

## **CUBA: CRIMINALIZED FREEDOM OF EXPRESSION**

### **Executive Summary**

According to the Chapultepec Index of Expression and the Press, Cuba is one of the countries throughout the Americas where this universal human right is inexorably restricted and one of the worst evaluated according to the opinions of experts. Out of a maximum of 100 possible points, the Caribbean country was awarded an evaluation of 11.11. That result is the result of the application of Decree-Law 370 ("scourge law") to censure criticism of State policy, and of a new rule (Decree-Law 35) that legalizes censorship on the island.

### **Introduction**

Year after year Cuba is one of the countries with a very serious situation for the exercise of freedom of expression and the press. The 2021 *ranking* of the global organization Reporters Without Borders (RSF), places Cuba in 171 place out of 180 countries included in the list, and points out that the independent press-without legal or constitutional recognition on the Island- can only exist through the Internet.

In the Caribbean country, journalists who have authorization within the framework of legality are those who practice in the media controlled by the State and, therefore, by the Communist Party of Cuba (PCC). Through this, all editorial policies are governed. Such a situation gives the state the authority to repress through detention, house arrest and censorship all those journalists who practice the profession independently.

Independent journalism is becoming increasingly difficult because the State limits citizens who want to access public information. This is also a consequence of the risks faced by press workers due to the persecution and criminalization of expressions that are critical of the State's policy.

It also highlights the limitation of the Internet, reflected in cuts to that service and in technological blackouts such as the one that occurred on July 11, 2021, amid the significant protests of the Cuban people.

Legal provisions such as the 370, promulgated by the Cuban government in 2018 to sanction "the dissemination of information on social networks contrary to social interest, morality and good customs" (Article 19, 2020), continues to be active to the detriment of anyone who speaks out against the government on the Internet. Also, under the protection of this law, government officials are authorized to confiscate equipment used for these purposes.

The novelty of the year 2021 was the publication in the Official Gazette of the Republic of Cuba of Decree-Law 35 to criminalize freedom of the press and expression in general. This decree, which regulates the use of telecommunications, punishes those who publish on social networks content that may be considered as cybercrimes due as they voice discontent with the government, and aims to contribute to the use of telecommunications services being an instrument "for the defense of the Revolution" (Granma, 2021).

## **Analysis of the results**

In the period from August 2020 to July 2021, the repression against journalists, bloggers, freelancers, youtubers, human rights activists, opponents, artists, and anyone who dissents and publicly expresses themselves against the government of Miguel Díaz Canel, increased significantly.

Events such as the quartering at the headquarters of the San Isidro Movement in Havana, the "sit-in" of artists, activists and intellectuals for 12 hours in front of the headquarters of the Ministry of Culture on November 27, 2020, the concentration in that same place on January 27, 2021, the peaceful protest on Obispo Street and the demonstrations in almost the entire Island on July 11, resulted in criminal laws and immigration regulations that reinforced harassment of journalists.

## **Executive Environment**

According to the experts who participated in the survey, the Executive environment, of a maximum of 10 points, was awarded 6.35 with a very strong degree of influence in situations unfavorable to freedom of expression. In this period, the Cuban government's crusade against the independent press continues with censorship and repression as banners to weaken non-official journalism.

Because the Constitution of the Republic of Cuba states that the Government establishes the principles of organization and operation for all media (Article 55) and that the PCC is the one that governs the editorial policies of all official media controlled by the State, the exercise of the independent press and freedom of expression in general is criminalized. Its recognition in the Constitution is a dead letter.

In practice, independent journalism is carried out within a hostile environment so reporters and community media based in Cuba (Amanecer Habanero, El Espirituano, Panorama Pinareño, Páginas Villaclareñas...) they suffer all kinds of attacks by the repressive organs of State Security, as well as by the state media themselves. Attacks translated into media discredit and defamation, without the right to reply, such as those carried out in the Cuban television program called "Hacemos Cuba", hosted by the lawyer and journalist Humberto López.

Many independent reporters, activists and artists were victims of repression by State Security and Police agents when, on January 27, they peacefully gathered in front of the Ministry of Culture in Havana to demand the release of journalist Camila Acosta, artist Tania Bruguera and poet Katherine Bisquet. The young demonstrators suffered beatings, threats and lengthy interrogations that day.

## **Legislative Environment**

The Legislative environment, the one with the least impact, was evaluated with 7.01 points out of 10, with a strong influence on situations unfavorable to freedom of expression. In the period analyzed, the application of Decree-Law 370, published in 2018 and implemented a year later; the new Decree-Law 35 and its associated norms, legislations that exposed inequality before the law due to political causes, continued.

After months with an apparent calm, so far in 2021 four fines of three thousand pesos have already been imposed under the "ley azote" (scourge law). The last sanctioned was the young Rafael Santos Regalado who has more than 12 thousand followers on Twitter. Already in March of this year, the activist Adrian Gongora from Las Tunas had been fined for broadcasting live while he was at a store reporter of the independent audiovisual media Palenque Visión, Yeris Curbelo was also fined. In September, this law was applied to Guantanamoenian activist and journalist Emilio Almaguer de la Cruz, for his publications on social networks.

Likewise, in the Sixth Plenary Session of the Union of Journalists of Cuba, held in January 2021, one of the highly polemic and echoed topics discussed was the proposal of the first vice president, Rosa Miriam Elizalde, who called for the creation of "a legal group in capacity to present legal cases against those who organize and execute actions of harassment and intimidation towards Cuban journalists" (Juventud Rebelde, 2020).

If this idea materializes, the Cuban State Union could call for legal actions against those who discredit or provoke journalists and media subordinate to the Communist Party. Independent journalists and media would not be able to do the same.

## **Judicial Environment**

The Judicial setting, on the other hand, was dimensioned with a value of 6.25 out of 10 points, so it presents a strong influence on situations unfavorable to freedom of expression. In Cuba, as long as the judicial processes have a political connotation, the Government Security Entities (Órganos de Seguridad del Estado, OSE) exercise control over this power.

Multiple court summonses, house arrests and detentions such as those of independent reporters Héctor Luis Valdés Cocho, Camila Acosta, Iliana Hernández, Luz Escobar, Rolando Rodríguez Lobaina, Esteban Rodríguez, Niober García Fournier (fined twice under the "ley azote"), Yoe Suárez, María Matienzo, Mauricio Mendoza (assaulted by the Minister of Culture Alpidio Alonso in the middle of the events On January 27, 2021, Mary Karla Ares and Lazaro Yuri Valle Roca (who has been detained since June 2021), characterized the period evaluated.

The most important events at this time were the anti-government protests that took place on the island on July 11, 2021. As a result of this historic event in which part of the Cuban people used their constitutional right to demonstrate (article 56), more than a thousand people were attacked in different ways (physical abuse, detentions, exemplary trials), including a dozen independent journalists.

## **Realm A: Cuban citizens have restricted the right to receive and offer information**

The Cuban State, at any level, limits and restricts citizens' access to public information. This is demonstrated by Decree-Law 6, published on July 30, 2020, and its regulations Decree-Law 9; these Decree-laws restrict the constitutional right to public information (Article 53), by asking citizens to explain why they place the request, their personal data and confidentiality. All these requirements, along with the reprisals that anyone who seeks information related to the Government may suffer, do not provide security to access public information.

The State, and therefore the PCC, controls the official media. These are the only ones authorized to disseminate information related to the government, as long as the Party agrees. Everything published or transmitted by the State media passes through the ideological filter of the Party. This restricts the right of citizens to receive all kinds of information, not just favorable to the system and the government.

Subrealms such as "information flow" and "free expression" received an evaluation of 0 points out of a total of 11 and 12 respectively due to the monopoly of information by the State, the criminalization of criteria contrary to government policy, and the censorship and restrictions on the right to freedom of expression in the Net of Networks. In general, citizens in Cuba are not free to express themselves as it shows the evaluation of 0 points out of 23.

## **Realm B: The exercise of independent journalism in Cuba is uncomfortable for the government**

The exercise of independent, alternative journalism has been boycotted by the constant attacks of the Cuban political police on those who practice it. Arbitrary arrests, summary trials, criminal proceedings –without the guarantees of due process– exile... have characterized the government's treatment of those who practice the profession or also those who project themselves differently from how the State commands.

Journalists and human rights activists are the highlight of the repression of the Cuban government, which applies a strategy of physical or psychological exhaustion on them. They are subjects of constant subpoenas, extensive interrogations, long hours inside patrols hermetically closed under the sun – a torture method called "oven-patrols"- (Suárez, 2021), and the use of ordinary crimes to keep them in prison.

One of the Cuban reporters who suffer the harassment and constant repression of the political police for exercising independent journalism is Camila Acosta Rodríguez, who has been the victim of constant arrests on public roads, evictions from the rented homes where she has lived, police surveillance in her home that has prevented her from leaving and hacks of her social media accounts. She is currently charged with incitement to commit a crime (Article 202 of the Cuban Penal Code) and public disorder (Article 200) for reporting the July 11 protests in Havana.

Other journalists such as Iliana Hernández (CiberCuba) and Luz Escobar (14yMedio) are also kept by State Security for long periods under home confinement without even being criminally prosecuted.

Another method used by the Cuban government to intimidate those who practice independent journalism on the island is the prohibition of leaving the country through "regulation" and the choice between deprivation of liberty through criminal convictions, or banishment (exile) from their own country.

Likewise, in this period, the journalist of the independent media ADNCuba, Karla María Pérez, expelled in 2017 from the Central Martha Abreu University of Las Villas for collaborating with the protest site "Somos +" (We are more) and exiled in Costa Rica, was denied entry to the island. For this reason, in this realm, from a theoretical maximum of 10, the surveys to experts yielded a 0.6 as a result.

### **Realm C: The Cuban government violates its own laws and goes unpunished**

According to the opinion of specialists, this realm has an evaluation of 7.68 of 42 possible points. The Cuban government controls freedom of expression in practice as well in the legislation. On the island, since there is no legal or political equality, there is no press law that recognizes and protects all Cuban journalists equally. Only those who serve the ruling party are legally protected by the PCC and the Constitution.

There is no body of law that allows independent journalists and dissidents, in general, to use it when they are subject to slander and defamation by the state media, as has been happening in several broadcasts of the Noticiero Estelar of Cuban television.

In the Cuban Penal Code, although the government uses common crimes such as public disorder, contempt, attack, or spread of epidemic, to silence the voices of those who express themselves publicly differently, the law also penalizes critics of the system with crimes such as enemy propaganda (article 103), defamation (article 318) and some forms of crimes against State Security (title I).

An example is the case of independent reporter Esteban Rodríguez, in prison since April 30 for peacefully demonstrating. He is accused of the alleged crimes of public disorder and contempt. In the period from August 2020 until his arrest at the end of April, Esteban, one of the barracks of the San Isidro Movement, suffered three arbitrary detentions and constant police surveillance of his home, not allowing him to leave the house.

However, there is complete impunity for the Cuban government and its officials, who violate their own laws and the Constitution, refuse to give information on the whereabouts of detained reporters and refuse to acknowledge that there are human rights violations in Cuba. This happens instead of condemning those who commit such transgressions, punishes those who denounce them, making use of freedom of expression and risking being imprisoned for exercising it.

Despite the fact that in May 2021 the government announced that in the new process of judicial reform on the Island it would be established "to allow people to go to court if the administration infringes their rights" (Lezcano, 2021), the application of this provision in practice is a different matter.

### **Realm D: The State's monopoly on the Cuban media**

This realm, related to media control, received 2.86 out of a maximum of 25 possible points. On the island, with a one-party system, the government monopolizes the media and part of the information that is disseminated, since it cannot control that disseminated by the independent media. The national press (Granma, Juventud Rebelde, Trabajadores, provincial newspapers...), radio, television and websites, are totally at the service of the Communist Party, so all the legal scaffolding also assists it.

The unofficial press, with an agenda different to the one of the official media, is considered mercenary and for it there are only attacks in the form of media discredit and defamation. Although article 54 of the Constitution of the Republic of Cuba recognizes freedom of expression (but not in practice), it is restricted by establishing that the fundamental media are socialist-owned and cannot be object of other types of property (article 55).

Precisely the Telecommunications Company of Cuba, the only one of its kind in the country, continues to block independent media that have their servers in other countries such as CubaNet, Diario de Cuba, Cubanos por el Mundo, Diario Las Américas, CiberCuba... and has directly targeted community media.

Such is the case of "Páginas Villaclareñas", a newspaper attached to the Cuban Institute of Freedom of Expression and Press (ICLEP). In mid-March 2021, the political police confiscated their equipment and forced the reporters to close it down. The Committee to Protect Journalists demanded at the time the return of all equipment and an end to the harassment of their journalists.

## **Conclusions**

In the period from August 2020 to June 2021, independent journalists, artists, human rights activists, and anyone who exercises freedom of expression and the press in Cuba, continue to be victims of persecution, harassment, intimidation, confiscation of work equipment, repression ..., in a clear violation of Article 19 of the Universal Declaration of Human Rights.

Reporters continue to constantly face illegal detentions, fines, telephone and Internet line cuts... The government, protected by law, violates all the constitutional and legal rights of those who express themselves freely and shows a critical position against the system.

In May 2021, the law 88 or "Ley Mordaza" (Gag law) was mentioned on the Cuban television program Hacemos Cuba (We Make Cuba). This law has not been applied since 2003, when 75 dissidents were taken to prison, including 25 independent journalists, but it is still valid to criminalize freedom of association, expression and assembly.

Decree-Law 370 "On the Computerization of Society in Cuba" continues to apply to those who publish on social networks content that violates "the social interest, morality, good customs and integrity of people"; and Decree-Law 35 emerged that establishes the regulatory framework of telecommunications in Cuba.

The new provision criminalizes the "dissemination of false news, offensive messages and defamation with an impact on the prestige of the country" (Meza, 2021) and the

"dissemination of content [...] that violate the constitutional, social and economic precepts of the State, incite mobilizations or other acts that alter public order" (Meza, 2021), in order to limit, first, the critical expressions of citizens towards the government and also restrict their right to demonstrate.

In the analyzed stage, it has been demonstrated, according to surveys of experts, that the right to exercise freedom of expression and the press in Cuba suffers a serious deterioration. The Executive environment and realm A, related to the flow of information and free expression, have been evaluated as the most deteriorated, while the legislative environment and realm C on violence and impunity are in a better state.

The next analysis of the Chapultepec Index in Cuba may not show variability because the government of Miguel Díaz Canel Bermúdez has shown its tendency to increase repression and censorship to restrict freedom of expression and the press on the island.

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