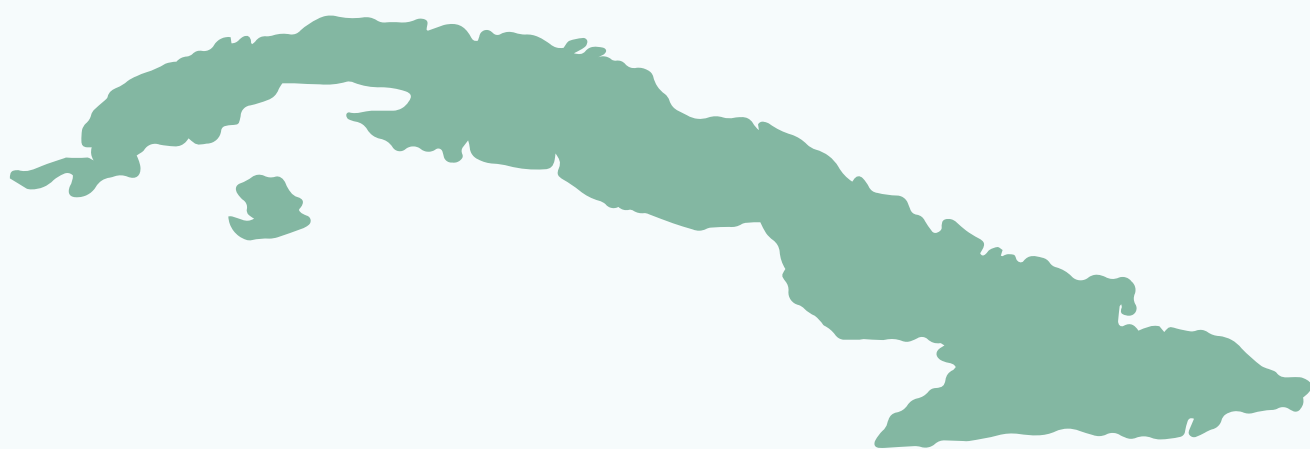


# PROGRESS ON COMMITMENTS MADE BY THE STATE OF CUBA

MID-TERM SHADOW REPORT  
MAY 2022



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ALIANZA REGIONAL POR LA LIBRE EXPRESIÓN E INFORMACIÓN  
COLECTIVO MÁS VOCES  
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 15 countries in the Americas. It was created 15 years ago 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.

## **COLECTIVO MÁS VOCES**

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

The Fundación Colectivo Más Voces is a collective of Cuban media, journalists, bloggers, photographers, designers, videographers and cartoonists. As civil society actors, they work to empower Cuban people through communication tools. Their intervention topics are citizenship, freedom of expression, political participation, gender equality, social inclusion, human rights and sustainable development. It is a member of the Alianza Regional.

## **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 purpose of this report, jointly prepared by Alianza Regional with its local members: Observatorio Cubano de Derechos Humanos and Fundación Colectivo+Voces, 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 that are related to the progress in the country of the rights of access to information, freedom of expression, association and peaceful assembly.

Aware of the time remaining for the next periodic evaluation (November 2023), this report is mainly motivated by the need to express our position regarding the **numerous events of violence, repression and censorship in terms of freedom of expression, association and peaceful assembly that have taken place in Cuba** since the presentation of our last Shadow Report, in October 2020, and that shows one of the phases of larger demonstrations, anti-government protests and massive repression, in the recent history of the country. In this sense, we intend that this work contribute with elements that serve, both to the countries that integrate the UN Human Rights Committee, as well as to the offices involved in this subject (High Commissioner, UNESCO, among others), to know the details of the aforementioned situation and to follow up on the commitments assumed by Cuba regarding the exercise of the rights to freedom of expression, association and peaceful demonstration.

In 2018 UPR, the State of Cuba fully accepted 226 recommendations, partially 2, took note of 86 and rejected 30. Regarding those recommendations accepted by the Cuban State (and that therefore represent a commitment with the international community) that are of interest for the purposes of this report, we were able to identify 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.

For the preparation of this report, we based on an exhaustive review of regulations and official communications, and several documents prepared by other national and international actors (media, academics, non-governmental organizations and regional institutions).

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# SUMMARY OF OBSERVATIONS

The following report covers the period between October 2020 and May 2022.

## REGARDING THE RIGHT TO FREEDOM OF EXPRESSION

### STATUS OF PROGRESS

- The recurrence of events of repression and censorship of the exercise of freedom of expression associated with art and culture, particularly within the framework of Decree No. 349, enacted in April 2018, which establishes serious **restrictions and sanctions to artistic production and promotion**.
- The persistence and aggravation of incidents of **repression, persecution, arbitrary arrests and censorship** against independent journalism and civil society and the population in general in the frame of Covid-19 pandemic and the protests of July 2021.
- The presentation (and subsequent approval), by the Supreme Court of Cuba, of a **project to reform the Penal Code** that represents a serious setback in terms of freedom of expression since it outlaws foreign financing of journalists and local news media and increases the punishment of offenses such as disrespect and public disorder that have been ordinarily used to outlaw freedom of expression in the country.

### RECOMMENDATIONS

- Urgently stop persecutions against artists, and modify or repeal Decree 349, allowing those who work with art to develop their profession in a frame of freedom of expression and legal security, complying with the commitments assumed in the 2018 UPR.
- Immediately cease all types of harassment, repression and censorship against the independent press and the expressions of the citizens. In particular, we emphatically recommend the repeal or modification of the regulations that promote arbitrary criteria and mechanisms of censorship against the freedom of expression of the Cuban population, such as Decree Law 370, Decree Law 35, Decree 42, 43 and Resolution 105/2021.

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Modify or suspend the application of the new Penal Code, and suspend Cuba from any membership in international organizations, such as the Human Rights Council, until the mentioned Code is not modified.

## **REGARDING THE RIGHT TO FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY**

### **STATUS OF PROGRESS**

- Serious acts of repression and violence that happened in the frame of various popular demonstrations, mainly the historic mobilization of July 11, 2021 (J11), which ended with a balance of more than 700 people detained, including minors.
- The effects of the new Penal Code project, which criminalizes whoever promotes or participates in associations not registered in the corresponding record, while introducing the possibility of ordering confiscation of assets in cases in which the person has been sanctioned by this offense, aggravating this way the possibilities to develop civil associations in the local scenario and a greater number of restrictions and limitations to the exercise of free association.

### **RECOMMENDATIONS**

- Immediately stop repression and violence against the population that decides to demonstrate peacefully, and the urgent release of those persons in prison for political reasons who continue to be imprisoned for expressing different opinions from the official discourse.
- Cease harassment and pressure policies for activists and political opponents to leave the country.
- Modify or suspend the application of the new Penal Code, in attention to the effects that this project has on the Right to Freedom of Association and Peaceful Assembly, in addition to those already mentioned in terms of Freedom of Expression.

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# I. ON THE RIGHT TO FREEDOM OF EXPRESSION

## **Recommendations accepted by the State of Cuba:**

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

24.200. Continue to expand the space for the population to **express their opinion** on the main issues of national and international interest, and create mechanisms for it (Russia).

Cuba only fully accepted these 2 commitments, among 51 specific requests related to the Right to Freedom of Expression.

In October 2020 we presented a Shadow Report that analyzed the progress of these commitments assumed by the State of Cuba since its evaluation in 2018. We identified the following points. In the first place, the persistence and aggravation of situations of repression, harassment, raids and arbitrary arrests, linked to the effective exercise of freedom of expression in different spheres of social life in Cuba. Secondly, the repeated and severe incidents of repression, arbitrary arrests, capture and break of work items as a government response to the protests and demonstrations caused by the promulgation of Decree 349 (which regulates and limits the freedom of artistic expression) and Decree 370 (which establishes sanctions for the free distribution of information through the Internet)[1].

This Report retrieves this line of work and presents an analysis of the state of progress of the commitments between October 2020 and March 2022; period in which we observed the following facts:



[1] The mentioned work also includes an exhaustive analysis of the situation of the country in relation to the right of access to information, a topic that is not discussed in this report.

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- The recurrence of events of repression and censorship of the exercise of freedom of expression associated with the field of art and culture, particularly within the framework of Decree No. 349, enacted in April 2018, which establishes serious **restrictions and sanctions to artistic production and promotion**.
  - The persistence and aggravation of incidents of **repression, persecution, arbitrary arrests and censorship** against independent journalism and civil society in general.
  - The presentation, by the Supreme Court of Cuba, of a **project to reform the Penal Code** that shows a serious throwback in terms of freedom of expression since it outlaws foreign financing of journalists and local news media and increases the punishment of offenses such as disrespect and public disorders that have been ordinarily used to ban freedom of expression in the country

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



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## I.a Decree 349

Since **Decree 349** was enacted in April 2018, it has never been implemented. Due to the strong resistance of the artistic sector and other actors of Cuban civil society, the authorities of the country announced that it would not be applied. However, it has not been repealed to date.

**It is a legal norm that restricts freedom of expression and creation that is still in force** and that can be used at any time to validate acts of censorship. As presented in the previous Shadow Report (p.14), the rule requires the approval of the authorities for artists to present their work to the public and also creates the figure of the "inspector", who is empowered to censor those expressions that the Government does not consider appropriate.

Both locally and by the international community, this rule has been subject to various expressions of repudiation.[2] In this regard, **the IACHR and its Special Rapporteur** warn that the regulation "keeps a limitation and restriction on the freedom of expression of artists by the State" and add that "it limits access to culture, to the extent that only those people registered in the 'Registry of the Creators of Plastic and Applied Arts' can make presentations, provide services in public or have market spaces".[3]

Despite that 349 was never implemented, since its sanction, the **acts of repression and censorship against any artistic expressions that do not adjust to the cultural policy of the government have seriously intensified**. This tendency shows that even though the government did not formally use the contravention catalog avowed by 349, it did not stop its intentions to control the expressions of a sector that has historically been one of its main opponents. Regarding this point, we note a series of specific events that occurred during the review period.

- In the first place, stands out **the arbitrary detention of Denis Solís González**, a Cuban musician who is a member of the "San Isidro Movement" (MSI), after having an argument with an officer of the National Revolutionary Police (PNR) who entered his home without authorization on November 6, 2020. On November 9, three days after the aforementioned event, Mr. Solís González was arrested and tried without

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[2] 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 one published by The New York Times, on February, 2019, "Cuba no debe volver a la era del oscurantismo y censura".

[3] "Situación de derechos humanos en Cuba". Inter-American Commission on Human Rights, February 3, 2020, page 93.

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- a lawyer for a crime of contempt.[4] Solís was sentenced in less than 72 hours to 8 months of deprivation of liberty for having committed, according to the criteria of the authorities, a crime of contempt. This event motivated the Working Group on Arbitrary Detention, United Nations Human Rights Council to issue a declaration on October 14, 2021, where it recognizes that the deprivation of liberty of Mr. Denis Solís González was an arbitrary detention, and urges the Government of Cuba to adopt the necessary measures to remedy the situation and bring it into conformity with the pertinent international standards.[5] At the time of the presentation of this report, we could not verify any progress in this direction.
  - In response to this incident, the MSI organized a campaign to find out the whereabouts of Denis Solís. When they found out about his trial they gathered at the police station where he was detained, but the authorities arrested the demonstrators and avoided the public demonstration. After this situation, members of the MSI and several self-convened persons quartered in the house of the plastic artist Luis Manuel Otero Alcántara, headquarters of the organization. From November 16, 2020, they undertook, in that same place, a unique civic protest campaign: the "poetic whispers" (poetry readings) that alternated with "direct" distribution through social networks demanding Denis Solís immediate freedom and, also, with direct confrontation with State Security personnel, who, after the quartering began, blocked the street in the neighborhood of San Isidro where the organization's headquarters are located. When on Wednesday, November 18, the besiegers decided to cut off the food supply that a neighbor was trying to bring to the place, nine of the detained people decided, in response, to declare a hunger strike; four of them also refused to drink water. Some protesters held the strike for several days, and others joined later. The hunger strike was interrupted when State security personnel, masquerading as health personnel, **violently entered the headquarters and detained all the people arguing that some of them did not comply with the health regulations established by the government for COVID control.**[6]

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[4]About this event, see the article published in elToque, "Denis Solís: una historia de desacato y desapariciones forzadas en la Habana", November 18, 2020.

[5] See "Opinions approved by the Working Group on Arbitrary Detention on its 91er session time, September 6 to 10, 2021: Opinión núm. 41/2021, relativa a Denis Solís González y Luis Robles Elizástegui (Cuba)".

[6]"El régimen cubano asalta la sede del Movimiento San Isidro y arresta a todos los huelguistas", published by Diario de Cuba, November 27, 2021.

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- At the time the police authorities entered MSI headquarters, **scheduled internet outages** took place, particularly within the country's capital.[7] In this way, the government was starting a practice that would later legalize with the enactment of Decree-Law 35.
  - The day after the break-in at MSI headquarters and the arrest of its activists, a spontaneous rally took place in front of the Ministry of Culture building in Havana. Throughout the day, several hundred people gathered at the site in an unprecedented event in the history of Cuban civil society. Representatives of the demonstration managed to meet with the authorities of the Ministry, to whom they presented a series of demands, and agreed to start a dialogue process that never took place. [8] On the contrary, the position of the government hardened until it concluded, on January 27, 2021, with **an act of violence and repression led by the Minister of Culture, Alpidio Alonso, and several other ministry officials, against demonstrators that had gathered in front of the institution.**[9]

In view of these considerations, we reiterate our request to the international community to demand the Cuban government **to stop the persecutions against artists, and proceed to modify or repeal Decree 349, allowing those who work with art to develop their profession in a framework of freedom of expression and legal security, to comply with international agreements and the commitments made at UPR 2018.**

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[7] "El Movimiento San Isidro y el poder de internet que empiezan a entender los cubanos", Diario de Cuba, December 3, 2020.

[8] See a chronology of the events that took place after November 26, 2020 in this interactive timeline published by the independent Cuban magazine El Estornudo.

[9] "¿Qué pasó el 27 de enero frente al Ministerio de Cultura?", El Toque, January 2021.

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## I.b Increased violence and censorship against the independent press

Throughout the period outlined in this Report, and despite having made commitments with the international community to guarantee freedom of expression in the field of social communication, we were able to notice the **persistence and increase of violent events perpetrated by the Cuban government against the independent press**. According to a report prepared by the organization Artículo 19 (page 19), during the first semester of 2021, the arbitrary detentions of independent journalists increased by 40% compared to 2020, while the discredit campaigns did by 80%.

In the case of women journalists, the situation is even more disquieting: according to Law N° 1289 “Family Code”, fathers and mothers can lose the custody of their children when it is observed a dangerous behavior or a breach of the duty to “inculcate love for the country, respect for its symbols and appreciation of its values, the internationalist spirit, the rules of coexistence and socialist moral”. According to the Report by Artículo 19 (page 26), that legal disposition was repeatedly used by the State of Cuba to threaten, intimidate and silence women journalists.

At the same time, the Cuban government intends the approval of a new Family Code by 2022. The proposed project includes formulas that are similar to those mentioned and also recognizes that fathers and mothers can be deprived of custody of their children when “they observe a vicious, corrupting or criminal behavior that is incompatible with the proper exercise of parental responsibility”. This concept may sound protective in other contexts, nevertheless, considering the previously mentioned background and local practices, we should highlight the risk of its use as a coercion mechanism against activists, independent journalists[10] and those who express their opposition to the government, whose work is understood by the authorities as criminal and non as the practice of their basic rights. The project of imminent approval that is being discussed would allow the Prosecutor's Office, in the event of a complaint against a father or a mother, to order the separation of minors and their internment in care centers without the need for a detailed investigation.[11]

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[10] See the testimonio of Luz Escobar, journalist from 14 y medio digital media.

[11] “¿Habrá mayor facilidad para separar a padres e hijos con el nuevo Código de las Familias?”, El Toque, March 2022.

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The persistence of censorship and monopolic control of public opinion was the object of several pronouncements by the international community in recent years. In this sense, the Inter-American Commission on Human Rights (IACHR) and its Special Rapporteur affirmed, in their Informe País de 2020, that “the restrictions to the open debate of ideas and key aspects of daily life are constant”. The Comisión para la Protección de los Periodistas (CPJ) places Cuba in the 10th position of the countries with the highest censorship; while the organization Reporteros Sin Fronteras places it in position 171 in a ranking of 180 countries, ranked from the best to the worst situation in terms of press freedom (same position as in 2020, but a drop of 2 positions compared to 2019).

As we noted in the Shadow Report (page12) presented in October 2020, in the last years various regulations were passed that represent a serious threat to the effective practice of freedom of expression, and serve as legal protection for the incidents of violence and censorship by the Cuban government against independent journalism.

- In the first place, **Decree-Law 370**, passed in December 2018, establishes serious restrictions and sanctions to the free distribution of information through the internet. In particular, article 68 establishes the "violations associated with information and communication technologies", and section II (articles 69 to 76) establishes a series of sanctions linked to the mentioned violations, such as the "confiscation of equipment and media used to commit the contraventions", "temporary suspension of the license or the definitive suspension", "closure of the facilities" and fines that can rise to substantial amounts in Cuban pesos.
- On the other hand, on August 17, 2021, the Government of Cuba ordered the publication of a group of policies at the Gaceta Oficial N°92 aimed at updating the legal framework for telecommunications in the country. Within this set are **Decree Law 35** «On Telecommunications, Information and Communication Technologies and the use of the Radioelectric Spectrum»; **Decree 42** «General Regulation of Telecommunications and Information and Communication Technologies»; **Decree 43** «Regulation on the use of the Radioelectric Spectrum»; and three resolutions by the Ministry of Communications, where Resolution 105/2021 «Regulation on the National Action Model for Response to Cybersecurity Incidents» stands out.

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- At the moment of presenting the Decree Law 35, Jorge Luis Perdomo Di-Lella, then Minister of Communications, pointed that the norm pursued, among other aims, “to counteract radioelectric attacks and in cyberspace; to safeguard the principles of security and invulnerability of telecommunications for the benefit of the Economy, Society, Security and National Defense, Internal Order and Civil Defense; and to defend the achievements of our socialist state”.[12] This Decree, as formulated, deepens the prohibitions outlined by Decree 370 because it prohibits users from using the “service to carry out actions or transmit information that is offensive or harmful to human dignity; sexual, discriminatory content; that generates harassment; that affects personal and family privacy or one's own image and voice; the identity, integrity and honor of the person; collective security, general welfare, public morality and respect for public order”.
  - **This regulation redraws and widens a previous system of censorship regulated in Decree Law 370[13]; that has been used by the Cuban authorities to sanction dissent and the expression of the citizens in social networks.** Also, it pursues to turn citizens into attention targets for the control organisms and into one more inspector/controller. The regulation considers as one of the user's' obligations: “to prevent that telecommunication services/TIC from being used to threaten the security and internal order of the country, transmit false reports or news, or in actions aimed at causing harm or damage to third parties and as a means to commit illicit acts.[14] The context of publication of the measure is clearly preoccupying, since it was sanctioned a month after the massive demonstrations of July 11, 2021, that were mainly called through social networks.
  - About this, Pedro Vaca, Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, said that the law “is serious because of what says and because of the publishing time, one month after the protests, when the international community was hoping for one more step towards listening to its population and no more speech repression”.[15] The concern of the international community was made official through a Mandate made public by the UN Rapporteurs on Freedom of Expression, on October 20, 2021, arguing that these policies have the “deliberate objective of preventing and hindering access or disclosure of online information, violating international human rights law”.

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[12] See “Aprueba el Consejo de Estado normas jurídicas en respaldo a la agenda económica y social del país”, Juventud Rebelde, March 14, 2022.

[13] Particularly, in its article 68, subsection i. See detail above, in this same report.

[14] “Decreto Ley 35: más censura sobre el ciberespacio”, elToque, August 17, 2021.

[15] “Decreto Ley 35: las nuevas regulaciones en Cuba para condenar a los que hablen mal del gobierno en redes sociales”, BBC News, August 19, 2021.

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Given these considerations, we reiterate the request to the international community to urge the State of Cuba **to immediately stop all kinds of harassment, repression and censorship against the independent press and the expressions of its citizens. In particular, we emphatically recommend that they request the repeal or modification of the regulations that promote arbitrary censorship criteria and mechanisms against the freedom of expression of the Cuban population both online and in person, such as Decree Law 370, Decree Law 35, Decree 42, 43 and Resolution 105/2021.**

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## I.c Penal Code and freedom of expression

The People's Supreme Court of Cuba prepared a **new project for the Penal Code** that aims to replace the current law enacted in 1987.[16] We noticed after an exhaustive analysis of the bill that its approval could have serious implications in terms of freedom of expression, association and peaceful assembly. Specifically, the text that we accessed contemplates the following points.

- It maintains several of the offenses used by the government to **restrict the exercise of the right to free expression** in the Island, among them the offenses of propaganda against the constitutional order and contempt; the latter declared by the IACHR as incompatible with the American Convention on Human Rights.
- Introduces for the first time in a penal regulation **the outlaw of the financing of civil society actors**, enabling the sanction of those who as persons or as representatives of "non-governmental organizations, international institutions, associative forms or any natural or legal person of the country or of a foreign state", support, promote or finance actions "against the State or its constitutional order". This extends the stigma not only to US funds but to any support from NGOs, philanthropic organizations and individual initiatives, which give rise to opinions or actions that the government considers opposed to the communist system or any other principle of the constitution.
- Imposes **serious restrictions on the occupation of public space and on the right to demonstrate**, through the inclusion of offenses such as "public disorder" and the term "provocative acts." These types of figures deepen legal insecurity since, by the experience of recent years, any exercise of civility is considered provocative by the Cuban government and, therefore, subject to penal consequences.
- **Restricts freedom of expression in electoral and "democratic participation" spaces**, through the inclusion of a series of offenses, such as the prohibition of carrying out electoral campaigns, or the criminalization of the promotion of abstentionism during electoral

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[16] A few days before the presentation of this report, the National Assembly of People 's Power approved a new Penal Code (May 15, 2022). Although the final text of the report has not yet been published in the Official Gazette, it is estimated that all the points indicated in this report were included and that they constitute a serious threat to the rights of freedom of expression, association and peaceful assembly in [Cubadebate from May 15, 2022](#).



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- processes. Likewise, it establishes the prohibition of promoting “by any means, (...) expressions that denigrate the councils or other electoral structures and their authorities.” The outlaw of this type of behavior prevents the free and verified exchange of public information and consequently the popular control over the work of electoral institutions and authorities.
  - Maintains the death penalty as a sanction for a significant number of crimes. Unlike current regulations, the new Penal Code centralizes, almost exclusively, the possibility of applying it in the case of crimes related to State security. It eliminates its probable use in offenses not contemplated within that title, with the exception of murder and drug trafficking. In this way, the project recognizes the possibility of applying the death penalty to 24 criminal figures, four more than the 1987. In this increase, there are new criminal figures not contemplated in its predecessor.

In response to the remarks made, **we urge the international community and international organizations to point out to the government of Cuba the discordance of this new Penal Code with international standards and to urge it to modify or suspend its application.** Also, **we ask the international community to suspend Cuba from any membership in international organizations, such as the Human Rights Council, until it modifies the recently approved Penal Code.**

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

### **Recommendations accepted by the State of Cuba:**

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

24.189. Continue **to strengthen the space for national non-profit associations** in the country (Maldives).

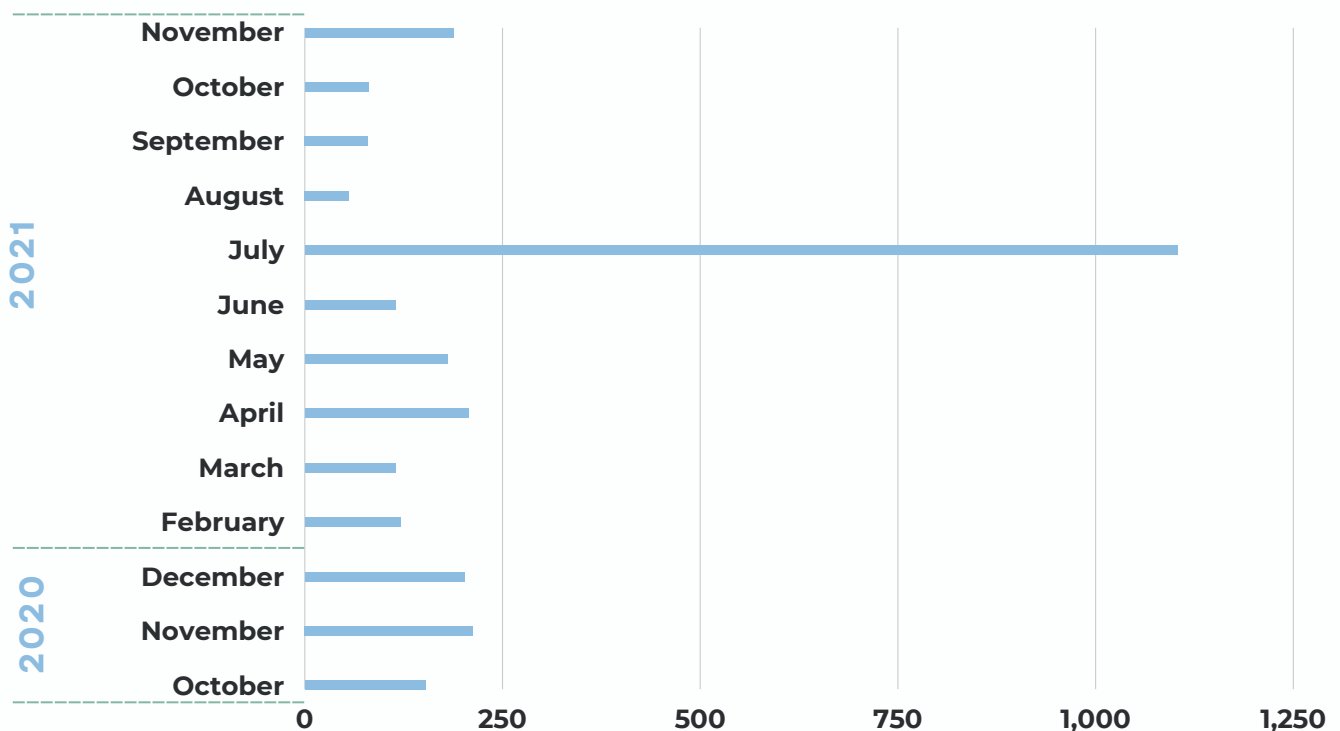
Cuba fully accepted 2 of the 17 recommendations received in relation to the Right to Freedom of Association, and only 1 of the 18 linked to peaceful assembly.

## II.a. Repression and censorship of people's demonstrations

Regarding the period from October 2020 to March 2022, we identified a series of events that confirm an **unfortunate stepback in the country in terms of freedom of association and peaceful assembly**. Below, we present our analysis in relation to this point.

- Throughout the indicated period, Cuban civil society carried out different mobilizations, demonstrations and protests related to several demands. In this framework, the Government's response was, in general terms, repression, coercion, and harassment of the protesters, seriously restricting the population's right to freedom of association and peaceful assembly.

### Arbitrary arrests



Source: Observatorio Cubano de Derechos Humanos (OCDH)

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- As the graphic shows, an average of 140 arbitrary arrests by the state were registered per month throughout the entire period reviewed. The exception was the month of July 2021, where a peak of 1,103 arrests was recorded in the framework of the historical demonstration of July 11 (11J). [17] This protest was the expression of the significant discontent of the population with the economic situation, the shortage of medicines, the government's response to Covid-19 pandemic, and the harsh restrictions on the rights to freedom of expression and peaceful assembly that are being experienced in the country.[18]
  - The size of the protest as well as the violent and out of scale response of the government, caused the events to be denounced by a great part of the international community on numerous media and platforms. According to [data from OCDH](#), at least 757 persons were detained or disappeared, among them 13 minors. As reflected in the independent press –the main source of information in the absence of public and verifiable data –, a significant number of people were put on trial without being allowed access to a defense,[19] and more than 100 were punished for the crime of "sedition" with sentences that reach 30 years in prison.[20]
  - On March 16, 2022, the People's Provincial Court of Havana announced the last 6 sentences that concluded the judicial processes of 130 protesters from the events of July 11 and 12, 2021.[21] On this occasion, and as happened with 99,2% of the remaining defendants (only 1 of them was acquitted of charges), sentences reached up to 30 years in prison under the charges of sedition and theft.[22]

Added to this incident, other **protests and specific demonstrations were the object of repressive and violent responses** by the government.

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[17] See ["Reporte Cuba 2021"](#), Amnesty International.

[18] For further detail on the causes of the protest, see this article by [El Estornudo](#), [July 22, 2021](#), or this article by [Distintas Latitudes](#), [July 26 de julio de 2021](#).

[19] ["Empiezan juicios por protestas en Cuba sin abogados defensores"](#), [elToque](#), 21 de julio de 2021.

[20] ["Lágrimas y tensión por juicio a 33 manifestantes del 11 de julio en Cuba"](#), [France 24](#), 4 de febrero de 2022.

[21] ["Algunas claves sobre las sentencias de Toyo y La Güinera"](#), [elToque](#), 23 de marzo de 2021.

[22] ["Protestas en Cuba: condenan a 127 manifestantes del 11 de julio con penas de entre 6 a 30 años de cárcel"](#), [BBC News Mundo](#), 17 de marzo de 2021.

- On December 4, 2020, while peacefully demonstrating for the release of Denis Solís on Boulevard de San Rafael, in Havana, Luis Robles was arrested and put in pretrial detention, where he remained for more than 120 days without completing the investigation into the case and without having presented in court to stand trial.[23] The “Provisional Conclusions” of the case, which were made public three months after the arrest was completed, maintain that Robles intended to “start a provocation somewhere where several people attended”, also arguing that he neglected the police attempt to dissuade him. Nevertheless, audiovisual records of the case that were filmed by witnesses don’t show any dissuasion attempt by police authorities.[24] The case was the subject of several complaints by human rights organizations. Likewise, it was presented to the Working Group on Arbitrary Detention, which stated that “Mr. Robles was detained in violation of the guarantees established in the Universal Declaration”.[25] At the moment of the presentation of this report, 15 months after being arrested, Luis Robles continues to be imprisoned without a final sentence.[26]
- On April 30, 2021, several people were arrested at Obispo Street, in Havana, during a peaceful demonstration in which they demanded access to the house of San Isidro Movement (MSI) leader, Luis Manuel Otero Alcántara, whose home remained surrounded by a police operation while the artist, inside, had declared a hunger and thirst strike.[27] According to the reports of organizations for the defense and protection of human rights in Cuba, as Cubalex, A total of thirteen people related to the protest were arrested.[28] Twelve of them were accused of the offense of public disorder or resistance to authority.
- In an attempt to promote a popular mobilization in favor of a deep change in social, political and economic life of Cuba, Archipelago platform[1] called for a peaceful demonstration scheduled for November 15, 2021.

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 [23] “El caso de Luis Robles, sanción a la libertad de expresión y manifestación”, elToque, 16 de abril de 2021.

[24] “Quién es Luis Robles, el joven que lleva preso casi cuatro meses en Cuba por pararse en una calle con un cartel”, BBC News Mundo, March 19, 2021.

[25] “Opiniones aprobadas por el Grupo de Trabajo sobre la Detención Arbitraria en su 91° período de sesiones, 6 a 10 de septiembre de 2021”, UN Human Rights Council, page 10.

[26] “Luis Robles desde la cárcel: me cansé de ver cómo mi país se destruye”, Diario de Cuba, March 11, 2022.

[27] “¿Qué pasa con los manifestantes de la calle Obispo?”, elToque, May 27, 2021.

[28] “¿Quiénes son los 13 ciudadanos arrestados tras la protesta del pasado 30 de abril en La Habana Vieja?”, El Estornudo, May 17, 2021.

[29] Collective of citizens composed of more than 30.000 members, organized since the events of the popular mobilization of July 11, 2021, whose objective is "to promote debate and dialogue among Cubans to find consensus in a civic and peaceful way to get out of the crisis". See “¿Qué es Archipiélago, la organización que está detrás de las manifestaciones en Cuba”, El Periódico, November 15, 2021.

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- However, the presence of the police, the arrest and immobilization of several leaders of the movement impeded the demonstration.[30] The reasons presented by the authorities were that the Cuban Constitution bans the promotion of actions that seek to change the socialist model declared irrevocable in its fourth article. In this framework, the Attorney General's Office of the country cited the main referents of the platform to warn them of the criminal consequences that could arise from their decision to demonstrate in the streets on November 15.

The events reviewed here marked a serious setback regarding the free exercise of freedom of association and peaceful assembly in the country, and a clear non-compliance with the commitments assumed in the framework of the last Universal Periodic Evaluation that are mentioned at the beginning of this section.

In this sense, we ask the international community to demand the government of Cuba **to immediately stop repression and violence against the population that decides to demonstrate peacefully, and the urgent release of those imprisoned for political reasons who continue in jail for expressing opinions different from the official discourse**. Also, we ask the Office of the United Nations High Commissioner for Human Rights, the special representation of the European Union for Human Rights, the Inter-American Commission on Human Rights, and IACHR and UN Special Rapporteurs for Freedom of Expression, to exhort the government of Cuba to take **the necessary measures to guarantee the rights of association and peaceful assembly, as well as due judicial process**.

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[30] ["Cuba desactiva la protesta del 15N con policías en las calles, detenciones y actos de repudio"](#), El Comercio, November 16, 2021.

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## II.b. Penal Code and free association

The new Penal Code project maintains the ban on illicit associations and meetings inherited from the 1987 Code. However, in the new modality, the penal rule not only keeps the banning of those who promote or participate in associations not registered in the correspondent record but also aggravates the penalties for this type of offense in relation to its predecessor.

The aggravation is quantitative and qualitative: the new Code introduces the possibility of ordering the confiscation of assets in cases in which the person has been sanctioned for this offense. This possibility, non-existent in the 1987 Code, **shows the Cuban government's intention to dismantle opposition organizations by imprisoning their promoters and members by eliminating their sources of material support, including those assets that they may have stocked over time.**

The main problem of the right of association in Cuba is not only in the limitations by the Penal Code but also in the restrictive design of this right from the Cuban administrative norm. The Law of Associations establishes that only the organizations authorized by the Ministry of Justice that do not pursue the same objectives as another that already exists can be registered in the Ministry of Justice Record -and therefore, have legal existence-. In this sense, **the model of Cuban associationism denies plurality since it establishes that two or more organizations dedicated to the same tasks and oriented to the same population sector cannot legally coexist.** It is a model that does not promote diversity but associative monopoly. In light of this, the new Penal Code with these mentioned characteristics is extremely preoccupying because it seriously aggravates the local scene for the development of civil associations, promoting a greater number of restrictions and limitations to the exercise of free association.

In relation to this point, **we want to reaffirm the importance that the international community demand that the Government of Cuba suspend or modify the new Penal Code project due to the negative effects that it has on the right to free association of the Cuban population, in addition to the aforementioned damage to freedom of expression. Likewise, it is essential that the Cuban State be requested to modify the Law of Associations, in order to allow the formal and legal recognition of all civil organizations, in order to advance in the expansion of civic space, as affirmed in the commitment assumed in the framework of the UPR 2018.**

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## CONCLUSIONS

According to what has been stated in this report, the state of Cuba did not show progress in terms of freedom of expression, association and peaceful assembly during the period between October 2020 (date of presentation of our previous Shadow Report) and March 2022.

On the contrary, as shown in this study, the period addressed was a context of events of repression, violence and censorship against Cuban civil society that marked a serious setback in respect for the mentioned rights, while at the same time motivated one of the largest popular protests in the history of the country (J11).

At the beginning of this year, Cuba submitted for the first time its Volunteer National Report.[30] In it, it presents the progress made during 2021 in relation to the 2030 Agenda. In relation to SDG 16 (“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build at all levels effective and inclusive institutions that would be accountable”), goal 10 (“Ensure public access to information and protect fundamental freedoms”), it stated that “since the triumph of the revolution, in Cuba there are no murders, kidnappings, enforced disappearances or torture of journalists, associated members of the media, trade unionists and human rights defenders.[31] However, the events analyzed in this paper show that the Cuban state committed throughout these last years different violations of the rights to freedom of expression, association and peaceful assembly, situations that were denounced in several international ambits by the independent civil society of Cuba, as well as by the international community, and even have motivated expressions of concern and repudiation by international human rights organizations.

Aware of the time still remaining for the next Universal Periodic Evaluation, we hope that this report will serve to alert the international community about the setbacks experienced by Cuba in the last time in relation to the commitments assumed in the framework of the 2018 UPR in terms of freedom of expression, association and peaceful assembly. Also, we are interested in strengthening the recommendations proposed in the previous report, that at the time of the presentation of this new study, have more urgency than before. Specifically:

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[31] “Informe Nacional Voluntario: Cuba 2021”.

[32] Ídem, página 108.



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- **We consider it is urgent that the Cuban government cease repression, censorship and harassment of members of civil society who attempt to exercise their right to freedom of expression and peaceful assembly.**
  - **We demand to repeal the regulations that restrict the exercise of freedom of expression, association and peaceful assembly, and those that enable repression.**
  - **We demand the freedom of all those persons that remain arrested for expressing different opinions from the official discourse.**
  - **We request that free association be guaranteed in the country in broad terms, without the intervention of the State in the constitution of new associations or in the exercise of their activities, and that a new law be sanctioned that respects international standards and good practices in the matter.**
  - **We demand to end the policy of harassment and pressure to exit the country for activists and political opponents.**
  - **We consider urgent to modify or suspend the application of the new Penal Code, in concern to the effects that this project has on the Rights to Freedom of Expression, Freedom of Association and Peaceful Assembly.**