



LIMITATIONS FOR THE DEFENSE OF HUMAN RIGHTS IN CUBA

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Presentation

DemoAmlat is an initiative of Transparencia Electoral that aims to make visible the anti-democratic and illiberal nature of the Cuban regime and its pernicious influence in Latin America.

The Cuban dictatorship emerged unscathed from the third wave of democratization and saw different authoritarian regimes move in the 70s, 80s and 90s, to democracies, some more robust than others, but finally democracies.

During the last decade of the twentieth century and the first of the twenty-first century, Cuba remained the only non-democratic regime in Latin America, but thanks to its efforts to penetrate the democracies of the region, the authoritarian club has been joined by Venezuela and Nicaragua, two great allies of the Island.

To prevent a democratic transition, the Cuban regime, first in the hands of the Castro brothers and since 2018 under the presidency of Díaz-Canel, has used the systematic violation of human rights. The world has witnessed the cruelest and most inhumane treatment of dissent in a country that paradoxically has a seat on the Human Rights Council (HRC) of the United Nations (UN).

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The lack of scruples of the ruling elite of Cuba to limit and prevent the exercise of the most basic freedoms of its citizens has been decisive in sustaining the totalitarian model in which only the Communist Party of Cuba has a place, the only legal political organization according to the Constitution, and to which mass organizations are subordinated, that control the population and cut off civic space.

The historic protests of July 2021 left more than a thousand people arrested, hundreds of convictions, torture, and at least 200,000 exiles in the last year alone.

In addition, the National Assembly of People's Power, Cuba's legislative body where only the PCC is represented, approved a Penal Code that provides for death or life imprisonment for more than 20 crimes related to state security and drafted in a very vague manner, leaving a large space for arbitrary interpretation.

More recently, at the time of writing these lines, protests are being violently repressed in several localities of the island and according to the organization [Justice 11J](#), there is a record of at least 20 detainees between September 30 and October 3.

Through this report, DemoAmlat aims to give an account of the current human rights situation in Cuba. The first part will expose the guarantees that a State must give for the appropriate protection of human rights, and the second part will address the Cuban situation, the changes implemented by the new Constitution (2019), the Penal Code (2022) and the balance thrown by the demonstrations of July 2021.

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Part One: International Standards for the Defense of Human Rights

This report aims to highlight the worrying state of human rights in Cuba today. Human rights are guaranteed in countries that have a strong democratic government. The democratic process encourages and values the participation of citizens in the day-to-day life of a country. A democratic state allows for regular, free and fair elections with a selection of candidates from a variety of parties ranging from one end of the ideological spectrum to the other.

A democratic state is a balance of aspiration and reality. It maintains the status quo to better serve the general population in economic, social and political areas. It provides a decent standard of living for as many people as possible in areas such as education, health care, job opportunities and, above all, gives citizens the ability to live a free and fulfilling life. It allows them to participate in the direction their country is taking and thus determine their future. The opposition respects itself, accepts itself, and is part of the political landscape. Choice exists in all areas of life and discussion and debate are open.

Democracies facilitate human rights, among other rights. They do this by being members or facilitating the work of international organizations such as the United Nations, the International Red Cross and Human Rights Watch and non-governmental organizations (NGOs) such as Amnesty International and other civil society organizations. Members of the United Nations subscribe to just principles and commit themselves to upholding civil and political rights and economic, social and cultural rights, among many others. They should strive to protect the rights of women and children, persons with disabilities and promote freedom of expression and association without risk of arbitrary detention or enforced disappearance. They campaign for fair access to justice and reasonable conditions of detention. These aspirations are realized by signing and ratifying into national laws specific UN conventions, such as the Convention on the Rights of Persons with Disabilities CRPD, the International Convention on Economic, Social and Cultural Rights CESCR, the International Covenant on Civil and Political Rights CCPR. to name a few. ^[1]

Each signatory to a convention agrees to uphold the same international standards of justice over rights within the carefully articulated parameters of an international convention. The objectives of the convention are clearly stated and leave no room for individual interpretations to suit a particular government.

Judicial independence

To ensure that these conventions are fully integrated and operational in a given country, the national judiciary must be vigilant. It is essential that the judiciary be free to uphold any international commitments that have been ratified without interference from external parties such as government or corporate interests. No pressure should be put on the legal system to promote any scheme that defends the interests of government at the expense of citizens' rights. Currently, the UN is made up of 193 countries, including Cuba, and the rules apply equally to all of them. ^[2]

Judicial independence is an absolute prerequisite for ensuring that the rule of law can function fully and that international and national legal commitments can be fulfilled without external interference or pressure. If judicial appointments are not made in a transparent manner, how can citizens believe in their country's commitment to give them a fair hearing? Judges and other members of the legal profession should be appointed on merit and not on the basis of their politics. This must be achieved through the separation of powers, which is a cornerstone of democratic principles. Once in place, they must be guaranteed the right to work without hindrance.

The judiciary must be able to rely on and support an independent and honest police force that is versed in the law and the human rights of all citizens. The police must go to court knowing that they will be required to defend the rights and freedoms enshrined in the constitution. Practices such as arbitrary detention or excessive use of force will not be tolerated. There can be no impunity for malpractice.

Judges should be able to hold a fair trial in which suspects have legal representation and in which there are no undue delays in proceedings. In the case of minors and vulnerable adults, all international procedural standards must be scrupulously respected.

The judiciary should know that when sentencing someone to a prison sentence, that person will be detained in accordance with international standards and will not be subjected to torture or other cruel, inhuman or degrading treatment while in custody. Children should be placed in appropriate facilities and never in custody with adult prisoners.

A person should never be guilty by association and is always innocent until proven guilty.

A country must be willing to submit to independent observation of its detention facilities to demonstrate that they meet the international standard of a UN member state. The

international committee of the Red Cross conducts visits to political prisoners. Amnesty International conducts country visits to monitor compliance with international human rights standards in all areas. These organizations can make recommendations on how unsatisfactory conditions can be improved to guarantee basic rights for all. A country with some interest in providing human rights to its citizens should welcome these visits and engage with feedback to improve standards across the country.

Freedom of association, assembly and expression

Freedom of association, assembly and expression are basic human rights. Without them, people lose their voice and their ability to come together to make their feelings known. This is how people protest or support and make their opinions heard. They show the collective wishes or demands of citizens and convey those opinions to the government. If a country does not allow free assemblies of its citizens, their speeches and their power to be heard are muzzled. It cuts off a vital channel of citizen communication and deprives the government of a clear understanding of what its citizens want or need.

A free press is vital because it will make known the daily realities of people's lives and, consequently, is a check on the functioning of the state. The inability to access a free national or international press means that people can only read what the government wants them to read. They feed on a single narrative, with no way to access alternative media. Gagging the press and interfering with the ability to access foreign websites is one of the most effective ways to control a population. Their broader benchmarks are taken away and their ability to rally support and dissent is cut off. It effectively isolates them within a small space. It also robs them of the knowledge that their struggle is witnessed and supported by a wider international audience.

Defence of human rights

There are many actors that impact the way human rights are defended in a country. There are the big organizations like Amnesty International, Human Rights Watch and, of course, the UN. They are high-profile with international coverage and carry weight in the international community. They are independently funded and are therefore not required to follow a specific line in reporting. They can give clear and impartial opinions on the state of human rights in a country. Their reports are widely circulated and can put pressure on states to improve their performance in providing human rights. But there are also small organizations, grassroots groups that provide invaluable information about what's really going on in specific areas. They know the physical landscape and the human cost of providing or enhancing human rights on the ground. They can provide

daily updates on what's happening and have the interests and support of the communities they serve always at the forefront of what they do. However, in order to work in the field of human rights, they must have the freedom to examine and question what they see and have no obstacles in their work. They need to be provided with funding without strings attached. While registering and organizing these groups is helpful in ensuring that as many areas as possible are covered, registration and access to government support should not depend on them repeating a government doctrine. Its workers must be free to operate independently of policing and report abuses wherever and however they see them.

Cuba's new constitution and penal code will be considered to see if the changes introduced are beneficial to the people it serves or if they further tighten the knot on personal freedom and human rights.

The Universal Declaration of Human Rights (UDHR) adopted by the UN General Assembly contains fundamental rights that underpin a democratic society.^[3] Many of these personal freedoms, such as association and expression, are taken for granted, as is the freedom to join unions in the workplace to better negotiate wages and conditions. If these basic freedoms are absent or significantly restricted in a country, the ability to lobby for better rights is severely restricted. This disempowerment of people's ability to defend their rights has a significant influence on their ability to improve the system. They are powerless to combat government policies that can greatly mitigate against them.

In addition, the human rights established in the Universal Declaration are reaffirmed by many countries of the Americas that are part of the Inter-American Commission on Human Rights, the Organization of American States. Article 17 of the agreement states that they 'shall respect the rights of the individual and the principles of universal morality'. Consequently, these are clear universal parameters for the protection of human rights that must be respected by States.^[4]

Part Two: The Situation on the Ground in Cuba Today

The first part of this report has established the international parameters considered necessary to defend human rights in a country. Looking at how Cuba adheres to these parameters will give a good indication of the limitations it exercises in the defense of human rights there.

Starting with the rights of free assembly and expression, just look at the events of July 11, 2021. That day, citizens took to the streets to protest as reported in an article by the Institute on Race and Equality and Human Rights "On July 11, 2021 and the following days (hereinafter, "11J"), one of the largest protests in the country's recent history was experienced in Cuba. On that occasion, thousands of people took to the streets of more than 50 cities to peacefully express their concern about the worsening health and economic crisis, and denounce the policies imposed by the government to reduce civic space. Civil society organizations registered more than 124 peaceful demonstrations throughout Cuban territory, which included the 15 provinces and the special municipality Isla de la Juventud. [\[5\]](#)

The protests that began on July 11, 2021 in Cuba represented the response of Cuban society to a social situation that worsened day after day. This is due to the inability of the Cuban State to effectively guarantee access to economic, social and cultural rights and respect the exercise of civil and political rights of its citizens.' [\[6\]](#) What began as a peaceful protest by citizens turned into a bloody situation due to the heavy-handed response of the police and other state actors. 'A high number of protesters reported serious human rights violations due to the excessive use of police force, resulting in one death, 1,745 repressive actions, at least 1,103 arbitrary arrests, several testimonies of sexual assaults by the police, 402 assaults, 63 harassments, 55 summonses and internet cuts throughout the country.' [\[7\]](#)

Citizens' rights to expression and assembly were completely trampled underfoot. There was no attempt by the government to listen to the grievances and needs of its citizens, in fact Cuban President Miguel Díaz-Canel Bermúdez fermented the civil struggle and "incited the civilian population to take to the streets to 'act,' including through violence against the protesting people." [\[8\]](#) The human rights of a significant part of the population were being suspended by its president. The president was pitting citizens against each other.

The aforementioned figures were also endorsed in a report by the NGO Cubalex that indicated that there were 1,484 arrests and 87% were verified by the detainees or their

relatives. 85% were men and 14.6% women. These people were arrested for a peaceful protest that received a brutal response from the police. This clearly indicates that the right to protest and express an opinion is severely restricted and are not respected by the Cuban government.

The treatment of detainees in the 11J protests shows clear violations of basic detention rights. In a 2021 report by the Inter-American Commission on Human Rights, [section ii 54](#) highlights ^[9] "The Commission has also followed up on the generalized, illegal, and arbitrary detentions that have occurred in Cuba in the context of the social protests that began on July 11, which have reached alarming numbers. Additionally, the IACHR has monitored the conditions of detention experienced by people who have been deprived of liberty in this scenario." And [paragraph II 55](#) establishes that "specifically, in the case of recent arrests related to protests, the Commission has been monitoring the number of people detained, the circumstances of the detentions, the people who remain deprived of liberty, and the detentions of adolescents. He also highlighted the lack of official information on these issues. According to Cubalex and Justicia 11J for December 9, the number of people who have been deprived of liberty in the framework of the protests is 1314"^[10]

As indicated in the first part of this report, there must be transparency about the conditions of detention and the whereabouts of detainees. Special procedures should be applied to adolescents. According to the 2021 IACHR report, detention conditions are deplorable, with overcrowding, lack of food and water, and isolation being the norm. These can be seen as a form of cruel, inhuman or degrading treatment that violates the right to humane and other human rights. With regard to the mistreatment of detainees, the IACHR was informed that people who participated in the protests have been subjected to torture and cruel and inhuman treatment. In this regard, the Commission reiterates its condemnation of all forms of cruel, inhuman, and degrading treatment, and recalls that it is absolutely prohibited in all circumstances. ^[11]

It is very clear from the IACHR report that Cuba has done little or nothing to protect detainees from further abuse and neglect. The fact that Cuba has signed and ratified the Convention against Torture and Other Cruel or Degrading Treatment or Punishment (CAT) in January 1986 and May 1995 respectively, has no impact on the current reality. The Cuban government is neglecting its responsibilities under the Treaty despite its commitment to fulfilling them. His behaviour towards those arrested after 11J shows no interest in defending human rights in this area.

The treatment of these detainees deteriorated further when their trials began. According to IACHR reports, "most of the detainees were subjected to interrogations for intimidating purposes and did not have adequate legal assistance. In this regard, the IACHR received information that these persons had been interrogated without knowing the reason or whether the interrogations were related to a criminal investigation. Nor have they been informed of their right to remain silent and their right to legal assistance."^[12] This behavior goes against the basic human right to a fair trial that allows a detainee access to a pre-trial lawyer and clear information about the charges against them. In addition, detainees have been held incommunicado with their families. This is particularly serious in the case of juvenile detainees who are particularly vulnerable. Holding detainees incommunicado amounts to enforced disappearance. Cuba signed the Convention for the Protection of All Persons from Enforced Disappearance in February 2007 and ratified it in February 2009. The Cuban government is not fulfilling its obligations under this treaty.

Failure to treat people with medical problems during detention also demonstrates callousness and total disregard for their overall health and well-being. In the case of Luis Robles Elizastegui, who is detained without access to his medications despite suffering from chronic gastritis, the IACHR has granted precautionary measures in his favor.^[13]

The Cuban government does not allow the Red Cross or Amnesty International to conduct monitoring visits to see conditions of detention or to see that human rights are respected in trials.^[14] It is the only country in the Americas that does not allow international monitors. This says a lot about their contempt for human rights.

At the trial, "according to the report, many people were tried as a group, without segregation of cases, mostly in closed-door hearings in which the only evidence presented was the testimony of state security agents."^[15]

These summary trials with detainees handcuffed hand and foot and surrounded by soldiers and other State agents paint a chilling picture of the power of the state to intimidate and disregard international trial standards.

Human rights in any country are built into its legal system. They must be clearly stated and available to all citizens equally. They must be confirmed in practice by the courts under the direction of the judiciary. Therefore, as indicated in the first part of this report, an independent judiciary is essential. It must be separate from the government of the day and must be allowed to defend national and international law. It must be able to hold everyone, including police and state actors, accountable for meeting high standards of behavior. There should be no collusion to quell dissent in favor of advancing government

policy. All citizens should have equal rights, even if it means allowing criticism of government policies and holding elected representatives accountable. Amnesty International's criticism of the Cuban judiciary is therefore worrying:

"The judicial system is firmly under political control, severely undermining the right to a fair trial.

The National Assembly of Cuba elects the President, Vice-President and other judges of the People's Supreme Court, as well as the Attorney-General and Deputy Attorney-General.

Defense lawyers are government employees and do not often question prosecutors or evidence presented by state intelligence services.^[16]

Cuba is incorporated into the UDHR and therefore subject to its provisions. In addition, the UDHR is widely recognized as customary international law. Articles 5 to 11 of the UDHR grant "the right to a fair and public hearing by an independent and impartial tribunal", equality before the law, protection from cruel or degrading treatment, the right not to be arbitrarily arrested or detained and the presumption of innocence until proven guilty, as well as the right to an adequate defense. It is clear from the foregoing that there are severe limitations on the defence of human rights and consequently Cuba does not adhere to its obligations under the UDHR.

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According to DemoAmlat "Democracy is based on the principles of freedom of expression and association in the book of the exercise of the vote"^[17]. It could be argued that voting in Cuba is free, but it is certainly not fair. Voting in Cuba is mandatory for those over 16 and turnout is generally high. However, there is only one official party, the Communist Party of Cuba (PCC). While candidates for election at all levels of power, except municipal offices, are presented in elections, there is no candidate election and the electorate can only vote for the unique name on the ballot. The one-party communist state bans political pluralism, and the 2021 Freedom House report gave Cuba a 1/40 score on political rights. ^[18]

The constitution identifies the CCP as the "superior engine of society and the state." All other political parties are illegal. Political dissent is a punishable crime and dissidents are systematically harassed, arrested, physically assaulted and imprisoned for minor infractions. Supposedly spontaneous mob attacks, known as "acts of repudiation," are often used to silence political dissidents. Restrictions on freedom of assembly remain a key form of political control. Security forces and government-backed assailants often

break up peaceful gatherings or protests by political dissidents and civic activists. The Madrid-based non-governmental organization (NGO), Prisoners Defenders, reported that Cuban authorities held 251 political prisoners as of September 2021. ^[19]

The Cuban Observatory of Human Rights (OCDH), a Madrid-based nongovernmental organization, reported 1,800 arbitrary detentions of peaceful dissidents during 2020. As has been customary in recent years, these detentions were usually carried out without legal oversight and were combined with house arrests, raids, fines, confiscation of belongings, beatings and threats. These brief politically motivated detentions of political dissidents and independent journalists were a key repressive tactic under Raúl Castro's government, and have similarly continued under Díaz-Canel'.^[20]

Voting is compulsory, but the result is a foregone conclusion, the CCP will win every time. Dissident groups attempted to field independent candidates in the 2017 municipal elections, but authorities successfully blocked their candidacies and ensured that none of them appeared on the ballot. They had already done so in the 2015 electoral process, which warned the regime for successive elections. Similarly, security forces mobilized to suppress any opposition activity both during the February 2019 constitutional referendum and during the National Assembly's election of the president in October 2019. ^[21]

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While Cuban citizens can and do vote, it is a futile exercise since the system is against alternation and the protection of human rights.

The Constitution is the framework for laws establishing personal rights and freedoms. In 2019, the current Constitution was endorsed, with an electoral participation of 84% and with 90% approval. A historic abstention (15%) and rejection (9%) compared to the 1976 constitutional referendum. Prior to the adoption of the changes, there was a citizen consultation (the results of which are not binding under the Electoral Law) and debate in the process, no doubt facilitated by expanded internet access that helped disseminate information.^[22] The rights that were strengthened include the right to private property, the prohibition of discrimination based on sexual orientation, the guarantee of reproductive rights and protection against gender-based violence, and the establishment of the presumption of innocence in criminal proceedings and the right of habeas corpus. "The changes in the new Cuban Constitution are undeniably significant^[23] (...) There are signs of change in the thinking of the political leadership and the population as a whole."^[24] While the changes did not go far enough for everyone, they were seen as a step in the right direction.

In May 2022, Cuba's National Assembly approved a new Penal Code that came into force in mid-August. In contrast to the constitutional reform process in 2019, there are concerns about the lack of transparency and public consultation around this process.^[25] In a comment by WOLA, a human rights advocacy group in the Americas in July 2022, concerns are raised about a series of changes to the penal code.

1. The number of offences punishable by death or life imprisonment is increased to 24. These crimes generally relate to matters of state security that are often vaguely defined. It also includes torture as a crime punishable by life imprisonment following the government's ratification of the CAT.

2. It includes punishment for issuing or receiving foreign financing, criminalizing public or private financing, and potentially allowing Cuban authorities to prosecute Cubans living abroad. Funding is loosely defined in the code.

3. Prevent citizens from challenging authorities. A person's rights guaranteed in the Constitution can be suspended if they are deemed a threat to Cuba's political system. These threats could include public dissent or expression framed in a peaceful meeting or protest. There are few legal mechanisms to influence, change or amend the Constitution and the people have virtually no say in their elected government. The criminalization of dissent means that grassroots organizations have little power to push for change.

4. Internet channels and social media are now included in the Penal Code, making it punishable to organize protest meetings.

5. The code includes gender-based crimes but significantly does not include femicide. The local group "Yo Si Te Creo" registered 34 femicides in 2021. ^[26]

The progress made on personal and human rights in the 2019 Constitution has been eroded by the new Penal Code. Defending human rights in Cuba is now more difficult than ever. The government is tightening the net around all forms of protest and dissent with tough new rules and cuts to vital finances.

In an article published in UN Chronicle, Ban Ki-moon, the eighth UN Secretary-General wrote: "Freedom of expression is a fundamental human right, enshrined in Article 19 of the Universal Declaration of Human Rights. But all over the world, there are governments and those who wield power who find many ways to obstruct it."^[27] This is particularly true for Cuba. He also said "people have a right to information that affects their lives, and

states have a duty to provide this information. Such transparency is essential for good governance."^[28] The adoption of the new Penal Code is a threat to independent media. The Committee to Protect Journalists has expressed alarm at its restrictions on foreign funding. CPJ's senior Latin America and Caribbean researcher, Ana Cristina Núñez, said that "with the new penal code, Cuban authorities continue to build an intricate and perverse legal regime of censorship and deal a devastating blow to independent media and journalists."^[29]

A free press is a vital tool for protest. It allows information to circulate freely and presents diverse and often critical points of view. It informs citizens of the rights violations that are taking place and informs them of what they can legitimately demand from their government. So it's no wonder that the Cuban government has criticized both the local and international press. In an article on press freedom in The Voice of America (VOA), Edith Rodríguez Cachera, vice president of media watchdog Reporters Without Borders in Madrid, said that "after the repression of independent media during the July protests, Cuba had turned its attention to the international press."^[30] . Five journalists from the EFE news agency had their credentials revoked ahead of planned protests in Cuba. EFE is the largest foreign media organization in Cuba with a strong presence in Latin America and the Spanish-speaking world. These restrictions have been criticized by the EU and journalistic organizations, however, the Cuban embassy in Madrid has refused to answer them.

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The country remains, year after year, among the worst in Latin America in press freedom, and ranks 171st out of 180 countries analysed in the 2020 World Press Freedom Index by Reporters Without Borders (RSF). The Committee to Protect Journalists (CPJ) includes Cuba in a list of the 10 countries with the highest level of censorship on the planet.^[31]

After the 11J protests there were arrests and detentions by the local media and Ms. Cachera commented: "Not content with silencing all the local press with jail and exile, now he wants to do this with the foreign press."^[32]

Normando Hernández González of the Cuban Institute for Freedom of Expression and the Press told VOA that "dozens" of independent journalists on the island were unable to do their jobs because they were under effective house arrest. It is another shameful expression of the totalitarian regime in Cuba that seeks to silence anyone who opposes the regime or who wants to denounce what is really happening.^[33] By effectively imprisoning journalists in their homes, the Cuban government is arbitrarily detaining them

and once again ignoring their obligations under the UDHR. Article 3 of the UDHR states that "everyone has the right to life, liberty and security of person", while article 9 adds that "no one shall be subjected to arbitrary arrest, imprisonment or exile".

With the inclusion of the internet and social media in the Penal Code, the Cuban government has further expanded its control strategies over freedom of expression and assembly. Those who 'incite' against the socialist order can be jailed for five or ten years if they use social media to do so. [\[34\]](#)

The Cuban government is trampling on the right to expression it pledged to defend when it signed the UDHR. With the legal framework, it is sought that its citizens do not read or see the reality of social discontent and protest. Such limitations on press freedom truly harm the defense of human rights in Cuba. Deprived of the means to organize protest meetings and facing draconian punishments if they do, Cubans struggle to make their voices heard.

NGOs play an important role in overseeing daily life in a country. They are organizations on the ground that deal with people at the grassroots level. Through their chosen field, they see the realities on the ground of many vulnerable people in areas such as housing, education or rural affairs. They are well placed to advise and direct funding to those who need it most. It is important that they are independent organizations and that they can carry out their work without undue interference from the government. They must be able to challenge the status quo and point out unfair practices that can lead to the violation of the human rights of some segments of the community. They must be the voice of these communities when violations are evident. They work in areas where trust is vital and people need to know that their needs will be promoted. NGO staff should be free to work without fear of reprisals from state agencies. NGOs may be critical of state policies and the unfair distribution of resources, but that is their mission, to challenge and fight for their communities.

In order to protect and support a community, an NGO must be able to operate independently of external constraints. Your source of funding must be secure and your staff must be free to carry out their work. Unfortunately in Cuba NGOs must be registered and controlled by the government. Citing the 1985 Law on Associations, the government refuses to register any new organization that is not supervised by the state.[\[35\]](#) Therefore, NGOs in Cuba toe the party line or face the consequences. Given the above on freedom of expression, penalties for non-compliance with government rules are harsh and arbitrary. The funding of NGOs has been severely affected by the prohibition on receiving

money from external sources, provided for in article 143 of the Criminal Code. It is aimed at foreign-funded individuals who may be acting on their own behalf or on behalf of "non-governmental organizations, international institutions, associations..."^[36] Moreover, what the code defines as 'funding' is extremely vague, potentially allowing the government to arbitrarily sanction any remedy that aims to support or incentivize actions against the state or constitutional order."^[37]

The U.S. government has contributed to groups in Cuba that would promote democracy, but Cuba rejected a recent call by the U.S. government to request funding. The Biden administration announced in July a call for applications to award up to \$6.25 million to nongovernmental organizations and individuals as part of a decades-long program authorized by U.S. law to "promote peaceful, nonviolent democratic change in Cuba." The United States opened the call for applications from groups that would provide humanitarian assistance for persecuted people and for those who "empower Cubans through access to information." The U.S. government made clear that the recipients "will not serve as agents or act under USAID's direction." Cuba criticized U.S. funding for "democracy promotion" programs as interventionist and illegal, aimed at overthrowing the government.^[38]

It is clear that official NGOs cannot fulfill their function of defending human rights in Cuba and these organizations are actually GOs since they are tied up by the Cuban government.

Workers have traditionally safeguarded their rights to fair wages and working conditions through the trade union movement. Different categories of workers join their sector union and pay dues to the representative body. In return, they expect representatives to lobby and defend their rights. A trade union in the sector or a group of unions enter into negotiations with the government to ensure living wages and decent conditions. When unions join forces, they have significant collective bargaining power and can force employers to raise wages or improve conditions. In Cuba, however, there is only one union led by prominent members of a single political party. It is organized under the banner of the Central de Trabajadores de Cuba (CTC) which was founded in 1939. Since that date there has been a single national trade union center in Cuba. According to Freedom House's report on Cuba, Cuban workers do not have the right to strike or bargain collectively, and independent unions are illegal.^[39] Although workers pay monthly dues of about 1% of their wages, they seem to receive little in return.

Given the Cuban government's poor record in providing human rights, there are many people who are dedicated to safeguarding human rights for all. These Human Rights Defenders (HRDs) risk harassment, arrest, torture or forced exile to campaign for the rights of their fellow citizens. International concern about the treatment of HRDs is strong, as evidenced by a recent US State Department press report: "The United States is deeply concerned about the ongoing harsh sentences of political protesters in Cuba (...) Cuban judges have sentenced more than 550 Cuban protesters to more than 4,000 years combined. Protesters are sentenced to imprisonment, hard labor or other punitive measures. These numbers include more than 20 protesters arrested as minors."^[40] These were ordinary citizens who took to the streets to defend their rights and who were brutalized for their participation in the protests. There are many groups and organizations in Cuba that fight to defend rights. One such group is the "Ladies in White," an opposition movement founded in 2003 by wives and other female relatives of imprisoned dissidents and those who have been wiped out by the government. These brave HRDs face constant police harassment and the threat of arrest. One of its members, Laura Pollan, said: "I started fighting for my husband, then for the group, now it is for changes for the good of the country."^[41] Its objective is to secure the release of imprisoned family members.

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In 2016, a group of human rights lawyers, Cubalex, was attacked by the Cuban government. His office was raided without a warrant and laptops and work documents were taken. Members of the Cubalex team were interrogated, searched and arbitrarily detained. "This was not the first time the Cuban government attacked the organization and its members—in 2015, the Inter-American Commission on Human Rights (IACHR) issued precautionary measures to safeguard the lives of the organization's staff due to a campaign of defamation and sustained harassment by government authorities."^[42] . These are just two of the many individuals and groups risking their freedom and security to defend human rights in Cuba against the totalitarian regime in power.

In 2005, the United Nations established the Human Rights Council (HRC). It should establish a universal periodic review mechanism as one of its central pillars. The HRC should focus on reviewing a country's implementation of the international treaties it had signed and its performance in all areas of human rights protection. This is done through a system known as the Universal Periodic Review. (UPR). Reviews are conducted every four and a half years and feedback is provided on the performance of the State under review. Cuba's performance in the reviews has been critical. In the three cycles of the Universal Periodic Review (UPR), Cuba has received severe warnings about violations

of freedom of association and expression, political persecution, arbitrary detentions, prohibitions on free national and international movement, lack of judicial independence, censorship, internet control, and the scarcity of media plurality.[43] ...Cuba has made no effort to implement the recommendations of the various UPRs and, although it has participated in the process, its human rights record has not improved. The fact that Cuba has been granted a seat on the UNHRC is puzzling and has raised concerns in the international community. Undoubtedly, a prerequisite for a position at the HRC must be a commitment to uphold international human rights standards and a commitment to improve those rights in law and practice.

Conclusion

The weight of evidence published by respected independent organizations including, among others, the UN and Amnesty International, clearly shows that there are no relevant democratic standards for human rights in Cuba. It is clear from the above that human rights in all areas of life in Cuba are absent. The normal international human rights parameters are missing. The right to freedom of assembly and expression is strictly and brutally restricted, as evidenced by the continued treatment and detention of 11J participants. Their conditions of detention are far below international standards and the Cuban government does not allow monitoring of detainee conditions. This is puzzling since one of the few international treaties Cuba has ratified is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Obviously, the ratification was only on paper.

Human rights neglect is also evident in pretrial treatment with failure to notify charges, lack of legal representation, and long delays in due process. Although habeas corpus is enshrined in the Constitution, it is not practiced in everyday situations. The judiciary is not independent and does not hold the police accountable for ill-treatment of detainees.

While voter turnout is high, there is a single-party candidate on the ballot and any attempt to present alternatives is unconstitutional and his aspiration can be considered a threat to state order and security, which according to the Penal Code can be punished with the death penalty or life imprisonment.

Freedom of the press is non-existent and the media is owned and run by the government. Journalists are subjected to continuous harassment and sometimes exile.

NGOs and trade unions are severely restricted in their ability to represent the people. Only NGOs that are registered in the State, loyal to the Communist Party of Cuba, can operate, and there is only one trade union body that responds to the interests of the government.

HRDs are rigorously monitored and subject to draconian measures when expressing government dissent. Arbitrary arrest and ill-treatment of HRDs are common, as are the closure of their offices and the seizure of materials and equipment. Many HRDs have been forced to flee Cuba to survive.

The Cuban government as a member of the United Nations is subject to review under the UPR system but has chosen to ignore all procedural recommendations. As a member

of the HRC, Cuba is expected to observe its human rights obligations and strive to meet its commitments to these universally accepted international standards. This is clearly not the case.

The defense of Cuban human rights takes place largely outside the country with many courageous actors operating in the country. The limitations imposed on human rights in Cuba are put into practice by the Cuban government. As long as there is no radical change in the government's behavior, the limitations on the defense of human rights in Cuba will remain unchanged.

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^[5] <https://raceandequality.org/>

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^[9] <https://www.oas.org/en/cidh/docs/annual/2021/Chapters/IA2021cap4B.Cuba-en.pdf>

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^[20] *ibidem*

^[21] *ibidem* B2

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^[24] *ibidem*

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^[45] N 43



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