

## ATTACKS ON JUSTICE - CUBA

### *Highlights*

The judiciary continues to suffer from a noticeable lack of independence, particularly when dealing with political crimes or crimes related to the security of the State. The legal profession remains largely under government control. Some 80 pro-democracy activists were arbitrarily detained and convicted in March and April 2003 following trials where fair trial and due process guarantees were largely ignored. Lack of procedural guarantees was also reported in the trial of three ferry hijackers in April 2003. According to Christine Chanet, Personal Representative of the United Nations High Commissioner on Human Rights for Cuba, the rules of criminal procedure need to be amended to ensure the independence of the judiciary and guarantee fair trial and due process rights. The government continues to refuse access to non-governmental organizations or to co-operate with United Nations envoys whose mandates are seen as spurious.

### BACKGROUND

In **March 2003**, President Fidel Castro, Chief of State, Head of Government, First Secretary of the Cuban Communist Party (*Partido Comunista de Cuba, PCC*) and Commander-in-Chief of the Armed Forces, who has ruled Cuba since the 1959 revolution, declared his intention to remain in power for life. In **January 2003**, government candidates secured all the seats in the National Assembly of Peoples' Power (*Asamblea Nacional del Poder Popular*) in an uncontested general election.<sup>1</sup>

The 1976 Cuban *Constitution* was last amended on 27 June 2002 to reaffirm the irrevocability of Cuba's socialist revolutionary political system.<sup>2</sup>

Under articles 69 and 70 of the Constitution, the National Assembly is the legislative organ but in practice it merely rubber-stamps the decisions taken by the main executive body, the Council of State (*Consejo de Estado*). The Interior Ministry is the key body responsible for state security and control. Its Department of State Security maintains an elaborate system of surveillance comprising undercover agents, informers, rapid response brigades (*Brigadas de Acción Rápida*) and Committees for the Defence of the Revolution (*Comités de Defensa de la Revolución, CDR*), a network of civilian informants operating at neighbourhood level.

In **March 2003**, the government arbitrarily detained and summarily tried scores of political dissidents, human rights defenders, independent journalists and pro-democracy activists. Seventy-five people were sentenced to prison terms ranging from

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<sup>1</sup> See *Marcha del Proceso Electoral 2002-2003*, [http://www.cubaminrex.cu/Mirar\\_Cuba/La\\_isla/marcha\\_proceso\\_0203.htm](http://www.cubaminrex.cu/Mirar_Cuba/La_isla/marcha_proceso_0203.htm)

<sup>2</sup> See *Constitución de la República de Cuba*, proclaimed on 24 February 1976 and published in *Gaceta Oficial Especial No. 2* of 24 February 1976, p. 3 (last amended on 7 July 2003).

six to 28 years. Several of them were connected to the 2001 *Proyecto Varela*, a civil society initiative for promoting democracy based on article 88(g) of the Constitution. This article allows individuals or groups to introduce legal initiatives for consideration by the National Assembly if they can support their application with at least 10,000 signatures.<sup>3</sup>

In **October 2003**, 14,000 additional signatures to the original 2001 proposal were submitted to the National Assembly, calling for a referendum on political and economic reforms.<sup>4</sup>

The European Union opened its first diplomatic office in Cuba in **March 2003**.<sup>5</sup> However, diplomatic relations were subsequently frozen following the crackdown on dissidents and, in **October 2004**, three members of the European Parliament who sought to hold talks with opposition groups were deported. Since **November 2004** and following the release of 14 dissidents on humanitarian grounds that month, the EU has taken steps to re-establish normal diplomatic relations. NGO sources estimate that as many as 315 political prisoners may be serving prison sentences or awaiting trial in Cuban jails.

Cuba has vehemently criticized the situation of Guantánamo Bay detainees. During the 61<sup>st</sup> Session of the UN Commission on Human Rights, the Cuban Government unsuccessfully tried to introduce a draft resolution urging the US Government to allow an independent probe by UN Rapporteurs into alleged human rights abuses there.<sup>6</sup>

Cuba has persistently refused to engage in dialogue with the Personal Representative of the UN High Commissioner for Human Rights on the situation of human rights in Cuba, Christine Chanet, or to allow her to visit the country since she was mandated in 2002. The Cuban Government has described the creation of a personal representative to monitor the situation of human rights on the island as “spurious”. The country is not a party to the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social, and Cultural Rights, and since 1989 has refused to allow the International Committee of the Red Cross to visit its prisons, the only nation in the western hemisphere to do so.<sup>7</sup>

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<sup>3</sup> For further information on the Varela Project, see <http://www.proyectovarela.org>

<sup>4</sup> See *Nelson Aguilar Ramírez et al. v. Cuba*, Opinion 9/2003 Working Group on Arbitrary Detention, United Nations document E/CN.4/2004/3/Add.1 at 47 (2003), <http://www1.umn.edu/humanrts/wgad/9-2003.html>, and Cuban Democratic Directorate, *Steps To Freedom*, First Edition 2003-3004 Report, <http://www.directorio.org/>

<sup>5</sup> *EU Opens first Cuba Office*, 11 March 2003, <http://news.bbc.co.uk/2/hi/americas/2838973.stm>

<sup>6</sup> *Cuestión de los detenidos en el área de la Base Naval de los Estados Unidos en Guantánamo*, [http://www.cubaminrex.cu/CDH/61cdh/Resoluciones%20de%20Cuba\\_61CHD.htm](http://www.cubaminrex.cu/CDH/61cdh/Resoluciones%20de%20Cuba_61CHD.htm), and *Granma International*, 14 January 2002, *Statement by the Government of Cuba to the National and International Public Opinion*, <http://www.latinamericanstudies.org/cuba/guantanamo-statement.htm>

<sup>7</sup> *Situation of human rights in Cuba: Report submitted by the Personal Representative of the High Commissioner for Human Rights, Christine Chanet*, United Nations document E/CN.4/2005/33, 4 January 2005, [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=1&se=59&t=9](http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&se=59&t=9); UN Press Release, 23 March 2005, *Commission on Human Rights Hears Personal Representative of High Commissioner on Human Rights Situation in Cuba Present* Report, <http://www.unhchr.ch/hurricane/hurricane.nsf/0/F42ABD42EFFEB9ADC1256FCD0074A422?opendocument>; Human Rights Watch, *World Report 2003: Americas: Cuba*; and United Nations document GA/10288 of 2004, *General Assembly For Thirteenth Straight Year Adopts Resolution On Ending United States Embargo Against Cuba*, 28 October 2004, <http://www.un.org/News/Press/docs/2004/ga10288.doc.htm>

## JUDICIARY

### Independence of the Judiciary

Cuba's Marxist-Leninist legal system does not recognize the judiciary as an independent branch of government. The judiciary is subjugated to the executive, both in law and practice. Although article 122 of the Constitution entrenches the principles of functional judicial independence and the rule of law, article 121 expressly subordinates the courts to the legislative branch, the National Assembly, and the executive branch, the Council of State. Furthermore, under article 5 of *Law 82 on Popular Tribunals (Ley No. 82 de los Tribunales Populares*, passed on 11 July 1997, hereinafter *Law 82*), all courts are also under an obligation to comply with 'general instructions' given to them by the executive via the Governing Council (*Consejo de Gobierno*) of the People's Supreme Court (*Tribunal Supremo Popular*), Cuba's highest judicial authority.

Christine Chanet, Personal Representative of the UN High Commissioner for Human Rights on the Situation on Human Rights in Cuba, recommended in **January 2005** that the rules of criminal procedure be amended to bring them into line with the requirements of articles 10 and 11 of the *Universal Declaration on Human Rights*, in order to ensure fair and public hearings by an independent and impartial tribunal and guarantee due process rights.<sup>8</sup>

Articles 656 and 657 of the 1977 *Law on Civil, Administrative and Labour Procedure (Ley de Procedimiento Civil, Administrativo y Laboral)* provides for judicial review of administrative resolutions, but there is no similar procedure for laws introduced by the executive. According to article 75(c) of the Constitution, the power to review the constitutionality of laws lays with the legislature, the National Assembly, which has reportedly never ruled on a constitutional challenge.<sup>9</sup> There is no recorded instance of a Cuban court having ever ruled against the government in proceedings that involve political issues.<sup>10</sup>

### *Security of Tenure*

The lack of security of tenure affects the independence of professional judges. Article 52 of *Law 82* states that they are not subject to any specific period of tenure (*sin sujeción a término de mandato*). Article 126 of the Constitution grants the National Assembly the power to remove judges from the People's Supreme Court (*Tribunal Supremo Popular*) and the provincial assemblies (*Asambleas Provinciales del Poder Popular*) the power to remove judges from provincial and municipal courts (*tribunales provinciales y municipales*). These bodies have full discretion.

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<sup>8</sup> United Nations document E/CN.4/2005/33, [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=1&se=59&t=9](http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&se=59&t=9)

<sup>9</sup> See Universidad Carlos III de Madrid, *Justicia Constitucional en Iberoamérica*, <http://www.uc3m.es/uc3m/inst/MGP/JCI/02-cuba.htm>

<sup>10</sup> Alberto Luzarraga, *Reflexiones sobre un futuro poder judicial en Cuba*, and *Situation of human rights in Cuba: Report submitted by the Personal Representative of the High Commission for Human Rights, Christine Chanet*, E/CN.4/2005/33, 4 January 2005, [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=1&se=59&t=9](http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&se=59&t=9)

### *Corruption*

The Ministry of Auditing and Control (*Ministerio de Auditoría y Control*), which was established by the executive in October 2001, is tasked with preventing and investigating corruption in all public bodies including the judiciary.<sup>11</sup> Despite this measure, there have been no publicized cases of judicial corruption since the 1984 clampdown on judicial corruption known as “Operation Dirty Robe” (*Operación Toga Sucia*). It has nonetheless been noted that the fact that judicial salaries are low, equivalent to less than one US dollar a day, may contribute to creating conditions that foster corruption.

### **Judicial Organization**

Cuban courts are organized within a three-tier structure. At the national level, there is one People’s Supreme Court with divisions specializing in criminal, civil and administrative, economic (*económico*), military, state security and labour matters. At the regional level, there are 14 people’s provincial courts and 169 people’s municipal courts. The vast majority of civil and criminal cases are heard by either provincial or municipal first instance courts. These comprise one professional judge and two lay judges. Criminal cases punishable by more than eight years in prison, or civil cases that raise complex legal issues, are heard by provincial courts or by the Supreme Court, both of which are made up of three professional and two lay judges.

### *Judicial Appointments*

There are two types of judge in Cuba: professional and lay (*jueces legos*). Articles 45 and 46 of *Law 82* state that professional judges are to be appointed by the corresponding provincial or national legislative assembly depending on the level of the court to which they are to be appointed. Article 49 provides for lay judges to be appointed by the corresponding municipal, provincial or national legislative assembly, again depending on the level of the court to which the judge is to be appointed.

Professional judges are required to have recognized legal training and between two and ten years of either professional or academic experience.

Lay judges are individuals without legal training who are selected from candidates proposed by recognized associations, such as the Committees for the Defence of the Revolution or the University Students’ Federation. Lay judges serve for a maximum of one month per year for a fixed five-year term. According to the Ministry of Justice, as of **June 2004**, there were 1,200 professional judges and some 19,000 lay judges.

In **2005**, Christine Chanet noted the steady increase in the number of women in the judiciary, including in the higher echelons.<sup>12</sup>

In contrast with the old 1973 *Law on the Organization of the Judicial System (Ley de Organización del Sistema Judicial)* which stipulated that “active revolutionary involvement” was a pre-requisite for judicial appointment<sup>13</sup>, *Law 82 on Popular*

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<sup>11</sup> Balance del Ministerio de Auditoría y Control 2003, [www.fut.es/~mpgp/2002/amigos1303.htm](http://www.fut.es/~mpgp/2002/amigos1303.htm)

<sup>12</sup> Situation of human rights in Cuba: Report submitted by the Personal Representative of the High Commission for Human Rights, Christine Chanet, United Nations document E/CN.4/2005/33, [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=1&se=59&t=9](http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&se=59&t=9)

<sup>13</sup> Beatriz Bernal, *La Administración de Justicia*, <http://www.cubancenter.org/uploads/40years13.html>

*Tribunals* no longer formally requires professional or lay judges to be members of the Communist Party. In practice, however, the principle of “active revolutionary involvement” is reportedly still applied and only government supporters are selected. Over half of the Supreme Court judges are members of the Cuban Communist Party.

## THE LEGAL PROFESSION

### Professional Associations

In order to practice law, all lawyers are required to register with the National Organization of Collective Law Firms (*Organización Nacional de Bufetes Colectivos, ONBC*). As of **June 2004**, about 2,000 lawyers were registered with the ONBC. Its governing statute, *Decree No. 81 on the Exercise of the Legal Profession and the National Association of Collective Law Firms* dated 8 June 1984 (*Decreto Ley 81 sobre el Ejercicio de la Abogacía y la Organización Nacional de Bufetes Colectivos del 8 de Junio de 1984*), and its 1997 Code of Ethics (*Código de Ética*) both proclaim the ONBC’s autonomy. However, in practice, the government reportedly exercises a large degree of control over it.

There are also two main non-governmental lawyers’ organizations. The National Union of Jurists of Cuba (*Unión Nacional de Juristas de Cuba*), which comprises practicing lawyers and academics, is in practice largely under government control. The independent lawyers’ association, *Corriente Agramontista*, is not recognized by the government. A number of lawyers affiliated to it were among the scores of dissidents and human rights activists imprisoned during the crackdown that began in **March 2003**.<sup>14</sup>

Lawyers’ fees, which are regulated and allocated by the ONBC, typically amount to the equivalent of two dollars per case. This forces lawyers to take on too many cases, thus negatively affecting the quality of their service, and also potentially encourages them to turn to corruption to increase their low income.

### Independence

During the period under review, the government often denigrated, threatened and arbitrarily detained members of unrecognized associations of professionals, including lawyers. Because of the likelihood of reprisals by the government and in order to avoid compromising their own careers, criminal defence lawyers are generally reluctant to represent defendants in politically-sensitive cases. The lack of a genuinely independent bar association and the potentially negative repercussions that may ensue from representing a political prisoner have caused many lawyers to refuse to get involved in such cases.

### Cases

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<sup>14</sup> *Organización Nacional de Bufetes Colectivos (ONBC)*, <http://www.onbc.cu/homepage.asp?top=bienvenida>; *Código de Ética de la ONBC*, 8 February 1997, <http://www.onbc.cu/homepage.asp?top=onbc>; and Cubaencuentro, *Abogados disidentes denuncian la situación de tres presos políticos*, 9 March 2004, <http://www.cubaencuentro.com>.

**Laura Pollan**, wife of dissident **Héctor Maseda** who has been serving a 20-year prison sentence since **April 2003**, was refused when she tried to hire the services of a prominent Cuban lawyer in **March 2003**. The lawyer reportedly dismissed her husband's case as a 'lost cause'.<sup>15</sup>

One of the most publicized instances of an attack on a dissident **Cuban lawyer** is the case of **Juan Carlos González Leiva**, a blind human rights lawyer involved with a number of civil society organizations. González Leiva was arrested during a peaceful demonstration on **4 March 2002**, and detained without charge until his trial on **10 April 2004** when he was found guilty and sentenced to four years' "*limitación de libertad*" (restricted freedom) which, according to article 34 of the Penal Code, permits the release of the detainee. Four days later, after two years in pre-trial detention, he was released on health grounds, a decision that could be rescinded. González Leiva is currently serving the remainder of his four-year sentence under house arrest.

While in detention, González Leiva was reportedly subjected to ill-treatment, including being denied medical assistance and adequate care for his blindness, resulting in a deterioration of his state of health. There were also unconfirmed allegations that he was injured by prison authorities. However, the Cuban Government insists that these injuries were self-inflicted.<sup>16</sup>

## PROSECUTORS

Under article 127 of the Constitution, the General Prosecutor's Office of the Republic (*Fiscalía General de la República*) has the sole responsibility for initiating criminal prosecutions. Both article 128 of the Constitution and article 2 of the 1997 *Prosecutor's Office Law (Ley de la Fiscalía General de la República)* state that it is subordinate to both the legislature, the National Assembly, and the executive, the Council of State.

As of **June 2004**, there were 1,400 prosecutors in Cuba. Prosecutors are allowed to rely on hearsay evidence from members of the Committees for the Defence of the Revolution concerning the revolutionary background of defendants. Such evidence has been taken into account as an aggravating or mitigating factor during sentencing.<sup>17</sup>

## ACCESS TO JUSTICE

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<sup>15</sup> See sentencing document No. 6 of 2003 (*Sentencia Número: Seis Del Dos Mil Tres (6 del 2003)*), <http://www.ruleoflawandcuba.fsu.edu/documents-havana-6s.cfm>; Ana Leonor Díaz, *El debido proceso, un caso perdido*, 4 April 2003, <http://www.cubanet.org/CNews/y03/apr03/04a3.htm>, and Diario La Prensa (Nicaragua), *Opositores cubanos sin abogados*, <http://www-ni.laprensa.com.ni/archivo/2003/abril/07/elmundo/>.

<sup>16</sup> Cuban Commission on Human Rights and National Reconciliation; Voice of America, *VOA Broadcasts Exclusive Story Of Cuban Prisoner's Release*; and Leonardo Miguel Bruzón Avila et al. v. Cuba, Opinion 17/2003, Working Group on Arbitrary Detention, United Nations document E/CN.4/2004/3Add.1 at 87, paragraphs 6, 8, 10, 12, 14, 15, 21, 24 and 27, <http://www1.umn.edu/humanrts/wgad/17-2003.html>

<sup>17</sup> See [Trials of Political Dissidents](#) below and *Ley de la Fiscalía General de la República*, 11 July 1997.

The lack of due process and fair trial rights is an ongoing problem in the Cuban judiciary, particularly in trials of a political nature or those involving State security issues. The most worrying features include the lack of access to a lawyer prior to, and sometimes during the trial, the criteria for presenting evidence, reliance on confessions made under duress and the habitual use of swift trials that last less than a day.

Among the recommendations in her **2005** report on Cuba to the UN Human Rights Commission, Christine Chanet called for amendments to be made to the rules of criminal procedure to ensure compliance with the fair trial and due process guarantees enshrined in articles 10 and 11 of the *Universal Declaration of Human Rights*.<sup>18</sup>

## Cases

### *Trials of Political Dissidents*

The trials of some 80 dissidents arrested in **March and April 2003** have been marred by allegations of unfairness and the denial of due process guarantees. In its opinion 9/2003, the UN Working Group on Arbitrary Detention found their detention to be arbitrary, a view shared and reflected in the 2005 report by Christine Chanet.<sup>19</sup>

The trials were not open to the public and the government did not allow foreign journalists, diplomats, international observers and sometimes, as in the case of Luis Enrique Ferrer Garcia's relatives, even family members to attend the proceedings

The defendants were reportedly charged under article 91 of the 1987 *Penal Code (Código Penal)* which deals with crimes against State security. In some instances, defendants were also charged with offences under *Law 88 on the Protection of the National Independence and Economy of Cuba (Ley 88 de Protección de La Independencia Nacional y la Economía de Cuba)*<sup>20</sup>, which was enacted in March 1999 to punish individuals who “support, facilitate or collaborate” with the US ‘blockade’ and ‘economic war against the Cuban people’ with a view to destabilizing the Socialist internal order and sovereignty of Cuba. Under *Law 88*, nicknamed the “Gag Law” (“*Ley Mordaza*”) by dissidents, participating in peaceful demonstrations and possessing materials that are deemed to be ‘subversive’ are punishable with imprisonment. The measures apply to writing, publishing and broadcasting as well as internet-related material. Although this law had never been enforced in the past, according to Christine Chanet, the prosecution in these cases cited the publication of articles and interviews in the media, communication with NGOs and exile groups in the US and Europe, possession of audiovisual material from the US Interests Section

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<sup>18</sup> *Situation of human rights in Cuba: Report submitted by the Personal Representative of the High Commission for Human Rights, Christine Chanet, E/CN.4/2005/33, 4 January 2005, [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=1&sc=59&t=9](http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&sc=59&t=9)*

<sup>19</sup> *Situation of human rights in Cuba: Report submitted by the Personal Representative of the High Commission for Human Rights, Christine Chanet, E/CN.4/2005/33, 4 January 2005, [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=1&sc=59&t=9](http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&sc=59&t=9), and Nelson Aguiar Ramirez et al. v. Cuba, Opinion 9/2003, Working Group on Arbitrary Detention, United Nations document E/CN.4/2004/3/Add.1 at 47, <http://www1.umn.edu/humanrts/wgad/9-2003.html>*

<sup>20</sup> [www.ruleoflawandcuba.fsu.edu/law-88.cfm](http://www.ruleoflawandcuba.fsu.edu/law-88.cfm)

in Havana and contact with unrecognized professional and academic associations to demonstrate the defendants' guilt.<sup>21</sup>

In spite of procedural guarantees afforded to defendants under the 1977 *Code of Criminal Procedure*, all of the detainees were arrested, tried, convicted and sentenced within a period of 20 days, following swift trials that lasted less than a day. Most of the dissidents were subjected to the summary trial proceedings (*procedimiento sumarísimo*) applicable under articles 479 and 480 of the Code in "exceptional circumstances".<sup>22</sup>

Measures to expedite the proceedings had jeopardized the defendants' right to have access to a lawyer as well as sufficient time to prepare their defence. Many defendants were not informed of the charges against them or allowed to see a lawyer until the day of the trial, as in the case of journalist Manuel Vázquez Portal who had been kept under arrest without access to a lawyer and was not informed that he was going to be tried until the day of the hearing.

The accused were reportedly represented by lawyers who did not belong to an independent bar association. They were sentenced to very long prison terms, ranging from six to 28 years, for acts "contrary to the independence and integrity of the State".<sup>23</sup>

Eighteen of the prisoners who were arrested in **2002** and **2003**<sup>24</sup>, including UNESCO World Press Freedom Prize winner Raúl Rivero, were released on humanitarian grounds (*licencia extrapenal por causas justificadas o motivos extraordinarios*) in **2004**. Release on medical grounds is conditional and can be rescinded at any time. As of **April 2005**, the remaining dissidents brought to trial in 2003 were still in prison.

In **2004**, more people were reportedly arrested and given disproportionately heavy sentences for expressing dissident political views.<sup>25</sup>

### *The Ferry Hijackers' Trial of April 2004*

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<sup>21</sup> Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 a.k.a. Helms Burton Act.

<sup>22</sup> Ley No. 5 de Procedimiento Penal 1977; Decree Law No. 151, "Modificativo de la Ley de Procedimiento Penal", 10 June 1994, Gaceta Oficial Ext. No. 6, 10 June 1994, p.16.

<sup>23</sup> Situation of human rights in Cuba: Report submitted by the Personal Representative of the High Commission for Human Rights, Christine Chanut, E/CN.4/2005/33, 4 January 2005, [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=1&se=59&t=9](http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&se=59&t=9), and *Diary of Manuel Vazquez Portal from Boniato Prison*.

<sup>24</sup> Situation of human rights in Cuba: Report submitted by the Personal Representative of the High Commission for Human Rights, Christine Chanut, E/CN.4/2005/33, 4 January 2005, [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=1&se=59&t=9](http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&se=59&t=9)

<sup>25</sup> Patricia Gregg, Inter-Press Service, *Cuba-Unión Europea: Distensión en el Horizonte Cercano*, 11 January 2005; *Jailed Cuban journalist Raúl Rivero awarded World Press Freedom Prize 2004*; Comisión Cubana De Derechos Humanos Y Reconciliación Nacional (CCDHRN), 14 January 2005; Human Rights Watch, *Cuba: EU Should Insist on Real Rights Progress*, 31 January 2005, <http://hrw.org/english/docs/2005/01/31/cuba10089.htm>; Situation of human rights in Cuba: Report submitted by the Personal Representative of the High Commission for Human Rights, Christine Chanut, E/CN.4/2005/33, 4 January 2005, [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=1&se=59&t=9](http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&se=59&t=9); and Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, submitted in accordance with Commission on Human Rights resolution 2004/33 Addendum 1, Situations in specific countries or territories, E/CN.4/2005/60/Add.1, 18 March 2005, [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=1&se=59&t=9](http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&se=59&t=9)



On **8 April 2003**, eleven Cubans accused of hijacking a passenger ferry on 2 April and forcing the crew to sail towards the United States were summarily tried and sentenced to death, life imprisonment or a range of prison terms.<sup>26</sup>

The hijackers were tried under the ‘summary trial proceedings’ established in the *Code of Criminal Procedure* and charged with ‘seizure of hostages’ and ‘acts against the safety of maritime shipping’ contrary to articles 14 and 16 of the *2001 Anti-Terrorist Law*. The proceedings concluded on **8 April 2003**. According to official government sources, the defendants lodged an appeal to the highest judicial organ, the People’s Supreme Court, which upheld the sentences. The executive, the Council of State, approved the sentences; this organ reviews all death sentences passed in Cuba *ex officio*, as stipulated in article 496 of the 1977 *Code of Criminal Procedure* as amended by *Decree Law No. 151* of 1994. Three of the accused were executed on **11 April 2003**.<sup>27</sup>

According to the *Code of Criminal Procedure*, the accused in these circumstances should have benefited from a minimum of 20 working days to prepare their defence (art. 283) but, according to Christine Chanet’s report, the trials were held, and all remedies exhausted, within the space of a week.<sup>28</sup>

In this case, the imposition of capital punishment overstepped the mandate of the *2001 Anti-Terrorist Law*<sup>29</sup> since articles 14.2 and 16.1 (a) and (b) state that the death penalty should not be applied to the hijacking of a boat. In the case of kidnapping, the death penalty may only be imposed if the kidnapping results in the death of, or serious injury to, the hostages or if the kidnappers’ conditions for freeing the hostages are met. Even in such circumstances, article 29.1 of the *Penal Code* states that the imposition of capital punishment is discretionary and not mandatory, and should only be imposed by a court for the most serious crimes. This was not the case with the hijacking in question since it lasted only a few hours and no blood was shed. Official sources reported that state security forces eventually freed all the hostages unharmed.<sup>30</sup>

## LEGAL REFORMS DURING THE PERIOD

**26 June 2002:** *Constitutional Reform Law on the Irrevocability of the Socialist Nature of the Cuban Constitution*

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<sup>26</sup> *Rule Of Law & Cuba ‘Sentencing Documents’*.

<sup>27</sup> Proyecto Democrático Cubano, ‘*La Pena De Muerte En Cuba*’, <http://prodecu.org/documentos/penademuerte.htm> and *Gobierno De Cuba: Nota Oficial*, 11 April 2003, <http://www.cuba.cu/gobierno/documentos/2003/esp/n110403e.html>

<sup>28</sup> *Situation of human rights in Cuba: Report submitted by the Personal Representative of the High Commission for Human Rights, Christine Chanet*, E/CN.4/2005/33, 4 January 2005, [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=1&se=59&t=9](http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&se=59&t=9)

<sup>29</sup> *Ley 93 Contra Actos de Terrorism*, 24 December 2001, [www.granma.cubaweb.cu/secciones/verdad/a019.htm](http://www.granma.cubaweb.cu/secciones/verdad/a019.htm)

<sup>30</sup> *Situation of human rights in Cuba, report submitted by the Personal Representative of the High Commissioner for Human Rights Christine Chanet*, 28 January 2004, E/CN.4/2004/32, [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=1&se=4&t=9](http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&se=4&t=9)