

UNIVERSAL PERIODIC REVIEW (UPR), CUBA,  
MID-TERM REPORT

SEPTEMBER 2020

# SHADOW REPORT ON THE PROGRESS OF COMMITMENTS MADE



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**PREPARED AND PRESENTED BY**

ALIANZA REGIONAL POR LA LIBRE EXPRESIÓN E INFORMACIÓN  
OBSERVATORIO CUBANO DE DERECHOS HUMANOS

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## **ALIANZA REGIONAL POR LA LIBRE EXPRESIÓN E INFORMACIÓN**

[www.alianzaregional.net](http://www.alianzaregional.net)

The Alianza Regional is a network of 18 non-governmental organizations, independent, non-related to political parties, and non-profit, from 16 countries in the Americas. It was created to strengthen the ability of its member organizations to promote best practices and legislation on access to information and freedom of expression in their countries and the region.

## **OBSERVATORIO CUBANO DE DERECHOS HUMANOS**

[www.observacuba.org](http://www.observacuba.org)

The OCDH is a non-profit association established under Spanish law in 2011 by former political prisoners of 2003 Black Spring, members of Damas de Blanco and Cuban exiles, to ensure the respect and defense of Human Rights in Cuba. It is a member of the Alianza Regional.

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# INTRODUCTION

The objective of this report, prepared together by the Alianza Regional and the Observatorio Cubano de Derechos Humanos, is to evaluate the performance of the Cuban State in relation to the implementation of the commitments made within the framework of the Universal Periodic Review (UPR) in May 2018. Specifically, we will focus on those commitments made which related to the advancement of **the rights of access to information, freedom of expression, association and peaceful assembly** in the country.

In order to the Mid-Term Assessment (to be held in the course of the present year), and aware of the remaining time for next periodic evaluation, this report aims to contribute to the development of the aforementioned rights in Cuba based on the indication of some fundamental findings regarding the status of progress of commitments made by the country in 2018. In the same way, we postulate a series of recommendations in order to reduce the existing gap between the aforementioned commitments, and the current state of affairs they present in the country.

In 2018 UPR, the State of Cuba received a total of 339 recommendations made by 143 countries.[1] Of these, it fully accepted 226, partially 2, took note of 86, and rejected 30. [2] Regarding those recommendations accepted by the Cuban State (and that therefore represent a commitment to the international community) that are of interest for the purposes of this report, we were able to identify 8 that aim to generate progress in the access to information (including Internet access and communication technologies) within the island; 2 that appeal to generate progress in the rights related to freedom of expression; and 2 that refer to the rights of association and peaceful demonstration.



[1] These are available in this link: <https://undocs.org/A/HRC/39/16>.

[2] The answers of the Cuban State to the recommendations that were formulated can be consulted in the following link: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/16/Add.1](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/16/Add.1).

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For the preparation of this report, we based on an exhaustive review of regulations and official communications, of several documents prepared by other national and international actors (media, academics, non-governmental organizations and regional institutions), and conducting an original survey original to 19 leaders of independent civil society organizations linked to social activism and the defense of human rights in Cuba.

Finally, in order to provide a plural and objective approach regarding the performance of the Cuban State in the matters analyzed in this report, on July 9, 2020 we sent an electronic request to the Ministry of Communications and the National Assembly of the People's Power (Parliament) on the progress of each of these institutions in relation to the commitments made. Unfortunately, at the time of writing this report, we have not received any response.

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# SYNTHESIS OF OBSERVATIONS

## COMMITMENTS RELATED TO THE RIGHT OF ACCESS TO PUBLIC INFORMATION

### COMMITMENTS MADE

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24.165. Pursue efforts to widen the access of its people to information and culture (Bhutan).

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24.190. Continue strengthening the right of the citizens to access information in the areas of management of government and public institutions (Ethiopia).

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24.204. Increase the use of E-government as a method to improve the interrelation between citizens and the Government at all levels (Turkey).

### STATUS OF PROGRESS

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Incorporation of the article 53 in 2019 Constitution on the right to request and receive information from the State, but without effective progress regarding its institutionalization.

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Promise of sanction of a Law on Transparency and Access to Information by June 2021, but still without signs of implementation of the mechanisms for consultation and participation of independent civil society for its layout.

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Sanction of the Decree Law N°6 “Of the Government Information System” and its Regulatory Decree N°9, which establish a highly restrictive and biased regulatory framework for the production and communication of official statistics.

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Growth in connectivity levels and Internet access, which is still excessively expensive for most of the population.

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## RECOMMENDATIONS

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Advance in the creation of institutional mechanisms and tools that guarantee the full enjoyment of the right to access public information on government anagement, as the article 53 of the new Constitution says, improving in parallel the quality of the information on the management that it proactively spreads in its web pages.

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Establish urgently transparent mechanisms of consultation and citizen participation that guarantee the effective participation of the independent civil society in the preparation and treatment of the Law of Transparency and Access to Information, in accordance with international standards.

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Review and modify the Decree Law N°6 and its Regulatory Decree N°9 to adapt the regulatory framework in accordance with the international standards and the Model Inter-American Law on Access to Public Information.

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Take the necessary measures to guarantee Internet access in reasonable economic conditions for the average income levels of the population, since that means an essential democratization tool with regard to access to public information.

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## COMMITMENTS RELATED TO THE RIGHT TO FREEDOM OF EXPRESSION

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### COMMITMENTS MADE

24.164. Publicly acknowledge the role and work of the members of the civil society and take the necessary measures to ensure that human rights defenders and members of the organizations of the civil society can exercise their rights to freedom of expression, peaceful assembly and association, in accordance with Cuba international obligations (Belgium).

24.200. Continue to widen the space for the population to express their opinions on the main national and international issues, and create mechanisms for that (Russia).

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### STATUS OF PROGRESS

Persistence and aggravation of situations of repression, harassment, raids, arbitrary detentions, related to the effective exercise of the freedom of expression in different areas of social life in Cuba.

Issue of decrees 349 (that regulates and limits the freedom of artistic expression) and 370 (that establishes sanctions for free spread of information via the Internet) lead to repeated and severe episodes of repression, arbitrary detentions, capture and breakdown of work elements.

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### RECOMMENDATIONS

Urgently stop repressive actions against the exercise of freedom of expression, respecting article 54 of the National Constitution. Also, guarantee the free exercise of freedom of expression in broad terms and respectful of international standards on the matter, as well as review and modify article 32 subsection h, which establishes prior censorship on freedom of artistic expression, in order to guarantee the free exercise without any conditioning.

Urgently stop persecutions against artists and modify or repeal, as appropriate, Decree 349, allowing art workers to develop their profession in a frame of freedom of expression, as stated in commitments accepted in 2018 UPR.

Modify or repeal, as appropriate, Decree Law 370 “On the computerization of the society in Cuba”.



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## COMMITMENTS RELATED TO THE RIGHT TO FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY

### COMMITMENTS MADE

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24.164. Publicly acknowledge the role and work of the members of the civil society and take the necessary measures to ensure that human rights defenders and members of the organizations of the civil society can exercise their rights to freedom of expression, peaceful assembly and association, in accordance with Cuba international obligations (Belgium).

24.189. Continue strengthening the scope of national non-profit associations in the country (Maldivas).

### STATE OF PROGRESS

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No regulatory and procedural advances of any kind in relation to the right to freedom of association.

Multiple acts of repression and harassment by the Government to different members of independent civil society were recorded in the framework of the exercise of their right to peaceful demonstration.

### RECOMMENDATIONS

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Establish transparent mechanisms of consultation and citizen participation that guarantee the effective participation of independent civil society in the preparation and treatment of a Law of Associations. Also, that this Law completely guarantees the right to freely associate for a lawful purpose, without ideological, political or cultural distinctions, and that this right to associate or create associations can be exercised without the need for prior authorization, as established by the international standards on the matter.

Guarantee the free exercise of peaceful assembly, in accordance to the commitment made in the frame of 2018 UPR.

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# I. ON THE RIGHT OF ACCESS TO INFORMATION

Of the 339 recommendations formulated to the Cuban State in the frame of 2018 UPR, we identified 26 specific requests related to the Right of Access to Information, of which Cuba fully accepted only 3.

Along these years, we observed regarding this particular agenda:

- The incorporation of article 53 in the new Constitution of the Republic of Cuba in 2019 [3], which states as follows: “all the people have the right to ask and receive from the State truthful, objective and timely information, and to access to which is generated in State organisms and entities, in accordance to the established regulations”.
- The publication of a legislative schedule[4] with the laws to debate until the year 2022, which informs the subjects that will be the object of legal development by the National Assembly of People’s Power, and that contemplates the treatment of a Law of Transparency and Access to Information, to be debated in July 2021.
- The recent sanction (July 30, 2020) of the Decree Law 6 “Of the Government Information System” and its Regulatory Decree N°9[5], which set a regulatory framework for the collection, production and dissemination of data and statistical information in the country.

**24.165.** Pursue efforts to widen the access of its people to information and culture (Bhutan).

**24.190.** Continue strengthening the right of the citizens to access information in the areas of management of government and public institutions (Ethiopia).

**24.204.** Increase the use of E-government as a method to improve the interrelation between citizens and the Government at all levels (Turkey).

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[3] Nueva Constitución de la República de Cuba, proclaimed April 10, 2019.

[4] Cronograma Legislativo 2020, published at Gaceta Oficial N°2 Ordinaria , January 13, 2020

[5] Decreto Ley 6/2020 y Decreto 9/2020, published at Gaceta Oficial N°54 Ordinaria, July 30, 2020.

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- The increase in the levels of connectivity and Internet access, which grew from 6.470.000 connected users by the end of 2018, to about 7.100.000 at the beginning of 2020, representing almost 63% of the total population of the country.[6]

Next, we present **our analysis** with regards to each one of the mentioned events.

- Even though we celebrate the incorporation of article 53 into the new Constitution, it seems important to us to point out that at the time of writing this report **we have not been able to verify concrete progress in the implementation of institutional arrangements that are necessary for effective enjoyment.** Specifically, we refer to the norms, management procedures and other tools that aim to guarantee the effective exercise of the right that article 53 entails, regarding the access to public information for all the citizens (review agencies, specific deadlines for information delivery, procedures and adequate channels for making requests, among other possible basic mechanisms).[7] We were able to perceive, nevertheless, that most of the ministries have web pages, but it is necessary to highlight that **those do not constitute a real channel of access to public information.** In particular, we refer to those that did not add yet the option to ask or receive information on government administration[8], not fulfilling this way international standards on the matter, established by the Model Inter-American Law on Access to Public Information[9]. About this, 19 leaders of the independent civil society that were consulted in the frame of this report agreed to point that, in the last two years, the government did not make



[6] Data from Informe Global Digital 2020, synthesized in this article from the official website Cubadebate. "Informe Global Digital 2020: Cuba por primera vez por encima de la media mundial de penetración de internet", February 5, 2020.

[7] As a proof of hat we can mention that we Como prueba de ello podemos mencionar que we have not received any response yet respect the request for information that we sent on July 9, 2020 to the Cuban State about the evolution of the commitments made in the 2018 UPR that motivated the preparation of this report. In the same way, we neither got an answer to the request for information asked on March 21, 2020 to the Home Office (Department of Identification, Immigration and Foreigners) about the number of Cuban citizens that migrated during the last years.

[8] For the preparation of this report we consulted several times the official pages of the following state agencies: Presidency, Ministry of Justice, Cuban Parliament, Ministry of Communications, Ministry of Food.

[9] Ley Modelo Interamericana sobre Acceso a la Información Pública, approved by the Member States of the OAS on June 8, 2010.

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progress in the proactive publication of relevant information on the management and use of public funds, neither in the generation of channels and procedures to ask and receive information.[10] In summary, we recommend the international community to ask the Cuban State to take the necessary measures to **advance in the creation of mechanisms and institutional tools to guarantee the full enjoyment of the right to access to public information on government administration**, as the article 53 of the new Constitution states, improving in parallel the quality of information on the administration that it proactively spreads in its web pages.

- The promise of a Law of Transparency and Access to Information represents a positive sign that we note, however, there is still no news of the existence of an analysis regarding the way in which international standards in the matter can be adapted to the local institutional framework, nor that open consultations are being held with civil society in order to the drafting of this new law. In this sense, we think that it is essential that the international community ask the Cuban State to urgently establish universal and transparent mechanisms of consultation and citizen participation that guarantee the effective participation of the independent civil society in the preparation and treatment of the Law of Transparency and Access to Information. We consider that it is very important to insist on this procedural point, since there are recent negative records as the case of the new Electoral Law where this instance of consultation and participation was missing.[11]
- The creation of a regulatory framework for the collection, production and dissemination of official statistics is an essential step in the improvement of the access to information. However, we consider the Decree Law N°6 “Of the Government Information System” and its Regulatory Decree N°9 do not constitute effective progress in the matter. Specifically, article 36.1 states that citizens must request information in writing specifying “clearly the identification of the applicant, the information required, the

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[10] For further development, see section “Annex. Consultation with independent civil society”, page. 24 of this document

[11] Even when that query instance was a petition by academicians close to the official line: Emiliano Duarte Díaz, La Tizza Cuba, July 8, 2019, [“La nueva Ley Electoral merece una consulta popular y un referendo”](#).

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statement of interest and location”. Article 36.3[12], in turn, states that the National Office of Statistics and Information and its territorial representatives assume the faculty to authorize or deny spreading or dissemination of the information received by the users, without reasons that justify that decision, thus contradicting the principles of anonymity, maximum dissemination and good faith stated by international standards.[13] Neither is incorporated or contemplated the implementation of an autonomous instance to appeal in case the information requested is not obtained. Last, a Unique Special Provision[14] is added to the Decree that gives the officials of the Armed Forces and the Home Office, without any type of mediation, the power to veto any provision established by the Decree. In this sense, **we are concerned that this regulation can be taken as a valid precedent for the future regulation of the right of access to nformation, and we consider that the mentioned points do not fulfill the international standards and Model Inter-American Law on Access to Public Information, and therefore we strongly recommend its review and appropriate modification.**

- Even though, as data affirms, in recent years there has been a considerable increase in the number of users connected to the Internet, it is necessary to highlight that different problems still persist that require an immediate approach by the government in order to expand and improve Internet access and communication technologies. About the quality of the connection, there are different opinions and an objective assessment on that matter is not possible due to lacking reliable data on the subject. Nevertheless, there is an extended consensus about the price paid in Cuba for Internet access. Basically, and according to different



[12] Article 36.3: “The answers to the requests for information include the declaration about the authorization or not of its further disclosure by the user; in that case, the National Office of Statistics and Information and its territorial representatives subscribe with the users agreements on the protection and confidentiality of the sources of information, as well as the terms that limit the spread”.

[13] Ley Modelo Interamericana sobre Acceso a la Información Pública, “Right of access o information” section, points 5 and 6.

[14] “The Minister of the Revolutionary Armed Forces and Home Office are authorized to adapt as necessary, the application of the provisions established in the present Decree, in correspondence with the structural characteristics and functions of those ministries”.

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in the field[15], Internet connection is still extremely expensive in the country. According to the ranking of the countries with the highest costs in terms of data transmission via the Internet, produced by the British company Cable, Cuba is in position 16 of a total 228 analyzed countries, with an average cost of 13.33 U\$S per GB.[16] Considering that the monthly minimum wage established by the Cuban Government in mid 2019 is 16 dollars, then one GB of data represents more than 80% of the minimum salary. In this sense, in tune with the claims that have been made in the country in this regard,[17] we think it is important that **the international community ask the government of Cuba to take the necessary measures to guarantee Internet access in reasonable economic conditions for the average income levels of the population, because it means an essential tool for democratization in terms of public information.**

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[15] See, for example, the report by the researchers Laura Tedesco and Rut Diamint., [“Cuba, más conectada y más aislada”](#), July 9, 2020.

[16] Report prepared by the British company Cable, [“Worldwide Mobile Data Pricing: The Cost of 1GB of Mobile Data in 228 Countries”](#).

[17] See this article in Cubanet portal, June 30, 2020, [“#BajenLosPreciosDelInternet, continúa la demanda”](#).

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## II. ON THE RIGHT TO FREEDOM OF EXPRESSION

Out of 339 recommendations formulated to the Cuban State in the frame of 2018 UPR, we identified 51 specific requests related to the Right to Freedom of Expression, of which Cuba completely accepted only 2.

Along these years, we observed regarding this particular agenda:

- The incorporation in the new Constitution of 2019, of the article 54, which establishes that “the State recognizes, respects and guarantees people freedom of

thought, conscience and expression”, and adds that “conscientious objection may not be invoked for the purpose of evading compliance with the law or preventing another from complying with the law or exercising their rights”; and of the article 32, section h, which states that “freedom of artistic creation is promoted in all its forms of expression, in accordance with the humanist principles on which the cultural policy of the State and the values of socialist society are based”.

- The publication of Decree N°349 in April 2018[18], which establishes serious restrictions and sanctions to artistic production and promotion, aggravating this way censorship and persecution of artists in Cuba.

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[18] Decreto 349/2018, published at Gaceta Oficial N°35 Extraordinaria, April 20, 2018.

**24.164.** Publicly acknowledge the role and work of the members of the civil society and take the necessary measures to ensure that human rights defenders and members of the organizations of the civil society can exercise their rights to freedom of expression, peaceful assembly and association, in accordance with Cuba international obligations (Belgium).

**24.200.** Continue to widen the space for the population to express their opinions on the main national and international issues, and create mechanisms for that (Russia).

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- The publication of Decree-Law 370 in July 2019, “On the Computerization of the Society in Cuba”,<sup>[19]</sup> which regulates and sanctions free distribution of information via the Internet, and that led to repeated and severe episodes of repression, arbitrary detentions and censorship.

Next, we present **our analysis** regarding each one of the mentioned events.

- While the inclusion of the article 54 in the new Constitution of Cuba represents a progress in the recognition of freedom of expression as a fundamental right, it is important to point that along with the absence of advanced regulation of this right, during the last years we identified persistence and aggravation of situations of repression, harassment, raids, arbitrary detentions, linked to the effective exercise of freedom of expression in different spheres of social life in Cuba. In its annual report on freedom of expression, the Inter-American Commission on Human Rights (IACDH) documented, in the year 2018, the following events: about 6 cases of raids on independent journalists and arbitrary detention of other 13 journalists in August; 31 cases of detentions, aggressions and harassment by the police to different members of Damas de Blanco civil organization; about 55 detentions of different activists linked to the organization Unión Patriótica de Cuba (UNPACU) in July, accused of contempt, public disorder and pre-criminal social dangerousness; an increase over the previous years in the number of websites that declared to have been censored by the Cuban government.<sup>[20]</sup> In 2019, for its part, the IACDH documented more than 50 denounces of violent persecution against journalists that belong to independent media as El Estornudo<sup>[21]</sup>, ADN Cuba and El toque magazine.<sup>[22]</sup> About this particular, at the Observatorio Cubano de Derechos Humanos (OCDH) we were able to detect at least 1468 arbitrary detentions

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[19] Decreto Ley 370, published at Gaceta Oficial N°45 Ordinaria, July 4, 2019.

[20] Informe Anual de la Relatoría Especial para la Libertad de Expresión 2018, IACHR, pages 124-129.

[21] In this article published on December 11, 2019 by The New York Times “Soy periodista, no un criminal”, you can access the statement of the director of this media, who was arrested in several opportunities by Cuban police in the frame of the exercise of his profession.

[22] Informe Anual de la Relatoría Especial para la Libertad de Expresión 2019, IACHR, pages 125-128.



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only in the first 10 months of 2019, many of which were directly connected to issues related to freedom of expression. As regards article 32 of the new Constitution, subsection h, on freedom of artistic expression, it is important to point the latter is already conditioned in its formulation in two different senses: on the one hand, the Constitution itself establishes that “freedom of artistic expression is promoted in all its forms of expression, in accordance with the humanist principles on which the cultural policy of the State is based”; on the other hand, adds that it must abide by “the values of the socialist society”. In view of these points, **we recommend that the international community request, on the one hand, the State of Cuba to stop its repressive action against different manifestations of the exercise of freedom of expression, as established by article 54 of the National Constitution. Also, we ask to recommend the Government to guarantee the free exercise of freedom of expression in broad terms and respectful of international standards on the matter, as well as to review and modify article 32 subsection h, which establishes an indirect censorship that limits artistic production to the one that suits “the values of socialist society” and consequently enables prior censorship of freedom of artistic expression, with the aim to guarantee its free exercise without any conditions.**

- Decree 349, sanctioned in April, 2018, updates decree 226 of 1997, setting new regulations to cultural policy and the “provision of artistic services”, in line with the conditions established by article 32 subsection h of the new Constitution. According to the text of the new norm, approval by the authorities is required so that the artists can show their work to the public and the figure of the inspector is created, who is empowered to close an exhibition or end a concert if he determines that they are not appropriate to the cultural policy of the government. These aspects were denounced by different artists and activists[23], since they involve the actual possibility of prior censorship by the government. As documented

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[23] See, for example, this article published in Letras Libres on December 10, 2018, “¿Qué es el Decreto 349 y por qué los artistas cubanos están en contra?”; or this other published in The New York Times on February 17, 2019 “Cuba no debe volver a la era del oscurantismo y censura”.

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by the IACHR at the 2019 Annual Report of the Special Rapporteur for Freedom of Expression, there have been verified throughout the year persecutions and arbitrary detentions against different artists from “Movimiento de San Isidro”[24] which manifested against Decree 349.[25] In this sense, the Special Rapporteur for Freedom of Expression has established its position in relation to these regulations stating that “the absence of precision and the excessively broad nature of the wording of Decree 349 allows the possibility of its arbitrary application and, therefore, puts at risk to infringe not only freedom of artistic expression and creativity of all the people in Cuba, but also the right of any person to search for and receive information and ideas of any kind”.[26] **Therefore, we consider of utmost importance that the international community urge Cuban government to stop persecutions against artists and proceed to modify or repeal, as appropriate, Decree 349, allowing art workers to develop their profession in a frame of freedom of expression, as stated in the accepted commitments in the 2018 UPR.**

- Decree 370, “On the computerization of the society in Cuba”, would look for, among other aspects, “to strengthen the computerization process, to consistently modernize all the spheres of society and to contribute to the economic and social development of the country”. As stated by the IACHR in its 2019 Annual Report,[27
- ] that would seem a progress for ICTs in Cuba regarding mainly, computing order and security. Nevertheless, the article 68, corresponding to section VII (“Contraventions and sanctions linked to ICTs and administrative resources for its contestation”), and Chapter II of that same section, are particularly alarming with regard to the effective exercise of freedom of expression in the country. Chapter 68, on the one hand, sets “contraventions linked



[24] For example, recently, the official Facebook page of the Movimiento de San Isidro (MSI) was hacked on August 9, 2020, action that its members attribute to the political police. The goal of the hack was to publish private images of the artist Manuel Otero Alcántara, one of the leaders of the MSI campaign against decree 349.

[25] Informe Anual de la Relatoría Especial para la Libertad de Expresión 2019, IACHR, page 130.

[26] Idem, page 131

[27] Idem, page 133.

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of freedom of expression in the country. Chapter 68, on the one hand, sets “contraventions linked to information and communication technologies”; Chapter II (articles 69 to 76), on the other hand, postulates a series of sanctions linked to those contraventions, as the “confiscation of the equipment and means used to commit contraventions”, “temporary suspension of the licence or the definitive song”, “facility closure” and fines that can be as high as several hundred US dollars, considerable amounts in Cuban pesos.” In relation to these indications, we have noticed lately a series of episodes of repression, arbitrary detentions and censorship related to the mentioned regulations. Specifically, different organizations of the region and of Cuban independent civil society[28] denounced that at least 30 persons were subjected to interrogations, threats and confiscation of means of work (especially independent journalists) for spreading their opinions in social networks, and about 20 were victims of the imposition of fines of 3000 pesos (120 usd), amount that triples the current average monthly salary in Cuba. In the same line, at the Observatorio Cubano de Derechos Humanos (OCDH), we were able to verify, in the first seven months of 2020, the issue of about 32 fines, 10 threats and tens removals of mobile data. Last, and on the occasion of the presentation of a petition at the National Assembly of the People's Power to declare unconstitutional two articles of Decree 370, a member of the OCDH was arrested and detained for 48 hs, 24 of which passed without his whereabouts being known and without the Government admitting his detention [29]. We understand that the mentioned events, as well as what happens in the case of Decree 349, constitute a direct consequence of the claims for the modification of Decree Law 370. In this same way, leaders of the independent civil society that were interviewed in the frame of this report, stated that “the decree law 370 is used to try to silence critical voices, it is called the gag law and used for repression, harassment and detentions for not supporting the official narrative.”[30] In summary, we consider that norm not only



[28] Release, May 6, 2020 by the Alianza Regional por la Libre Expresión e Información, [“Cuba y su Decreto Ley 370: aniquilando la libertad de expresión en internet”](#).

[29] Release, May 2, 2020 by the Alianza Regional por la Libre Expresión e Información, [“Cuba: sobre la detención de Enix Berrio Serrá”](#).

[30] See section “Annex. Consultation with the independent civil society” of this document.

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contravenes the provisions set forth in articles 54 (“The State recognizes, respect and guarantees s people, freedom of thought, conscience and expression”) and 55 (“freedom of press”) of the National Constitution in force in Cuba, but also the international standards in matters of freedom of expression. In view of that, **we ask the international community to urge the Cuban government to proceed to the immediate modification or repeal, as appropriate, of Decree Law 370 “On the computerization of the society in Cuba”.**

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# III. ON THE RIGHT TO FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY

Of the 339 recommendations formulated to the Cuban State in the frame of 2018 UPR, we identified 17 specific requests related to the Right to Freedom of Association, of which Cuba fully accepted 2, and 18 requests related to peaceful assembly, of which accepted only 1.

Along these years, we observed regarding this particular agenda:

- There were no regulatory or procedural advances of any kind in relation to the right to freedom of association and peaceful assembly, included in the commitments 24.164 y 24.189.

Next, we present **our analysis** regarding each one of the mentioned events.

- Regarding freedom of association in Cuba, it is important to note that the Law of Associations of 1985[31] is still valid. This norm seriously hinders and restricts the possibility of creating independent associations. Specifically, as referred in article 7, the State assumes the prerogative to approve or reject the registration of an association according to its interests: “The body, organization or state agency that receives the application [for registration] will

**24.164.** Publicly acknowledge the role and work of the members of the civil society and take the necessary measures to ensure that human rights defenders and members of the organizations of the civil society can exercise their rights to **freedom of expression, peaceful assembly and association**, in accordance with Cuba international obligations (Belgium).

**24.189.** Continue strengthening the scope of national non-profit associations in the country (Maldivas).

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[31] Ley de Asociaciones, approved by the National Assembly of People's Power, December 27, 1985.

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issue, within ninety days, a report to the Ministry of Justice in which it explains if the constitution of that association is appropriate, taking into account the correspondence of its objectives with the purposes of the activities that they develop.” In the same way, once the association is constituted, it is regulated and supervised by the State, as it is set in article 11: “For the fulfillment of its goals and the development of its activities, the associations will keep relations of coordination and collaboration with the body, organization or state agency referred to in the articles 6 and 7 of this Law”. In summary, the exercise of freedom of association in Cuba is still conditioned to the political ends of the socialist society, so that to date there are no legally recognized associations registered that are not aligned with the Government. This lack of recognition of legal status, besides being a limitation to the right of free association, also carries certain practical limitations, as it can be the difficulty to access financing, as well as to participate in international forums. Also, the Ministry of Justice, in charge of admitting new associations for registration, does not publish existing NGOs in the country nor the procedures that are in effect for the acceptance of that registration, a situation that represents a problem linked, at the same time, with the right to access public information. In relation to this particular agenda (freedom of association), most of the leaders of the independent civil society interviewed in the frame of this report agreed to point that there were no advances in the last years in relation to the recognition and treatment of these associations. Likewise, they emphasized that not having a legal status, “real capacity to establish working relationships with other organizations and associations is blocked at national and international levels”[32]. It is important to note that the Legislative Schedule, recently published at the Gaceta Oficial N°2 on January 13, 2020, contemplates the treatment and sanction of a new Law of Associations, planned for July, 2022. On this matter, as we expressed in relation to the sanction of the future Law of Transparency and Access to Information, we consider necessary to **establish universal and transparent mechanisms for consultation and citizen participation that guarantee the**



[32] See the section “Annex. Consultation with the independent civil society” of this document.

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**right of free association for the achievement of lawful purposes, without ideological, political or cultural distinction, and that this right to associate or create associations can be exercised without the need of prior authorization, as established by international standards on the matter.[33]**

- According to the reports prepared by different organizations[34], there is in Cuba a systematic repression by state agents and groups that support the government, that would seek to prevent protests or peaceful assemblies organized by human rights defenders, activists and opponents to the government to claim against violations of human rights and/or political or social issues. An example of that was the harsh repression deployed by state agents against the participants of the LGBTI parade, celebrated in May, 2019, which was duly informed to the United Nations by the Observatorio Cubano de Derechos Humanos.[35] In the same line, recently, the government of Cuba prevented the development of a peaceful mobilization[36] claiming for the death of Hansel Ernesto Hernández Galiano by the police.[37] These episodes are only a few examples of peaceful assemblies repressed and censored by the State; situations that contradict directly not only the commitment 24.164 made in the frame of the 2018 UPR, but also the article 56 of the National Constitution, which establishes that “the rights of assembly, demonstration and association, for lawful and peaceful purposes, are recognized by the State provided that they are exercised with respect for public order and compliance with the regulations established by law”.



[33] United Nations, Human Rights Council, “[Informe del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación](#)”, Maina Kiai, May, 2012, pages 51 to 76. Also, see the section “[Estándares de Libertad de Asociación](#)”, Manual de Protección de los Derechos de la Sociedad Civil, Civilis Derechos Humanos.

[34] See, for example, [Informe Anual de la Relatoría Especial para la Libertad de Expresión 2019](#), IACHR, page 134.

[35] Article at Cubanet portal, published on May, 29, 2019, “[Denuncian represión del régimen cubano contra asistentes a marcha LGBTI](#)”.

[36] “[Cuba: la protesta abortada contra la muerte de un joven negro a manos de la policía](#)”, DW German portal, published on July, 1, 2020.

[37] “[Hansel Hernández Galiano: el gobierno de Cuba reconoce que un joven negro murió por disparos de la policía](#)”, BBC, published on June 30, 2020.

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- Regarding the latter, we are interested in specifying, in correspondence with the position assumed by the IACHR[38], that the concept of “public order” referred to in article 56, is vague and enables wide interpretation and application, even through the abusive use of force, making the exercise of the right to peaceful assembly, in practice, impossible. **In this sense, we believe it is important that the international community demand the government of Cuba to guarantee the free exercise of peaceful assembly, according to the commitment made in the framework of 2018 UPR**

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[38] Informe Anual de la Relatoría Especial para la Libertad de Expresión 2019, IACHR, page 134.



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# CONCLUSIONS

The Cuban State did not show significant progress in relation to the rights of freedom of expression, access to information, and peaceful demonstration and assembly

As this study shows, many of the events that could be considered, at first sight, advances in the implementation of the commitments mentioned along this report, do not constitute effective developments in the in the aforementioned matters as they still carry a series of political conditioning, legal contradictions and the most important, a set of practices that reinforce detachment from these rights.

Aware of the remaining time for next Universal Periodic Review, we expect that the recommendations postulated throughout this work will contribute to reduce the existing gap between the current state of affairs, and the commitments made in the mentioned matters by the Cuban State in the frame of 2018 UPR.

In spite of a world context in which the States are immersed in solving endless problems related to Covid-19 pandemia, it seems essential to continue insisting in the importance of the international demand for respect for human rights, as well as in the mechanisms and tools set to promote and guarantee its realization around the world. In this sense, we ask the international community to reinforce its recommendations to the Government of Cuba so that it fully advances with the commitments made at the appropriate time in the frame of 2018 UPR. Specifically:

- **We consider urgent that the Cuban Government ceases repression, censorship and harassment against members of the civil society who try to exercise their right to freedom of expression and peaceful assembly.**

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- We demand that it repeals the regulations that restrict the exercise of freedom of expression and those that enable repression.
  - We believe it is necessary to sanction a Law of Access to Information according to international standards and that the same will contemplate prior implementation of mechanisms of consultation and citizen participation.
  - We request that freedom of association be guaranteed in the country in broad terms, without State intervention in the creation of new associations or in the exercise of their activities, and that a new law is enacted that respects international standards and good practices in the matter.

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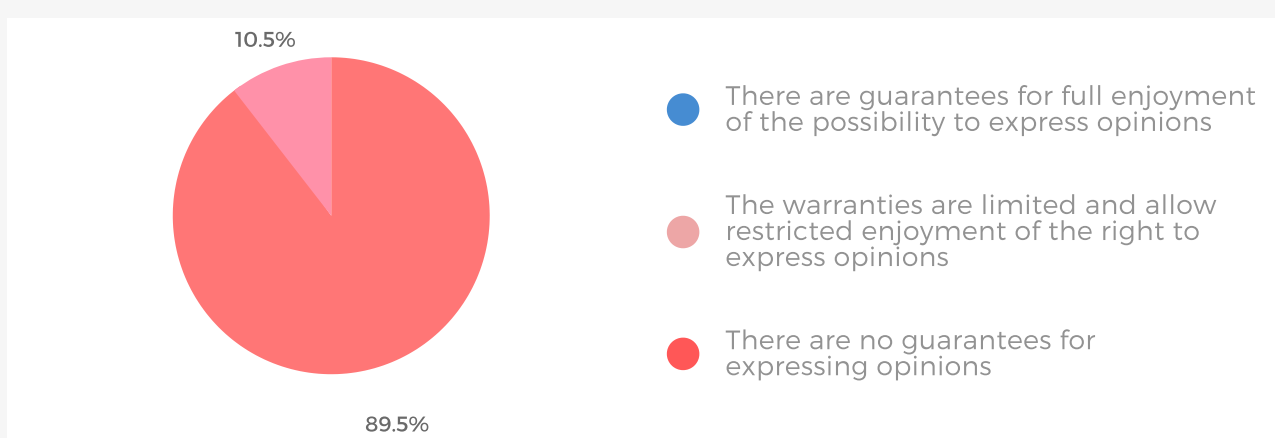
# ANNEX

## CONSULTATION WITH INDEPENDENT CIVIL SOCIETY

During the month of July 2020, within the framework of the obligatory isolation established in different countries by the Covid-19 pandemic, we prepared a digital survey that we sent to 19 leaders of independent civil society organizations in Cuba that carry out their activism from different spheres and on a variety of topics, in order to gather their perceptions regarding the evolution and effective compliance with the commitments voluntarily accepted by the Cuban State in the context of the 2018 Universal Periodic Review (UPR). This annex presents the results of that survey.

### QUESTIONS, RESULTS AND PERCEPTIONS

**1.a.** *The Government committed itself to "continue to expand the space for the population to express its opinion on major issues of national and international interest. For its part, the latest report of the Inter-American Commission on Human Rights (IACHR) on the situation of human rights in Cuba states that the country continues to be the only one in the hemisphere in which there are no guarantees of any kind for the exercise of the right to freedom of expression. Do you consider that in the last two years there has been an effective expansion of the space for opinion? (Closed answer).*



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**1.b.** *Briefly explain your answer.* (Open answer)

"The regime continues to control all the media including the Internet where they have blocked independent sites such as Diario de Cuba and Radio Television Marti".

"Decree Law 370 is used to try to silence critical voices, it is called The Gag Rule and is used for repression, harassment and detentions for not supporting the official narrative. More than 27 activists and journalists have been fined three thousand pesos, their cell phones and work equipment confiscated".

"There are mechanisms of repression in society that exclude and do not promote dialogue, but rather hate the diversity of political criteria".

"The guarantees of expression only exist for persons who agree with the Cuban political system, those who do not agree, have neither opinion nor rights".

"Decree Law 370 affects the rights of all citizens, but also Decree Law 349 and 373 affect the rights of free artistic creation"

"The media disseminate supposed facilities for citizens to channel their dissatisfaction and all this is reduced to the possibility of delivering a document with the complaint but there is no response or improvement".

"The right to express oneself freely is criminalized".

"Cuban society is repressed, imprisoned, censored and persecuted for exercising free expression and for denouncing the problems that are affected by the dictatorship".

"Internet access has diversified public space and is a space for channelling divergent opinions in the absence of material spaces where different points of view can be debated and confronted. However, it has also been attacked with restrictive legislation such as decree law 370. Citizens' expressions in cyberspace are increasingly influential in the government's responses to specific events".

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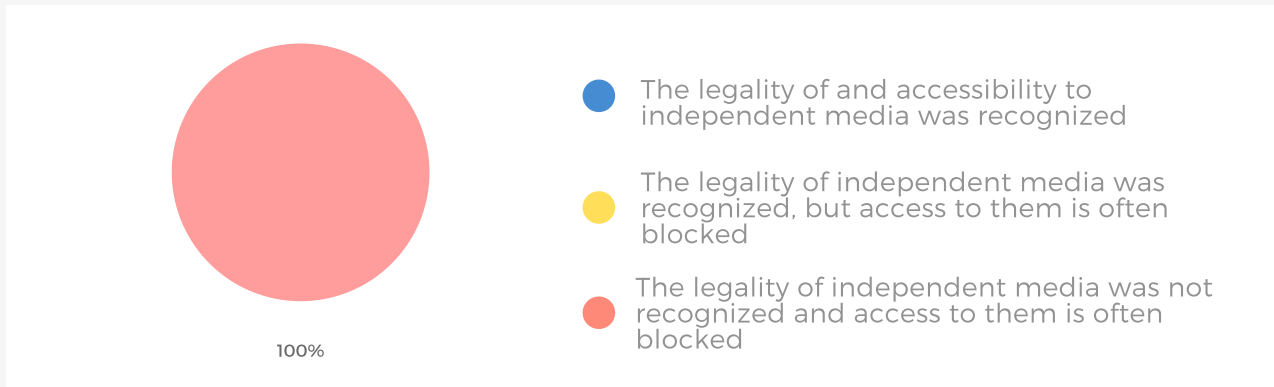
"There has been more censorship and repression, especially against journalists.

"Criminalization and repression of journalists, independent media, political and social actors (feminists, anti-racists, artists, creators, ecologists, gender, civilists and critics of the current order. Decrees 349 and 370 confirm this, censorship is direct and online (Internet)".

"For giving an interview to an independent press, citizens have been fired from their jobs or threatened with losing their university because of their opinions.

"Non-discrimination on the basis of political opinion was not included in the new Constitution. No other political parties were approved. The PCC was ratified as unique and superior to the Constitution and the state. The participation of the lawyer from the beginning of the detention was not approved, violating the due process and allowing the arbitrary detentions of short duration and the possibility of contradiction of the lawyer with the evidence and fabricated evidence to the dissidents and human rights activists. A court or tribunal of guarantees was not accepted. The only press accepted was the official one. Independent civil society with associations and NGOs that can monitor, investigate and denounce the violations of the fundamental rights of Cuban citizens is not allowed".

**2.a.** *The government committed itself in the UPR to "create a more pluralistic media environment"; however, the last IACHR country report on human rights states that "a model of state monopoly over the media remains and the prohibition on founding private media is maintained; there is continuous selective and deliberate persecution against independent media and journalists, and for periods it even intensifies". Do you think that in the last two years the government has promoted a more pluralistic media environment? (Closed answer).*



**2.b.** *Do you think that in the last two years the government promoted a more pluralistic media environment? (Open answer).*

"Far from the democratization of the media environment in the last two years, there has been a setback. Not only has there been no legal recognition of independent media, but harassment of journalists has increased. The clearest case is the judicialization of independent journalist Roberto Quiñones, who was given the most severe sanction contemplated for the crime the government charged him with. The campaigns to discredit the independent media and its promoters have increased".

"The independent media continue to be blocked and the regime persecutes and imprisons independent communicators".

"The government has even drawn up 'blacklists' and tracks users who visit blocked sites".

"The framework in which journalists, correspondents, and other citizens who try to keep themselves informed about the national reality is critical. They face arrests and trials where they are condemned for trying to inform themselves."

"The Cuban government is an expert in political marketing so that at the international level it is one story and the reality is another".

"Decree Law 370, Article 68, paragraph f) prohibits hosting a site on servers located in a foreign country, and access to national .cu sites has also been denied".

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"The COVID-19 pandemic has also served as a means for the government to formalize restrictive practices such as prohibiting the filming and disclosure of police actions".

"The legal personality of independent media continues to be a problem because it is not granted. As the media continues its work, the strategy has been to block access to websites and also to create false profiles to repress activists on social networks".

"The blockade against independent publications on the island has increased".

"The entire independent media ecosystem is being criminalized, online censorship is being carried out, access is being blocked through the monopoly communications service provider. Social communicators are repressed and prosecuted independent."

"Most of the independent media that publish voices critical of the Cuban regime remain blocked. On 'legality', legal limbo continues and independent media remain without accreditation".

"Access to independent media is very difficult and those who access the international media are monitored for legal repression".

**3.a.** *The Cuban government issued Decree 370/18 regulating aspects such as electronic commerce and government; however, the ambiguity of the norm allowed it to use it to repress critical expressions on social networks. For its part, the last IACHR report on Cuba states that "in matters of the Internet, it is observed that the legal provisions would be extremely restrictive and ambiguous and there would be limited connectivity of the Cuban population. How would you evaluate this norm? (Closed answer).*



**3.b.** Briefly explain your selection. (Open answer).

"Constitutional prescriptions are highly contradictory. They recognize freedom of expression and immediately limit its exercise. It contravenes Article 19 of the Covenants signed and not ratified by Cuba".

"Despite the repression, independent journalists carry out their function, which is to inform. Otherwise they would become a link in the regime that would control them at will".

"It only fulfills a repressive function".

"The only effective thing about the Internet in Cuba focuses on the ease it gives to the repressive apparatus of the single party, which receives first hand the flow of information from the different actors of Cuban civil society to attack its protagonists".

"This norm violates the right to freedom of expression contained in the Constitution."

"Decree Law 370 is nothing more than a repressive method of a government that does not care about freedom of expression and human rights".

"Article 68 of decree law, paragraph i, establishes imprecise terms that violate the principle of legality because they do not define the conduct or content that constitutes an illicit act, and serves to eliminate from the public sphere speeches and opinions critical of the government and its institutions".



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"Dozens of activists have been penalized by this law, and also, an undetermined number of people who have uploaded photos, videos or critical opinions about the effects of the country's severe economic crisis".

"It is a law to silence Cubans on social networks and to prevent them from publishing the reality we are living or the discontent with the regime".

"Every legal tool under a totalitarian and dictatorial regime is an aberration. In times of democracy it will be possible to revise norms with positive or negative parts. Now the main work is to end the dictatorship".

"In itself I do not consider it a gag law, but I do consider it a norm that because of its ambiguity and the spirit that moves it is an indispensable instrument to legitimize censorship. The decree law 370, came to regulate an environment whose regulation was very dispersed and that needs the government's attention. It may provide some elements of interest to citizens but which succumb to an underlying intention to control autonomous citizen spaces since its enactment. The vagueness of the decree law and the lack of judicial control of the decisions made under it have allowed it to be used as an efficient mechanism to restrict freedom of expression".

"If the judiciary, which is quite unlikely, rejects the use of 370 as an attack on the fundamental right of freedom of expression, these judicial decisions could become the basis for citizen initiatives to promote questions of constitutionality".

"Law 370 is a tool to silence critical expression".

"The scope of this legal instrument should favor open e-government, citizen participation, socialization of knowledge, and government management, but these are carried out only for the purposes of the Cuban regime, which is contrary to law and undemocratic".

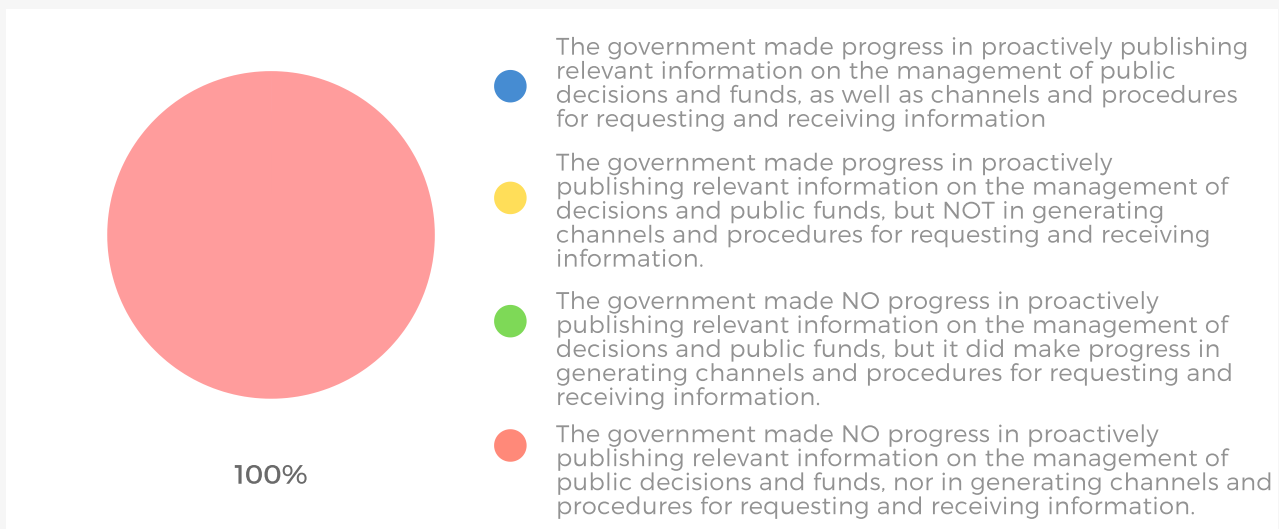
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"The Internet is useful but it is very restrictive and with fines for people who post information that is not in keeping with the communist revolution".

"Decree Law 370 seeks to arbitrarily control everything that happens on the Internet in Cuba and puts human rights on the net at risk, especially through Article 68 that defines a group of contraventions".

"This norm attacks and violates personal opinion, issued on a digital platform that the citizen pays for, with a marked policy of restrictions and prohibitions on Facebook, youtube and others".

**4.a.** *The Cuban government committed itself to "continue its efforts to expand its people's access to information" and to "continue to strengthen the right of citizens to access information. Please indicate which of these statements you feel is more appropriate to what happened in the last 2 years: (Closed response).*



**4.b.** *Briefly explain your evaluation (Open-Ended Response).*

"All information is manipulated and biased."

"The regime is trying to confuse public opinion by saturating cyberspace with irrelevant information about its dealings with the government, for example, about COVID-19. We are facing a propaganda machine more interested in its image than in the truth, which is not very credible".

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"All information is manipulated and biased."

"There are media outlets that publish data, but these are not governmental, but official organs of the communist party, and there are no channels through which society can request access to information".

"I recognize that today we have more channels to transmit and receive data, information, but there are no guarantees for freedom of information. The cases of people attacked by the political police in a ruthless way for seeking or spreading information have increased".

"There is a total divorce between the government and the great majority of society."

"Of course, the government is increasingly repressing and violating human rights, even if it wants to appear otherwise at international levels."

"Although the right of access to information was constitutionally recognized, no clear rules or procedures have been issued to allow citizens to access information held by the state."

"In Cuba any issue that the state understands can cause some setback is hidden. Sometimes these are issues that may be inconsequential in other parts of the world, such as a citizen protest or some act of police abuse, or important issues such as the military budget, the budget of the repressive forces, government or party expenditures, which have never been made known".

"There is no progress at all. There are plenty of elements that indicate a strengthening of ideological fundamentalism based on Marxist-Leninist doctrine."

"There is no transparency on public expenditures, nor is it known where to ask for it. The television news reports sometime information that they understand to give but without clarity."

"The regime generates simulations of progress and information, but it really misinforms and manipulates everything."

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"An attempt has been made to provide an image of transparency, but without enabling channels for citizens to demand information. The government has increased its communications, but more than transparency, this process has occurred as a reaction of the state and government to the increase of citizen expressions in social networks. Rare events in government communication such as the two recent official notes from the Ministry of the Interior trying to clarify the death of two citizens at the hands of the police are new, but that does not reach the standards of transparency to which the Cuban people should aspire".

"The government's information policy in the country, and the government's program to confront racism and racial discrimination, is unknown".

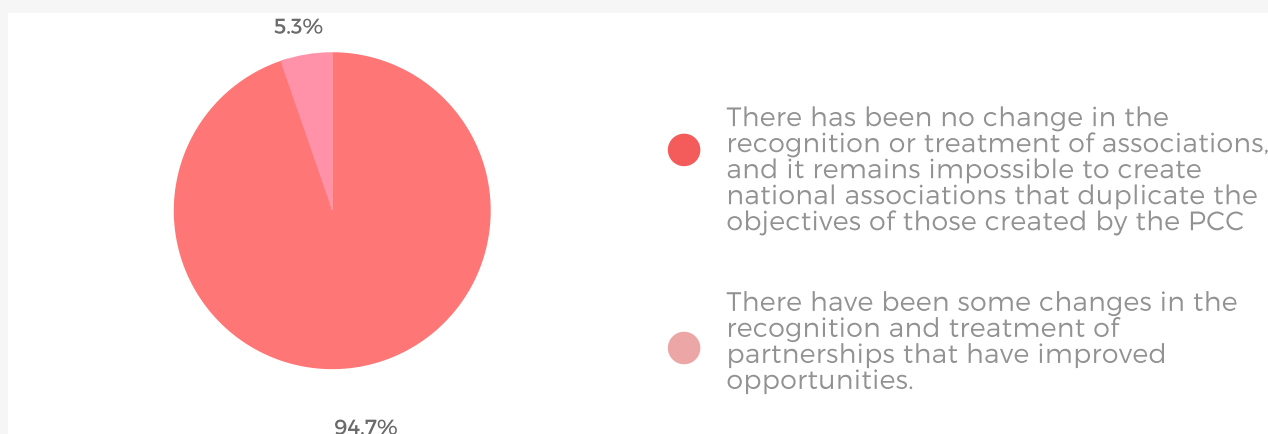
"Relevant and public information is not defined. The electronic government is false and incomplete. The constitutional right to request information, to file a complaint, is repressed. The design and implementation of government policies is not democratized, and the information about the future law of access to information and transparency that is being developed in conjunction with UNESCO becomes a mystery".

"All government management information and funds are secret, only accessible to specific individuals. Anyone who wants to access this information will not be able to do so".

"Cuba does not have a law of access to public information, although in 2019 they announced that they were collaborating with UNESCO to generate one. The opacity of information in Cuba is the norm. Databases are lacking in relevant or outdated information and the independent press does not have access to important figures".

"Never has the government been transparent with public funds, including the budgets and expenditures of the PCC. On the other hand, neither the GAESA group of the Armed Forces, owner of the main companies generating foreign currency in the country, such as tourism, inputs and commercial products, is inaudible and cannot be investigated. In addition, the absence of an authorized civil society or opposition that controls, denounces and sanctions the non-transparent conducts of the Cuban government".

**5.a.** At the UPR, the government committed itself to "strengthening national associations" and "publicly recognizing the role and work of members of civil society"; and a few years ago, it committed itself to issuing a new law on association. Please assess the extent to which the Cuban government has made progress in strengthening national associations over the past 2 years: (Closed Response)



**5.b.** Briefly explain the concrete impact this context has for your organization in relation to legal, funding, international and other opportunities. (Open response).

"The lack of legal personality blocks the real capacity at the national and international level to establish working links with other organizations and associations".

"The regime continues to deny us the right to register with the Ministry of Justice's registry of associations, which means that we cannot create bank accounts for our financing and leaves us at the mercy of the theft of our patrimony by the political police. We are prevented from attending national events because we do not have legal personality and we are prosecuted and imprisoned in court for "illicit association", despite submitting our request for legalization to the registry of associations".

"Association between entrepreneurs is not allowed either, that is to say, association for links between entrepreneurs".

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"The government has only established laws to repress, in terms of the law of associations, the country is anchored in 1959".

"Since we are not recognized as a legal organization in the country, we are persecuted by the political police, we are prevented from meeting and doing our activities normally, we are accused of being mercenaries, they try to isolate us from society, they watch us, they fine us unjustly, they make false accusations and we feel defenseless in the face of so much repression".

"The government does not accept any other organization or party that is not theirs".

"The lack of registration of associations prevents civil society organizations that are not recognized by the government from accessing financial resources both within the country and from international cooperation, from participating in forums with their own international personality that demand national legal registration as a requirement for registration as is the case with the OAS. Nor does it allow for the enjoyment of certain rights that are recognized for the government's "mass organizations," such as filing unconstitutionality actions, legislative initiative, or requesting constitutional reform, or owning a media outlet. The "mass organizations" created by the party have privileges that are discriminatory with respect to the rest of the society."

"They do not allow organizations that are not under the direction of the PCC. Our organization applied for registration with the Ministry of Justice 14 years ago and has never received a response. We have suffered a lot of repression through the political police and the banning of several of us from traveling abroad".

"There is a strengthening of control by the political police that makes it much more impossible to develop independent initiatives".

"Independent civil society organizations suffer greatly from the lack of legality, both nationally and internationally, to receive financial support, which is made difficult because most international organizations, including embassies, only provide support to .

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organizations supported by the regime. The illegality in which independent civil society lives is a weapon of the regime to imprison journalists and activists on a daily basis"

"Limitations on the right of association in Cuba remain notorious. The impossibility of being legally recognized conditions the capacity to act within Cuba, the relations with other institutions and the constant risk of criminalization. Likewise, it makes it difficult to access funds that require transparency and auditing, since from illegality almost no financier can be offered mechanisms of control of funds that respond to international standards".

"Without legal recognition, every activity of associations can be seen as illegal. Access to debate and agreement between equals - independent associations and government associations - does not take place because the counterparts are not recognized. Access to funding sources such as EU funds for cooperation and development is limited to independent associations because donors request legal personality".

"The Citizens' Committee for Racial Integration, like other civil society platforms, has limitations and barriers to perform our public management service, firstly, because of the criminalization of activism by state agents and, secondly, because of the legal helplessness of the organizations as they cannot be legally registered by the Ministry of Justice".

"Law 54 of Associations of 1985 works as a lock on the possibility of associations. The Minister of Justice and the Secretary of the Council of State have reported in the media of the official monopoly that the draft law of associations included in the legislative schedule 2019-22 does not imply changes in the role given to the PCC and does not imply a multi-party system. The lack of legal recognition of organizations and other political and social actors that are not subjects of rights, leads to vulnerability and lack of resources".

"Our organization is illegal in the country because it is an organization that bets on democracy and participation and has a different political vision from the Cuban Communist Party".

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"Only associations linked to the regime are allowed".

"Although I have been serving members of civil society as an independent lawyer for ten years, I have not been able to have legal or financial opportunities or participation in international events".



