



CUBA BEFORE ITS THIRD UNIVERSAL PERIODIC REVIEW OF HUMAN RIGHTS

In the previous review, carried out in 2013, the Cuban government categorically rejected the most relevant recommendations on their human rights violations, which persist today. This can be seen in the most recent Amnesty International and Human Rights Watch reports. From the Southern Cone of South America, it is important for countries such as Argentina, Brazil, Chile, Peru and Uruguay to participate in Cuba's next Universal Periodic Review (UPR), to stand out for the defense of human rights, which would contribute to their commitment of strengthening democracy in the Latin American region.

By Gabriel C. Salvia



The **Center for the Opening and Development of Latin America (CADAL)** is a private foundation, non-profit and non-partisan. It was constituted on 26 February, 2003 and registered before the General Inspectorate of Justice in the Federal Capital of the Argentine Republic.

The mission of **CADAL** is to investigate, encourage and support respect for civil liberties, political and economic. For this purpose, **CADAL** prioritizes the defense and strengthening of democracy as pillar of socio-economic progress, and promotion international human rights.

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CADAL integrates the International Coalition to Stop Crimes against Humanity in North Korea (ICNK) and is registered as a Company Organization Civil before the Organization of American States (OAS).

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Introduction

For the thirtieth session of the Human Rights Council (CDH) of the United Nations Organization (UN), the third Universal Periodic Review (UPR) of Cuba is planned for April and May 2018.

In the previous examination, carried out in 2013, the government of Cuba categorically rejected the most relevant recommendations about their rights violations toward human beings, which persist today, as can be seen in the most recent Amnesty International¹ and Human Rights Watch² reports.

However, the Cuban government affirmed in Geneva that, “Freedom of opinion, expression, information and of the press were recognized to all citizens” and that, “Cuba attaches the greatest importance not only to the protection but to the promotion of the right to freedom of expression and assembly, which have constitutional status and they have been developed in their legal system.” This notwithstanding, several democratic countries presented the following recommendations for Cuba:

- Apply legal guarantees that ensure protection of human rights defenders, including journalists, in the face of abuse of provisions relating to criminal prosecution (Czech Republic);
- Eliminate restrictions on freedom of expression, in particular with regard to the Internet connection (Romania);
- Review all laws that consider crime or restrict the right to freedom of expression and the right to freedom on the Internet (Estonia);
- Lift restrictions on the rights to freedom of expression that are not in accordance with the Declaration Universal Human Rights and ensure to all an affordable and unhindered access to the Internet (Hungary);
- Lift restrictions that prevent free expression and ensure that the human rights defenders and independent journalists are not victims of intimidation or prosecution and arbitrary detention (Switzerland);
- Adopt new measures to improve freedom of expression consisting of allowing means of independent communication and improve opportunities to obtain information through public access to the Internet taking advantage of the recent investment in the fiber optic network (Canada);
- Ensure that there is a safe, free and independent

environment for journalists and ensure that all the cases of aggressions against them are investigated by independent and impartial bodies (Austria);

- Reduce government influence and control on the Internet as part of a broader commitment with freedom of expression (Australia);
- Respect freedom of expression, association and assembly, and recognize the legal personality of associations of human rights through a system of inclusive official registration (Spain);
- End measures that restrict freedom of expression and assembly, including detentions of short duration and the use of charges penalties as “pre-criminal social dangerousness,” “contempt” and “resistance” (Great Britain, Brittany and Northern Ireland);
- Revoke the laws related to the so-called “pre-criminal social dangerousness,” contemplated in Articles 72, 73 and 74 of the Criminal Code of Cuba (Ireland);
- Guarantee freedom of expression and peaceful assembly, as well as the free activity of the defenders of human rights, independent journalists and political opponents (France);
- End repression, investigate acts of rejection and protect all the people who are victims of intimidation or violence (Netherlands);
- Release immediately and unconditionally all the prisoners who are in detention provisionally or that have been condemned in relation to the exercise of his freedom of opinion and of expression, as well as freedom of assembly and association (Poland);
- End limitations imposed on activities of civil society, including arrests short-term political activists (Australia);
- Refrain from all forms of harassment, intimidation and arbitrary detention of activists in favor of human rights (Germany).

The government of Cuba pointed out that these types of recommendations, “are incompatible with the constitutional principles and the internal legal order, and whose content is contrary to the spirit of cooperation and respect that must prevail in the UPR,” and therefore, “do not have the support of Cuba.” He added: “This minority group recommendations does not have the support of the Government of Cuba because they are

1. “Your mind is in prison” - Cuba’s web of control over free expression and its chilling effect on everyday life. <https://www.amnesty.org/download/Documents/AMR2572992017ENGLISH.PDF>

2. Human Rights Watch, “World Report 2018 - Cuba, events of 2017”: <https://www.hrw.org/world-report/2018/country-chapters/cuba>

politically biased and built on false premises, derived from attempts to discredit Cuba by those who, with their hegemonic ambitions, refuse to accept diversity and the right to free determination of the Cuban people. Those recommendations do not conform to the spirit of cooperation and respect, the very thing that this exercise demands.”

However, those same recommendations that the Cuban government criticizes are similar to those included in the UPR in the, “Compilation prepared by the Office of the High Commissioner for Human Rights with accordance with paragraph 5 of the annex to resolution 16/21 of the Human Rights Council,” where in the part related to, “Compliance with international obligations in human rights matter, taking into account the law applicable international humanitarian law,” states the following:

- Concern about prolonged pre-trial detention and indefinite detention of people deprived of their liberty for political reasons;
- Recommendation to Cuba to put an end to the administrative detention based on subjective concepts, vague and imprecise criminal or pre-criminal social dangerousness;
- Concern over the restriction of rights to freedom of expression, association and assembly and a recommendation to Cuba to modify the Constitution;
- In 2012, the Special Rapporteur on the situation of human rights defenders expressed concern about the information received about increasing violence and insecurity for defenders of human rights, in particular those who worked in favor of civil rights and politicians;
- With regard to political opponents, activists of human rights and independent journalists, expressed concern for arbitrary detentions for brief periods, the use of ambiguous criminal figures detained for the “pre-criminal social dangerousness,” the restrictions to freedom of movement, the operatives of invasive surveillance, physical aggression and acts of intimidation and harassment allegedly committed by the Revolutionary National Police and the State Security Bodies, as well as the “Acts of repudiation.” Cuba was urged to put an end to this kind of repression, investigate those acts, protect all people from intimidation and the violence to which the exercising their freedom of opinion and expression and of their rights of association and

peaceful assembly, and authorize the registration of human rights NGO organizations that request it to be entered in the Register of National Associations;

- UNESCO encouraged Cuba to enact a freedom of information law, decriminalize defamation, allow journalists and workers of the media exercise their profession in a safe, free, independent and pluralist and facilitate the self-regulation of media communication;
- The independence of civil society will be respected.

The State of Human Rights in Cuba in 2017

Since 2015, when relations were re-established between the United States and Cuba, a series of events occurred, among which the first visit to Cuba by a president of the United States in almost a century, Barack Obama. At the end of 2016, Cuba saw the death of Fidel Castro. This projected a sense of political openness in Cuba, accompanied by an important boom of the tourism sector and the emergence of Cuban media alternatives that, according to the Committee for Protection of Journalists (CPJ)³, allowed journalists and bloggers will find more space to be critical and dive into issues ignored by the state press. However, the Castro government continued to repress fundamental civil and political liberties, punishing dissent and public criticism through repressive tactics, arbitrary arrests and beatings, among other practices.

It is necessary to take into account that, as indicated by Amnesty International⁴ in its 2017 report on Cuba, the country has not ratified the International Covenant on Civil Rights and Politicians or the International Covenant on Economic Rights, Social and Cultural Rights, nor the Rome Statute of the International Criminal Court. Likewise, it has not recognized the competence of the Committee against Torture or the Committee against Enforced Disappearance (CPED).

In their recent report titled: “Cuba: Control Mechanisms of Free Expression and its Intimidating Effects on Daily Life,” Amnesty International notes that, “The voices Cubans that make up the core of this report describe the feelings of suffocation that affects their daily lives. This sentiment has contributed to decades of disproportionate and arbitrary use of criminal law and discrimination campaigns promoted by the Cuban State against those who dare to protest or try to leave the country. Discriminatory dismissals of state employment and arbitrary harassment against those who are self-employed in the private sector, as an additional layer of control of the Cuban State,

3. Connecting Cuba: More space for criticism but restrictions slow press freedom progress <https://cpj.org/reports/2016/09/connecting-cuba-internet-bloggers-press-freedom-criticism.php>

4. Amnistía Internacional, Cuba 2016-2017: <https://www.amnesty.org/en/countries/americas/cuba/report-cuba/>

together with the absence of a resource effective to face them, they have created a deep climate of fear in Cuba.” The report that was just published Human Rights Watch highlights that, “The Cuban government continues repressing and punishing dissent and public criticism. The number of short arbitrary of human rights defenders, independent journalists and other people was substantially lower than in 2016, but nonetheless high, and there were more than 3,700 cases of arbitrary detention between January and August of 2017. The government continues to use other repressive tactics, such as beatings, public denigration, restrictions of travel and dismissals.” That is, a democratic country that takes the UPR seriously would likely accept more than one relevant UPR recommendation to report to the Cuban military government.

The Electoral Process in Cuba and the Universal Declaration on Democracy

The second UPR on Cuba was realized in the 16th session on May 1, 2013, and was headed by Bruno Rodríguez Parilla, the Cuban Minister of Foreign Affairs. In the “Exposition of the State Under Review,” the representative of the Cuban government pointed out that, it is “not accepted that there is a single or universal model of democracy, much less the imposition of the system politician of the industrialized countries of the West.”

However, Cuba did not express any reservation to the text of the “Universal Declaration on Democracy,” adopted by the Interparliamentary Council of the World Inter-Parliamentary Union, on September 16, 1997 in Cairo, in which the following is indicated:

“Democracy is a universally recognized ideal as well as a goal, which is based on common values shared by peoples throughout the world community irrespective of cultural, political, social and economic differences. It is thus a basic right of citizenship to be exercised under conditions of freedom, equality, transparency and responsibility, with due respect for the plurality of views, and in the interest of the polity.” (Article 1)

“A state of democracy ensures that the processes by which power is acceded to, wielded and alternates allow for free political competition and are the product of open, free and non-discriminatory participation by the people, exercised in accordance with the rule of law, in both letter and spirit.” (article 5).

During 2017, Cuba began an electoral process lacking of democratic legitimacy, according to Latin American standards. This will culminate with the renewal of authorities of the Council of State in April 2018 and from which the new Head of State will supposedly emerge to replace General Raúl Castro. An analysis of the Cuban electoral process by the Political Scientist Leandro Querido says that, “Behind the facade is an authoritarian device of sustained and perfected control, whose central purpose is to maintain political control, ignoring what dictates the notion of democratic tradition, structured in unrestricted respect to popular sovereignty. In Cuba it is very easy to notice the hijacking of the popular will by a minority that clings to power.”⁵

Regarding the unique Cuban electoral process, democratic countries will also find enough reasons to formulate observations and recommendations on the right human to political participation⁶ during the next UPR of Cuba.

Latin America Before the New UPR on Cuba

As already expressed, among the recommendations that Cuba rejected during the last UPR, there were no recommendations made by any Latin American country. This is a clear indicator to the permanence in the power of a non-democratic government in the region with a state policy that openly represses civil and political freedoms. How can you expect political openness in Cuba if Latin America doesn't take a stand?

From the memory of the dictatorships suffered in the Southern Cone of South America, it would be desirable that countries like Argentina, Brazil, Chile, Peru and Uruguay participate in the next UPR in Cuba where they stand out for the defense of human rights, which would contribute to their commitment to strengthening democracy in the region.

An aspect that should be considered in favor of greater Latin American commitment during Cuba's next UPR is the position assumed by many countries of this region towards the situation in Venezuela. On one hand, although the repression in Cuba is of lower intensity, its internal political situation is much more closed than that of Venezuela. This includes the impossibility to investigate the responsibility of Raúl Castro's government in several cases of death of political opponents. On the other hand, Cuba's role in Venezuela can't be ignored, providing logistical support to the repression against opponents

5. Querido, Leandro. Cuba: La “democracia total” según los totalitarismos, en *Diálogo Latino Cubano* N° 20 Cuarto Trimestre del 2017 http://www.puentedemocratico.org/dlc/Dialogo_Latino_Cubano_20.pdf

6. Article 21 of the Universal Declaration of Human Rights states: (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. <http://www.un.org/en/universal-declaration-human-rights/index.html>

and marking the political path for the consolidation of a totalitarian regime.

It can be argued that, except for the case of Chile, some countries do not encourage the participation of the Southern Cone of South America in the previous

examinations of Cuba in the UN Human Rights Council. However, the region is experiencing a political change that includes international insertion with the developed democracies and Cuba's next UPR offers the opportunity to demonstrate these very aspirations.

Annex

Participation of the Countries of the Southern Cone of South America in the First and Second Universal Periodic Reviews of Cuba by the Human Rights Council of the UN

Argentina

In the first UPR of Cuba, Argentina affirmed that the way forward is cooperation and international dialogue on human rights at all levels: bilateral, regional, and international. In this regard, Cuba made an important step by extending an invitation to the Head of the procedure relating to torture. Argentina highlighted the importance of Cuba's accession to the International Convention for the Protection of all People Against Enforced Disappearances.

Argentina welcomed the ratification of the CPED and the adoption of the regulation for employment of people with disabilities, and recommended to continue with the measures carried out in order to ratify the Second Optional Protocol of the International Covenant on Civil and Political Rights. As soon as possible, Argentina recommends to continue with the measures taken carried out in order to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and to continue the efforts to combat prejudice and racial stereotyping, and, lastly, to promote efforts to abolish the death penalty.

Brazil

In Cuba's first UPR, Brazil highlighted a balanced analysis of the national report on Cuba about its achievements, particularly in the field of economic rights, civil society, and the problems that followed facing the developing country. The situation has been intensified by a economic blockade that is incompatible with human rights. Cuba's accession to the International Covenant on Civil and

Political Rights and the International Covenant on Human Rights Economic, Social and Cultural Rights was a important victory for Cuba and can be seen as an example for others. Brazil asked what other measures Cuba could adopt to guarantee respect for the principle of transparency between civil, political, economic, social and cultural rights, and if there were concrete cases in which Cuba considered important that international cooperation should be strengthened. Brazil recommended that Cuba consider the possibility of adhering to the Rome Statute of the International Criminal Court and to accelerate the ratification of the International Covenants of Human Rights. Brazil also recommended to Cuba to continue their efforts to promote the moratorium on the death penalty. With regard to the violations of human rights in Cuba,

Brazil recommended that they adhere to the cooperation of the human rights mechanisms of the United Nations, including special procedures and bodies created by virtue of these treaties.

In Cuba's second UPR, Brazil recognized the advances, including in immigration reform, while facing a blockade incompatible with human rights. Brazil recommended to intensify awareness campaigns to combat gender stereotypes, expand opportunities for dialogue on sexual orientation and identity of gender, and continue to implement the Rules of Brasilia regarding the accessibility of people with disabilities to justice.

Chile

At the first UPR of Cuba, Chile welcomed the visit of the

Special Rapporteur on the Right to the Access of Food and the recent announcement of the invitation to the Special Rapporteur on Torture, and recommended that Cuba: a) Received other Rapporteurs that were requested. Chile was expressly opposed to the trade embargo that affected economic, social and cultural rights of the Cuban people and praised the considerable progress achieved in the implementation of the right to education and health. Chile recommended that Cuba: b) Quickly ratify the International Covenant on Economic, Social and Cultural Rights. Chile applauded the announcement of the ratification of the International Convention for the Protection of all People Against Forced Disappearances and the signing of the International Covenant of Civil and Political Rights. Chile recommended that Cuba: c) Proceed quickly to sign the latter agreements (not simply ratify). Chile noted that to achieve fair human rights in Cuba, it will be important to ensure the effective independence of the procedures and the administration of justice. Additionally, the due limitation of emergency legislation is necessary. Finally, what is needed is the adequate protection of human rights defenders, as well as political opponents, and the effective guarantee of freedom of expression and freedom of movement inside and outside from Cuba.

In the second UPR in Cuba, Chile stated that it remained concerned about the lack of freedom of expression and rejected the embargo; and recommended ratifying the ICCPR, and accept the meeting requests made in 2011

by the Special Rapporteur on Freedom of Assembly and Peace.

Peru

In Cuba's first UPR, Peru did not participate, and in the second they highlighted the achievements in its immigration policy and in economic, social and cultural rights, despite the restrictions. Peru recommended to Cuba to use their best efforts to eradicate stereotypes, prejudices and negative attitudes of a patriarchal and racist society.

Uruguay

In the first UPR of Cuba, Uruguay was a member among a group of three who focused on the analysis of Cuba. In the second UPR, Uruguay highlighted the measures to advance in human rights, migration, prison visits and the Millennium Development Goals (MDGs), even during a time with an economic blockade. They recommended to consider recognizing the competence of the Committee on Forced Disappearances to receive and analyze communications, intensify their efforts to harmonize legislation with the Convention on the Rights of the Child and with the Optional Protocol on the Sale of Children, Prostitution Childhood and the use of Child Pornography, extending protection until age 18; and consider the possibility of establishing an independent commission of human rights in line with the Paris Principles.