



## UPR Submission

### Cuba

September 2008

#### Summary

For almost fifty years, the Cuban government has relied on the harsh repression of political dissent and exercise of basic freedoms to remain in power. The denial of basic civil and political rights is written into Cuban law. In the name of legality, armed security forces, aided by state-controlled mass organizations, have silenced dissent with heavy prison terms, threats of prosecution, harassment, or exile. Cuba has used these tools to restrict severely the exercise of fundamental human rights of expression, association, and assembly. Indeed, hundreds of Cubans remain behind bars today for the peaceful expression of ideas out of favor with the government. Others face raids, short-term detentions, and beatings for trying to organize independent political groups or for defending human rights.

Since Raul Castro assumed the presidency in February 2008, there have been some encouraging signs that the government might moderate its longstanding disregard for international human rights norms. However, there has been no real progress toward reforming the country's repressive laws and policies.

#### Legal Machinery

The apparatus for repression of speech, association, and assembly is written into Cuban law. The country's criminal code grants officials broad authority to repress nonviolent opposition. Numerous laws explicitly penalize the exercise of fundamental freedoms while others are so vaguely defined as to grant Cuban officials broad discretion to silence government critics. Such crimes as "dangerousness," "enemy propaganda," and "contempt for authority" (desacato) have been regularly used to shut down dissent.

Basic freedoms are also abridged by the lack of independence of Cuba's judiciary. Cuban law allows the country's highest political authorities to control the courts and prosecutors, granting broad authority for warrantless arrests and pretrial detention, and restricting the right to a defense. Indeed, Cuba's Constitution explicitly states that the courts are "subordinate in the line of authority to the National Assembly... and the Council of State," a supreme

executive branch body, and that the Council of State may issue instructions to the courts. This structure robs Cuban courts of even the semblance of independence and impartiality. At the same time, Cuban law permits civilians to be tried in military courts, whose independence and impartiality are also an open question. Moreover, Cuban judges occasionally choose to prosecute nonviolent government opponents behind closed doors, violating the right to a public trial.

Although the Cuban constitution states that citizens have the right to a defense, Cuba's procedural laws, as well as the banning of an independent bar association, seriously debilitate this right. Given the lack of independence of judges, prosecutors, and state-appointed or approved attorneys, many defendants have little hope that their attorneys can or will provide them a meaningful defense.

Although Cuba's Associations Law (Ley de Asociaciones y su Reglamento) claims to guarantee the right to association, the law effectively bars the legalization of any genuinely independent organization. The law requires organizations to "coordinate" and "collaborate" with a counterpart state entity. Fulfilling this condition necessitates the group's subjugation to the government organization, by allowing a representative of the state entity to attend and speak at any planned or unplanned meetings; requiring the group to notify the government in advance of any publications; coordinating with the government entity regarding participation in any national or international event; regularly reporting to the government on its activities; and providing prior notice of the date and hour of any meetings or other activities.

### **Encouraging Steps**

Recent actions by Cuba's newly-installed President Raul Castro suggest that the Cuban government may be willing to consider a new approach to human rights. The government marked International Human Rights Day (December 10) 2007 by announcing that it would sign the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights<sup>1</sup>. Nonetheless, it remains to see whether the National Assembly (filled exclusively with government supporters), will ratify the documents without attaching reservations that undermine the object and purpose of the treaties.

Of the 75 dissidents rounded up by the authorities during a crackdown in 2003, twenty have been released, according to Cuba's non-governmental Commission on Human Rights and National Reconciliation. Overall, the Commission reports that the number of political prisoners in Cuba has dropped by 26 percent, from 316 to 234, since Raul Castro took provisional control of the government in July 2006. While this marks an improvement, Cuba remains one of the nations with the highest number of peaceful dissidents imprisoned.

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<sup>1</sup> The Cuban Government proceeded to sign the two instruments in February 28, 2008

The government has also reportedly eased some restrictions on foreign travel, which has been strictly limited for decades, contributing to considerable suffering on the part of those with relatives living abroad. However, exit visas are apparently still be required for medical personnel, recent university graduates, members of the military and of the Interior Ministry.<sup>2</sup> These people will continue to suffer from Cuba's restrictions on freedom of movement.

The August 31, 2008 sentencing of a dissident musician to a \$28 fine for "public disorder" shows that Cuba is still loathe to tolerate any expression of opposition. Aguila's "offenses" apparently included lyrics referring to Fidel Castro as "el Coma andante" and references to Cuba's Central Committee as the Central Geriatric Committee. Twenty-eight dollars far exceeds the average monthly wage in Cuba. Nonetheless, the trial included several encouraging and unusual developments: charges of "social dangerousness" that would have required a four-year prison term were dropped and authorities allowed a prominent non-governmental human rights monitor, Elizardo Sanchez, to attend.<sup>3</sup>

### **Continued Repression**

Despite these tentative positive signs, short-term arrests, raids, and beatings of government opponents appear to have actually intensified in recent months.

On April 21, 2008, a group of wives of political prisoners known as the Ladies in White, were reportedly arrested while attempting to conduct a peaceful demonstration and later released.<sup>4</sup>

On July 16, 2008, authorities reportedly arrested another 11 members of the student group as they were preparing to celebrate the 17th anniversary of the group's founding as well as the birth of José Antonio Echeverría, an anti-communist student icon. Authorities subsequently searched the youths' homes to confiscate t-shirts bearing images of Echeverría. Eight of the minors were released that night; three were kept overnight for refusing to remove their t-shirts.<sup>5</sup>

Dissidents also faced so-called acts of repudiation – government sanctioned mob attacks – in recent months. On May 30, Lisandra Domínguez Mora, a

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<sup>2</sup> Christina Boyle, "Raul Castro loosens travel restrictions for Cubans," New York Daily News, April 18, 2008, [http://www.nydailynews.com/news/us\\_world/2008/04/18/2008-04-18-raul-castro-loosens-travel-restrictions.html](http://www.nydailynews.com/news/us_world/2008/04/18/2008-04-18-raul-castro-loosens-travel-restrictions.html) (accessed July 31, 2008).

<sup>3</sup> Will Weissert, "Dissident Cuban rocker set free after paying \$28 fine," Associated Press, Aug. 31, 2008.

<sup>4</sup> Cuban Democratic Directorate, "Ladies in White Demand Freedom for Political Prisoners at Revolution Square, Raul Castro's Regime Cracks Down," April 21, 2008, [http://www.directorio.org/pressreleases/note.php?note\\_id=1962](http://www.directorio.org/pressreleases/note.php?note_id=1962) (accessed July 31, 2008).

<sup>5</sup> Cuban Democratic Directorate, "New Arrests in Continuing Repression against Young Cubans," July 17, 2008, [http://www.directorio.org/pressreleases/note.php?note\\_id=2075](http://www.directorio.org/pressreleases/note.php?note_id=2075) (accessed July 31, 2008).

student at a vocational program in Buenaventura, Holguin, who is active in human rights, was reportedly beaten and expelled from the program for wearing a bracelet with the word "Cambio" (change).<sup>6</sup>

On July 8, a mob carrying portraits of Ernesto "Che" Guevara reportedly attacked the home of student leader Nestor Rodriguez Lobaina in Baracoa, throwing objects at the house, trying to break in, and burning a sign that opposition members had placed in front of the house.<sup>7</sup>

## **Recommendations**

The government should take immediate steps to lift restrictions on fundamental freedoms. Specifically it should:

Immediately and unconditionally release all those imprisoned for exercising their fundamental rights to free expression, association, assembly, or movement, including all those imprisoned for human rights monitoring and advocacy.

Reform Cuba's Criminal Code, repealing or narrowing the definition of all crimes that are in violation of established international norms and practices. Among the crimes that should be repealed are: contempt for authority, clandestine printing, illegal exit, dangerousness, defamation of institutions and mass organizations, insulting the nation's symbols, abuse of the freedom of religion, failure to comply with the Associations Law, and failure to comply with the duty to denounce.

Cease application of the Criminal Code's security crimes – including enemy propaganda, rebellion, revealing secrets concerning state security, sedition, sabotage, and other acts against state security – against non-violent dissidents for the exercise of their fundamental rights.

Restructure the court system to establish judicial independence.

Reform the Criminal Procedure Code to provide due process guarantees for all criminal defendants. In particular, the Criminal Procedure Code should afford swift judicial review of all detentions and defendants' prompt access to lawyers. The government should also permit lawyers to practice without joining collective law firms.

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<sup>6</sup> Cuban Democratic Directorate, "Female Student Beaten and Expelled for Wearing a CAMBIO (CHANGE) Bracelet," June 4, 2008, [http://www.directorio.org/pressreleases/note.php?note\\_id=2022](http://www.directorio.org/pressreleases/note.php?note_id=2022) (accessed July 31, 2008). For more examples visit the Democratic Directorate website at <http://www.directorio.org/pressreleases/index.php>

<sup>7</sup> Cuban Democratic Directorate, "Mobs Led by Cuban Secret Police Besiege Student Leader's Home," July 9, 2008, [http://www.directorio.org/pressreleases/note.php?note\\_id=2066](http://www.directorio.org/pressreleases/note.php?note_id=2066) (accessed July 31, 2008).

Cease support for “acts of repudiation” of dissidents and prosecute any individuals who continue this practice.

Abolish restrictions on travel that violate the right of any individual to leave his or her country and to return to it. In particular, the government should reform the Criminal Code to eliminate the crimes of illegal exit and entry.

Ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, without attaching reservations that undermine the object and purpose of these treaties.