

CUBA

FREEDOM OF EXPRESSION, A RISK

Executive Summary

Once again, according to the Chapultepec Index of Freedom of Expression and Freedom of the press, Cuba is one of the countries across American hemisphere where freedom of expression continues to be criminalized. It is also the third worst rated nation according to the experts inquired. Of the 22 countries reviewed, for a maximum of 100 possible points, Cuba obtained a score of 15.68, deemed as a country without freedom of expression. Such assessment is the result of the unceasing attacks and threats to independent journalists, primarily following the enactment of the new Cuban Criminal Code (*Código Penal*).

Introduction

Cuba has experienced a new wave of repression and curtailment of freedom of expression. Interrogations, threats, forced exile, public resignations, immigration regulations, and Internet shutdowns marked the period from August 2021 to July 2022 in the nation. Not in vain did non-governmental organization (NGO) Reporters Without Borders place this Caribbean island in the 173rd place out of a total of 180 countries in its 2022 ranking. This confirms that, year after, year Cuba continues to be the worst country in Latin America for freedom of the press.

Exercising independent journalism on the island is increasingly complex since there are legal provisions still in place such as Decree-Law 370 which prohibits the dissemination of information "... contrary to social interest, morality, good customs, and the honor of persons" (Article 19, 2020); and Decree-Law 35 that punishes those who publish content on social media that may be regarded as cybercrime for expressing discontent with the government.

Also, the National Assembly of the People passed the new Criminal Code, which replaces the current one enacted in 1987. This legislation restricts the exercise of freedom of expression, demonstration, and the press in Cuba, thereby being a repressive law.

Just during the period under analysis, not only did the persecution of reporters continued, but the new Criminal Code played a key role on the interrogations of independent journalists and human rights activists in Cuba. This has been the legal instrument used by the political police to force the public resignation of independent media and to force exile.

The constant attacks against independent media such as *Periodismo de Barrio* and *El Toque* digital outlets stand among the most important evidences that marked the repression by the Cuban government security forces during the period reviewed.

Environments: Another year of curtailed freedom of expression in Cuba

Although Cuban dissidents of the government are growing on the island, partly because of the underlying economic crisis in the country, the Cuban repressive machinery against anyone who dissents from the Government's policies and openly voices [their disagreement] has continued to expand.

Executive Environment

For 63 years and up to present day, the Cuban Government has kept control of almost all information since written and digital press; state-owned television and radio only respond to the interests of the Communist Party of Cuba (*Partido Comunista de Cuba*, PCC) and its editorial policy.

According to the experts inquired to assess the Executive environment from August 2021 to July 2022, Cuba obtained 7.58 points out of a maximum 10 (being 10 a very strong influence) so its level of influence in this country is very strong to the detriment of freedom of expression.

This has been another period where freedom of expression and the press, as well as the right to protest, have been restricted. The manhunt against independent reporters has increased. Many have been forced to leave the country and those who remain inside Cuba, exercise journalism under a hostile scenario, expecting that any day they will be prosecuted by the Cuban regime.

Independent journalists like Orelvis Cabrera, Esteban Rodríguez, and Héctor Luis Valdés Cocho have been forced to leave the country under threats of being prosecuted and sentenced under the new Criminal Code. Notwithstanding, community media based on the island, such as *Amanecer Habanero*, *El Espirituano*, *Panorama Pinareño*, (and) *Páginas Villaclareñas*, continue to publish their fortnightly newsletters in spite of the repression against their correspondents.

Legislative Environment

This year, the legislative environment achieved 6.85 points out of 10, which represents a strong influence on situations unfavorable to freedom of expression. This figure results from the fact that, during the period analyzed, not only was Law 370 enacted, but also Decree 35 as an "... inalienable and sovereign right to regulate telecommunications, information, and communication technologies". (Granma, 2021).

Within the period surveyed, Cuban journalists Yadiris Luis Fuentes and Henry Constantín, director of digital magazine *La Hora de Cuba* and chapter president of the Inter American Press Association (IAPA), were fined with 3,000 Cuban pesos under the provisions of Decree-Law 370. Also, Carlos Alberto Pérez García, a Twitter user known on social media as "*El Ruso*", was sanctioned for violating this decree because of his criticism and memes against the government and President Miguel Díaz Canel on his Twitter account.

Published in August 2021, the Decree-Law 35 has also become a threat and intimidation tool as it was used against Guantánamo-based journalist Yoel Acosta Gámez who was also

punished. According to pro-government newspaper *Granma*, chiefly among the general objectives of this new legislation "... is to contribute to the use of telecommunications services as an instrument for the defense of the Revolution".

During the period analyzed, there were news of a draft bill on communications introduced by officials of the Union of Cuban Journalists (*Unión de Periodistas de Cuba*, UPEC) which seeks to regulate the content of the Cuban press and criminalize freedom of the press on the island.

Said regulation does not recognize any type of local media ownership other than by the Government as established in Article 55 of the Constitution of the Republic of Cuba, which sets forth that "... the fundamental communications media [...] are socialist property [...]; and cannot be the object of any other type of ownership".

Finally, the approval of the new Cuban Criminal Code was announced in May 2022. Under this piece of legislation, with the support of the National Revolutionary Police (*Policía Nacional Revolucionaria* PNR) and the State Security Corps (*Órganos de la Seguridad del Estado*, OSE), the government will be able to prosecute new offenses as of December 1, 2022. This law prohibits any funding from foreign sources (Article 143), as this "violation" is penalized with prison terms of up to ten years.

Judicial Environment

Out of 10 possible points, the judicial environment was rated with 6.86, which represents a strong influence in situations unfavorable to the freedom of expression. From August 2021 to July 2022, house arrests, arbitrary detentions, and issue of court warrants against independent journalists, artists, and human rights activists occurred every day.

Vladimir Turró, from the independent media outlet *CubaNet Noticia*, was summoned to court on several occasions and threatened with prison by the political police if he continued posting on social media and collaborating with *CubaNet*. Other reporters were arrested without warrant by political police agents. Among them, Waldo Fernández Cuenca, Héctor Luis Valdés Cocho, Leonel Rodríguez, and Mauricio Mendoza are included. Youtuber, Ruhama Fernández, was also detained and held in a police inmate van for at least 12 hours while her home was being raided and her work equipment stolen.

A distinctly repressive moment that Cuba experienced occurred on November 15, 2021 when a group of young dissidents of the political system and the government on the island, organized a peaceful rally for a change across the country. The demonstration was declared illegal by the Cuban government, although People's Supreme Court (*Tribunal Supremo Popular*) Head Justice Rubén Remigio Ferro, assured that demonstrating is a constitutional right of the people.

That day, both the organizers of the peaceful rally and independent journalists who were covering the event were summoned, arbitrarily detained, threatened, interrogated, had their Internet service suspended, and were subjected to house arrests that prevented them from leaving their homes to report.

Realm A: Cuban citizens should only be informed through official media.

Information flow continues to be restricted to Cubans. The PCC, with Miguel Díaz Canel as its First Secretary, establishes the editorial policy of print media. Therefore, the information that the people receive is that filtered by party controls.

As Internet and computers have become gradually popular in society, the Cuban people are increasingly consuming news from independent media, as well as everything that is shared on social media showing the reality on the island and what is concealed by the official print media associated to the PCC.

Despite the freedom that the Internet appears to provide regarding information access, the Cuban Government also exerts controls over it under regulations like Decree-Law 35 and 370, known as the "whiplash law" ("*ley azote*"), whereby the digital domain becomes a space where freedom of public information is also restricted.

Moreover, since the *Empresa de Telecomunicaciones de Cuba* (Etecsa) is state-owned and is the only one of its kind across Cuba, the government controls and restricts the Internet through this company by slowing it down or, as has happened on many occasions, by taking down the service altogether. Such takedowns occur mainly when there are demonstrations of Cubans against the government. Consequently, neither Cubans themselves nor other countries can learn about what is really happening on the island.

Journalists like Luz Escobar, Iliana Hernández, Juan Manuel Moreno, and Mabel Páez, directors of community media outlets *Amanecer Habanero*, and *El Majadero de Artemisa*, respectively, as well as Yoani Sánchez, director of *14ymedio*, reported on these Internet takedowns.

Because of the foregoing, and stemming from the restrictions on freedom of expression in the digital domain, Cuban citizens, once again, proved not to enjoy freedom to express themselves. Out of a total 23 points, it reached 0.4. Similarly, the sub-realms of Information Flow and Citizens Free to Express Themselves were rated at 0.4 and 0 out of a total 11 and 12 points, respectively.

Realm B: Criminalization of the exercise of private journalism

Exercising independent journalism in Cuba contrary to the government official narrative is becoming increasingly dangerous and complex. Those who remain practicing the profession to show the world and Cubans themselves the reality in the island –especially the discontent of the people with the political system– are victims of detentions, harassment, physical and psychological attacks, inspections, and confiscations, in short, repression in all its forms.

Just before, during, and after the commemoration of the first anniversary of the anti-government demonstrations staged in Cuba on July 11, 2021 (11J), the Cuban Institute for Freedom of Expression and the Press (*Instituto Cubano por la Libertad de Expresión y Prensa*, ICLEP) put on record 126 instances of infringement against 46 journalists, among them, Camila Acosta, María Matienzo, Luz Escobar, Boris González Arenas, Henry Constantín, and Yunia Figueredo.

Meanwhile, journalist Lázaro Yuri Valle Roca, grandson of communist leader Blas Roca Calderío, was sentenced to five years in prison for the alleged crimes of enemy propaganda and resistance after publishing a journalistic piece titled: "*Havana heats up. Leaflets are tossed in the air to commemorate the birth of Antonio Maceo*" (*Se calentó La Habana. Lanzan octavillas conmemorando natalicio de Antonio Maceo*). Youtuber, Yoandi Montiel Hernández, known on social media as "*El Gato de Cuba*" (The Cat of Cuba), was also sentenced.

It is also difficult to exercise independent journalism in Cuba when the government uses migratory regulations to intimidate those who practice it by directing threats of preventing them from leaving the island. Concurrently, once they leave, they are banned from returning and forced into exile.

This is what happened to journalists María Matienzo and Henry Constantín; also to activists Marthadela Tamayo, Osvaldo Navarro Veloz, Aimara Peña, and Saily González. They were prevented from leaving Cuba for their participation in the Ninth Summit of the Americas in the United States.

However, Cuba's independent journalists are not the only ones who are hampered from exercising their profession by the Cuban government. In November 2021, the government withdrew the credentials of three editors, a photographer, and a camera operator from EFE news agency in Havana, as the date of the Civic March for Change was coming close. Earlier, the accreditation of the [above news] agency coordinator in Havana had also been withdrawn.

Consequently, the realm was rated by the experts at 1.1 points out of a theoretical maximum of 10.

Realm C: The Cuban government also violates freedom of expression

Through its repressive body and political police, the Cuban government also attacks those who exercise freedom of expression and the press and those who demonstrate against the government in the streets or via newspaper pieces. This is conducted in absolute impunity. For these reasons, this realm was rated at 11.2 points out of a possible 42.

During the period reviewed, some journalists who are constantly harassed for their journalistic endeavor among community media were physically assaulted. This happened to journalist Mabel Páez, director of *El Majadero de Artemisa*. She was beaten by two hooded men who broke into her house. Alejandro Hernández Cepero, a contributor to independent media outlet *CubaNet*, Vladimir Turró, and Adriano Castañeda, were also assaulted in broad daylight. These reporters have declared that their assailants are ordinary citizens colluded with the political police or actual police officers. Therefore, filing reports with authorities will be in vain.

Freedom of expression is also violated when private mail is breached, as is the case of the letters sent by the German channel Deutsche Welle (DW) to journalist Yoani Sánchez. The Cuban Government violates its own Constitution, as its Article 50 establishes that "... correspondence [...] may only be intercepted or searched under a warrant issued by a relevant officer in the cases and in accordance with the formalities established by the law."

Realm D: The government controls and attempts to monopolize information

As for Control over the Media, the experts rated Cuba at 2.9 points out of a maximum 25. Cuba has only one single party (PCC), which controls all the media except alternative or independent outlets. Therefore, monopolizing all the information that citizens can access is impossible.

Within the period between August 2021 and July 2022, independent media with servers located overseas (*Diario de Cuba, CiberCuba, CubaNet, Diario Las Américas, 14ymedio...*) remained blocked and could only be accessed via VPNs (virtual private networks).

In an attempt at keeping control over the media in Cuba and to isolate alternative media, a new Criminal Code was enacted. This code establishes an unlawful model allowing the Government to criminalize independent journalism in Cuba. "The instrument punishes anyone who, on their behalf or that of non-governmental organizations, [...] supports, encourages, funds, provides, receives or holds sums in their possession, [...] with the purpose of financing activities against the Government and its constitutional order". (El Toque, 2022).

Conclusions

According to the experts inquired for analysis in this [edition of] Chapultepec Index of Freedom of Expression and the Press, during the period from August 2021 to July 2022, the most detrimental environment in Cuba is the Executive, as it reflects a very strong influence in situations unfavorable to freedom of expression. Likewise, Realm A, regarding Information Flow and Free Speech, is the most affected; while the Legislative environment and Realm C, on Violence and Impunity, are again in a better condition.

Nevertheless, exercising freedom of expression the press in this Caribbean island continues to be a risk. Threats to independent journalists and activists under the new Criminal Code –entering into force on December 1, 2022– were common during this period.

After July 11, 2021, new demonstrations took place on the island in the wake of the economic crisis and, most importantly, power outages spanning for over six hours locally known as *apagones*. Equally, as demonstrations went on the rise, repression against Cuban dissidents also increased.

Furthermore, during this period, many pro-government journalists were censored or harassed in their workplace, or had to leave the country: Yuni Smith, Boris Fuentes, Isabel Fernández, Alejandro Quintana Morales, Frank Abel Gómez Bernal, Juan Gabriel Gordín... were some of them.

On significant dates such as November 15, 2021; July 11, 2022; December 10 (International Human Rights Day), January 28 (birthday of the "Cuban Apostle" [independence hero], José Martí) May 1, and May 20 (commemoration of the 120th anniversary of the birth of the Republic of Cuba), the Cuban Government –through its repressive corps– arbitrarily summons, interrogates, and detains independent reporters.

Journalists such as Luz Escobar, Camila Acosta, Boris González Arenas, still cannot leave their homes on the above dates, and must remain under continuous surveillance by Government security forces.

Other journalists such as Anay Remón García, Claudia Fuentes (for her program *Castro's Prisoners (Presos de Castro)*); Yusleidy Romero, and Yoel Acosta Gámez have been threatened with prison. Some have even been fined with CUP 7,000 [CUP: ISO code for the Cuban Peso], as was the case for the latest.

Because of these instances of intimidation, journalist Cynthia de la Cantera, who collaborated with the *YucaByte* media outlet, quit her professional practice after being threatened with a criminal case or becoming a collaborationist of government security officials.

The period was also marked by the exodus from the country and the forced exile of many independent reporters such as Esteban Rodríguez, Héctor Luis Valdés Cocho, Mary Karla Ares, Orelvis Cabrera, Iliana Hernández, and Raúl Almeida Peláez, who was dismissed from state-owned press for refusing to write pieces against the 11J demonstrations.

As long as Cuba is a single-party ruled nation and this party has the monopoly of the media, repression, censorship, and limitations on freedom of expression and the press will remain year after year.

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