

SITUATION OF THE RIGHT TO FREEDOM OF ASSOCIATION IN CUBA

CURRENT CONTEXT

In Cuba, dissidents, human rights defenders, and independent journalists face serious obstacles in expressing their ideas and opinions and defending human rights. This situation is compounded by the worsening shortages and scarcity of basic goods, such as food and medicines, which were exacerbated by the pandemic. This reality continues to this day and became the trigger for the most recent mass demonstrations in the country.

The State must take the necessary measures to guarantee the exercise of the rights to freedom of expression, assembly, and association in a peaceful manner, in accordance with Cuba's international obligations.

Legislative reforms implemented by the State have tightened restrictions on the exercise of freedom of association. The Constitution of the Republic of Cuba does not expressly prohibit discrimination on the basis of political opinion. In addition, the constitutional recognition of the Communist Party of Cuba (PCC) as the only political party in the country prevents citizens from associating for political purposes, participating in political life or competing in free elections.

The following legislative norms restrict, hinder and even criminalize the exercise of freedom of association in Cuba:

- Law of Associations (1985)
- Law 80/1996
- Law for the Protection of National Independence and the Economy of Cuba or "Gag Law".
- Article 120.1 of the Penal Code
- Article 143 of the Penal Code
- Article 274.1 of the Penal Code

- Decree-Law No. 370 (2019)
- Decree-Law No. 35 (August 2021)

The State must cease practices and measures that hinder the exercise of the right to freedom of association.

The right to freedom of association is not only limited and conditioned by legal mechanisms, but also by the practices and measures implemented by the Cuban State. The implemented general context of repression and persecution is part of the elements that hinder the work of registered and unregistered organizations in Cuba. Despite the possibility of appealing to the courts in the event of violations of the exercise of freedom of association, these remedies are illusory due to the lack of judicial independence in the country.

For example, unregistered organizations (due to legislative barriers) do not have legal personality and are therefore exposed to criminal sanctions and cannot receive funds from the State or through international cooperation.

The State must recognize freedom of protest as a form of freedom of expression and association.

On July 11, 2021, a series of protests began in which thousands of Cubans demonstrated peacefully in different cities of the country denouncing the human rights crisis facing Cuba, aggravated by the COVID-19 pandemic, shortages and scarcity. The government's response to the protests included the deployment of the elite military group of the Revolutionary Armed Forces (FAR) and civilian groups, arbitrary arrests, forced disappearances, detention of minors, police brutality, mass judicial proceedings without the minimum guar-

antees of due process, restrictions on mobility, torture, ill-treatment and limitations on internet access as well as the approval of decrees criminalizing protest under the threat of serious charges of terrorism.

RECOMMENDATIONS

Refrain from criminalizing and intimidating people who have organized or expressed their intention to participate in protests and guarantee the effectiveness and suitability of the resources available for the protection of the rights of associations.

Review, repeal and amend those regulations that arbitrarily restrict the right to freedom of association, especially the regulation of international cooperation in order to make it accessible to all associative figures with lawful purposes, so that they conform to international standards on the subject (Article 143 of the Penal Code).

Immediately adopt administrative and judicial measures to eliminate government practices that violate the right to association and peaceful demonstration.

Immediately comply with the planned legislative schedule, especially with respect to the drafting and enactment of laws regulating the exercise of the right of association and peaceful demonstration, in accordance with international standards. In particular, the new regulation should:

- Suspend the authorization regime for the constitution of associations and replace it with one of notification.
- Disarticulate the double inspection system in order to guarantee the free development, work and independence of registered organizations.
- Decriminalize the existence and work of unregistered organizations.

PRELIMINARY QUESTIONS

- Why does the Constitution adopted in 2019 not recognize political opinion as a ground for discrimination as recognized in international standards?
- Can Cuban citizens associate for political purposes independently from the PCC?
- Can there be more than one independent civil society organization with the same objectives as the social and mass organizations recognized by the State?

