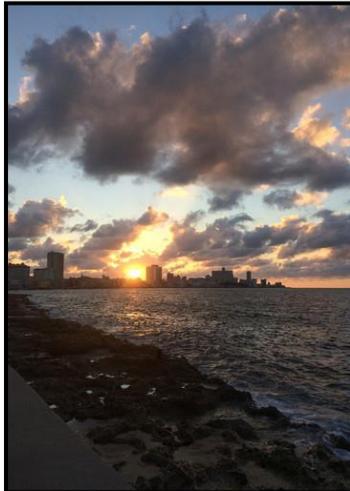




## TRANSFORM CONFRONTATION INTO DIALOGUE

### A HUMAN RIGHTS AGENDA FOR CUBA



The finalization of Raúl Castro's mandate as President of the Cuban government on 19 April 2018 will mark the end of an era for Cuba. This will be the first time in many years that the country will have a President likely to have been born after the 1959 Revolution.

Cubans living on the island, and in the diaspora, and observers on both sides of a deeply polarized political spectrum, have strong views on what this means for the future of the country and for its human rights situation.

As an independent human rights organization, Amnesty International does not take a position on any country's political or economic system. But we do use historical opportunities to advocate human rights advances.

Cuba continues to be a hot topic in international news rooms due to recent political and economic changes. In December 2014, Cuba and the USA re-established diplomatic relations. This promised the beginning of an end to the economic embargo that for decades perpetuated the Cold War rhetoric of "us" versus "them" and undermined Cubans' enjoyment of economic and social rights.

High-profile visits by Pope Francis and the International Committee of the Red Cross in 2015, and visits by two UN experts in 2017, appeared to herald greater political openness and offer some hope that Cuba might begin to open itself up to increased international monitoring by independent human rights observers.

A tourism boom, the expansion of Wi-Fi-internet hotspots, and 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 loosening its tight grip on freedom of expression.

But against this backdrop, President Raúl Castro continued to flatly deny that there were any "political prisoners" in Cuba. In contrast, in the past three years, Amnesty International has been able to identify 11 prisoners of conscience (people who have been detained solely because of the peaceful expression of their opinions or beliefs), and there are likely many more. Among them is the leader of the pro-democracy Christian Liberation Movement, Dr Eduardo Cardet Concepción, a prisoner of conscience who remains in prison at the time of writing.<sup>1</sup>

More recently, President Trump's almost complete U-turn in US political rhetoric towards Cuba is making the likelihood that the US Congress will lift the economic embargo on Cuba even more distant. The persistence of the embargo – which Amnesty International has consistently recommended be lifted –

will continue to undermine the economic and social rights of the most vulnerable Cubans.<sup>2</sup>

In the months leading up to President Raúl Castro's departure expected in April, Amnesty International has documented the continued detention, harassment and intimidation of political activists and independent journalists. Those who peacefully protest or express even subtle criticism of the government's political or economic model are frequently targeted.

For many Cubans, such as those whose stories we published in our recent report, [\*\*\*Your Mind is in Prison\*\*\*](#), significant structural change to the human rights situation in Cuba is inconceivable any time soon. For other human rights defenders and independent journalists willing to work within the current system, change will be slow, but conceded gradually over time.

***Transform confrontation into dialogue***, Amnesty International's Human Rights Agenda for Cuba, does not pretend to represent the diversity of all views or proposals about how better to respect and protect human rights of all in today's Cuba. Instead, it highlights long-standing and pressing human rights challenges that a new administration will face and makes recommendations for advancing the realization of human rights. At their core, these recommendations promote the inclusion of diverse voices that have been historically silenced in the debate about Cuba's future.

## OPEN UP TO CONSTRUCTIVE HUMAN RIGHTS MONITORS

### RATIFY KEY HUMAN RIGHTS TREATIES AND ALLOW INDEPENDENT MONITORS TO VISIT CUBA

There are many ways to move towards achieving human rights for all. One way is for Cuba to institutionalize the international human rights framework at the national level by ratifying core human rights treaties and complying with the obligations that arise from them.

Cuba continues to go against the almost universal trend amongst countries by not ratifying core treaties, despite being a member of the UN Human Rights Council until 2019. As a member of the Council, Cuba has pledged to work towards “strengthening the promotion and protection of human rights around the globe”<sup>3</sup> and as such would show leadership by ratifying these treaties.

Cuba also continues to be the only country in the Americas closed to independent human rights monitors, including Amnesty International.

#### **Recommendations:**



**Ratify, without delay, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and implement them fully into national law.**



**Allow independent human rights monitors, including Amnesty International and all UN Special Rapporteurs who express interest in visiting Cuba, in particular those on the promotion and protection of the rights to freedom of opinion and expression, and of peaceful assembly and of association, access to Cuba.**

# EMBRACE DIALOGUE WITH ALL SECTORS OF CUBAN SOCIETY AND ALLOW PLURALITY OF VOICES

**“We defend human rights. In our view, civil, political, economic, social and cultural rights are indivisible, interdependent and universal.”**

President Raúl Castro, in press conference with former US President Obama, March 2016

Many people interviewed by Amnesty International, including Cubans citizens, academics and human rights experts recognize that Cuba has made important human rights advances in the provision of free health care and access to education. But progress in guaranteeing economic, social and cultural rights must not come at the cost of civil and political rights.

Successive decades of disproportionate and arbitrary use of the criminal law and campaigns of state-sponsored repression against those who dare to speak out or try to leave Cuba have severely eroded the right to freedom of expression in Cuba.

To unravel the web of control and fear that undermines Cuba’s achievements in safeguarding economic and social rights, the new political leaders must take steps to:

## VALUE THE INPUT OF INDEPENDENT CIVIL SOCIETY, HUMAN RIGHTS ORGANIZATIONS AND TRADE UNIONS

The Cuban Penal Code prohibits so-called illicit associations, meetings or demonstrations of groups not legally registered. Under the Law on Associations, founders of an organization should officially request registration of their organization through the Ministry of Justice. In practice, the Ministry routinely denies this registration and/or fails to respond to applications.

This effectively prohibits the legitimate work of human rights organizations – and the work of independent human rights lawyers – and puts independent civil society in a legal limbo that exposes them to the risk of harassment and arbitrary detention.

Similarly, a recently revised Labour Code establishes workers’ rights to voluntarily associate and form trade unions, but in reality, only one state-controlled confederation of trade unions is permitted.

International human rights law, specifically the UN Declaration on Human Rights Defenders, is clear. Anyone has the right to defend human rights, including by meeting or assembling peacefully and forming, joining and participating in NGOs, associations or groups.

### **Recommendations:**



**Create spaces to allow for meaningful participation of people belonging to independent civil society, human rights defenders, and alternative trade unions, especially those critical of the government, to receive their feedback on proposed policies and laws.**



**Establish a regime of simple notification for the registration of associations, including human rights organizations, independent trade unions, and other civil society groups, and ensure that people working in unregistered associations are not criminalized.**

## PROTECT INDEPENDENT JOURNALISM TO ENCOURAGE A PLURALITY OF VIEWS ON CUBA'S FUTURE

Cuba's dominant official media remains heavily censored and limited. While an increasing range of autonomous digital media projects has emerged in recent years, bringing new voices to Cuba's media landscape, these news sources operate within a legal limbo that exposes journalists, bloggers and other media workers to the risk of harassment and arbitrary detention. Moreover, their webpages are often blocked and filtered by the authorities.

### **Recommendations:**



**Engage in consultation to reform the constitution and other laws regulating the media to allow for independent and critical views to be reported on, and allow journalists to work freely without fear of reprisals.**



**Pass laws that guarantee access by the public to information held by the government, to increase transparency and facilitate an informed public debate about policy development and decision-making.**

## STOP CONTROLLING FREE EXPRESSION THROUGH EMPLOYMENT

**“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.”**

Former Cuban fisherman interviewed by Amnesty International in 2017

The Cuban government is the largest employer in the country – approximately 70% of the jobs available are in the public sector. The government also effectively controls the small and emerging private sector.

Politically motivated and discriminatory dismissals are used against those who criticize the government's economic or political model. Workers pushed out of employment in the public sector for freely expressing themselves, or for not proactively supporting the government, are also often further harassed by the police after entering the self-employment sector. People have told Amnesty International that the authorities often arbitrarily and disproportionately apply restrictions from the maze of regulations governing the private sector against anyone deemed critical of the government.<sup>4</sup>

Workers are unable to independently organize and appeal against discriminatory dismissals because of the effective prohibition on independent trade unions. The government's strong influence over the judiciary and lawyers limits effective recourse through the courts.

### **Recommendation:**



**Prohibit discrimination based on political or other opinion in hiring, promotion and termination of employment in the public and private sector, and comply with the International Labour Organization Conventions which Cuba has ratified.**

# STOP UNDERMINING THE RIGHT TO EDUCATION THROUGH CENSORSHIP AND DISCRIMINATION

**“They (the government) say children can’t use Wikipedia, because everything in Wikipedia is a lie. (They say) that children have to learn what is in history books, and not look for other information.”**

Former Cuban school-teacher interviewed by Amnesty International in 2017

Cuba’s literacy rate exceeds 99% and its educational achievements have been commended by UNICEF and UNESCO.<sup>5</sup> However, undue restrictions in access to information and freedom of expression online continue to mirror decades of offline censorship, undermining Cuba’s advances in education.

In 2017, the Open Observatory of Network Interference<sup>6</sup> conducted testing on a sample of websites in Cuba. It found 41 sites blocked by the authorities. All the blocked sites expressed criticism of the Cuban government, reported on human rights issues, or discussed techniques to bypass censorship.

While the government continues to expand access to the internet, it prioritizes access to the highly censored, government-curated national intranet and access to the global internet remains prohibitively expensive for most Cubans.

The 2017 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 and highlighted the long-standing problem of discrimination based on political opinion in the educational system.<sup>7</sup>

Students are often pressured to participate in acts of repudiation against such civil society groups as the Ladies in White - female relatives of prisoners detained on politically motivated grounds - or else risk being given poor grades. Similarly, teachers and professors are required to provide education consistent with the ideology of the revolution. Training particular professionals, such as lawyers, in this way clearly also has implications for safeguarding judicial independence and the separation of powers.<sup>8</sup>

## **Recommendations:**



**Prevent discrimination in access to education, in particular based on political opinions.**



**Guarantee universal access to uncensored Internet, a vital educational tool and catalyst for free expression.**

## PROMOTE EQUALITY AND PREVENT DISCRIMINATION

### ACCEPTING SEXUAL AND GENDER DIVERSITY ALSO MEANS ACCEPTING DIVERSITY OF VIEWS

In recent years, the government has promoted the rights of LGBTI people through Cuba's National Centre for Sex Education (CENESEX). Mariela Castro, [the daughter of President Raul Castro and] Director of CENESEX, has promoted the rights of LGBTI people internationally and nationally and expresses support for the legal recognition of same-sex unions. Before his death, Fidel Castro expressed regret at the government's policy of sending LGBTI people to forced labour camps in the 1960s and 1970s.<sup>9</sup>

Unlike in many other Caribbean countries, same-sex relations are not prohibited in law in Cuba. In 2008, Cuba passed a law to allow for state-funded gender reassignment surgery and hormone treatment, although transgender people are still largely unable to change their legal name and or the gender markers on official documents issued by the state, according to LGBTI activists. In 2014, Cuba passed a law that prohibits workplace discrimination on the basis of sexual orientation, but not on the basis of gender identity.<sup>10</sup>

But while the Cuban authorities' general acceptance of sexual and gender diversity is welcome, many LGBTI activists argue that the state-run CENESEX tries to monopolize and control LGBTI activism and HIV prevention. And while visibility of the LGBTI community has increased in recent years, LGBTI activists say authorities do not accept diverse viewpoints or mobilization of LGBTI groups outside of state-sanctioned activism spaces, limiting the advancement of legal protections for the community.

Youth, especially transgender youth, continue to be pushed out of their families due to their gender identity and/or sexual orientation, and continue to face bullying in schools, according to activists. Poor and/or Afro-descendent LGBTI people also face multiple and intersecting forms of discrimination. Greater visibility to Afro-Cuban culture and heritage in Cuban society is also a demand expressed by Afro-Cuban activists.

Despite reports that a project of Family Law Code including legal protections for same-sex couples would be introduced to Parliament, LGBTI activists say they have not seen the draft code or been consulted on it.

#### **Recommendations:**

-  **Continue anti-bullying campaigns and programs promoted by CENESEX in schools to guarantee LGBTI youth access to education free from discrimination.**
-  **Become the first independent nation in the Caribbean to legalize same-sex unions, and ensure adequate consultation with LGBTI activists in development of legislation which facilitates this.**
-  **Consult with civil society to develop comprehensive anti-discrimination legislations which protect against stigma, discrimination and violence against marginalized and vulnerable groups.**

# STRENGTHEN THE INDEPENDENCE OF THE JUDICIARY AND BRING CRIMINAL LAWS IN LINE WITH INTERNATIONAL LAW AND STANDARDS

## “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 by Amnesty International in 2017

The misuse of the criminal justice system to target and harass human rights defenders, political activists, journalists and artists critical of the authorities, together with undue restrictions on the right to freedom of association and the lack of independence of the judiciary and public lawyers, are some of the most visible indicators of how damaged the right to freedom of expression is in today’s Cuba.

A long list of criminal provisions are inconsistent with international law and standards. Over successive decades, provisions of criminal law have repeatedly and arbitrarily interfered with the peaceful exercise of human rights.

Vague and overly broad crimes, such as “dangerousness”, are regularly used to threaten or charge people who are perceived to be a threat to the “social, economic or political order of the socialist state.”<sup>11</sup>

People who have been detained for peacefully exercising their rights to freedom of expression or peaceful assembly repeatedly tell Amnesty International about the difficulties they face in accessing a lawyer of their choice and criticize 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 national and international level.

Independent human rights lawyers are unable to legally operate as there are virtually no professional categories in which university graduates or professionals can gain licenses for legal self-employment in Cuba.

And while Cuba has said it is opposed to the death penalty, it still retains the penalty in law.

### **Recommendations:**

-  **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.**
-  **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 or where they are applied to unduly restrict the peaceful exercise of human rights.**
-  **Abolish the death penalty for all crimes.**

## FURTHER READING

Cuba: “Your mind is in prison” – Cuba’s web of control over free expression and its chilling effect on everyday life (AMR 25/7299/2017)

Cuba’s internet paradox: How controlled and censored internet risks Cuba’s achievements in education (News story, 29 August)

Cuba: The US Embargo against Cuba: Its impact on economic and social rights, (AMR 25/007/2009)

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<sup>1</sup> Amnesty International, Cuba: Activist sentenced to three years in jail after criticising Fidel Castro (News), 21 March 2017. Others have including El Sexto, a graffiti artist, imprisoned for almost a year during 2015 solely for writing the names “Raúl” and “Fidel” on the backs of two pigs as part of an artistic performance that authorities stopped from taking place, see: Amnesty International, Cuba must release graffiti artist jailed for painting Castros’ names on pigs’ back (News), 29 September 2015.

<sup>2</sup> Amnesty International, The US Embargo Against Cuba: Its impact on economic and social rights, (Index: AMR 25/007/2009).

<sup>3</sup> United Nations Human Rights Council, ‘About the Human Rights Council’, see <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>

<sup>4</sup> Amnesty International, Cuba: “Your mind is in prison” – Cuba’s web of control over free expression and its chilling effect on everyday life (AMR 25/7299/2017), p. 24-25

<sup>5</sup> UNESCO, ‘General Information’, available at: <https://en.unesco.org/countries/cuba> and Human Rights Council, Working Group on the Universal Periodic Review, ‘National report submitted in accordance with Human Rights Council resolution 16/21, annex, paragraph 5\*’ Geneva, 22 April–3 May 2013, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CUIndex.aspx>

<sup>6</sup> Amnesty International, Cuba’s Internet paradox: How controlled and censored Internet risks Cuba’s achievements in education, 29 August 2017, available at: <https://www.amnesty.org/en/latest/news/2017/08/cubas-internet-paradox-how-controlled-and-censored-internet-risks-cubas-achievements-in-education/>

<sup>7</sup> Amnesty International, Cuba: “Your mind is in prison” – Cuba’s web of control over free expression and its chilling effect on everyday life (AMR 25/7299/2017), p. 20 and 29

<sup>8</sup> Amnesty International, Cuba: “Your mind is in prison” – Cuba’s web of control over free expression and its chilling effect on everyday life (AMR 25/7299/2017), p.23

<sup>9</sup> BBC, ‘Fidel Castro takes blame for persecution of Cuban gays’, 31 August 2010

<sup>10</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>11</sup> Article 75.1 of the Criminal Code 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.”