



Law of the State vs. Rule of Law

2011 Annual Report on the Legal System in Cuba,

Political Situation and Status of Human Rights

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CUBAN AMERICAN BAR ASSOCIATION

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Executive Summary

At the close of 2011, the Cuban legal system remains an extension of the powers of the State and the Communist Party. Cuba remains a communist State, governed by a sole party system, with no rule of law, separation of powers or multiple parties. In 2010 its legal structures underwent no significant changes.

Both the legislative and judicial branches remain subordinate to the executive branch, and the Penal Code continues to criminalize the exercise of freedom of expression, association, and other human rights recognized by the Universal Declaration of Human Rights. The Socialist Constitution of 1996 remains in effect, establishing the Communist Party as the society's "guiding force."

The Sole Party system remains in effect, with a unicameral legislative assembly whose members are selected based on their "suitability," measured in terms of their allegiance to the Communist Party. In April, Raúl Castro was unanimously elected First Secretary of the Communist Party, at last formalizing the succession of power transferred from his brother Fidel Castro. No opposition party activity is permitted, nor are any independent civil organizations allowed.

Independent legal associations won two important victories this year, with the preliminary recognition of the *Asociación Jurídica Cubana* [Cuban Legal Association], under its President Wilfredo Vallín, and the court judgment in Santiago de Cuba convicting a Communist Party official of slander against independent attorney Ernesto Vera. Another significant event was the complaint filed by activist José Alberto Álvarez against two political police officers for illegal seizure of a photographic camera.

These two cases exemplify a new culture of empowerment within the opposition, in challenging the Cuban legal system in response to the arbitrary acts of repressive authorities. However, there is a persistent pattern of harassment and intimidation of its members, whose primary job is to educate the citizens and confront the government with its own laws. No legal proceeding against human rights activists resulted in an acquittal; on the contrary during this period there were an increased number of arbitrary arrests, temporary banishments, and prohibitions from living in certain areas of the country, all in place of precautionary measures.

The petition for *habeas corpus* does not exist, and the accused may wait years before being brought to trial. The most notorious case was that of US contractor Alan Gross, who remained in custody for 1 year and 5 months without being brought to trial. In one of the year's most notorious court cases, on August 6 the Supreme Court upheld a judgment of 15 years in prison for Alan Gross, accused of providing free internet access to Jews on the Island. Over 14 witnesses appeared at the trial, held on March 4, and his imprisonment has become the primary stumbling block in relations between Cuba and the US Government, which is demanding his unconditional release.

The age of majority in Cuba is 16 years. The UN Committee on the Rights of the Child made a recommendation to the Cuban Government that it raise the age of majority to 18 years, so as to protect children from pornography, the sale of children and prostitution. The Committee also expressed concern with regard to the fact that children born abroad of Cuban parents who do not meet the criteria for citizenship enshrined in Article 29 of its Constitution are at risk of becoming stateless.

June 9 saw the arrival in Miami of Reyna Luisa Tamayo, mother of the prisoner of conscience Orlando Zapata Tamayo, whose death as a result of a hunger strike touched off a wave of international protests against the regime. Reyna Luisa and her family were the victims of constant harassment by the government's repressive machinery, which even blocked her from visiting her son's grave.

On August 25, René Gómez Manzano, head of the Agramontista Current (organization of Cuban independent lawyers), filed three complaints with Chief Justice of the Supreme Court Rubén Remigio Ferro, Minister of Justice María Esther Reus and Attorney General Darío Delgado Cura, for violent acts against the Ladies in White and members of the opposition (Appendices 2 and 3).

On October 7, the United States released Cuban Wasp Network spy René González, after he had served enough time to qualify for parole. He must remain in the United States on parole for three years before being allowed to leave the country.

One of the most notable events of the year occurred on October 14 with the death under suspicious circumstances of Laura Pollán, leader of the Ladies in White, allegedly from dengue hemorrhagic fever with respiratory complications. Her body was cremated and no autopsy was performed, and therefore there was no medical confirmation of her cause of death. Following her death, Berta Soler was elected by the Ladies in White as their new spokesperson and leader of the group.

Chapter I. Current Conditions

a) Penal Code.

No changes were made to the Penal Code this year. Penal Code continues to criminalize the exercise of freedom of expression, association, and human rights in general. The legal system continues to be used as a vehicle for the repression of dissidents, rather than a system for the administration of justice. The following are two of the most notable cases.

May 8. Juan Wilfredo Soto García, age 46, died in a Santa Clara hospital, after having been severely beaten and in Leoncio Vidal Park. The official cause of death was “pancreatitis.” None of the police officers who arrested him were investigated or suspended, not even temporarily, in spite of the fact that one of the officers who participated in the beating, Alexis Herrera Machado, had a record of violence and brutality against citizens.

Also on May 8, the same day that Soto García died, Herrera Machado committed suicide with a firearm and was buried in the Pantheon of Combatants in the Santa Clara Cemetery.

Amnesty International (AI) demanded that the Cuban Government “immediately open an impartial, independent investigation” into his death. European Union (EU) High Representative Catherine Ashton demanded explanations regarding the case on behalf of the EU. In an open letter to Raúl Castro, the World Organization Against Torture (OMCT) expressed its “concern” regarding the circumstances surrounding the death of Juan Wilfredo Soto García and demanded an “immediate, independent investigation.” None of these demands received any response from the Cuban Government.

August 8. Activist Ernesto Carrera Moreno was the victim of a violent machete attack by William Valverde, member of the neighborhood watch division of the Municipal Committees for the Defense of the Revolution (CDR). Carrera Moreno suffered a fractured skull and dislocated jaw, requiring emergency surgery at the Santiago de Cuba Provincial Hospital. The activist was attacked by Valverde and his nephew. To date, neither of the two attackers has been prosecuted.

b) New Laws and Decrees

A series of new laws and decrees were issued during the year, 10 of which stand out as most significant. None of these involved improvements to the exercise of human rights. The nature of these new decrees demonstrates the State’s intention to cement ownership of large enterprises, and increase control over small enterprises by collecting arbitrary taxes. None of the new provisions authorize citizens to own industries or operate banks or financial institutions, hotels or tourist facilities.

On two occasions new laws were announced that as of the date of this publication have yet to be promulgated. On February 8, the Ministry of Justice (MINJUS) and the Executive Committee of the Council of Ministers announced that they would consider a telecommunications bill. On August 2, Raúl Castro announced that Cuba's migratory policies would be revised, but to date no move has been made to do so.

The following are the 7 most important decrees and laws promulgated this year.

May 4. Manuel Marrero, Minister of Tourism, announced the approval for golf courses, marinas and other real estate development projects using foreign capital to promote the tourism industry.

May 17. The Council of Ministers agreed to grant authorization to all non-state owned businesses the right to hire workers and continue the process of relaxing self-employment regulations.

July 15. An official decree established that all self-employed workers based in historic central Havana must contribute a percentage of their income toward the preservation of the area, which is considered World Heritage. In addition, entities and organizations with offices or premises in buildings with historical heritage value must "create conditions" to transfer them to the Office of the Historian of the City of Havana "as circumstances permit."

August 1. The Official Gazette of Cuba announced the lifting of the ban on the sale of high energy consumption appliances, primarily for the Gastronomic and Commercial industry (restaurants and cafes).

August 1. The National Assembly of People's Power approved the "experimental" separation of powers between the executive and legislative branches in the new provinces of Mayabeque and Artemisa. "The initiative will take effect experimentally for a period not to exceed 18 months, as part of an experiment for a final legislative decision."

August 15. The International Affairs Committee of the National Assembly of People's Power resolved to apply and strengthen Law 88 (Gag Law), applying stricter penalties to dissidents. (See Appendix 1)

September 27. The Official Gazette published 9 resolutions of the National Housing Institute and the Ministries of Finance and Prices, Labor and Transportation, specifying the taxes to be paid, safety regulations to be followed, and other updates with regard to labor at independent companies.

c) Freedom of Expression

Restrictions remain in place against the exercise of this right, in addition to repressive actions against those who in one way or another manifest their disagreement with government

policies. The most common punishment in these cases is to expel those who openly express their discontent with government policies from their workplaces or schools.

This practice has been extended to cyberspace, in an attempt to restrict criticism of the regime. In two relevant cases, student Reyner Agüero Varona was expelled in February from the *Universidad de Ciencias Informáticas* [University of Computer Sciences] for having given an interview to a blog that is critical of the regime administered by Spanish (native of Cataluña) citizen Joan Antoni Valls; while in May, young blogger Henry Constantin was expelled from the *Instituto Superior de Arte* [Superior Institute of Art] for participating in video debates called *Razones Ciudadanas* [Citizen Reasons], with bloggers critical of the regime and dissidents.

This is the third time Constantin has suffered this type of reprisal. He had previously been expelled from the Universities of Santiago de Cuba and Villa Clara for “political problems.” In one astonishing case, Professor Hergues Frandin was expelled from Oriente University in April, merely because his photograph appeared in an opposition blog. In another remarkable case, on March 23 sports commentator Rolando Ramos was temporarily detained and subsequently expelled from his job at the Cuban Radio and Television Institute on October 31, for maintaining contact with defector athletes.

On May 23, painter Pedro Pablo Oliva, winner of the 2006 National Prize for Fine Arts, was fired from his job as a Pinar del Río provincial representative. Oliva, age 62 and considered one of the most important figures in contemporary Cuban painting, explained that at a regular meeting of said government body, in which he had been participating for three years, he was “called a counter-revolutionary and other names I do not accept,” for publishing pieces in dissident media and receiving members of the opposition at the studio he has had in his home for the last 10 years.

On May 3, in celebration of the World Press Freedom Day, Reporters without Borders denounced the fact that some 30 independent journalists were arrested in Cuba during the first quarter of this year. This pattern of harassment and intimidation also extends to foreign correspondents, such as Carlos Hernando, reporter for the Spanish newspaper *El Mundo*, to whom on April 8, Cuban authorities gave 48 hours to leave the Island for making reports criticizing Cuba.

On August 29, the Cuban regime rejected the assignment of journalist Juan Castro Olivera as chief of the Agence France Presse (AFP) bureau in Cuba. On September 20, Spanish *El País* newspaper correspondent Mauricio Vincent was denied the renewal of his credential, despite having operated on the Island for years and being married to a Cuban citizen. The reason was his coverage of opposition events, particularly the Ladies in White.

On November 14, Cuban Government newspaper *Granma* reported the arrest of several individuals who were providing wireless internet access to citizens, calling them “bandits” and accusing the US Government of providing the technical means to provide Cubans with “illegal access” to the internet.

d) Freedom of Association

All meetings or activities independent of the regime are considered illegal. “Unlawful gathering” is still considered an offense under the Penal Code. The only legally recognized associations are those affiliated with the Government, known in the NGO world as “GONGOS” (Government-Organized Non-Governmental Organizations).

The most important case under this heading occurred in the month of July, when the government refused to license Matraka Productions, which had been organizing the outdoor music festival known as the “La Rotilla” Rave on Baracoa Beach in the outskirts of Havana. After 20,000 young people freely congregated at the 2010 event, the government took it over and held a 2011 Festival controlled by the political police.

On July 21, Metraka Productions issued a communiqué stating: “We, the organizers and founders of the Rotilla Festival (...) denounce the theft, plagiarism and kidnapping” of the event and the “excessive, stubborn censoring of any cultural activity not organized by the so-called ‘institutions’.”

e) Freedom of Movement.

The Cuban Embassy in Madrid denied permission to travel to Havana to a dozen relatives of former political prisoners who wished to return to the Island temporarily or permanently. After Catalina Cano, age 83, aunt of former prisoner Marcelo Cano, had completed the necessary paperwork and purchased the airline tickets, the Cuban Consulate in Madrid stamped “revoked” on the exit visa in her passport. Leonel Grave de Peralta, father of the former political prisoner of the same name, also had his permission revoked at Barajas Airport in Madrid, just prior to boarding his plane.

On June 8, Barbora Subrtova, spokesperson for the United Islands Festival of Prague, reported that “Despite the organizers and artists having met all the legal requirements, the Cuban administration has refused to grant permission (to leave the country) to the Cuban rock band “*Porno Para Ricardo*.” As a result, the only member of the band who performed at the festival was guitarist Gorki Águila, who was visiting Mexico at the time, and traveled from there to the Czech capital.

A report by the *Hablemos Press* Information Center released on June 3 revealed that “it is estimated that some 300 citizens a week are arrested in the capital city of Havana for being present in the capital province without government authorization, and are deported to their provinces of origin.” On June 22, the National Office of Statistics (ONE) reported that emigration from the provinces to the capital city of Havana more than doubled over the last five years.

f) Arrests

During this period, the regime showed a tendency toward “low intensity” repression characterized by temporary arrests. Another method very often used in the past year was temporary banishment, in which activists are detained and later abandoned in remote areas, from which it takes them hours to return home.

A report by the Cuban Human Rights and National Reconciliation Commission (CCDHRN) released on November 3, pointed out that so far this year, the regime has arrested some 3,070 members of the opposition, at least 800 more than in all of 2010. According to the CCDHRN document, “The regime continues to engage in systematic arrests for political reasons lasting several hours or days, without imposing numerous long prison sentences as it did eight or ten years ago.”

Notable cases include the violent arrests of Sara Marta Fonseca Quevedo, Odalys González Naya, Mercedes García Álvarez and Tania Maldonado Sánchez, after they led a protest on the steps of the National Capitol. All were released in less than 48 hours, with formal “Warnings.”

The same occurred in the cases of activists Ivonne Mayesa and Mercedes Galeano, after beating pots and pans in protest at the *Mercado Único* market in central Havana. They were taken to a police station and released 48 hours later with warnings. A crowd of over 200 people congregated in front of the police station where they were being held, demanding their release.

g) Due Process

The lack of separation of powers makes due process impossible. Defense attorneys generally receive case files 24 to 48 hours before a trial, and often only meet with their clients hours before their trials begin.

Judges are not elected by popular vote, but rather appointed by the Communist Party. No dissident or opposition activist was acquitted of charges or found innocent at any trial that has taken place as of the date of this report, demonstrating the markedly political nature of the courts.

Some significant examples include:

On May 24, the Municipal Court of Holguín sentenced brothers Marcos Maikel and Antonio Michel Lima Cruz to three and two years in prison, respectively, for “public disorder and insult to national symbols,” for listening to music by the popular hip hop duo “*Los Aldeanos*.”

Four dissidents who tossed anti-government leaflets in the central Havana Esquina de Tejas and across from the Palace of the Revolution, in Havana, in mid January, were sentenced on June 1 at the 10 de Octubre Municipal Court. Luis Enrique Labrador, age 33, David Piloto (40) and Walfrido Rodríguez (42) were sentenced to five years in jail, while Yordani Martínez (23) was

given three years. HRW issued a protest statement demanding the immediate release of the four men.

A series of noteworthy trials took place during the year, mostly involving cases of government corruption.

Chilean businessmen Max and Marcel Marambio were sentenced to 20 and 15 years in jail, respectively, at trials held on May 5 and June 6, in a case of corruption involving the “Río Zaza” food company, owned by the two brothers. Former Minister of the Food Industry, Alejandro Roca, was sentenced for “continuous bribe-taking and acts prejudicial to economic activity or employment,” in addition to another fifteen Cuban nationals sentenced to jail terms of between 3 and 10 years.

As a consequence of this trial, on June 10 the Provincial Court of Havana sentenced the former Deputy Minister of the Food Industry Celio Hernández and the executives Maritza Esther Ramos Hernández, Ofelia Grisel Liptak Rubí and Rafael Alonso Gutiérrez. Ofelia Liptak was the Business Manager for the Río Zaza public-private joint venture and wife of the former president of the Cuban Civil Aeronautics Institute, General Rogelio Acevedo, who was fired without explanation in March of last year.

Another noteworthy case this year was the trial of the directors of Cubana de Aviación and the Heberbiotec S.A. pharmaceutical and biotechnology corporation, held on August 1 in the Provincial Court of Havana. The defendants were sentenced to between 3 and 13 years, and the primary business managers of the foreign subsidiary Caribe Cargo S.A. were given 6 and 7 years for acts of corruption.

On March 28, Raúl Castellanos Lage, cousin of the former president of the Council of Ministers, Carlos Lage, was released after being held for two years without charge. No explanations were given for his arrest or his release.

The most noteworthy cases unrelated to acts of dissidence or corruption were the trials in relation to the death of dozens of patients who froze to death after having been locked naked in a room at the Havana Psychiatric Hospital, and the trial for the murder in Bayamo of 12-year old Lilian Ramírez Espinosa, a case involving child prostitution and drugs. In both cases numerous irregularities were committed, and the primary responsible parties were never brought to trial.

Despite complaints from family members and human rights organizations, in the case of the deaths at the Psychiatric Hospital neither the Hospital Director nor the Minister of Public Health were prosecuted. The trial was delayed for over a year and began on January 17. Judgments were handed down on February 1.

The case of the murder of Lilian Ramírez began on September 26 and judgment was rendered on November 7. Italian citizens Angelo Malavasi and Simone Pini were sentenced to 25 years in

prison, while Luigi Sartorio was given 20 for the murder. Of the Cuban citizens convicted, Vicel Ramos Cedeño was sentenced to 30 years. Yoel Rafael Sánchez Ramírez, alias "Yoquer," and Leonel Milán Gamboa each received 25 years.

The attorneys for the Italians were not allowed to meet with their clients, and Simone Pini issued an extensive document from prison entitled "I accuse and demand," in which he states he was not in Cuba when the crime took place. Before the trial, his family in Italy presented documentary evidence in support of his claim.

Various arbitrary actions were also taken against foreigners, including the following notable cases:

March 9. The Ministry of Foreign Affairs of Peru reported the case of Peruvian citizen Cleida Quevedo Balmaseda, who was held for more than one month for entering the country with \$90,000 dollars to open a private restaurant.

March 26. Mexican fisherman Carlos Joaquín Morales Tec was released after serving 6 years of a 10 year sentence for human trafficking.

May 14. 30-year sentence upheld against Salvadoran citizen Francisco Chávez Abarca for the crime of terrorism, declaring his appeal "unfounded."

August 10. Former Spanish journalist Sebastián Martínez sentenced to 7 years in jail for "corruption of minors" for having produced a television documentary on child prostitution on the Island in 2008, broadcast by the Spanish television network Antena 3. Martínez returned to Cuba as a businessman and was jailed and tried without due process.

August 11. A Cuban court sentenced French businessman Jean-Louis Autret to 15 years. He had been held in Cuba since 2009 for money laundering in connection with drug trafficking and tax fraud. Autret's Cuban wife was sentenced to 5 years in prison and an additional four years of correctional labor without incarceration.

h) Trafficking in Persons.

Although there is no empirical evidence of government involvement in human trafficking, various international organizations and political bodies have identified Cuba as the origin of human trafficking networks to the United States, using sea routes across the Florida Straits, and overland routes through Central and South America. In June, the United States State Department placed Cuba on the black list of countries engaged in human trafficking for the ninth consecutive year, according to its Annual Report on Trafficking in Persons for 2010.

The Cuban Government still has not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

On May 4, Chilean authorities arrested Cuban citizen José Valente Alen Abrabelo, age 50, for leading a human trafficking network, according to the report by local newspaper [La Tercera](#).

Legal actions were also filed in the United States in relation to human trafficking originating in Cuba. On July 22, 45-year old Miami resident Héctor Peña was sentenced to 15 years in prison, for smuggling 17 Cubans into the country, according to the judgment issued by Judge José E. Martínez.

Moreover, on November first, the United States Court of Appeals, 11th Circuit, reversed the conviction of sports agent Gustavo "Gus" Domínguez on charges of transporting illegal immigrants, while upholding his conviction for smuggling. Dominguez was sentenced to five years in prison after he was convicted in April 2007 of paying for five baseball players to be smuggled by boat from Cuba in 2004.

Chapter II. Relevant National and International Events

a) European Union Common Position

There was no significant change in relations between Cuba and the European Union. The 1997 Common Position remained in effect, which conditions the participation of the Cuban Government in cooperation agreements with the EU upon the release of all political prisoners, freedom of action of opposition organizations and protection of human rights, among other demands.

This year the Cuban regime signed several bilateral agreements with Russia, Ukraine, Norway, France and the UK, in an attempt to circumvent the effects of the Common Position.

b) Cuba – United States Relations

There was no significant change in the status of relations between the two countries. In an interview broadcast on the Univisión television network in May, President Barack Obama said he would have to see “real change” in Cuba for Washington to move toward normalizing relations with Havana after half a century of estrangement. Cuba was once again on the State Department’s list of State Sponsors of Terrorism.

This year the number of airports operating direct flights to Cuba increased. The air terminals that received State Department licenses for this purpose are as follows:

- 1 Tampa
- 2 Chicago O’Hare,
- 3 Baltimore
- 4 Dallas/Fort Worth
- 5 New Orleans
- 6 Pittsburgh
- 7 Atlanta
- 8 Luis Muñoz Marín
- 9 Fort Lauderdale
- 10 Fort Myers
- 11 Key West

New flights were also added from Latin America and Europe:

- Aerolínea Avianca Taca. As of August increased from 9 to 12 the number of direct flights to from its hubs in Peru, El Salvador and Costa Rica.
- Air Nicaragua. Mario Salinas, Nicaragua’s Minister of Tourism, announced in May that the state airline would operate one flight to the Island three times per week.

- Mexican budget carrier *Interjet* announced in August that it would operate one daily flight between Mexico City and Havana to serve the market once served by the defunct Mexicana de Aviación
- KLM (Holland). Resumed operations in Cuba on November 1, with three flights per week.

On January 20, the so-called “mail war” began when the United States postal system began to return letters originating in Cuba. The Cuban government responded by suspending postal service to the USA on January 24, and service was finally reestablished on April 5, with no convincing explanations offered by either party.

Several American politicians visited Cuba this year. The most noteworthy were former Democratic presidential candidate George McGovern, who arrived on the Island for an unofficial visit on June 1 and left two days later without succeeding in meeting with Fidel or Raúl Castro. McGovern did not reveal the specific agenda for his trip. On September 14, former governor of New Mexico, Bill Richardson, left Cuba without being able to see or secure the release of Alan Gross.

The Foreign Affairs Committee of the US House of Representatives approved by a vote of 36-6, including the votes in favor of 13 Democrats, Florida Republican David Rivera’s amendment to reinstate the restrictions on travel and remittances imposed by George W. Bush.

On August 17, Congressman David Rivera proposed changes to the Cuban Adjustment Act, suggesting that Cubans who travel to Cuba before they become citizens should be stripped of their status as legal residents. The Cuban Government requests the elimination of the Act. Oswaldo Paya, Yoany Sánchez and Guillermo Fariñas, among other activists on the Island, have come out against the elimination of the Act.

On November 8, 364 activists inside Cuba sent a letter to the President of the Foreign Affairs Committee of the United States Congress, Ileana Ros Lehtinen, requesting international assistance in combating repression on the Island.

c) Suits and Fines

May 18. The European Union (EU) General Court denied the petition filed by the Habanos S.A. corporation requesting the annulment of the recognition of the Kiowa brand of tobacco on the European market. Contrary to Habanos’ position, the European court did not believe there was a risk that said brand name would be confused with Cohiba.

August 24. Florida Circuit Court Judge Beatriz Butchko found in favor of the plaintiff in the suit for damages filed by Gustavo Villoldo, who said the Cuban Government tortured him and stripped his family of its assets after Fidel Castro came to power in 1959. Butchko ordered Cuba to pay \$2.8 billion in damages, the largest award in the history of lawsuits against the Cuban regime in US courts.

August 26. The US Treasury department announced that JP Morgan Chase Bank (JPMC) agreed to pay \$88.3 million to settle claims involving “scandalous” violations of the Cuban Assets Control Regulations (CACR).

August 29. Federal District Judge Federico Moreno ruled that Ana Margarita Martínez could not garnish the \$27 million she was awarded in 2001 in a lawsuit against the Cuban Government, because she lacks the license to handle Cuban money issued by the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC).

November 2. Online payment service PayPal lifted the “blockade” on the account of DTS&W, a firm that commercializes rum, tobacco and other Cuban products in Germany. The parties reached an “amicable” settlement. With this suit, filed with the provincial court of the city of Traunstein, in Bavaria, DTS&W forced PayPal to reopen its account.

d) International Fugitives from Justice Taking Refuge in Cuba

The regime continues to be reluctant to turn over the numerous international fugitives residing in Cuba, including Joanne Chessimard (AKA Assata Shakur), wanted by the United States for the murder of a highway patrol officer in New Jersey. On July 18, the FBI released a list of 54 Medicare fraud fugitives, 26 of which are in Cuba, most of whom were born on the Island and arrived in Florida after 1990.

Particularly noteworthy is the case of Eduardo Moreno, a Miami-Dade resident who had collected \$2 million from the government program and fled to Cuba, and is now operating a DJ business for clubs, weddings and other events in Havana. It is estimated that some 70 fugitives from US justice are in Cuba. On May 18, the FBI reported that it believed that Víctor Manuel Gerena, a key participant in the armed robbery of a Wells Fargo truck in 1983, organized by the Puerto Rican group “Los Macheteros,” is currently in Cuba. Gerena has been on the FBI’s Ten Most Wanted list since 1984, longer than any other fugitive.

Other noteworthy cases of fugitives originating in Latin America and Europe include:

- Alexis Soto, Chilean, AKA “El Rambo”. Accused of the murder of Senator Jaime Guzmán. On March 2 he was tried *in absentia* in Chile, and three days later a warrant was issued for his arrest. On June 10, the Chilean Supreme Court requested his extradition from the Cuban Government. The request has not been granted.
- Elena Bárcena Argüelles, AKA *Tigresa*, and Francisco Javier Pérez Lekue, AKA *Niko*, members of ETA. May 16. Spanish newspaper El País published a letter dated February 8 from the two fugitives “to the people of Euskal Herria (Basque Country),” calling Cuban authorities “jailers” and accusing them of not sticking to a 1984 accord in which Havana promised not to do anything to prevent ETA exiles from leaving the Island. The ETA members accuse the regime of

refusing to provide them with “functional” false documentation that would allow them to leave Cuba.

- Joseba Garrionandia, winner of the Euskadi Prize for Literature in Basque. Located in Cuba by the Spanish press on July 18.
- José Ignacio Echarte Ubieta. Arrested in Venezuela on September first along with other ETA members after escaping Cuba by boat. They were sent back to the Island, and on October 14, National Court Judge Eloy Velasco formally requested his extradition. The request has not been granted.

e) International Organizations

This year, the Cuban Government received various negative evaluations from international human rights organizations, political bodies and opinion polls. The following are the most significant:

Human Rights

- 1- Ranked 72nd out of 149 countries on the Global Peace Index
- 2- IACHR Report places Cuba on the black list for Latin America
- 3- Reported among the 10 Worst Internet Oppressors by the Committee to Protect Journalists (CPJ) on World Press Freedom Day
- 4- Freedom House annual report places Cuba among the most repressive societies on the planet, especially with regard to the Internet
- 5- CPJ Report on World Refugee Day highlights the fact that “Nearly 70 journalists were forced into exile in the last 12 months, more than half of them from Iran and Cuba, two of the most repressive countries in the world.”
- 6- The Chapter on Cuba in the Annual Report of the Committee for the Protection of Journalists (CPJ) states that the authorities are “still persecuting independent journalists.”
- 7- 67th Assembly of the IAPA condemns Cuba for attacks on freedom of expression
- 8- The chapter on Cuba in the Amnesty International (AI) Annual Report on the worldwide status of human rights says that “the rights to freedom of expression, association and assembly continued to be restricted and scores of critics of one-party government were harassed.”
- 9- Irish organization Front Line, with special consultative status with the United Nations Economic and Social Council, called for the immediate cessation of “all attacks” on the Ladies in White and activists on the Island, and a “complete, impartial and independent” investigation of the “acts of violence” suffered by human rights defenders.
- 10- The Observatory for the Protection of Human Rights Defenders, a World Organization Against Torture (OMCT) and International Federation for Human Rights (FIDH) joint program, expressed its concern regarding reports of attacks on the Ladies in White in Santiago de Cuba.

- 11- Foreign Policy Magazine listed Raúl Castro as the 4th worst dictator in the world, behind Omar al Basher (Sudan), Mahmoud Ahmadinejad, of Iran, and Yoweri Museveni, of Uganda
- 12- Raúl Castro on the Reporters Without Borders (RSF) list of “Predators” of Press Freedom who “sow terror among journalists.”
- 13- Raúl and Fidel Castro, and Hugo Chávez, ranked last in a “favorability” list of Ibero-American leaders in a poll conducted by Activa Research and the Ibero-American Consortium of Market Studies and Investigations (CIMA).
- 14- The Latinobarometer opinion poll listed Fidel Castro and Daniel Ortega as the most unpopular leaders on the subcontinent.

In addition, several alerts were issued by other international organizations. On May 13, Christian Solidarity Worldwide (CSW) expressed concern over the arrest and interrogation of Protestant pastors Benito Rodríguez, Bárbara Guzmán and Bernardo Quesada Salmón.

The OAS Inter-American Commission on Human Rights (IACHR) released two statements, one on June 8 and the other on November 11, calling for "precautionary measures" for activist Idania Yáñez Contreras and her family. The IACHR called on the regime to “adopt any necessary measures to preserve and guarantee the life and physical integrity of Idania Yáñez Contreras and her nuclear family.” The IACHR released a similar statement on July 7 regarding Yris Tamara Pérez Aguilera, due to beating received from repressive agents of the State.

June 22. The United Nations Committee on the Rights of the Child made a recommendation to the Cuban Government that it raise the age of majority to 18 years, so as to protect children from pornography, the sale of children and prostitution. In the final recommendations, published by the Office of the United Nations High Commissioner for Human Rights (OHCHR), the committee requests the "review and reform of the Family Code, Penal Code and Labor Code.”

Chapter III. Impact on the Population

a) Opposition Legal Victories

On April 28, the Supreme Court dismissed a complaint filed by Wilfredo Vallín, Esq., of the Cuban Law Association (AJC), against the Ministry of Justice. The complaint was based on the refusal on the part of the Ministry of Justice Registry of Associations to issue Vallín a document certifying that no other group had registered with the same name and purpose as the AJC. The complaint was dismissed but the Court authorized Vallín to continue the process of registering the association. Finally on June 3, Vallín received the certification, the first step in requesting the legalization of any independent association under Cuban law.

In the second case, Ernesto Vera Rodríguez, Esq., also a member of the AJC, called it an “unprecedented event for Cuban jurisprudence” when the Provincial Court of Santiago de Cuba found a Communist official guilty of “slander” against him, in spite of the fact that she was ultimately not sentenced. Esther Pérez Duany, a senior official at the Interior Ministry Security and Protection Agency, leveled personal attacks of a homophobic nature against Vera Rodríguez, who in his capacity as attorney handled his own defense. Vera reported that the Court had ruled that “the facts as found constitute the crime of slander envisaged and sanctioned by the Article 320 of the Penal Code.” Vera appealed the verdict with the Supreme Court.

In a similar case, on September 14 the trial was held at the People’s Municipal Court of Central Havana in the lawsuit filed by independent journalist José Alberto Álvarez against State Security Agents Octavio and José Carlos Aguilera. The plaintiff accused the political police officials of confiscating his mobile phone during a search of his residence. The officers were accused of violating Articles 404 and 405 of the Criminal Procedure Act, since in addition to the fact that certain objects were confiscated, the search warrant did not meet established requirements and a copy of the warrant was never given to the affected parties.

The activist sought legal assistance from the Cuban Law Association. The petition, filed with the municipal court one month later, was admitted for processing in a relatively short period of time, but was later dismissed.

b) Laws on Real Estate and the Sale of Automobiles.

On October 27, a new law took effect authorizing the purchase of automobiles by private citizens. Gifts or trades of automobiles are not permitted.

September 20. Restrictions on housing leases relaxed. Monthly per-room tax lowered and the amount reduced (from 150 to 100) when leasing a complete one or two bedroom dwelling.

November 10. Decree-Law 288 regarding the sale of homes took effect. Under the new law Cubans may now not only swap, but also give, award, or sell their homes to other Cubans who

are either living in Cuba or have residence permits abroad, or to foreigners residing in Cuba. In order to exercise this right the property must be recorded in the Property Register, a statement is required regarding the legitimacy of the funds and a 4% tax is payable on the transaction.

c) Releases from Prison

On April 8, the Spanish Government announced that the process of releasing prisoners agreed upon between the Catholic Church and the Castro regime had come to an end, with a total of 115 prisoners released, 103 of which left for Spain along with 645 family members. However on April 13, the Archbishop of Havana issued a communiqué stating that the regime has not notified him that the releases have ended.

In October, Cardinal Jaime Ortega declared the matter of the political prisoners “closed” for the purposes of the released agreed upon between the regime and the Spanish Government. Berta Soler, leader of the Ladies in White, responded that the matter can never be closed as long as the Penal Code continues to criminalize the exercise of human rights, a position shared by the former prisoners released under the agreement, such as Ángel Moya Acosta and Pedro Argüelles Morán.

The Cuban Government never issued any official declaration regarding the agreement. All releases from prison were announced in communiqués from the Archbishop of Havana, and received no mention in the official media.

d) Economic Reforms

In spite of the reforms that have been announced, Cuban citizens’ economic situation has not experienced significant improvement. On July 13, Sociologist Mayra Espina Prieto, of the Cuban Center for Sociological and Psychological Research, published a study revealing that the participation of Cuban women in sectors of the economy with the highest paying, most stable employment continues to decline.

Scholar Zulema Hidalgo of the NGO Oscar Arnulfo Romero Reflection and Solidarity Group, a study participant, said “I don’t see self-employment offering many assurances for the security of that whole mass of people without work, the majority of whom are going to be women.” According to the National Statistics Office, women make up only 3.2 percent of all workers hired in agriculture, hunting, forestry and fishing.

A similar panorama exists in the area of self-employment and usufruct lands. On July 19, Aníbal Núñez, deputy director of the National Land Control Center, said “There has been some failure to put some of the parcels that have already been allocated into production, and as a result over 9,000 farmers have been stripped of their right of usufruct over them.” On September 23, Deputy Minister of Finance and Prices, Meisi Bolaños Weiss, revealed that the number of self-employment licenses returned as of the month of July was “around 25 percent” of a total of 333,306 licenses granted.

Chapter IV. Conclusion

The information contained in this report demonstrates the existence in Cuba of a legal system intended to be used as an instrument of oppression by those in power, rather than as a framework for defense and regulation of relations between citizens and the State. As such, the laws and regulations are not designed to conform to the Rule of Law, but rather to place the Rule of the State above the common good or the wellbeing of the citizens.

The so-called economic “reforms” have not had any significant impact on the citizens’ standard of living. An analysis of the decrees and regulations issued in this area reveals that the government intends to fill its coffers by collecting outrageous taxes while at the same time plunging the population into a survival economy.

As such, the political and legal framework that exists in Cuba constitutes the primary obstacle to the promotion of authentic reform towards the rule of law, based on a representative democracy and separation of powers. In 2011 the Cuban Government showed no intention of heading in that direction.

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About the Cuban American Bar Association's Human Rights Committee

As attorneys we know that an independent justice system is the cornerstone of a democracy. CABA's Human Rights Committee is dedicated to raising awareness, supporting independent lawyers and organizations advocating for the rule of law in Cuba and encouraging accountability for human rights violations. Our mission is to support independent attorneys in Cuba as they strive for the fair administration of justice, an independent judiciary and the return of integrity to the legal profession in Cuba. The Committee promotes the establishment of the rule of law where access to justice and human rights is a basic guarantee for all Cubans.

For more information regarding the Committee please CABA's President, Victoria Mendez at 305-298-0480, or at victoriamentendez@aol.com.

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Appendix 1

[Cuba: Gag Law](#)

5 September, 2011

[jurisconsultocuba4 comentarios](#)

Laritza Diversent

In the first of the two annual sessions of the National Assembly, held late last July, the International Relations committee agreed to commission its counterpart on Constitutional and Legal Matters, to tighten the provisions of Law No. 88.

The Gag Law, as this statutory provision is internationally known, was enacted by the National Assembly on February 16, 1999, for the purpose of protecting Cuba's independence and economy.

The offenses criminalized by this law, are actions which, according to the Cuban Government, are intended to support the aims of the "Helms-Burton" Act and the economic blockade, disrupt internal order and dissolve the Socialist State.

In general terms, it is considered a crime to collaborate in any way with foreign radio or television stations, newspapers, magazines or other mass media unless you are a foreign journalist accredited to work on the Island.

It is also unlawful to accumulate, reproduce or spread material the Cuban Government considers subversive from the United States of America, or pass any type of information to any public or private entities in said country.

Also sanctioned is promoting, organizing, inciting or disturbing public order or any of the following acts: receiving or distributing financial, material or other resources, from the United States or any third-party State that collaborates with it.

In 9 of its 12 articles, criminal offenses carry jail terms of 2 to 15 years and/or fines of 3 thousand to 250 thousand pesos. The penalty may increase to up to 20 years imprisonment, if the offense involves two or more persons, or is performed for payment or personal gain or using illegal means.

The penalty is also more severe if the unlawful acts damage the economic relations of the Cuban State, or in the event that state or private domestic or foreign entities, or the U.S. Government, take action against these or against any of the communist leaders or their relatives.