

WORLD FACTBOOK of CRIMINAL JUSTICE SYSTEMS

Cuba

by

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GENERAL OVERVIEW

1. Political System.

Cuba is a democratic-centralist state organized according to a Marxist-Leninist model. The Communist Party of Cuba is the only official political party. The national government is divided into executive, legislative and judicial branches. The executive branch consists of a Council of State and a Council of Ministers. The president of the Council of State serves as the President of Cuba. The national legislative branch consists of an elected, unicameral body known as the National Assembly of Peoples Power. The Supreme Court of Cuba serves as the nation's highest judicial branch of government. It is also the court of last resort for all appeals from convictions in provincial courts.

Below the provincial level, Cuba is divided into 14 provinces, and numerous municipalities. Each province and municipality has both an elected Assembly of Peoples Power, and a system of courts. Provincial courts handle felony-equivalent crimes, many forms of civil conflict matters such as divorce, and appeals from municipal courts. Municipal courts, in turn, are courts of first instance for lesser crimes and minor civil matters. In addition to these formal components, Cuba's political system incorporates a number of "mass organizations" into its processes, such as the Communist Party, the Young Communist League, the Cuban Federation of Women, the Association of Cuban Workers, and the National Association of Small Farmers.

2. Legal System.

The Cuban legal system is a composite of the three major stages of Cuban history. Reflecting its past as a Spanish colony, Cuba is a civil law state that emphasizes written codes rather than precedent as the source of law, and the utilization of an inquisitorial system of criminal procedure similar to that of Spain and France. Intermingled with this are elements of Anglo-American law such as habeas corpus, and a greater separation of courts and prosecutors than is normally characteristic of Marxist-Leninist states.

Finally, thirty years of development guided by Marxist legal theory, and shaped by close ties to the former Soviet Union have added a clearly socialist character to the Cuban legal system. Key elements of Cuba's "socialist legality" are: (1) an emphasis on substantive rather than juridical measures of justice, (2) the use of law as a pro-active tool for socialist development, (3) limited use of formal legal mechanisms for the resolution of private disputes, (4) the use of informal "social courts" to resolve conflicts such as housing and labor disputes, (5) direct citizen involvement in the judicial and crime control procedures, and (6) a system of state-organized law collectives to provide low-cost legal services nationwide.

3. History of the Criminal Justice System.

The modern history of Cuba began when Christopher Columbus claimed the island for the King of Spain in 1492. For the next 400 years Cuba remained a Spanish colony. In the mid-19th century, Cuban nationalists began a series of armed struggles for Cuban independence, which eventually led to the defeat of the Spaniards in 1899. The United States became involved in the Cuban war of independence during its last days. Consequently, through the settlement of the Spanish-American war, the United States obtained a peace treaty that effectively transferred sovereignty over Cuba from Spain to the United States.

For the next 60 years U.S. business and financial interests dominated the Cuban economy. Several U.S. military incursions in the early part of the 20th century insured governments hospitable to these interests, as well as U.S. security interests. On January 1, 1959, a revolutionary movement led by Fidel Castro toppled the former U.S.-supported government of Fulencio Batista, beginning a process that led to the transformation of Cuba into a socialist, planned-economy state. The post revolutionary era in Cuba can be divided into four periods. The first period, extending from 1959 to the early 1970s, was

characterized by revolutionary experimentation in all areas of social organization, including government management and control of production and distribution. The most notable experiment within the justice system during this time was the creation of Peoples' Courts (tribunales de base). These courts emphasized informal procedures, and utilized ordinary citizens as lay prosecutors, lay advocates, and lay judges rather than filling these positions with formally trained jurists.

The second major period of the revolution began in the early 1970s, and was characterized by institutionalization of the new economic and political order. This included the passage of a new Cuban constitution, reorganization of most administrative structures, and replacing the pre-revolutionary legal system with one more suited to the ideology and practice of a socialist political economy.

In 1973, the Cuban government promulgated a new Law of Judicial Organization. This law established a hierarchical and more formal court system, replaced the private practice of law with law collectives known as bufetes colectivos, and strengthened the emphasis on "socialist legality." This period was also marked by increasingly close relations with the Soviet Union, and increased economic dependence on COMECON - the trading bloc of socialist nations.

The mid-1980s initiated a period focused on "rectification" of earlier errors. One component of this era was passage of a new penal code that decriminalized a number of political offenses, reduced penalties for crimes overall, and instituted a broader range of alternatives to incarceration. In the early 1990s Cuba's socialist trading partners disappeared with the collapse of the Soviet bloc, ushering in an era of economic contraction termed the "special period" by the nation's leaders. In an effort to find alternative routes to continued socialist development, the Cuban government legalized the use of foreign currency by citizens and liberalized laws governing foreign investment.

CRIME

1. Classification of Crime.

* Legal classification. Under Cuban law, an act is a crime only if it is prohibited by the law and is socially dangerous or harmful (socialmente peligrosa). Violations of law that do not rise to the necessary level of social harm are considered to be infractions (contravenciones), that is, a noncriminal citation offense.

Crimes in Cuba are divided into felony and

misdemeanor offenses. Felony crimes are those with a potential sentence exceeding one year imprisonment or a fine of more than 300 cuotas. (Cuotas are units of a fine that have variable value. Thus, one person may be subject to a fine of 100 cuotas at one peso each while another may be subject to the same fine but at a rate of two pesos per cuota.) Offenses that meet this standard are prosecuted in provincial courts. Less serious misdemeanor offenses are adjudicated in municipal courts and carry maximum penalties below the one-year/300-cuota level.

Felony-equivalent crimes in Cuba encompass a standard array of offenses against persons or property including murder, rape, assault, death or injury by vehicle, robbery, burglary, larceny, vehicle theft, arson, and drug trafficking. Except for murder, rape, and robbery, each of these offenses also has a less serious, misdemeanor equivalent.

In addition to standard crimes against persons, property and social order, the Cuban penal code enumerates various offenses against socialist organization. Central among these are misuse of employment in a state enterprise for illegal personal gain (malversacion), obtaining money or property illegally channeled from some state economic venture (receptacion), trading in foreign currency (trafico de divisas), slaughter and distribution of livestock outside the socialist distribution system (sacrificio ilegal), and attempting to leave the country without complying with formal emigration requirements (salida ilegal). Rather than being occasional crimes, these offenses constitute a regular part of the criminal case load in Cuba.

* Age of criminal responsibility. The age of criminal responsibility in both municipal and provincial courts is 16, which corresponds to the Cuban voting age.

* Drug offenses. Cuba's drug prohibition is broad and nonspecific. Under Cuban law it is a felony to produce, sell, or possess with intent to sell any "toxic drug, or hallucinogenic, hypnotic, or narcotic substance, or any other substance with a similar effect." The penalty for this offense is 3 to 8 years of imprisonment. Simple possession of illegal drugs is punishable by 6 months to 2 years imprisonment.

2. Crime Statistics

The number and rate for serious crimes are reported by police investigators to the Office of the Attorney General in Cuba for 1988. Attempts are included only where they are crimes in

themselves such as attempted sexual assault. The rates are based on population projections from the Attorney General of Cuba, May 1989.

* Murder. Information not obtained.

* Rape. Information not obtained.

* Theft. In 1988, there were 6,531 cases of theft recorded by police investigators for a rate of 62 per 100,000 population.

* Serious drug offense. Information not obtained.

* Crime regions. Crime rates in Cuba are substantially higher in the island's two main cities, Havana and Santiago de Cuba, than elsewhere.

VICTIMS

1. Groups Most Victimized by Crime.

There is little survey data available on victimization in Cuba. Ethnographic and anecdotal evidence, however, suggest that there are no clear patterns of victimization by racial or ethnic background. Over 500 years of interracial contact between the descendants of Spanish colonists and African slaves have produced a relatively homogeneous Afro-Caribbean society in which social differentiation stretches along a continuum rather than being constituted by sharp lines demarcating races or cultures.

Despite this homogenization, there is some over-representation of darker-skinned Cubans in the lower-income sectors of the society, and some indication that these Cubans may suffer slightly higher victimization rates for interpersonal violence and minor theft. Women in Cuba, as in many areas around the world, are victims of both rape and domestic violence. The recorded frequency of such offenses in Cuba, however, appears to be lower than for both the United States and Latin America.

2. Victims' Assistance Agencies.

The primary institutions for assisting victims of crimes are the Committees for the Defense of the Revolution (CDRs). The CDRs are block-level neighborhood associations that offer various forms of social support to neighborhood residents, in addition to engaging in crime prevention and political vigilance. Victims of crime can obtain medical care, social welfare assistance, and/or counseling services from one of Cuba's nationwide system of neighborhood

"polyclinics."

3. Role of Victim in Prosecution and Sentencing.

There are no special roles for victims during prosecution or sentencing, other than providing evidence and testimony during adjudication.

4. Victims' Rights Legislation.

There is no specific victims' rights legislation in Cuba.

POLICE

1. Administration.

Policing in Cuba is organized under the auspices of the Ministry of the Interior (MINIT), which is directly responsible to the Council of State. The MINIT is divided into three directorates: Security, Technical Operations, and Internal Order and Crime Prevention. The Internal Order and Crime Prevention Section is subdivided into subdirectorates for corrections, fire protection, and policing.

The subdirectorate for policing is responsible for the National Revolutionary Police (PNR). The PNR encompasses uniform policing, criminal investigation, crime prevention, juvenile delinquency, and traffic control. The PNR is divided into municipal divisions, each with its own police chief. These local police agencies are responsible to the national directorate of the PNR, through a hierarchical structure that incorporates provincial levels of oversight.

The Security division of MINIT is responsible for policing crimes such as espionage, sabotage and other offenses against the state security. The Ministry of the Interior and the National Revolutionary Police have been closely integrated with the Revolutionary Armed Forces (FAR) since the revolutionary victory of 1959.

In addition to formal policing by the PNR, the Cuban system of control utilizes the Committees for the Defense of the Revolution (CDR) as auxiliary eyes and ears of the police. The CDR maintains nightly neighborhood watches known as la guardia to prevent crime. They deal with juvenile deviance and assist crime victims. The CDR is also responsible for promoting compliance with a variety of non-criminal requirements such as water and electricity conservation, pet inoculation, and public health requirements. Active CDR members (cederistas) may also provide the police or MINIT with information about activities they consider suspicious or deviant.

2. Resources.

- * Expenditures. Information not obtained.
- * Number of police. Information not obtained.

3. Technology.

- * Availability of police automobiles. Police in major cities patrol both in cars and on foot. In larger cities such as Havana there is a fairly high prevalence of police cars.
- * Electronic equipment. Cuban police utilize radio communications for dispatch, but computerized dispatching and computerized record keeping are still in the development stages.
- * Weapons. Cuban police are typically armed with a semi-automatic pistol and a baton. Other weapons such as assault rifles, shotguns and other anti-personnel ordnance are not available.

4. Training and Qualifications. Information not obtained.

5. Discretion.

- * Use of force. Police may use necessary force to apprehend suspects and to defend their person or that of any other citizen.
- * Stop/apprehend a suspect. Cuban law places few formal limits on police discretion to stop or interrogate citizens. This reflects Cuba's character as a civil law state with an inquisitorial judicial system. A central juridical assumption of this system is that no criminal case exists until an initial investigation (fase preparatoria) has demonstrated that a crime has been committed, and that a particular person is the probable offender. Consequently, because there is no formal criminal case, the argument claims that citizens have little need for procedural protection at this stage of the investigative process.

A planned revision of the Cuban law of penal procedure will permit attorneys to enter cases as soon as an individual has been arrested or is the target of an investigation. This change will constitute a significant move away from a pure inquisitorial criminal process.

- * Decision to arrest. Because arrests are usually part of the pre-case, investigative stage, the warrant procedure characteristic of Anglo-American legal systems is not part of the Cuban penal

process.

* Search and seizure. The Cuban constitution requires that warrants be obtained from a court in order to conduct a home search. Warrants must specify the place to be searched and the nature of the material being sought.

A warrant is not necessary, however, if a domicile is also the scene of the crime. In this case, procedural law permits investigators to search the premises and to remove any items deemed as evidence.

* Confessions. Cuban procedural law prohibits violence or force in obtaining a confession, and specifies that no one is required to testify against him or herself. Suspects can make whatever formal statements they wish regarding the charges against them, including confessions of guilt. These statements are made orally, and then presented in writing to the suspect for signature. Minors under the age of 16 can only make these statements in the presence of parents or other legal guardians.

While criminal suspects can confess guilt, they cannot be convicted solely on the basis of a confession. Rather, Cuban law requires that all criminal cases be proven at trial utilizing evidence beyond the suspect's statement of guilt.

6. Accountability.

There are no formal "watchdog" or citizen-review bodies devoted specifically to overseeing police in Cuba.

PROSECUTORIAL AND JUDICIAL PROCESS

1. Rights of the Accused.

* Accused persons have the right to a trial by a judicial panel. For felony-equivalent cases heard in provincial courts, these panels consist of five judges, three of whom are trained jurists with law degrees, and two of whom are citizens chosen to serve as lay judges. Less serious criminal offenses are adjudicated by municipal court panels consisting of one jurist and two lay judges.

* Assistance to the accused. Cuban defendants have the right to a defense counsel. A nationwide system of law collectives (bufetes colectivos) are designed to provide public access to legal counsel at state-set fees.

2. Procedures.

* Preparatory procedures for bringing a suspect to

trial. During the fase preparatoria, police investigators and/or prosecutors assemble a body of evidence and witnesses. If this evidence is deemed sufficient, the prosecutor issues the equivalent of a bill of indictment (conclusiones provisionales). This document is sent to the court of first instance and to the accused's defense attorney, if one has been identified at that time.

* Official who conducts prosecution. If a case is a felony equivalent the prosecution normally will be represented by a prosecutor (fiscal) from the provincial office of the attorney-general during trial. If it is a misdemeanor-equivalent offense, prosecution is most often represented by a police investigator.

* Alternatives to trial. At this time there are no alternatives, such as plea bargaining, to the requirement that all crimes be adjudicated at trial.

* Proportion of prosecuted cases going to trial. All crimes must be adjudicated at trial.

* Pre-trial incarceration conditions. Cuban procedural law specifies that police cannot detain a suspect longer than 24 hours without submitting the case to an investigator. The investigator in turn must submit the case to the scrutiny of a prosecutor within 3 working days. The prosecutor's office then has a maximum of 3 working days within which to either release the suspect or submit to judicial review the plan to keep the suspect in custody until trial. This review must be made by the court that will adjudicate the case. The court is required to either approve detention or order release within 3 days, and its decision is final.

According to law, in felony cases, pre-trial incarceration (prision provisional) is supposed to be limited to those who have committed crimes that caused public fear (murder, rape, robbery), who are suspected of multiple offenses, or who may flee prosecution. Pretrial incarceration is deemed inappropriate in all misdemeanor cases unless the person has produced false identification or given indications of imminent flight from prosecution.

* Bail Procedure. Defendants may be released on bail pending trial to the oversight of a work place, a union, or other recognized social organization, or on their own recognizance.

* Proportion of pre-trial offenders incarcerated.

A 1988 study of 982 defendants served by a law collective in Havana revealed that 35% were incarcerated at the time of indictment. (Crime specific rates of detention ranged from 61% for felony property crimes to 33% for felony offenses against state security and 19% for traffic offenses leading to death or injury. Felony crimes against the economy had a pre-trial detention rate of 40%.)

JUDICIAL SYSTEM

1. Administration.

The Cuban court system consists of a Supreme Court, Provincial Courts, Municipal Courts, and Military Courts. The Supreme Court is subdivided into areas of responsibility (salas) for penal, civil and administrative, labor, state security, and military cases. Provincial courts are similarly divided, with the exclusion of a military sala. There is no formal division of Municipal Courts into jurisdictional areas, although larger municipal courts may subdivide into sections with specific responsibilities.

2. Special Courts.

There are no special courts other than the divisions described above. All family matters such as divorce, custody, and child support are handled in the general civil sala of provincial courts. Juvenile problems that are not crimes are handled outside the formal court structure.

3. Judges.

* Number of judges. Information not obtained.

* Appointment and qualifications. Information not obtained.

PENALTIES AND SENTENCING

1. Sentencing Process.

* Who determines the sentence? Sentences are determined by the same judicial panel that heard testimony and determined guilt.

* Is there a special sentencing hearing? In municipal courts, sentences are almost always dictated at the time of trial. Sentences for felony offenses adjudicated in provincial courts may be dictated at the time of the trial, but are more often issued several weeks after the trial.

Cuban law requires that all criminal cases be completed within 6 months after the initial indictment is issued. One study found that

although about 20% of cases exceed this limit to some degree, over 90% of all cases were completed within 8 months of indictment.

Cuban judicial procedure does not separate assessment of the facts of a case from consideration of the character of the accused. Trial and pre-trial documents as well as in-court testimony normally incorporate information concerning the social character, work history, personal associations, and prior criminal record of the defendant, which judges then incorporate into their sentencing decisions. Consequently, there are no special sentencing hearings, and no formal procedures for gathering pre-sentencing information beyond what is revealed at trial.

* Which persons have input into the sentencing process? Information not obtained.

2. Types of Penalties.

* Range of penalties. In 1988, the Cuban Penal Code delineated the following range of sentences: execution, incarceration, correctional labor with confinement to the work site, correctional labor without confinement, probation, fines, and public chastisement (la amonestacion).

Prison sentences for serious crimes range from 15 to 20 years for first degree murder to 2 to 5 years for offenses such as trafficking in foreign currency and burglary of an uninhabited dwelling. The sentences for some misdemeanor crimes can extend beyond the maximum one year incarceration that distinguishes them from felony offenses. For instance, simple possession of illegal drugs or second degree theft can carry a penalty of 6 months to 2 years of incarceration. The jurisdictional level in these cases is determined by the level of the penalty sought by the prosecutor.

* Death penalty. The death penalty is reserved for "heinous" crimes such as multiple murders, murder of a child, murder associated with torture, or for treason. Execution is by firing squad. Persons who were under the age of 20 or pregnant at the time of the offense or at the time of sentencing cannot be subject to the death penalty.

PRISON

1. Description.

* Number of prisons and type. The Cuban penal system consists of prisons and granjas. Prisons are fenced and sometimes walled facilities, especially in the case of older prisons. Granjas

are open farms without gates or fences. Granjas house offenders convicted of relatively minor offenses, while prisons are reserved largely for felony-equivalent violators. Separate school-like facilities are maintained for delinquents under the age of 16.

* Number of prison beds. Information not obtained.

* Number of annual admissions. Information not obtained.

* Average daily population/number of prisoners. By 1990, the prison population in Cuba had dropped to around 19,000 as a result of the liberalized penal code that went into effect in 1988. This number yields a rate of imprisonment of approximately 190 per 100,000 population.

* Actual or estimated proportions of inmates incarcerated. Information not obtained.

2. Administration.

* Administration. Cuban prisons are administered nationwide through the Penal Directorate of the Ministry of Justice.

* Number of prison guards. Information not obtained.

* Training and qualifications. Information not obtained.

* Expenditure on prison system. Information not obtained.

3. Prison Conditions.

* Remissions. Information not obtained.

* Work/education. Cuban inmates are expected to complete the equivalent of a high school degree if they do not have one. If they do not have a trade, they are expected to learn one.

Inmates not involved in an educational program are expected to work. Prisoners are paid the same wage for their work in prison that they would receive on the outside. They are expected to contribute one-third of this income to their upkeep in prison, the remainder is devoted to supporting any dependents, and for assorted purchases in prison.

* Amenities/privileges. Cuban inmates receive medical care comparable to that outside the

prison. Both male and female prisoners are permitted conjugal visits from formal or common-law spouses approximately every 2 months. The actual number of visits may be increased or decreased according to conduct.

EXTRADITION AND TREATIES

* Extradition. Cuban citizens cannot be extradited for crimes committed in other countries. Non-Cubans can be extradited for crimes committed in other countries in accordance with bi-lateral extradition treaties.

* Exchange and transfer of prisoners. Information not obtained.

* Specified conditions. As an expression of Cuba's socialist and "anti-imperialist" ideology, Cuban law specifies that anyone sought for an offense related to "fighting imperialism, colonialism, neo-colonialism, fascism, racism or for defending the democratic principles or rights of working people" cannot be extradited. In 1993, Cuba returned two drug traffickers caught in Cuban waters to the United States to stand trial. This was viewed by many as marking a new era of cooperation between the United States and Cuba in the war against drug traffic in the Caribbean.

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