el sector no estatal Cubano’, p.32

<sup>68</sup> C. Mesa-Lago et al, ‘Voces de Cambio en el sector no estatal Cubano’, p.37.

<sup>69</sup> C. Mesa-Lago et al, ‘Voces de Cambio en el sector no estatal Cubano’, p.40.

<sup>70</sup> See Decree/Law 315 ‘regarding offences of the regulations of self-employment’

<sup>71</sup> *Granma*, ‘Por la ruta de la actualización’, 1 August 2017.



Approximately half of those interviewed by Amnesty International said they had tried to leave Cuba before on make-shift rafts. Many had been intercepted by state security officials before they had embarked on the journey. Many had tried to leave multiple times and had been trying to leave Cuba for years; one man said he had been trying to leave for 15 years. The majority had been detained or arrested for periods ranging from hours to months merely for attempting to leave the country. Most had never been formally charged, or presented before a judge. One man, who tried to leave six times between 2002 and 2015, told Amnesty International that each time he tried to leave he was beaten by officials during the arrest. He said the last time they broke his nose and hit him in the forehead with a baton. A woman said she was detained each of the four times she tried to leave by boat in 2016 for periods ranging from 72 hours to seven days; the last time she was detained in a high-security prison.

Nearly every person interviewed by Amnesty International told the organization that after having tried to leave the country, they were stigmatized and discriminated and denied access to state employment. A 43-year-old industrial engineer said that after trying to leave in 2008 he was detained for 12 days, fired from his job and told, “You are not trustworthy.” He says he was then given a job cleaning riverbanks, something he considered a form of humiliation. He, like dozens of other migrants, told Amnesty International that if he had not taken the job, he would have been charged with “dangerousness”.

## “For them, trying to leave the country is a form of protest.”

Small business owner interviewed in Nuevo Laredo, Mexico, March 2017

Sometimes when people have managed to leave the country, the authorities have taken reprisals against their family members who remain on the island. A 33-year-old chef said that after he left Cuba in 2016, his wife, who had remained and was working in the public sector as a health care provider, was fired from her job.

Article 13 of the UDHR enshrines the right to freedom of movement, including the right of everyone to leave their own country. States may not make this right dependent on the specific purpose for which a person decides to leave the country, nor on the period of time an individual chooses to stay outside the country.

Despite recent changes in Cuba’s migration laws, which partially eliminated the requirement for authorization to leave the country,<sup>72</sup> Decree 194 of 1999 still makes it an administrative offence punishable with a fine to try and leave by boat, or to be involved in the construction of a boat, among other things. Article 216.1 of the Cuban Penal Code maintains “illegal exits” as a criminal offence punishable with imprisonment for periods of between one and three years or a fine. And under Article 217.1, anyone who organizes, promotes or incites such exits can be sentenced to up to five years’ imprisonment.<sup>73</sup>

In practice, it is at the discretion of law enforcement officials whether and how a range of laws are applied to those intercepted trying to leave the country by boat. People who spoke to Amnesty International suggested that most who attempt to leave on rafts are fined, detained without charge or access to a lawyer, and are rarely presented before the competent judicial authorities. As independent human rights monitoring is not permitted in Cuba, it is hard to know if there are official registers of such detentions. In some cases, those detained were also charged with, or threatened with charges of, “dangerousness”.

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<sup>72</sup> See IACHR, Annual Reports 2013 and 2016. In 2012, Decree Law No. 302 published in the Official Gazette modified Law No. 1312 – the Law on Migration of 20 September 1976. While Cubans previously required an exit visa to leave the country, now only a passport and valid visa are required. However, Article 23 of the Decree Law still limits exit in certain circumstances, for example, for certain professionals, those with criminal charges or when “national defence and security so require”. The IACHR has noted that the generality of terms confer a broad discretion to the Cuban authorities to allow or not the exit of Cuban nationals, in particular those who express anti-government views.

<sup>73</sup> See also Human Rights Watch, ‘Families Torn Apart The High Cost of U.S. and Cuban Travel Restrictions’, October 2005, Vol.17, No. 5 (B).

## 3.4 LIMITS ON INDEPENDENT TRADE UNIONS

According to Article 13 of the recently revised Labour Code (Law 116, 2013), workers have the right to voluntarily associate and form trade unions. In practice, Cuba only permits one state-controlled confederation of trade unions, the CTC.<sup>74</sup> According to the Washington Office on Latin America (WOLA), a US-based NGO, the Central de Trabajadores de Cuba (CTC) “has strong political ties, like many European unions, but in a society that has only one political party such ties also indicate a close alliance with the government.”<sup>75</sup> Indeed, the current Secretary General of the CTC is also a member of the Communist Party and a congressman (*diputado*) calling into question his autonomy. According to the webpage of the International Trade Union Confederation, the leaders of the CTC are not elected by workers but appointed by the state and the Communist Party.<sup>76</sup>

Most people interviewed for this research said that the official trade union that supposedly represented them does not contest actions by government officials or the Communist Party and is therefore ineffective at representing their interests as workers. Many state-sector employees told Amnesty International that they felt pressured to belong to the CTC, but did not feel that the union advocated on their behalf. Self-employed workers are rarely affiliated with any trade union.

Furthermore, according to WOLA, the CTC does not engage in collective bargaining over wages, hours, and terms of employment. In 2017, the ILO Committee noted that revisions in the new Labour Code would allow for collective bargaining and requested that the government provide information on the number of collective agreements signed in the country, as the government reported it had signed over 7,000 agreements.<sup>77</sup> Most interviewees told Amnesty International that the CTC does not engage in negotiations over salaries, an additional factor that contributed to their belief that salaries would not improve anytime soon.

While the new Labour Code does not expressly prohibit strikes and the criminal law does not set out penalties for striking, in practice the right to strike is not recognized. In 2017, the ILO Committee requested that the government “provide information on measures taken or envisaged to ensure that no one suffers discrimination or prejudice in their employment for having peacefully exercised the right to strike.” The Committee also requested information on the number and nature of strikes called since January 2016 and any administrative or judicial investigations initiated related to the strikes.<sup>78</sup>

Independent trade unions also continue to experience harassment, intimidation and criminalization. Despite Cuba’s ratification of the relevant ILO Conventions,<sup>79</sup> a host of complaints and cases have been brought to the ILO Committee on Freedom of Association. For decades, the Committee has repeatedly called on the authorities to refrain from interference with trade unions that limits the exercise of freedom of association, or the exercise of human rights related to trade unionism, or that deprives trade unionists engaged in legitimate activity of their liberty.<sup>80</sup>

In its 2016 report, the International Group for Social Corporate Responsibility in Cuba (El Grupo Internacional Para la Responsabilidad Social Corporativa en Cuba) and the Independent Trade Union Coalition of Cuba (Coalición Sindical Independiente de Cuba) reported the arbitrary dismissal of several trade unionists from their state employment.<sup>81</sup> Iván Hernández Carrillo, the Secretary General of the Association of Independent Trade Unions of Cuba and a former prisoner of conscience, told Amnesty International in September 2017 that his organization, like many trade unions before it, had written to the appropriate authorities to legally register. At the time of writing, they were still awaiting a response.

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<sup>74</sup> IACHR, Annual Report, 2016, para.132.

<sup>75</sup> G. Thale and C. Boggs, ‘Labour Rights and Cuba’s Economic Reform,’ WOLA, p.7.

<sup>76</sup> International Trade Union Confederation, ‘Survey of Violations of Trade Union Rights’, available at: <http://survey.ituc-csi.org/Cuba.html?lang=en#tabs-3>.

<sup>77</sup> CEACR Observation – adopted 2016, published 106th ILC session (2017): Right to Organise and Collective Bargaining Convention, 1949 (Convention No. 98) - Cuba (Ratification: 1952).

<sup>78</sup> CEACR Observation – adopted 2016, published 106th ILC session (2017), Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention No. 87) – Cuba (Ratification: 1952).

<sup>79</sup> ILO Convention No. 87 and ILO Convention No. 98.

<sup>80</sup> See complaints bought against Cuba searchable at: [www.ilo.org/dyn/normlex/en/f?p=1000:20060::FIND:NO::](http://www.ilo.org/dyn/normlex/en/f?p=1000:20060::FIND:NO::)

<sup>81</sup> GIASCC&CSIC, ‘Situación Laboral en Cuba: Violaciones Cometidas por el Gobierno Cubano’, September 2016.

## 3.5 THE APPARENT LACK OF EFFECTIVE RECOURSE FOR DISCRIMINATORY DISMISSALS

Many interviewees who had been wrongfully dismissed or harassed until they felt they had no choice but to leave the state sector told Amnesty International that they understood that state security agents or Communist Party officials had directed their immediate supervisors to dismiss or exclude them. One man who believed he had been fired for his political activism said he tried to initiate an internal appeal process with his employer, but his employers ripped up the papers. He believes his boss would also have been fired had he contested the dismissal.

Article 8 of the UDHR guarantees everyone the right to an effective remedy by competent national tribunals for acts violating fundamental rights granted by the Constitution or by law.

None of those who spoke to Amnesty International had appealed their dismissal through labour tribunals, which they considered fully under the control of the executive and therefore not an effective means to challenge their dismissal.

While a system of labour courts exists to mediate workers' grievances, WOLA says it is difficult to assess how effective trade unions, labour legislation, and labour courts are in practice in a country with limited independent press and civil society and limits on international observers.<sup>82</sup> Lack of access to Cuba, is also a barrier for Amnesty International to monitor the effectiveness of labour courts. However, Cuban lawyers and independent trade unions told Amnesty International that the labour courts are not an effective recourse when dismissals are discriminatory or politically motivated.

### **“Why would you hire a lawyer if the lawyer is from the same government?”**

31-year-old man who had tried to leave Cuba six times by boat and was subsequently denied access to state employment and harassed by the police, interviewed in Tapachula, Mexico, May 2017

Serious and on-going limitations on the independence of lawyers and the judiciary previously documented by Amnesty International,<sup>83</sup> act as an additional barrier to effective challenges to wrongful state dismissals. For example, a lawyer at Cubalex told Amnesty International that a database of labour cases documented by the organization, including cases of alleged discriminatory dismissals, held on his hard drive was confiscated by authorities at the airport when he left Cuba after being granted asylum in the USA.

According to international human rights principles, lawyers are entitled to freedom of expression and association and to join self-governing professional associations to represent their interests, promote their continuing education and protect their professional integrity, without external interference.<sup>84</sup> However, as Cuba prevents the registration of independent human rights organizations – effectively prohibiting the legitimate exercise of human rights monitoring – and the practice of independent human rights lawyers, those who consider they have been wrongfully dismissed from work have limited recourse to effective legal representation. Finally, as Cuba does not accept the jurisdiction of the Inter-American Court of Human Rights, those who believe they have been wrongfully dismissed, like those who experience other human rights violations, are left without recourse to a regional human rights court.

<sup>82</sup> G. Thale and C. Boggs, 'Labour Rights and Cuba's Economic Reform,' WOLA, p.5.

<sup>83</sup> Amnesty International, *Restrictions on Freedom of Expression in Cuba*, (Index: AMR 25/005/2010).

<sup>84</sup> See Basic Principles of the Judiciary, Adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, 26 August to 6 September 1985 and Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

## 3.6 DISCRIMINATION IN ACCESS TO AND AT WORK

Cuba has ratified all the fundamental ILO Conventions,<sup>85</sup> a total of 90 Conventions, including the Convention on Discrimination in Employment and Occupation (Convention No. 111) and the Convention on Freedom of Association and Protection of the Right to Organise (Convention No. 87).

As an ILO member state, Cuba has committed to respect the ILO Declaration on Fundamental Principles and Rights at Work which requires it to promote and realize in good faith, among other things, freedom of association and the effective recognition of the right to collective bargaining and the elimination of discrimination in respect of employment and occupation.<sup>86</sup>

By ratifying ILO Convention No. 111 in 1965, Cuba committed to prevent discrimination in the workplace based on “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.” (Article 1.a) In 2017, the ILO Committee of Experts noted that there is no provision in Cuba’s new Labour Code<sup>87</sup> prohibiting discrimination on the full range of grounds covered in Article 1.a. While provision is made for protection against discrimination in *access* to employment, there is no protection against discrimination in other aspects of employment. It requested that the government amend the new Labour Code to bring it in line with the Convention.

The Committee also requested that the Cuban government ensure that neither workers nor students were subjected to discrimination “because of their political opinions or their religion and that no information about the political opinion or the religion of workers is recorded in the employment file so that it can be used against them.” It further requested that the government “take the necessary measures to ensure that in practice no information concerning political or religious opinion is sought from workers or students.”<sup>88</sup>

In a Direct Request in 2017 the ILO Committee of Experts additionally requested that the government “take the necessary measure to ensure that all workers, including independent journalists, are able to exercise their occupation freely and without discrimination based on political grounds, even if they express opinions contrary to the established order.”<sup>89</sup> It further requested that the government provide information on “the specific measures and plans adopted or envisaged to combat discrimination on all the grounds enumerated in Article 1.1.a of the Convention No. 111, together with information on their effectiveness and on the results achieved” as required by Article 3.f of the Convention.<sup>90</sup> At the time of writing, there had been no response from the government of Cuba.

Dismissals from employment in the state sector due to perceived or actual political opinion violate the right to non-discrimination. This right is a fundamental component of international human rights law that permeates the entire activity of the state in all its manifestations and is necessary for the exercise and enjoyment of economic, social and cultural rights.

As a signatory to the ICESCR, Cuba must refrain from acts which go against the object and purpose of the treaty, which includes the obligation to ensure non-discrimination in the exercise of economic, social and cultural rights. This includes non-discrimination in the right to work, as recognized by Article 6 of the ICESCR, which states: “The State Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.” The right to work is also essential for the realization of other human rights and for human dignity, according to the Committee on Economic, Social and Cultural Rights. It contributes to the survival of an individual and that of the family and a person’s development and recognition within the community.

Article 2 of the ICESCR obliges state parties to ensure that rights set out in the Covenant are exercised without discrimination of any kind. Similarly, Article 26 of the ICCPR states “All persons are equal before the law and are entitled without any

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<sup>85</sup> There are eight fundamental Conventions which cover core international labour standards, including freedom of association, forced labour, discrimination, and child labour. See [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011\\_DISPLAY\\_BY,P10011\\_CONVENTION\\_TYPE\\_CODE:1,F](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F)

<sup>86</sup> ILO, ‘Declaration on Fundamental Principles and Rights at Work: The text of the Declaration and its follow-up’, available at: [www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm](http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm)

<sup>87</sup> Cuba’s Labour Code (Act 116 of 2014) states: “all citizens able to work have the right to work and obtain a job taking into account the needs of the economy and their choice, both in the state sector and non-state sector; without discrimination based on skin colour, gender, religious beliefs, sexual orientation, territorial origin, disability or any other kind of distinction harmful to human dignity”.

<sup>88</sup> See CEACR Observation – adopted in 2016, published 106th ILC session 2017, Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Cuba (Ratification: 1965), Available at: [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:3298299](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3298299)

<sup>89</sup> CEACR Direct Request – adopted 2016, published 106th ILC session (2017), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Cuba (Ratification: 1965).

<sup>90</sup> CEACR Direct Request – adopted 2016, published 106th ILC session (2017), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Cuba (Ratification: 1965).

discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as...political or other opinion”.

In General Comment 20, an authoritative interpretation of the ICESCR, the Committee on Economic, Social and Cultural rights stated that: “Non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of economic, social and cultural rights.”<sup>91</sup> The Committee has also noted that states should actively take a broad range of measures to address discrimination in law and in practice, including in the private sector.<sup>92</sup>

Dismissals from employment in the public sector due to perceived or actual political opinion are a form of discrimination prohibited under international law and violate ILO Convention No. 111. The ILO Committee of Experts stated in its 2002 Observations to Cuba, “the protection of freedom of expression is aimed not merely at the individual’s intellectual satisfaction at being able to speak her or his mind, but rather – and especially as regards the expression of political opinions – at giving such persons an opportunity to seek to influence decisions in the political, economic and social life of society.”<sup>93</sup>

As there are virtually no professional categories in which university graduates or professionals can gain licenses for legal self-employment in Cuba, when professionals are wrongfully dismissed for exercising their right to freedom of speech in the state sector, it has a particularly debilitating impact on them as they are unable to pursue their careers. As documented in this briefing, they are often unable to find work in the state sector and cannot continue working in their chosen profession in the non-state sector. This is inconsistent with the goals of the ILO Convention on Employment Policy (Convention No. 122), Article 2.c of which states: “there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.” Furthermore, Article 23.1 of the UDHR establishes that “everyone has the right to free choice of employment.”

When administrative regulations and the criminal law are used against those in the self-employed sector who are, or are perceived to be, critical of the government in a way that deprives them of their ability to work, the state is also limiting their ability to ensure an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The prohibition in practice on independent trade unions and the right to strike and the limitations this places on workers’ ability to effectively organize, defend just and favourable conditions of work, and appeal against discriminatory dismissals constitutes a violation of ILO Convention No. 87.<sup>94</sup>

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<sup>91</sup> Committee on Economic, Social, and Cultural Rights, ‘General Comment No. 20: Non-discrimination in economic, social and cultural rights (Art. 2, para.2, of the International Covenant on Economic, Social and Cultural Rights)’, 2 July 2009, para.2.

<sup>92</sup> The Committee has noted that state parties to the ICESCR must take measures to address both formal discrimination (in a country’s constitution, laws and policies) and substantive discrimination (the conditions and attitudes which drive or perpetuate substantive discrimination particularly in groups who have suffered historical or persistent prejudice). This obligation on states extends to the private sector and requires state parties to adopt measures - including legislation - that ensures individuals in the private sphere do not discriminate on prohibited grounds (paras 7-8). Furthermore, states are required to actively eliminate discrimination in law and in practice through a broad range of measures, and in some cases special temporary measures, incentives for compliance or penalties for non-compliance with non-discrimination standards, and public leadership programmes (para.39).

<sup>93</sup> CEACR Observation – adopted 2002, published 91<sup>st</sup> ILC session (2003), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Cuba (Ratification: 1965)

<sup>94</sup> See also Committee on Economic, Cultural, and Social Rights, General comment No. 23, para.1.



## 3.7 FEAR OF RETURNING TO THEIR OWN COUNTRY

**“If they deport me to Cuba, I am not going to be able to practise my profession... As everything there belongs to the government, they won’t give me work as a professional anywhere.”**

Lawyer and former professor interviewed in Nuevo Laredo, Mexico, March 2017

Nearly all those who spoke to Amnesty International during the research for this briefing expressed fear of being returned to Cuba and believed they would be at risk for detention if deported. They also believed they would be excluded from access to any kind of state employment and subsequently harassed in the self-employed sector. For many, their fear was that they would not be able to provide for their family. Interviewees who had been directly involved in political activism believed they would be imprisoned if returned.

A 25-year-old sportsman who worked in Cuba in a pizza restaurant said: “If before I ‘wasn’t trustworthy’, now I am worse off because I deserted my country. I am less trustworthy now. If before it was because I had family overseas, now I am even less ‘trustworthy’ for having deserted... Now I will be under much closer surveillance than before. My freedom is at risk, because I won’t have work. And without work, they will apply the dangerousness law.”

Nearly all of those Amnesty International spoke to said they would find a way not to be returned to Cuba. The majority said while they had not initially planned to live in Mexico, they would prefer to stay and find any kind of work rather than be deported. The words of one man echoed the sentiments of many interviewees when he said: “I’d rather go back in a coffin [than voluntarily]...either I will stay here [in Mexico] illegally or I will head to Guatemala.”

People who had been abroad for several years had additional concerns as they believed that they would be unable to return and precluded from accessing social services if they return. Cuba’s revised migration law considers that a citizen has emigrated when they have resided outside of Cuba for a period of more than 24 months. Modifications made in 2012 to the migration law place a number of limitations and requirements on Cubans who wish to return to Cuba. For example, Cuban emigrants must “habilitar” (enable) their passport in order to enter the country, and there are limitations on the number of days they can visit Cuba.<sup>95</sup> There are other requirements for Cubans considered to have emigrated to re-establish residency.<sup>96</sup> On 28 October 2017, the authorities announced further changes to the migration law that would come into effect on 1 January 2018, including the elimination of the requirement for Cuban emigrants to “habilitar” their passport, and permitting the return of Cubans considered to have left the country “illegally”.<sup>97</sup>

The right to freedom of movement, as enshrined in Article 12 of the UDHR, protects the right of everyone to leave and return to their country. International standards require states not to impose measures – including administrative, legislative and judicial measures – that arbitrarily deprive individuals of their right to enter their own country.<sup>98</sup> The UN Human Rights Committee, regarding Article 12(4) of the ICCPR, has said there are very few, if any, situations where a person can legitimately be prevented from returning to their country.

Many of those whom Amnesty International was able to interview did not have a regular immigration status, and, based on their fears of being imprisoned or denied employment if returned, had applied for asylum in Mexico. In several of the interviews conducted, Cubans expressed having been treated in ways which could amount to ill-treatment by Mexican authorities. They additionally expressed concerns that the Mexican authorities did not properly assess the conditions in their country of origin.

Receiving states have a responsibility to examine individual asylum claims on their merits in a full and fair asylum process with all procedural and substantive safeguards.

<sup>95</sup> Decreto Ley 305, Modificativo de la ley no. 1312, “Ley de Migración” de 20 septiembre de 1976, Article 44 and 47

<sup>96</sup> Resolution no 44 published by the Ministry of Justice in the Gaceta Oficial 16 October 2012

<sup>97</sup> Granma, ‘Anuncia Cuba nuevas medidas migratorias’, 28 October 2018

<sup>98</sup> CCPR General Comment No. 27: Article 12 (Freedom of Movement) Adopted at the Sixty-seventh session of the Human Rights Committee on 2 November 1999, para.21

# 4. BELOW THE SURFACE OF THE ICEBERG

## 4.1 SELF-CENSORSHIP

**“Things are bad and you can’t protest... It’s like being a prisoner... it’s like you are deprived of your ability to do things that you feel under your skin... it’s like your mind is imprisoned.”**

Chef, 27 years old, interviewed in Tapachula, Mexico, in May 2017

Nearly every person whom Amnesty International interviewed identified lack of freedom of expression as a major factor in their decision to leave Cuba. Fifty years of repression of any form of criticism or dissent, including the use of state control over the employment sector as an additional tool of oppression, have resulted in constant self-censorship.

According to a 2017 poll by the University of Chicago conducted in the country, 76% of Cubans said they are careful in what they say sometimes, compared with 21% who said they feel they can always express themselves freely.<sup>99</sup>

A majority of the people Amnesty International interviewed said they were not involved in political or any other form of activism in Cuba. While many had heard of or knew the Ladies in White, opposition religious leaders and other activist groups and expressed strong admiration for their actions, when asked if they had ever thought about participating in some form of activism in Cuba themselves, most showed strong signs of restraint and fear.

**“I don’t get involved in political things... if you get involved they disappear you... Few people get involved in those things... nobody is crazy enough to get involved in that.”**

29-year-old market vendor interviewed in Tapachula, Mexico, in May 2017

Many said they would not express any kind of criticism of the government in a public space and some said they even mediated their views within the family. Many interviewees said they had refrained from participating in civic or political groups for fear of not being allowed to work again or of creating difficulties for family members still employed by the state.

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<sup>99</sup> NORC at the University of Chicago, ‘A Rare Look Inside Cuban Society: A New Survey of Cuban Public Opinion’, 2017, p.2.

When asked why they chose to leave Cuba rather than manifest their discontent with the current situation in Cuba, most said it was impossible to openly criticize the political or economic system or to participate in social movements outside of state-sanctioned spaces. In a typical account, a 33-year-old vendor said: “A simple comment, like saying you don’t agree with the system...for that simple reason you are punished. They can take you to court, take you away for years. You can’t do it, because you can’t do it...” A 37-year-old chef, who defined himself as independently opposed to the government, said he did not participate in organized opposition groups “because they label you as a *worm*.”<sup>100</sup> He said he had a friend who entered the opposition and “they made his life a mess.”

**“If you are afraid... to express what you think, you won’t have any problems... But for the rest... that want to know... that want to learn... they feel weighed down on the island... Those who think about questioning socialism... Those people lose everything. They prevent those people from working, and from growing, and from having a life. Those people, and their families too... are marginalized.... Many have the chance to leave, others have to stay.”**

33-year-old engineer interviewed in Tapachula, Mexico, May 2017

Those who had participated in peaceful protests had paid a high price. One woman who had been imprisoned for marching with the Ladies in White said that afterwards teachers prevented her six-year-old child from associating with other schoolchildren as if he would have a bad influence on them because of his mother’s activism. Another woman who attended a Ladies in White march had a large scar which she told Amnesty International was a result of a police beating during a march. She had never lodged a complaint as she said there was no independent body to receive it.

Impunity and the almost complete lack of effective recourse for human rights abuses in Cuba added to the sense of hopelessness among the majority of those interviewed and was an additional factor leading to their decision to self-censor. None of those interviewed felt they would receive effective representation from a lawyer, and in many cases had not accessed or engaged with a lawyer during their detentions or dismissals. Many of those who spoke to Amnesty International concluded: “In Cuba, there are no human rights”.

**“In Cuba, everything is designed so that government finds out about anything that moves.”**

Lawyer and former professor interviewed in Nuevo Laredo, Mexico, in March 2017

<sup>100</sup> In Cuba, “gusano” (worm) is a derogatory term used widely to describe those perceived to be in opposition to the government, critical of revolutionary ideology, or spies of the USA.

**“State security would surveille me. They’d be on the corner by my house every day. When I went out they would arrest me, they’d fine me... they had me in a bad shape.”**

40-year-old political activist fired from his job describes the surveillance he experienced, interviewed in Tapachula, Mexico, in May 2017

Nearly all of those who spoke to Amnesty International believed they were under constant and complex physical and virtual surveillance. Most said there was a Committee for the Defence of the Revolution on every street corner. One woman who had tried to emigrate by boat said she had had her phone blocked. When she enquired about it with the state telephone company, they informed her it was blocked as she was under investigation for attempting to leave the country “illegally”. A mechanical engineer said that after leaving Cuba he deleted some friends from Facebook for fear of getting them into trouble with the authorities by his mere association with them. Many interviewees also believed there were Cuban spies among the groups of migrants in Mexico.

**“I am stunned when I read the news in Mexico. They talk about the President as if he was a (normal) citizen. In Cuba you can’t do that... in Cuba everyone is afraid.”**

58-year-old former veterinarian interviewed in Tapachula, Mexico, May 2017

The existence of physical and/or virtual surveillance is often difficult to prove, either because it is covert or because it is technically difficult to prove, but even living under the constant threat of possible surveillance may be contrary to international law. The widespread surveillance among Cubans has led many to self-censor out of fear and to refrain from exercising their rights to freedom of expression, association and peaceful assembly, a fear further compounded by the threat of prosecution as a result of these practices.

Those interviewed repeatedly said leaving the country gave them unprecedented opportunities to exercise their right to freedom of expression and opinion. A 31-year-old fast food cook said that being in Mexico, with access to diverse media, was like “opening his eyes, and being born again”. Another man interviewed in Tapachula said: “Now I feel like the happiest man in the world, and the freest in the world. Far from my family, but I feel free because it’s sad living in a country where you don’t have rights to anything.”

## 4.2 THE CHILLING EFFECT

**“We are ill with fear.”**

Sportsman interviewed in Nuevo Laredo, Mexico, in March 2017

The rights to freedom of opinion and expression are crucial for the full development of a person and essential for any society. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has said that the arbitrary use of the criminal law to sanction legitimate expression amounts to one of the most serious forms of restriction to the right to freedom of expression, as it creates a “chilling effect” and results in other human rights violations such as arbitrary detention and torture and other ill-treatment.<sup>101</sup>

<sup>101</sup> Human Rights Council, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue’, 16 May 2011, para.28.

Reprisals against human rights defenders have a ripple effect in that those defending similar causes are deterred, which in turn affects the promotion and protection of human rights. The chilling effect also impacts society as a whole given that human rights defenders make demands at the social and collective level that contribute to the rule of law and to combating impunity.<sup>102</sup>

**“When human beings are free, they are able to create, to be creative, to work more, to study more, to live. Cuba is totally wrong... People don’t want to work. They are demotivated to study, to participate in anything.”**

44-year-old hairdresser interviewed in Tapachula, Mexico, in May 2017

The dozens of ordinary Cubans who spoke to Amnesty International described feeling “weighed down” and “suffocated” in their daily lives. Over successive decades the disproportionate and arbitrary use of the criminal law and campaigns of stigmatization and criminalization against those who dare to speak out or try to leave the country have contributed to this collective feeling.

The use of discriminatory dismissals from state employment and campaigns of harassment of self-employed people as an additional layer of state control, with no effective way to challenge them before competent courts, has created a profound climate of fear in Cuba.

The cumulative effect of these practices has resulted in a chilling effect, which impacts people’s ability to participate in an array of decisions that affect their daily lives, from buying goods, to negotiating their salaries, to contributing their ideas to the development of their country.

For many Cubans, these intersecting controls and limitations on a broad range of human rights are so stifling, they see leaving the country as their only option.

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<sup>102</sup> IACHR, *Criminalization of Human Rights Defenders*, p.114.



# 5. RECOMMENDATIONS

## TO THE CUBAN GOVERNMENT

### INTERNATIONAL SCRUTINY

- Ratify, without delay, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
- Allow independent human rights monitors access to Cuba and grant them, without hindrance, access to government officials, civil society organizations, human rights defenders, independent political associations and independent trade unions.
- Extend invitations to the UN Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and of association, and on the situation of human rights defenders.

### FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

- Review all legal provisions, including Article 62 of the Constitution, which unlawfully limit the rights to freedom of expression and association, with the aim of bringing them into line with international standards.
- Promote the review of criminal offences – such as resistance to public officials carrying out their duties (*resistencia*) and public disorder (*desórdenes públicos*) and ensure they are not applied to unduly restrict the rights to freedom of expression and peaceful assembly.
- Amend provisions of the Penal Code, such as those on “dangerousness”, that are so overly broad and vague that they allow for deprivation of liberty when no criminal offence has been committed.
- Amend laws which impose illegitimate restrictions on associations and that prevent in practice the registration of human rights organizations and independent media outlets, even when such associations are critical of the government.
- Repeal criminal defamation laws, such as that on contempt (*desacato*), which serve to silence critical views and restrict public debate.
- Conduct a thorough review of the Penal Code and other criminal laws to ensure that criminal offences have a legitimate aim, meet the principle of necessity and proportionality, and that deprivation of liberty is contemplated only as a last resort, especially where less harsh measures would be equally effective.
- Amend laws which impose illegitimate restrictions on associations and that prevent in practice the registration of human rights organizations and independent media outlets, including associations critical of the government.
- Repeal or substantially amend all legislation that can be used to prohibit or that criminalizes associations that seek, receive or utilize foreign funding destined to support their work.

### HUMAN RIGHTS DEFENDERS AND CIVIL SOCIETY

- Immediately and unconditionally release all prisoners of conscience who have been imprisoned solely for the peaceful exercise of their rights to freedom of expression, association or assembly.
- Cease all forms of harassment and intimidation, including the practice of short and recurrent arbitrary detentions, against human rights defenders and political activists.
- Promote and widely disseminate the UN Declaration on Human Rights Defenders among state officials, including in the judiciary, and among society in general.
- Refrain from using language that stigmatizes, abuses, disparages or discriminates against human rights defenders, including by characterizing them as “deserters”, “traitors” and “counter-revolutionaries”.

- Create spaces for dialogue with human rights defenders, independent trade unions, and diverse civil society groups, especially those critical of the government, to receive their feedback on proposed policies and laws.

#### **THE RIGHT TO WORK AND NON-DISCRIMINATION IN WORK**

- End discriminatory dismissals of public sector workers as a way to silence criticism of the government
- Prohibit discrimination based on political or other opinion in hiring, promotion and termination of employment in the public and private sector.
- Take steps to ensure that all workers, including university graduates, are able to exercise their occupation freely and without discrimination based on political or other opinion, even when they express opinions critical of the government.
- Ensure that any disciplinary proceedings are brought on the basis of an employee's capacity and conduct in their employment rather than their political opinion or the peaceful exercise of their human rights, including the rights to freedom of expression, peaceful assembly and association.
- Amend the new Labour Code to bring it in line with ILO Convention No. 111, specifically to prohibit discrimination on the full range of grounds covered in Article 1(a), and to protect against discrimination in access to employment, as recommended by the ILO Committee of Experts.
- Ensure that workers are not obliged to participate in pro-government activities, or punished for not participating in them, and ensure that in practice no information concerning political or other opinion is recorded in employees files and used against them, as requested by the ILO Committee of Experts.
- Take immediate measures to prevent discrimination based on political or other opinion in the public and private sector, in line with ILO Convention No. 111. Such measures should include appropriate laws, policies and programmes, and in some cases special temporary measures, incentives for compliance or penalties for non-compliance with non-discrimination standards, and public leadership programmes.
- Allow in practice the registration of independent trade unions, consistent with ILO Convention No. 87.
- Ensure that all workers are afforded the right join a trade union of their choosing.
- Ensure that public sector employees subjected to disciplinary proceedings are afforded the right to effective trade union representation and have an effective opportunity to present their defence before any sanctions are imposed.
- Ensure that in the event of any disciplinary proceedings resulting in dismissal, the consequences do not result in the denial of human rights, notably, the right to work and the right to an adequate standard of living.
- Establish a genuinely independent, impartial, transparent and effective appeal mechanism by which public sector employees can challenge dismissal from their jobs and in which they have access in practice to legal representation and assistance so as to ensure their right to an effective remedy.
- Ensure that public sector workers found not to be guilty of wrongdoing are able to return to their previous jobs and/or are provided with appropriate compensation.
- Cease all acts of harassment and intimidation against members of independent trade unions, and refrain from interference which limits the exercise of freedom of association, or the exercise of human rights related to trade unionism, or that deprives trade unionists engaged in legitimate activity of their liberty, as requested by the ILO Committee on Freedom of Association.
- Ratify the ILO Convention on Termination of Employment (Convention No. 158) which protects against arbitrary dismissal without due process.

#### **FREEDOM OF MOVEMENT**

- Abolish laws that violate the right of any individual to leave their country and to return to it. In particular, repeal Articles 216 and 217 of the Penal Code that impose penalties for "illegal exits".
- Ensure that Cubans who wish to return to their country after having left are allowed to do so without fear or discrimination, including in cases where they have emigrated without authorization.
- Take immediate steps to stop state-sponsored stigmatization of those who have left or tried to leave the country and ensure that no one is deprived of access to employment based on this.

## **INDEPENDENCE OF THE JUDICIARY AND ROLE OF LAWYERS**

- Adopt the necessary measures, including adopting specific legislation, to guarantee the independence and impartiality of the judiciary.
- Ensure that everyone deprived of their liberty or facing a possible criminal charge has the right to the assistance of a lawyer to protect their rights and help in their defence.
- Ensure that lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference and that they are not threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with their professional duties, in accordance with the UN Basic Principles on the Role of Lawyers.

## **TO THE US CONGRESS**

- Take the necessary steps towards lifting the economic, financial and trade embargo against Cuba which undermines economic, social and cultural rights in Cuba.

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FOR HUMAN RIGHTS.  
WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
MATTERS TO US ALL.**

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# **“YOUR MIND IS IN PRISON”**

## **CUBA’S WEB OF CONTROL OVER FREE EXPRESSION AND ITS CHILLING EFFECT ON EVERYDAY LIFE**

The Cuban voices at the centre of this briefing, describe feeling weighed down and suffocated in their daily lives. Successive decades of disproportionate and arbitrary use of the criminal law and campaigns of state-sponsored discrimination against those who dare to speak out or try to leave the country has contributed to this feeling. Discriminatory dismissals from state-employment, and arbitrary harassment of self-employed workers in the private sector, as an additional layer of state control, and the lack of an effective recourse to challenge them, has created a profound climate of fear in Cuba. This chilling effect has a deep impact on a wide range of decisions that affect Cuban’s daily lives. Intersecting controls on a range of human rights are for many so stifling, they see leaving Cuba as their only option.

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