

# CUBA

## IMPROVEMENTS WITHOUT REFORM

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## SUMMARY

To facilitate its full integration into the world community—and thus the world economy—the Cuban government is trying to improve its human rights image. To a limited extent, the government's concern with image has given rise to some concrete improvements. These include, most notably, the release of some political prisoners prior to the expiration of their sentences, a decline in the number of political prosecutions and “acts of repudiation,” a commitment not to prosecute for “illegal exit” persons who have been repatriated to Cuba by the United States, consent to a limited degree of human rights monitoring on two occasions, and ratification of a major human rights treaty.

These positive developments, which show the impact of international pressure, are welcome. Nonetheless, they do not indicate that the human rights situation in Cuba has fundamentally altered, nor that the necessary structural reforms have been initiated. The Cuban government continues to violate systematically the rights to freedom of expression, association, assembly, privacy and due process of law. The country's repressive legal structure is unchanged: laws prohibiting and penalizing “enemy propaganda,” “clandestine printing,” and “contempt of authority,” among others, remain on the books. Although the government recently promised not to prosecute citizens who are repatriated by the United States after exercising their internationally protected right to leave the country, even the law against “illegal exit” has not been repealed.

Numerous Cubans remain imprisoned for peacefully expressing their disagreement with government policy: in one instance, for as little as writing a critical letter to the secretary-general of the United Nations. Although prosecutions are fewer, state security police continue to arrest, detain, harass and intimidate human rights monitors, labor organizers and pro-democracy activists, to refuse them travel visas, and otherwise to restrict their movements. These individuals, whom the authorities assail as “counterrevolutionaries,” are kept under strict surveillance and discriminated against in employment. The civic and political organizations to which they belong are denied official recognition. Finally, the human rights monitors and political dissidents who are prosecuted receive trials woefully lacking in due process.

In the absence of real reform, this year's positive developments may be fleeting. A review of the past decade's events indicates that repression in Cuba occurs in waves, with relatively relaxed periods followed by crackdowns. Unless there are changes in Cuba's legal structure—including the repeal of repressive laws and the institution of due process guarantees—the human rights situation could deteriorate abruptly. No one, it should be emphasized, is more acutely aware of this fact than the human rights monitors working within Cuba.<sup>1</sup>

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Although the past year did not bring any dramatic change in the Cuban government's human rights practices, it did bring a dramatic change in U.S. policy toward Cubans fleeing their country. On May 2, 1995, the Clinton administration announced a new immigration agreement with Cuba that stripped Cuban immigrants of the blanket welcome they had enjoyed for more than three decades, transforming them overnight from presumed political refugees to presumed economic migrants.

In the form it was initially implemented, the new U.S. policy toward Cubans picked up at sea clearly did not ensure respect for the principle of “*non-refoulement*”: the requirement, to which the United States obligated itself by ratifying the U.N.'s 1967 Protocol Relating to the Status of Refugees, that it not repatriate refugees to a country where they may face persecution. In particular, the procedures originally adopted by the State Department and Immigration and Naturalization Service (INS) were inadequate to identify and protect Cubans who met the international definition of refugee. Human Rights Watch has since been informed, however, that the United States has significantly improved its

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<sup>1</sup> As Elizardo Sánchez, the leader of Cuban Commission for Human Rights and National Reconciliation (CCDHRN), recently explained, “Repression always had its ups and downs, and the current situation can change tomorrow, because we have no guarantee of human rights here.” “Dissidents Report ‘Relative Calm’ in Regime ‘Harassment,’” Paris AFB, June 3, 1995, in FBIS-LAT-95-107.

screening procedures for identifying Cuban refugees. The new procedures, as described to us, appear generally to comply with international requirements, although they still contain certain troubling aspects.

Improvements may also be forthcoming vis-à-vis U.S. restrictions on the free flow of information between the United States and Cuba. Existing restrictions—including the reciprocal ban on U.S.-Cuban news bureaus and the embargo-related ban on travel to Cuba by Americans—violate Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right of all people “to seek, receive and impart information of all kinds, regardless of frontiers.” Recently, in an encouraging move, the U.S. administration floated the possibility of lifting the ban on news bureaus and partially lifting travel restrictions.

## RECOMMENDATIONS

### To the Cuban Government

As the Cuban government seeks to gain political legitimacy and join the mainstream of the international community, its failure to respect basic human rights becomes all the more glaring. Human Rights Watch/Americas urges Cuba to move toward compliance with international human rights norms, beginning with the following steps:<sup>2</sup>

- The Cuban government should narrowly amend or repeal antiquated laws defining political crimes whose application violates established international legal norms and practices, including “contempt of authority” (*desacato*), “clandestine printing,” and “spreading enemy propaganda.” It should immediately drop the charges of spreading enemy propaganda and illicit association currently pending against members of the Cuban Human Rights Party. It should also repeal its “dangerousness” provision, which, in violation of the basic international law principle of legality, allows the preventive detention of persons based on their perceived tendency to commit crimes.
- The Cuban government should halt the politically punitive use of other criminal provisions that, while not explicitly targeting the exercise of legitimate political and civil rights, are so ambiguous and broadly defined that they may be employed to prevent Cubans from exercising those rights. These offenses include “rebellion” and “public disorder.”
- The Cuban government should officially recognize Cuban human rights organizations, other nongovernmental organizations, and political opposition groups. It should cease its harassment of human rights monitors, political activists and labor organizers.
- All people currently imprisoned for peaceful political activities or human rights monitoring should be immediately released. As an important first step, political prisoners should be segregated from common criminals.

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<sup>2</sup> The recommendations of Human Rights Watch/Americas expand somewhat on those put forward earlier this year by a coalition of Cuban human rights and opposition groups. In a document dated February 2, 1995, twelve persons acting on behalf of thirteen groups requested “amnesty for all political prisoners [and] the legalization, in accordance with the Law of Associations, of opposition groups, human rights groups, and other groups representing diverse currents of opinion.” The document was signed by Gisela Estévez of the Cuban Foundation for Human Rights, René Gómez Manzano of the Agramontista Union, Lázaro Loreto Perea of the National Confederation for Political Rights, Jorge Omar Pimienta of the National Council for Civil Rights, Evaristo Patricio of the United Labor Front, Mérida Pérez Fuentes of the Martiano Civic Women's Front, Alicia Ramos of the Leonor Pérez Pro Amnesty Mothers' Committee, Mario Remedio de los Cueros of the February 24 Movement, Vladimiro Roca Antúnez of the Democratic Socialist Current, Elizardo Sánchez Santa Cruz of the Cuban Commission for Human Rights and National Reconciliation, María Valdés Rosado of the Cuban Christian Democrat Movement, and Aída Valdés Santana of the Coordinator of Political Prisoners and Ex-Prisoners and the Cuban Workers Coordinator. At minimum, we urge the Cuban government to follow their two crucial recommendations.

- The Cuban government should immediately repeal its laws against “illegal exit” and should release from prison the hundreds of people believed to be incarcerated for no reason other than their attempts to leave the country. It should also eliminate or reduce to a reasonable amount the excessive fees currently charged prospective emigrants to the United States.
- The Cuban government should permit Amb. Carl-Johan Groth, the U.N. special rapporteur for human rights in Cuba, to enter the country so that he and his staff can perform their important investigative work. It should also grant access to the International Committee of the Red Cross (ICRC), whose prison visits were formally suspended by Cuba in 1990, and to other international human rights monitoring groups.

### **To the United States Government**

Human Rights Watch/Americas urges the U.S. government to adopt the following recommendations:

- The U.S. government should scrupulously observe its obligations under the U.N. Protocol Relating to the Status of Refugees by providing all appropriate procedural protections to Cubans picked up at sea who apply for refugee status. In particular, it should consult with the Office of the U.N. High Commissioner on Refugees for advice in refining its newly adopted procedures, and should consider land-based rather than ship-board screening of asylum-seekers. No Cubans meeting the international law definition of refugee should be returned to Cuba.
- In future immigration negotiations with Cuba, U.S. officials should press for the release of all “illegal exit” prisoners and the abolition of Cuba’s “illegal exit” laws, and should avoid any agreements with the Cuban government that appear to support the existence or enforcement of such laws.<sup>3</sup> They should also urge the Cuban government to allow local and international human rights organizations to monitor human rights, including repatriations, within Cuba. Incidents of reprisals against repatriates should be thoroughly investigated, and the results of those investigations disclosed.
- The United States government should lift all curbs on the free flow of people and information between Cuba and the United States, in accordance with the right to freedom of expression protected in Article 19 of the ICCPR.

### **To the Member States of the European Union**

With Spain’s accession to the presidency of the European Commission, the European Union is reportedly taking steps toward signing a cooperation agreement with Cuba. By way of the following recommendations, Human Rights Watch/Americas urges the member states of the European Union to use their influence to promote compliance by the Cuban government with international human rights standards.

- European officials should press the Cuban government to implement the reforms suggested above.
- European officials should consistently raise the issue of political prisoners with Cuban officials, urging them to grant international monitoring groups access to Cuban prisons.
- European embassies in Havana should maintain direct, ongoing contact with Cuban human rights monitors in order to keep apprised of human rights developments in the country. They should also send representatives to attend any political trials that might take place.

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<sup>3</sup> According to the September 1994 agreement between Cuba and the United States, Cuba is supposed to prevent “unsafe departures” from the country, “using mainly persuasive means.” The United States has long criticized the Cuban government for enforcing its laws against illegal exit. Given this history, it is particularly disturbing to find the U.S. government now encouraging the Cuban authorities to enforce such laws. See Human Rights Watch/Americas, *Cuba: Repression, the Exodus of August 1994, and the U.S. Response* (New York: Human Rights Watch, 1994) (hereinafter “Human Rights Watch/Americas, *Cuba: Repression*”), p. 11.

## BACKGROUND

Battered by a continuing economic crisis and faced with the poorest sugar harvest in decades, Cuba is seeking to attract foreign investment and foreign aid. The government's primary strategy for accomplishing this goal has been to adopt a series of economic reform measures, converting its command economy to a market-socialist model.<sup>4</sup> Yet even on the political and human rights fronts the Cuban authorities have been trying to demonstrate greater receptivity toward change.<sup>5</sup>

Their efforts have to a large extent been rewarded. Although Cuba was excluded from the Summit of the Americas held in Miami last December, its economic and political relations with other countries in Latin America and the Caribbean continued to improve over the course of the year. Chile decided to reestablish diplomatic relations with Cuba in April; Paraguay followed suit in May and Belize in July—leaving Cuba with full diplomatic relations with almost every country in the Americas.<sup>6</sup> In June, the head of the Organization of American States (OAS) suggested that it might be time to consider Cuba's reintegration into the inter-American system.<sup>7</sup>

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<sup>4</sup> There has recently been a flood of articles regarding Cuba's economic reform process and the related increase in foreign investment. See, e.g., "Hot Discovery: Cuba, International Fund Investors Take Notice," *Miami Herald*, July 5, 1995; Mimi Whitfield, "Cuban Beer Is Headed for Europe, Canada," *Miami Herald*, Feb. 1, 1995. Over the last two years, the government has legalized the dollar, introduced a convertible currency, allowed self-employment (but not in professional jobs), opened farmers markets and industrial markets, privatized the telephone infrastructure, opened practically all of Cuba's natural resources to foreign investment, authorized 100% foreign ownership of businesses, and created semi-private cooperatives out of previously state-run agricultural farms. In the face of these changes, even United States officials conclude that "the winds of change are beginning to blow across Cuba. Economic measures which would have been unthinkable only a few short years ago are being tolerated." Peter Tarnoff, Under Secretary for Political Affairs, "U.S. Policy Toward Cuba," *U.S. Department of State Dispatch*, May 29, 1995. Indeed, as a result of these changes, some U.S. businesses have begun lobbying the Clinton administration to consider lifting the U.S. trade embargo. "Businesses Press To End Cuba Embargo; U.S. Is Challenged to Justify Keeping Havana a 'Special Case'," *New York Times*, August 27, 1995; "Helpful Corporate Pressure on Cuba," *New York Times*, September 4, 1995 (editorial praising businesses for their efforts to end embargo).

<sup>5</sup> Particularly notable among political developments is the recent meeting between President Fidel Castro and a leading member of the moderate opposition abroad, Eloy Gutiérrez Menoyo. Gutiérrez Menoyo visited Cuba in late June, his first visit to the country since he went into exile in 1986 after spending 22 years in prison for armed opposition to the government. He met with Castro for three hours, discussing Cuba's future as well as the possibility of opening offices of his opposition party, *Cambio Cubano*, inside Cuba. Frances Kerry, "Castro Has Three-Hour Talk with Leading Exile Critic," *Reuter*, June 20, 1995.

Regarding human rights, Cuban government officials have—both publicly and privately—shown a recent willingness to discuss the topic and consider reforms. Human Rights Watch/Americas Interview with Minister of Justice Carlos Amat Forés, Havana, Cuba, April 28, 1995; Human Rights Watch/Americas Interview with Minister of the Interior Abelardo Colomé Ibarra, Havana, Cuba, May 4, 1995; Human Rights Watch/Americas Interview with Minister of Foreign Affairs Roberto Robaina González, Havana, Cuba, May 4, 1995; "Allende Willing To Discuss Human Rights with EU," *El País*, July 8, 1995, in FBIS-LAT-95-134, July 13, 1995. President Castro appears more resistant than other high officials to the idea of reform, although he has been willing, at least, to discuss the issue. Human Rights Watch/Americas Interview with President Fidel Castro, Havana, Cuba, May 5, 1995.

<sup>6</sup> James Brooke, "Latin America Now Ignores U.S. Lead in Isolating Cuba," *New York Times*, July 8, 1995 (also stating that all of Latin America is investing in Cuba).

<sup>7</sup> Sandra Marquez, "OAS Softening its Stance on Cuba," *Miami Herald*, June 6, 1995. Cuba has belonged to the OAS since its establishment in 1948, but its membership was suspended in 1962 for political reasons.

Relations with Europe have been progressing similarly. With Spain's accession to the presidency of the European Commission—and particularly now that the European Union (EU) has signed a cooperation agreement with Vietnam—the EU has taken steps toward negotiating a cooperation agreement with Cuba.<sup>8</sup>

The United States, though clearly less eager to welcome Cuba back into the international community, took one significant step toward normalizing relations with the country in announcing a sweeping change in its reception of Cuban asylum-seekers.<sup>9</sup> On May 2, 1995, the Clinton administration announced a new immigration policy that ended the blanket welcome that Cubans fleeing Cuba had enjoyed for over three decades. The reverse in policy was clearly not inspired by reforms in Cuban human rights practices, however, but by the simple desire to discourage massive Cuban migration.

The May 2 announcement was based on an agreement struck between high-level State Department and National Security Council officials and the Castro government to "normalize further their migration relationship . . . and to seek to address safety and humanitarian concerns and to ensure that migration between the countries is safe, legal, and orderly."<sup>10</sup> Under the new policy, which went into effect immediately, most of the 21,000 Cubans detained as of May in U.S. camps in Guantánamo Bay, Cuba, became eligible for humanitarian parole into the United States.<sup>11</sup> The administration stated that in the future, however, it would repatriate rapidly all Cubans intercepted at sea. Those Cubans seeking refugee status (or other migratory status) in the United States would be instructed to apply at the U.S. Interests Section in Havana. The Cuban government, for its part, pledged not to take action against repatriates for having attempted to leave the country by sea, an action that is still illegal and punishable by fines and imprisonment of up to three years under Cuban law (if violence is used, the penalty may be as high as eight years). Similarly, the Cuban government agreed not to impede those applying for refugee status at the U.S. Interests Section. Probably as a result of the agreement and its wide dissemination in Cuba, the outflow of Cuban rafters—which just over one year ago was a mass exodus—has slowed to a trickle. Between May 2 and August 28 of this year, U.S. authorities only intercepted 136 Cubans at sea, the majority of whom were immediately repatriated.<sup>12</sup>

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<sup>8</sup> "Spain To Work for Closer EU Ties with Cuba," *Reuter*, August 4, 1995. Cuba is currently the only Latin American country that does not have a formal cooperation agreement with the EU.

<sup>9</sup> Cuba is one of an extremely small number of countries with which the United States does not have diplomatic relations. The principal element of current U.S. policy toward Cuba is its stringent economic embargo. Initially imposed in 1962, the embargo's main official justification at that time was the threat that communism purportedly posed to hemispheric security, particularly the "subversive offensive of Sino-Soviet Communism." Proclamation No. 3447, Feb. 3, 1962, 27 Fed. Reg. 1085 (declaring the trade embargo). The end of the Cold War and the resulting diminishment of the security rationale did not, however, signal the end of the embargo. Rather, the 1992 Cuban Democracy Act (also known as the "Torricelli Act," for its House sponsor) broadened the embargo by prohibiting foreign-based subsidiaries of American companies from trading with Cuba. As evidenced by the congressional findings underlying that law, the stated reasons for the U.S. embargo had shifted. Although security concerns and the problem of Cuba's "subversive activities" were cited, the primary justification provided was the Cuban government's "consistent disregard for internationally accepted standards of human rights and for democratic values." 22 U.S.C. § 6001(1).

<sup>10</sup> Under the prior arrangement, worked out in September 1994 to stem an enormous exodus of Cuban rafters, the United States promised to grant to Cubans 20,000 visas per year for legal immigration, and the Cuban government promised to stem Cuban raft departures through "mainly persuasive means."

<sup>11</sup> The exceptions are Cubans ineligible for parole due to criminal records, disqualifiable behavior during their stay in the U.S. camp, or physical or mental illness. Human Rights Watch/Americas, which had strongly criticized the indefinite detention of Cubans on Guantánamo, applauds these releases.

<sup>12</sup> U.S. Department of State, Bureau of Population, Refugees, and Migration, *Cuban Migrant Population As of August 28, 1995. Document on file with Human Rights Watch/Americas.*

The United States and Cuba held another round of immigration talks in July. Deputy Assistant Secretary for Inter-American Affairs Anne Patterson headed the U.S. delegation to these talks, becoming the highest-ranking U.S. official to visit Cuba in more than a decade and furthering the impression that U.S.-Cuba relations were improving. During the same period, the administration floated the possibility of easing certain aspects of the embargo: specifically, of permitting the establishment of reciprocal news bureaus in the U.S. and Cuba, and of relaxing travel restrictions for academics and religious figures.<sup>13</sup>

At the same time, however, a bill intended to strengthen sanctions against Cuba moved toward passage in the Republican-dominated Congress, winning the approval of the House International Relations Committee on July 11. That bill, the "Cuba Liberty and Solidarity Act"—also known as the Helms-Burton bill for its original sponsors, Sen. Jesse Helms and Rep. Dan Burton—was Helms's first foreign affairs initiative upon becoming chair of the Senate Foreign Relations Committee. It would punish foreign companies doing business with Cuba in various ways, require that the United States oppose Cuban membership in international institutions such as the IMF and OAS, deduct from U.S. aid to Russia the amount paid to Cuba by Russia, and require the U.S. representative to the U.N. to press for an international economic embargo against Cuba, among other provisions. Its overall thrust would be to attempt unilaterally to internationalize the American embargo.

Human Rights Watch/Americas opposes Sec. 102(c) and (d) of the proposed legislation, designed to strengthen existing restrictions on travel to Cuba, as violative of the United States' obligation not to restrict the free flow of information and ideas between the two countries.<sup>14</sup> Although we take no position on the remainder of the bill, we note that it has been universally condemned abroad, as have the existing U.S. sanctions. We must also note that some of the findings regarding Cuba's human rights record codified in the bill are exaggerated: in particular, its citation of the Cuban government's "massive, systematic, and extraordinary violations of human rights," including "execution . . . and other forms of terror . . . as most recently demonstrated by the massacre of more than 70 Cuban men, women, and children attempting to flee Cuba."<sup>15</sup>

Because of its long adversarial relationship and lack of political and economic links with Cuba, the U.S. government has limited influence on the Cuban government's human rights practices. Increasingly, however, other governments are establishing relations with Cuba that carry with them the responsibility to press for human rights improvements. Human Rights Watch/Americas believes that it is critical that these governments use their influence constructively to encourage the Cuban authorities to adopt legal and institutional reforms.

## LEGAL, INSTITUTIONAL AND IDEOLOGICAL UNDERPINNINGS OF HUMAN RIGHTS VIOLATIONS IN CUBA

### Systematic Abuses

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<sup>13</sup> See Steven Greenhouse, "U.S. Seeking Deal with Cuba To End a 26-Year Ban on Each Other's News Bureaus," *New York Times*, July 18, 1995; "U.S. Considering Easing Travel Rules," *Reuter*, July 6, 1995. Human Rights Watch applauds these developments as indicating progress toward U.S. compliance with Article 19 of the International Covenant on Civil and Political Rights (ICCPR). (See discussion below.) We have no position regarding those aspects of the embargo unrelated to the free flow of information, however.

We do note that the January 1995 report of the U.N. special rapporteur on human rights in Cuba, Amb. Carl-Johan Groth, contained his strongest condemnation yet of the U.S. embargo, which he has begun describing as a "blockade," following the Cuban usage. Also, for the third consecutive year, Cuba won lopsided passage in 1995 of a non-binding United Nations General Assembly resolution that effectively calls for an end to the embargo. A total of 101 nations favored the Cuba-sponsored resolution, including many close allies of the United States, while only the U.S. and Israel voted against it.

<sup>14</sup> See discussion below.

<sup>15</sup> S. 381 §§101 & 2(6).

Cuba's laws and institutions are not designed to protect basic civil and political rights. To begin with, numerous provisions of its penal code infringe upon the internationally recognized rights of free expression and free association.<sup>16</sup> The charge of "enemy propaganda," for example—frequently used against human rights activists and political dissidents—penalizes a wide array of protected speech. It may be brought against anyone who "incites against social order, international solidarity or the socialist State" using oral or written "propaganda," or who produces, distributes or possesses such material.<sup>17</sup> Those convicted may be imprisoned for one to eight years. One who "spreads false news or malicious predictions that tend to cause alarm or discontent or public disorder" may be imprisoned for up to four years. If the mass media are used for these offenses, the maximum punishment is fifteen years in prison, while permitting the use of the mass media for these purposes is punishable by up to four years in prison.<sup>18</sup> Among the many Cubans imprisoned for the crime of enemy propaganda is Rubén Hoyo Ruiz, a member of the Cuban Committee for Human Rights, who wrote a letter to the secretary-general of the United Nations critical of the Cuban government.<sup>19</sup>

Laws prohibiting and penalizing "clandestine printing," and "contempt of authority," are also inconsistent with international legal norms. Again the case of Rubén Hoyo Ruiz is illustrative: while already in prison for the crime of enemy propaganda, he was convicted of "contempt of authority" and sentenced to two additional years' imprisonment because he accused President Castro of being a "traitor to the country." Similarly, Pedro Antonio Castillo Ferrer, who was permitted to leave prison in May 1995 for health reasons, was convicted in 1992 of "contempt of authority" for writing a letter—which was never sent—to the first secretary of the Communist Party urging improvements in Cuba's human rights conditions.<sup>20</sup> These cases, and the many others like them, are indicative of the Cuban government's intolerance toward free expression and free association.

Laws defining such crimes as "rebellion," "illicit association," "public disorder," and "sabotage," are also objectionable from the perspective of international human rights law. Although they do not necessarily target the exercise of basic political and civil rights, these crimes are so ambiguously and broadly defined that they may be discriminatorily applied to prevent Cubans from exercising these rights. The case of Yndamiro Restano Díaz, who was convicted of "rebellion" in 1992 for leading a democratic socialist movement dedicated to changing the government through peaceful means, is typical of this phenomenon. At his trial even the prosecution's witnesses affirmed that Restano was a pacifist who never advocated violence. Nonetheless, he was sentenced to ten years' imprisonment.<sup>21</sup>

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<sup>16</sup> These rights are enshrined in the Universal Declaration of Human Rights (UDHR), widely recognized as binding customary international law. In addition, the UDHR is considered by many to be incorporated into the U.N. Charter, rendering all U.N. member states, including Cuba, subject to its provisions. See Ian Brownlie, *Principles of Public International Law* (Oxford: Clarendon Press, 1990, 4th ed.), pp. 570-71.

<sup>17</sup> Although a criminal prohibition on spreading enemy propaganda might be legitimate if defined narrowly so that its application was limited to times of war, the Cuban provision contains no such limitation.

<sup>18</sup> Art. 103, Código Penal.

<sup>19</sup> Human Rights Watch/Americas Interview, Combinado del Este prison, Havana, Cuba, May 3, 1995.

<sup>20</sup> Human Rights Watch/Americas Interview, Kilo 7 prison, Camagüey province, Cuba, May 1, 1995.

<sup>21</sup> Human Rights Watch/Americas Interview, Combinado del Este prison, Havana, Cuba, May 3, 1995. Restano has since been granted early release from prison. (See discussion below.)



Cubans who engage in “anti-social behavior” or violate “socialist morality” may be held in preventive detention under the “dangerousness” provisions of the criminal code for as long as four years, even without being convicted of a crime. In the past, these provisions were called upon to prolong the imprisonment of political dissidents whose criminal sentences were expiring.<sup>22</sup> At present, they are most commonly used as a weapon of intimidation. A substantial number of dissidents and human rights activists report that they have received “official warnings” from the police that they are considered dangerous, justifying continued police visits to their home and posing the threat of future incarceration. Besides violating the universally recognized principle of legality—by which criminal behavior must be explicitly defined by law before it can be penalized—the Cuban authorities’ use of dangerousness provisions infringes on freedom of expression and association.

Finally, Cuba’s criminalization of “illegal exit” is inconsistent with international protections of the right to leave one’s country.<sup>23</sup> Although in the last couple of years the Cuban government has tended to fine first offenders rather than sentence them to prison, and in its May agreement with the United States it pledged not to apply the illegal exit law against repatriates, the law’s continued existence indicates that the Cuban government believes that it may permit its citizens to leave the country, but that they cannot demand to leave as of right.

Institutionally, the Cuban system permits the arbitrary or discriminatory application of these laws. The Cuban judiciary is constitutionally subordinate to the executive and legislative branches.<sup>24</sup> Judicial independence is further constrained by a system of monitoring that requires judges to render regular accounts of their work to the political bodies that originally chose them, and by the fact that those bodies may unseat them at any time.<sup>25</sup>

Cuban political trials, although they have generally improved over the years,<sup>26</sup> still fall short of international due process requirements. Journalists and other observers are often barred from attending them, violating the right to a public trial. Defense witnesses are often barred from testifying in them, violating the right to defense. In the end, defendants are almost always convicted and their convictions are almost always upheld on appeal.

Tight political control in Cuba is maintained through extensive monitoring of Cubans’ daily lives. This monitoring is conducted by state security police who often coerce people into becoming informants, and by government-sponsored “mass organizations” such as the Committees for the Defense of the Revolution (CDRs), which operate in neighborhoods and workplaces under national coordination. On occasion, the CDRs are mobilized to surround the homes of dissidents and human rights activists to yell insults, chant slogans and engage in other abusive actions, as part of ostensibly spontaneous “acts of repudiation.”

The Cuban government refuses to grant legal status to human rights, labor and political groups, despite many groups’ repeated applications for such status. Although political prosecutions are less frequent, state security police continue to arrest, detain, harass and intimidate members of these groups, to refuse them travel visas, and otherwise to restrict their movements. Most are fired from their employment and kept under strict surveillance, including telephone taps. (As another form of harassment, and as a means to isolate them, their phone lines are often cut or interrupted.)

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<sup>22</sup> See Americas Watch, *Human Rights in Cuba* (New York: Human Rights Watch, 1989), p. 64.

<sup>23</sup> See Art. 13, UDHR, which states that: “Everyone has the right to leave any country, including his own, and to return to his country.”

<sup>24</sup> The 1992 constitution explicitly ratifies the absence of the separation of powers. It provides: “The courts constitute a system of state organs . . . subordinate hierarchically to the National Assembly of People’s Power and the Council of State.” Art. 121, Constitution of Cuba.

<sup>25</sup> Arts. 125 and 126, Constitution of Cuba.

<sup>26</sup> The recent trial of Pastor Orson Vila is, however, an important exception to this generalization. He was tried the day of his arrest in blatant disregard for even the most rudimentary due process norms. (See discussion below.)

## Official Rationale

The Cuban government's stated justification for repression can be largely encapsulated in three words: the United States. Before trying to justify its human rights practices, however, the Cuban government staunchly defends its right "as a sovereign nation" to commit whatever practices it deems appropriate, regardless of international norms. At times it even suggests that the concern expressed by international organisms for the Cuban human rights situation in itself violates Cuban sovereignty.<sup>27</sup>

Of course, the notion that domestic human rights abuses are immune from international scrutiny has long been discredited. Numerous U.N. bodies—the Human Rights Commission and its working groups, above all, but also observer missions, war crimes tribunals, and treaty bodies such as the Human Rights Committee—attest to the fact that human rights abuses are of concern to the international community as a whole. Indeed, by criticizing human rights abuses in the United States, something the Cuban authorities do frequently, they themselves reject this argument.<sup>28</sup>

The Cuban government's second tactic is to assert that any criticism of its human rights practices is simply "slander" and lies.<sup>29</sup> The reports of the U.N. Special Rapporteur on Cuba, for example, invariably provoke this response.<sup>30</sup> The Cuban authorities even speak of a global "defamation campaign" against their country and last year established, at an international conference held in Havana, a "Commission on Slandorous Campaigns and the Truth About Cuba."<sup>31</sup> Of course, were the government genuinely interested in disseminating the truth about its human rights practices, it would permit international monitoring and, in particular, grant international human rights groups access to Cuban prisons. At present, given the government's utter lack of transparency regarding its human rights practices, its claims of defamation ring hollow.

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<sup>27</sup> In reacting to the preliminary conclusions of the April 1995 human rights mission led by the French group France-Libertés and including Human Rights Watch/Americas, for example, the authorities complained of the delegation's "flagrant violation of the country's sovereignty and clear interference in affairs solely within the competence of the government and the people." *Observaciones Acerca de la Estructura y Contenido del Documento de Trabajo de France-Libertés* sec. 2 (document on file with Human Rights Watch/Americas) (hereinafter "*Observaciones*"); see also *ibid.* sec. 3 (arguing that "the delegation, in flagrant violation of the principles of sovereignty and of non-interference in the internal affairs of States, questions the country's juridical-penal structure. . .").

The Cuban government echos the language of the U.N. Charter, which bars the U.N. from "interven[ing] in matters which are essentially within the domestic jurisdiction of any State." Art. 2 para. 7, Charter of the United Nations. Yet it is not enough simply to assert that these matters are reserved to its domestic jurisdiction, since violations of international human rights law by definition fall outside of this reserved domain.

<sup>28</sup> For example, every year the Cuban government sponsors a resolution before the U.N. Human Rights Commission condemning the United States for racism. See "Envoy Assails U.S.-Sponsored Rights Resolution in Geneva," *Prensa Latina*, March 8, 1995, in FBIS-LAT-95-045, March 8, 1995 (quoting Cuban Ambassador José Pérez Novoa attacking the "[human rights] violations stemming from racism and the racial discrimination prevalent in U.S. society"); see also "Mexican Newspaper Interviews Fidel Castro," *El Sol de México*, Mexico City, January 26, 1995, in FBIS-LAT-95-028-S, February 10, 1995 (quoting President Castro asserting "we don't have the U.S. situation where the death penalty is only for blacks and Hispanics").

<sup>29</sup> See *ibid.* (quoting President Castro complaining of "slander" against Cuba); "Foreign Minister Robaina Interviewed on Relations," *Diario Latino*, Havana, February 22, 1995, in FBIS-LAT-95-040, March 1, 1995 (quoting Robaina, in a burst of rhetoric, asserting that "to speak of flagrant violations of human rights against the Cuban people, to put this label on the country and accuse it before the world, are actions that are both infamous and gross, and those that play this game of lies play a renegade's game").

<sup>30</sup> See, e.g., "U.N. Envoy Calls Human Rights Report 'Immoral'," *Radio Rebelde*, November 23, 1994, in FBIS-LAT-94-227, November 25, 1994.

<sup>31</sup> "Harassments' Against Journalism Detailed," *Prensa Latina*, November 23, 1994, in FBIS-LAT-94-227, November 25, 1994.

The Cuban authorities' talk of defamation is closely connected to their primary argument: that the United States manipulates the human rights issue, acts as a patron to Cuban human rights monitors, and even fabricates abuses, as part of an aggressive campaign to undermine the Cuban government—and that this supposed manipulation is the sum total of the human rights issue in Cuba. With this argument, human rights monitors and the political opposition are portrayed—and discredited—as propagandists for the enemy, reporting false abuses, trying to incite the populace against the government using lies and coercion. They are never acknowledged as having legitimate complaints about human rights or legitimate disagreements with government policy.

In response to the preliminary conclusions of the April 1995 mission to Cuba, for example, the Cuban authorities wrote a document that sharply criticizes “the role that [human rights monitors] play in the hostile policy of the United States against Cuba.”<sup>32</sup> It argues that: “their purported status as defenders of human rights is no more than an unusual facade for hiding the work that they do in close coordination, and under the direction of foreign enemies of Cuba, with the goal of establishing internal conditions to facilitate the United States' well-known plans to destroy the Cuban Revolution.”<sup>33</sup>

Another document provided to the international delegation to describe the situation of political prisoners in Cuba begins by asserting that:

Any objective analysis of human rights in Cuba and, in particular, of persons sentenced and held in the island's penitentiaries, must take as its point of departure a full understanding of the political situation in which the Cuban Revolution has developed since its accession to power in 1959. This situation is characterized by an uninterrupted series of aggressions of all types from the United States, whose resources do not need to be emphasized. The declared objective of nine administrations of that country has been the destruction of the Cuban Revolution. Of course, this has meant that our State has had to fulfill the first obligation of any political process, the defense of its institutional existence by all means at its reach, including using the juridical-penal system to sanction those persons who try to destroy the political and social system chosen by the people, or to bring Cuban society back to the situation existing prior to 1959, when the effective realization of the human rights of the whole population was unattainable.<sup>34</sup>

With these arguments, the United States' hostility toward Cuba is used to justify domestic repression of human rights monitors and political dissidents. Shrewdly conflating opposition to government policies with disloyalty to the country, the Cuban authorities portray human rights monitors and political dissidents as enemy agents, working from the inside to “destroy”—not reform—the government. Indeed, “enemy propaganda,” the name of the criminal provision most commonly applied against human rights monitors and dissidents, explicitly fosters this image.

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<sup>32</sup> *Observaciones.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Información de las Autoridades Cubanas con Vistas a la Elaboración del Informe Final sobre la Visita de la Delegación Presidida por France-Libertés (hereinafter “Información de las Autoridades Cubanas”).*

President Castro, in a recent speech, elaborated further on these themes. Declaring that “the Revolution will not be destroyed from the inside nor from the outside,” he warned against the efforts of the United States “to penetrate us, to soften us, to create all types of counterrevolutionary organizations to destabilize the country.”<sup>35</sup> In attacking “counterrevolutionary organizations”—the Cuban authorities’ preferred designation for a wide array of human rights, labor rights and opposition groups—he displayed a continued unwillingness even to recognize the possibility of legitimate domestic dissent.

The Cuban government’s characterization of human rights and political opposition groups as agents of the United States ignores the fact that many such groups are strongly and vocally opposed to U.S. policy toward Cuba, particularly the embargo. Its characterization of them as right-wing counterrevolutionaries ignores the fact that many of them are committed socialists. But much more importantly, its repression of these groups—whatever their politics—reflects a disregard for the critical distinction established under international law between violent attacks on the established order and peaceful advocacy of change. In Cuba, where even acknowledged pacifists such as Yndamiro Restano are prosecuted for “rebellion,” the latter activity is treated as if it were equivalent to the former.

## POSITIVE DEVELOPMENTS

### Political Prisoners Released

Since last October, a number of political prisoners—including several of the most prominent—have been released prior to expiration of their sentences. Some of the releases reportedly took place on the urging of U.N. High Commissioner for Human Rights José Ayala Lasso, others due to the efforts of embassies in Havana, notably the Spanish Embassy, and a group of seven prisoners was released just prior to President Castro’s March visit to Paris. Finally, a group of six prisoners was released in the wake of an April human rights mission to Cuba, while a few more prisoners were released in July.

In the continuation of a disturbing trend, however, many of these prisoners were freed on the condition that they abandon the country. A number of them, in fact, were taken directly from prison to the airport. This method of ridding the country of political dissidents and other “troublemakers” echoes a forced emigration technique employed during the mass exodus of August 1994, when many human rights activists and dissidents were warned that they could either leave Cuba or face prosecution for their “illegal activities.”<sup>36</sup> The recent releases to exile are a positive development in that they gave the individual prisoner an alternative—albeit a painful one—to being illegitimately

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<sup>35</sup> Speech of President Fidel Castro, July 26, 1995. Interestingly, his tactic of discrediting the internal opposition by alleging that it is controlled or manipulated by “foreign enemies” is hardly unique to Cuba. In the past, it was frequently employed in the United States, where Left critics of government policy faced denunciation for purported Soviet—and, somewhat ironically, Cuban—loyalties. See, e.g., Natalie Robins, *Alien Ink: The FBI’s War on Freedom of Expression* (New York: William Morrow & Co., 1992), p. 276-78, 342-44; Geoffrey Rips, *UnAmerican Activities: The Campaign Against the Underground Press* (San Francisco: City Lights Books, 1981), p. 156.

The Internal Security Act of 1950, for example, which primarily targeted members of the Communist Party of the United States, was based on a detailed set of legislative findings establishing that individuals active in the Communist movement “in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to a foreign country.” Thomas Emerson, *The System of Freedom of Expression* (New York: Random House, 1970), p. 130 (quoting the Internal Security Act, 50 U.S.C. § 781).

This allegation of foreign domination was, in fact, the deciding factor in the Supreme Court’s decision to uphold the registration provisions of the law. *Id.* at 134-35 (discussing *Communist Party v. Subversive Activities Control Bd.*, 367 U.S. 1 (1961)).

The assumptions that underlie Cuban criminal provisions targeting free expression are also analytically akin to those of the House Committee on Un-American Activities. Its duties were, among others, to investigate “the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries.” Comm. on Un-American Activities, *Guide to Subversive Organizations and Publications*, H. Doc. No. 398 (1961).

<sup>36</sup> See Human Rights Watch/Americas, *Cuba: Repression*, p. 10.

incarcerated; but they clearly do not evidence a more open attitude toward political dissent. Indeed, from the government's perspective, freeing dissidents into exile is beneficial for at least two reasons: externally, it eliminates the embarrassment to the country's image caused by having known political prisoners, and internally, it helps nip nascent human rights and opposition movements in the bud by expelling potential leaders.<sup>37</sup>

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<sup>37</sup> Thus in a recent interview, Gustavo Arcos, a leading dissident and president of the Cuban Committee for Human Rights, stated that such releases in fact "weaken the opposition" in Cuba. "Whose Army?" *Index on Censorship*, July/August 1995, p. 140.

It should also be noted that the technique of releasing political prisoners into exile is reserved for those prisoners who have become wellknown, or at least known to foreign embassies in Havana. The hundreds of anonymous prisoners believed to be serving sentences for illegal exit, for example, are not offered this opportunity. In contrast, prominent prisoners are constantly invited to leave prison in this way. Rodolfo González González, for example, told us that high officials of the state security forces, including Lt. Col. Nelson de Armas Rodríguez, used to visit him in prison regularly, telling him that he could be free in a week if he agreed to go to Spain.<sup>38</sup>

Because this technique of release into exile has increasingly become the norm, a recent group of unconditional releases is noteworthy. In the wake of the April visit of the international human rights delegation, the government announced that it would release six political prisoners, four of whom had been interviewed by the delegation. The unconditional release of Yndamiro Restano and Sebastián Arcos—who were, up to that moment, the two most prominent political prisoners in Cuba—is particularly significant.

The following political prisoners were released prior to the completion of their sentences:

María Elena Aparicio of the Harmony Movement (MAR), tried in 1992 with Yndamiro Restano and sentenced to seven years' imprisonment for rebellion, was released to Spain on October 20, 1994.

Luis Alberto Pita Santos of the Association of Defenders of Political Rights, sentenced in 1992 to five years' imprisonment for illegal association, contempt to the head of state and clandestine printing, was released to Spain on December 4, 1994.

Pablo Reyes Martínez of the National Civic Union and the Cuban Democratic Coalition, sentenced in 1992 to eight years' imprisonment for enemy propaganda, was released to Spain on December 6, 1994.

Rodolfo González González of the CCPDH, sentenced in 1993 to seven years' imprisonment for enemy propaganda, was released to Spain on February 12, 1995.

Marta María Vega Cabrera, arrested on June 3, 1994 and held on charges of enemy propaganda, was released on February 24 after her trial was suspended for the fourth time.

Joel Mesa Morales of the José Martí National Commission of Human Rights, sentenced in 1993 to seven years' imprisonment for enemy propaganda; Luis Felipe Lorens Nodal of the Martí Youth Association, sentenced to four years' imprisonment for dangerousness; Juan José Pérez Mazó, sentenced in 1993 to eight years' imprisonment for enemy propaganda; Luis Rodríguez León of the Cuban Human Rights Party, sentenced in 1993 to eight years' imprisonment for enemy propaganda and illicit association; Roberto Rodríguez Morejón of the Máximo Gómez Human Rights Front, sentenced in 1993 to four years' imprisonment for attempted illegal exit; Jesús Torres del Llano of the Máximo Gómez Human Rights Front, sentenced in 1993 for attempted illegal exit; and Roberto Hernández, sentenced to seven years' imprisonment for piracy and illegal exit, were all released on March 8.

Caridad Lima García, who was sentenced to eighteen months' imprisonment for enemy propaganda and began serving her sentence in June 1994, was released on March 24.

Amador Blanco Hernández of the José Martí National Commission of Human Rights, sentenced in 1993 to eight years' imprisonment for enemy propaganda, was released on March 31.

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<sup>38</sup> Besides Rodolfo González González and the other former political prisoners mentioned below who were released into exile, Yndamiro Restano, Sebastián Arcos, Jorge Luis García Pérez were offered release on the condition that they go into exile. García Pérez remains in prison.

Prior to his release from prison in August 1994, Fernando Figueroa of the Partido Socialdemócrata Cubano also received this offer.

Israel Marcelino González Leyva, sentenced in 1992 to ten years' imprisonment for enemy propaganda, was released in March.

Agustín Figueredo Figueredo, sentenced in 1990 to twelve years' imprisonment for enemy propaganda; Pedro Antonio Castillo Ferrer, sentenced in 1992 to five and a half years imprisonment for enemy propaganda and contempt of authority; Ismael Salvia Ricardo, sentenced in 1992 to five years' imprisonment for enemy propaganda; and Luis Enrique González Ogra, sentenced in 1992 to four years' imprisonment for enemy propaganda, were all released at the end of May for humanitarian reasons, due to their poor health.

Sebastián Arcos Bergnes of the CCPDH, sentenced in 1992 to four years and eight months in prison for enemy propaganda, was released on May 31.<sup>39</sup>

Yndamiro Restano Díaz of the Harmony Movement, sentenced in 1992 to ten years' imprisonment for rebellion, was released on June 1.

Arnaldo Pascual Acevedo Blanco, Bárbaro Licourt Medina and Juan Luis Fuentes Valdés, members of the Cuban Human Rights Party sentenced in 1993 to prison terms of five, four and five years, respectively, for enemy propaganda and illegal association, were released in late July.

### **Political Prosecutions Decline**

Prosecutions of human rights activists and political dissidents declined during late 1994 through August 1995, compared to past years. Although many cases remain pending, very few of them went to trial.

The most prominent political trial during this period was that of Francisco Chaviano González, who was sentenced to an extremely harsh fifteen-year term of imprisonment for allegedly revealing state secrets and falsifying documents.<sup>40</sup> Even though it is clear that Chaviano's trial was politically motivated and lacking in due process, the fact that the Cuban authorities chose not to prosecute him on charges that clearly target the right of expression or association—as they easily could have under Cuban law—is notable in that it attests to their desire to present a facade of respect for human rights.

In part, the scarcity of political prosecutions may reflect the authorities' apparent preference for exiling dissidents rather than imprisoning them. In some recent cases, the defendants have been charged but not detained—what is perhaps an attempt to encourage them to apply for refugee status with a foreign embassy. In the case of Ileana Curra Luzón, in fact, the authorities permitted her provisional liberty while her conviction for enemy propaganda went up on appeal. Another notable case in this respect is that of Marta María Vega Cabrera, who was released from detention in February after her trial for enemy propaganda was suspended for the fourth time. She immediately applied for a refugee visa with the U.S. Interests Section and, as of early September, is expected to be leaving the country.

### **Limited International Human Rights Monitoring Permitted**

After several years of wholly refusing to allow human rights monitoring by international observers, the Cuban government recently granted access to two missions with a human rights focus. The first, a visit by U.N. High Commissioner for Human Rights José Ayala Lasso, took place in November 1994. The second, a week-long mission led by the French human rights group France-Libertés, took place in late April 1995, and included the participation of José Miguel Vivanco, executive director of Human Rights Watch/Americas.

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<sup>39</sup> Having completed over three-quarters of his sentence and having received a favorable report from the warden of the prison in which he was held, Arcos had already been eligible for conditional release from prison since February, a consideration which blunts considerably the credit due the Cuban authorities for releasing him.

<sup>40</sup> See discussion below.

Permission for such visits has rarely been granted by the Cuban government. In 1987 and 1988, it permitted a few informal visits by representatives of human rights groups such as Amnesty International, as well as formal visits from delegations of the United Nations Commission on Human Rights, the Association of the Bar of the City of New York (whose delegation included Human Rights Watch representatives), and the International Committee of the Red Cross (ICRC).<sup>41</sup> This period of relative transparency proved temporary, however. From May 1989—the date that the ICRC was last permitted to visit—until November 1994, no international human rights monitoring was officially permitted in Cuba.<sup>42</sup>

Most notably, the Cuban government refused to cooperate with the resolution adopted in 1991 by the U.N. Commission on Human Rights that authorized the appointment of a special rapporteur on the situation of human rights in Cuba. Dismissing the appointment as a discriminatory U.S. imposition, to date it has not allowed Special Rapporteur Carl-Johan Groth to visit Cuba.<sup>43</sup>

In striking contrast to its aggressive rejection of the special rapporteur, the Cuban government specifically invited U.N. High Commissioner for Human Rights José Ayala Lasso to visit the country. The visit was the high commissioner's first to Latin America after his debut in the newly-created post earlier in 1994. During his three days in Havana in November, the high commissioner met with top Cuban officials, including President Castro, as well as with political dissidents, human rights monitors, and church representatives. The monitors gave him a list of 1,195 people said to be held in Cuban prisons on political grounds. At the trip's end—and to the dismay of some human rights groups—the high commissioner maintained a diplomatic silence about his discussions and conclusions regarding human rights in Cuba. He stressed that his visit was primarily aimed at initiating a dialogue with the Cuban authorities, not at acquitting or condemning them for their human rights practices. Having established this initial contact, however, the high commissioner must set a more ambitious and concrete agenda for his future visits to Cuba.

In March, while visiting Paris, President Castro invited an international mission to Cuba to investigate the situation of political prisoners. Castro was in Paris to speak at UNESCO, but during his visit he met with the then-president of France, François Mitterrand, and visited the headquarters of France-Libertés, a French human rights organization led by Danielle Mitterrand, wife of the former president. After being presented with a list of Cuban political prisoners, he invited France-Libertés to lead a delegation to assess the treatment of political prisoners in Cuba.

José Miguel Vivanco, executive director of Human Rights Watch/Americas, was among the human rights experts chosen by France-Libertés to constitute the delegation, along with Rafael Doueb, vice-president of France-Libertés, Daniel Jacoby, honorary president of the Fédération Internationale des Ligues des Droits de l'Homme, and Pierre Micheletti of Médecins du Monde.

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<sup>41</sup> These monitoring efforts led to the publication of two reports on the Cuban human rights situation: *Human Rights in Cuba: Report of a Delegation of the Association of the Bar of the City of New York* (New York: Association of the Bar of the City of New York, 1988) and Americas Watch, *Human Rights in Cuba* (New York: Human Rights Watch, 1989).

<sup>42</sup> Despite repeated requests, the Cuban government has not allowed Human Rights Watch/Americas to conduct the kind of open investigation—involving meetings with victims of human rights abuses, witnesses, political prisoners, human rights monitors and government officials—that it undertakes routinely elsewhere in the region.

<sup>43</sup> Typical of the Cuban authorities' attitude toward the special rapporteur are these remarks by Rafael Dausa, spokesman for the Ministry of Foreign Relations: "we do not and will not cooperate with institutions or organizations which are manipulated, controlled, paid for, directed, or imposed by the United States. We reiterate, we will not cooperate with the rapporteur imposed by the United States." FBIS-LAT-95-053, March 20, 1995.



The mission visited Cuba between April 28 and May 5, interviewing 24 political prisoners held in eight prisons.<sup>44</sup> Its access was limited by the authorities last-minute insistence that the interviews take place in the administrative areas of the prison rather than in prisoners' cells, as the delegation had been led to believe would be possible. Otherwise, the mission's access to the prisoners it visited was unimpeded: the interviews were long and the prisoners complained freely about conditions.

In addition to meeting with political prisoners, the delegation met top Cuban officials, including President Castro, and representatives of numerous unrecognized human rights, lawyers and journalists associations. At the mission's end, the delegation released a press release describing its preliminary findings. A full report of the delegation's findings is in preparation.

### **Convention Against Torture Ratified**

On May 17, 1995, Cuba ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The convention requires states parties to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction," as well as to "undertake to prevent . . . other acts of cruel, inhuman or degrading treatment or punishment."<sup>45</sup> Whenever there are reasonable grounds to believe that an act of torture or cruel, inhuman or degrading treatment has been committed, the authorities are obliged to investigate the matter promptly and impartially.<sup>46</sup> These obligations are particularly relevant vis-a-vis abuses occurring in Cuban prisons.<sup>47</sup>

Cuba has already ratified a large number of international human rights treaties, including, for example, the Genocide Convention,<sup>48</sup> but, significantly, not the International Covenant on Civil and Political Rights (ICCPR), a comprehensive treaty for the protection of many rights that are systematically violated in Cuba.

### **Movement Away From the Use of Capital Punishment**

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<sup>44</sup> The Cuban authorities allowed the delegation to interview the political prisoners whose names were included on the list originally submitted to President Castro. Although a number of people named on that list were no longer in prison, the authorities did not allow the delegation to interview additional prisoners as a substitute for those previously released.

The delegation conducted interviews in the following prisons: Boniato in Santiago de Cuba, Kilo 8 in Camagüey, Ariza in Cienfuegos, Combinado del Sur in Matanzas, Kilo 5 ½ in Pinar del Río, Combinado del Este in Havana, the Western Women's Prison in Havana, and the Villa Marista detention center in Havana.

<sup>45</sup> Arts. 2(1) and 16(1), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. resolution 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

<sup>46</sup> *Ibid.*, Art. 12.

<sup>47</sup> See discussion below.

<sup>48</sup> Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force January 12, 1951.

There are a number of criminal offenses punishable by death under Cuban law. Among them are such offenses as “rebellion” and “sedition,” which are classified as “crimes against the internal security of the state” in the Cuban criminal code and sometimes relied upon as the basis for politically motivated prosecutions. Yet despite the broad potential application of the death penalty it appears that executions have become relatively infrequent. In fact, the last known execution in Cuba took place in mid-1994. Given the difficulty of monitoring human rights on the island and the secrecy with which the Cuban authorities operate, however, it is very difficult to ascertain whether other executions have been carried out.<sup>49</sup> Nonetheless, there are hopeful indications that the Cuban government is moving away from the practice of capital punishment.

In November 1994, in the murder and piracy case against Ramón Fidel Basulto García, for example, the prosecution initially requested the death penalty but then revised its request to 30 years' imprisonment. The case is particularly significant given its sensitive political context. Basulto was among a group of people arrested in connection with the attempted hijacking of a boat on August 4—an incident in which a policeman drowned—during the mass exodus from Cuba last year. The next day, hostile crowds attacked police officers who tried to prevent them from fleeing, with the ensuing riots being the most important challenge to Cuban governmental authority since the Revolution.

In another encouraging sign, President Castro told the April delegation led by France-Libertés that he would introduce a bill in the National Assembly to abolish the death penalty. The strength of his commitment to the plan was, however, greatly reduced by his qualification of it: namely, that prospects for the death penalty's abolition depended on developments in the economy and vis-a-vis the U.S. economic embargo.

Human Rights Watch/Americas opposes capital punishment in all circumstances. Evidencing a strong trend in the international community in favor of limiting this inhumane and irrevocable penalty is United Nations General Assembly Resolution 32/61, which states that “the main objective to be pursued in the field of capital punishment is that of progressively reducing the number of offenses for which the death penalty may be imposed, with a view to the desirability of abolishing this punishment.”<sup>50</sup> Unquestionably, the abolition—preferably *de jure*—of the death penalty in Cuba would be a welcome and important development.<sup>51</sup>

### **Growth of Independent Professional Groups**

In what has been heralded as the first sign of an incipient civil society, several independent professional groups have formed or become increasingly active recently. They include the Agramontist Current (Corriente Agramontista)—a lawyers' group named after Ignacio Agramonte, a nineteenth-century Cuban lawyer—the National

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<sup>49</sup> For example, we are concerned about members of a Cuban exile group, the National Democratic Unity Party (Partido de Unidad Nacional Democrático) (PUND) apprehended in Cuba in late 1994 after reportedly attempting a covert armed attack against the Cuban authorities in which one Cuban was killed. The prosecutor of their criminal case reportedly recommended the death penalty for three of the nine PUND members detained during the incident.

<sup>50</sup> UNGA Resolution 32/61, December 8, 1977; *see also* Art. 6, ICCPR (referring to the death penalty in terms that strongly suggest that its legal abolition is desirable); Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (stating that “the abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights”). Although we recognize that Cuba has signed neither the ICCPR nor the optional protocol, we cite the two treaties as evidence of this strong international trend.

<sup>51</sup> Besides the death penalty's inherent cruelty, one of Human Rights Watch's primary objections to the penalty is that the fallibility of criminal justice systems assures that innocent persons will be executed even when full due process of law is respected. Given its serious procedural failings and lack of judicial independence, the Cuban legal system is even more likely to produce such miscarriages of justice. For that reason, our opposition to the death penalty in Cuba is particularly strong.

Association of Independent Economists (ANEIC), and a handful of journalist's groups: the Bureau of Independent Journalists of Cuba (BPIC), the Havana Press, and the Association of Independent Journalists (APIC).<sup>52</sup>

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<sup>52</sup> The BPIC, the newest of the independent journalist's groups, was founded in September by, among others, recently released political prisoner Yndamiro Restano. It reportedly subsumes a prior group, the Association of Independent Journalists (APIC). The Havana Press was established only a few months earlier by Rafael Solano, an award-winning former reporter for Radio Rebelde, and other journalists. In September, with the establishment of the BPIC, there was a rash of short-term detentions of independent journalists. Almost every independent journalist was detained by state security agents, if only for an hour, and threatened with prosecution.

Given the vulnerability of human rights activists and others to politically motivated prosecution and the insufficiency of due process protections at trial, the development of an independent lawyers bar is of particular importance. Until recently, defendants charged with a political crimes often received the most perfunctory of defenses, with their lawyers “simply asking for the court’s mercy on the grounds that the defendant is young; that the defendant can change his ways; or that the charge should be changed to a lesser crime.”<sup>53</sup>

In contrast, attorneys with the Agramontist Current have been noted for their active and outspoken defense of political cases. The group’s president, René Gómez Manzano, has acted as counsel to, among others, Yndamiro Restano, leader of the MAR, prosecuted for rebellion; Samuel Martínez Lara, former leader of the PPDHC, prosecuted for rebellion; Sebastián Arcos Bergnes, vice-president of the CCPDH, prosecuted for enemy propaganda; and Abel del Valle Díaz, one of the co-defendants in the Francisco Chaviano prosecution. Another member of the group, Castor Miguel de Moya Viera, aggressively litigated the death penalty case of Ramón Fidel Basulto and even wrote a letter to U.N. High Commissioner José Ayala Lasso requesting that Ayala Lasso intercede with the Cuban authorities on his client’s behalf. Leonel Morejón Almagro, another member, defended the cases of Domiciano Torres Roca, of the Democratic Civic Party, and Marta María Vega Cabrera, of the Democratic Civic Association, both prosecuted for enemy propaganda.

Unfortunately, all of these lawyers have been penalized for their activities. In February, Gómez Manzano was subject to a punitive transfer from the office where he had worked for years doing appellate litigation, to an office at a two hours' commute from his home. A few weeks earlier, Leonel Morejón was effectively disbarred on the pretext of administrative deficiencies. The purported deficiencies were so insignificant that the director of his office recommended a simple warning, but this recommendation was overruled by the National Direction of Cuba’s system of public law offices. Morejón was also reportedly visited on February 9 by a “vigilance committee,” a group created to monitor persons suspected of “dangerousness,” leading him to fear possible prosecution under that provision. At present, Castor Miguel de Moya is facing disbarment, also for purported administrative deficiencies. Other members, including Juan Escandel Ramírez and José Angel Izquierdo González, have reportedly been under constant surveillance by the authorities.

Like other independent organizations, the Agramontist Current has not been granted legal recognition from the government, despite numerous requests.<sup>54</sup> The group has also seen its meetings disrupted. In April, shortly after the Chaviano trial, a meeting of the group’s members, who included two lawyers involved in that trial, was violently interrupted by a number of unknown intruders. The intruders insulted the groups’ members and tore up their papers.

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<sup>53</sup> *Human Rights in Cuba*, p. 79; see also Jorge Valls's description of his trial in Jorge Valls, *Twenty Years and Forty Days: Life in a Cuban Prison* (New York: Americas Watch, 1986), pp. 33-34.

<sup>54</sup> Gómez Manzano first tried to obtain registration of the group, under the name of the Agromontist Union, from the Ministry of Justice (MINJUS) in August 1990. After receiving a response describing seven registration requirements, he filed another application in February 1991. Since then, there has been no response from the MINJUS, despite six further requests.

## CONTINUING HUMAN RIGHTS VIOLATIONS

### **Prosecution of Two Baptists**

On December 20, 1994, Miguel Angel León García, a lay pastor of the Baptist Church in San Fernando de Camarones in Camagüey province, and Jorge Luis Brito Rodríguez, a member of that church, were tried in Santa Clara for the offense of enemy propaganda, receiving six-year sentences. The prosecutor had originally charged the two with rebellion as well, and had requested eight- and nine-year sentences, respectively. Both defendants had been held in pre-trial detention since October 1993. They are currently held in Ariza prison.

### **Prosecution of Francisco Chaviano González**

In April 1995, Francisco Chaviano González, the president of the National Council for Civil Rights in Cuba (Consejo Nacional para los Derechos Civiles en Cuba), was sentenced to fifteen years' imprisonment by a military tribunal on charges of revealing state secrets and falsifying documents. Co-defendants César Augusto San Martín and Alberto Boza Vásquez, former Cuban government officials accused of involvement in his alleged scheme to sell forged documentation to Cubans seeking U.S. visas, received seventeen years and twelve years, respectively, while other co-defendants received lesser sentences or probation.

Chaviano's activities in defense of human rights date back to 1990, when he founded the National Council of Rafters, which later developed into the more broad-based National Council for Civil Rights. In April 1994, he signed a letter to President Castro requesting that the government release all political prisoners and grant legal recognition to human rights groups. The document stated that "these steps would contribute in creating the bases by which Cuban society would begin a peaceful transition toward pluralist democracy." Prior to his arrest on May 7, 1994, he had been the target of constant government harassment, including frequent surveillance and acts of vandalism to his home.

The day of his arrest, Chaviano received an odd early-morning visit from a stranger who delivered a packet of documents supposedly sent by some other human rights activists. Soon after, state security agents raided his house. The initial charge brought against him was receipt of stolen goods, but it was later upgraded. He was detained almost a full year before his trial on April 15. During this time, although not tortured or beaten, he was held in solitary confinement.

Chaviano's trial violated basic due process guarantees. None of the seven defense witnesses that Chaviano called were allowed to testify, and the documentary evidence he submitted was refused by the court. He was not permitted any access to the evidence against him. The trial was closed to the press and to members of the Cuban human rights community, including Elizardo Sánchez and Lázaro Loreto Perea, who sought to attend. Aída Valdés Santana and Emilio Haber Tamayo, two representatives of the Human Rights Information Office, were picked up by state security agents on their way to the trial and detained for six hours. In addition, Chaviano claims that on the morning of the trial he was given a sandwich containing a drug that rendered communication difficult.

In July, the Western Regional Military Tribunal (Tribunal Militar Territorial de Occidente) denied Chaviano's appeal of his conviction and upheld his sentence, even though it reduced the sentences of at least two of his co-defendants.

### **Crackdown Against the Cuban Human Rights Party**

Soon after the departure from Cuba of the delegation led by France-Libertés came a crackdown against members of a human rights group whose leader, Odilia Collazo, had met with the delegation during its visit. This group, the Cuban Human Rights Party (PPDHC) (Partido Pro Derechos Humanos Cubano), was formed in 1988 and has been a frequent target of government persecution.<sup>55</sup>

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<sup>55</sup> See Americas Watch, *Cuba: Attacks Against Independent Associations* (New York: Human Rights Watch, 1991), p. 9-11 (describing the Cuban government's two-year campaign to eliminate the group).

The sweep began on May 13 in the province of Pinar del Río when state security agents detained PPDHC members Eduardo Díaz Fleitas and Fidel Valdés Baró. Díaz was released that same day after being charged with the crime of "illicit association." Valdés was held until May 17. He was released without charges being brought, but he left the country the following day.

On May 15, Abel de Jesús Acosta, José Lago González, Hermes Arocha Pérez, and Herminio Rodríguez, all members of the PPDHC in Santa Domingo, Villa Clara, were arrested and detained. The police conducted a detailed search of Acosta's home, confiscating a typewriter, 175 written denunciations of human rights abuses, a personal phone book, letters from a political prisoner, membership cards issued by the PPDHC and other documents.

The next day, ten more PPDHC delegates were detained in Guines, in the province of Havana: Miguel Molina Castillo, Gisela Acosta Vila, Rafael Martínez Torres, Martha Blanca González, Marta Martínez Riveron, Yamila Pérez, Ramón Izquierdo Pérez, Marisol González Gil, Emilio Vallina, and Justina de Armas. In addition, the police confiscated a typewriter and some documents from Martínez. They confiscated a number of human rights denunciations from Molina.

The detainees from Guines were released the same day of their arrest, while the Santo Domingo detainees were held two days. All of them were charged with the crime of "enemy propaganda."

Within the city of Havana, several members of the PPDHC were harassed by the police but no one was detained or charged. On May 16, state security agents searched the home of Estrella García Rodríguez, and called her in for questioning the following day. On May 18, Odilia Collazo, the president of the PPDHC, was called in for questioning along with her daughter Cecilia Arsa Collazo, the coordinator of the PPDHC, and Horacio Casanova Carreras of the Cuban Patriotic Alliance (Alianza Patriótica Cubana). All three people were threatened with imprisonment.

The two striking features about the crackdown are that it was coordinated across three provinces, and that criminal charges were brought against the people arrested. Over the past year there have been several sweeps in which large numbers of people were detained and then released without criminal charges being brought. This is the only such episode in which charges were actually brought; to date, however, no one has been imprisoned as a result of those charges. (The PPDHC delegates in Villa Clara reportedly were tried and received only fines.)

### **Crackdown Against "Casas Culto"**

In a harsh attack on the evangelical Christian movement, Cuban authorities in May closed scores of "*casas culto*," evangelical meeting places operating out of homes.<sup>56</sup> Pastor Orson Vila Santoyo, a Pentacostal minister in Camagüey who refused to refrain from holding religious services in his home, was arrested on May 25. Charged with "illicit association," he was tried and sentenced on the day of his arrest in blatant disregard for any semblance of due process. Later that month his sentence was reduced on appeal to eighteen months.

The mass closures and Pastor Vila's imprisonment indicate that the Cuban authorities are worried by the rapidly increasing popularity of evangelical Christianity in Cuba.<sup>57</sup> The government's intolerant reaction to evangelicals is especially striking when contrasted with the conciliatory approach it has recently adopted in its relations with the Catholic Church.<sup>58</sup>

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<sup>56</sup> Armando Correa, "Evangelicals Report Crackdown in Cuba," *Miami Herald*, May 31, 1995 (stating that eighty-six out of 101 evangelical centers in Camagüey province were ordered closed).

<sup>57</sup> "Cuba Turns From Word of Castro to Word of God," Reuter, July 5, 1995; Iván Román, "Cubanos Encuentran Respuestas en la Religión," *Nuevo Herald*, March 19, 1995.

<sup>58</sup> Indeed, in what would be an important symbolic development Castro may meet with Pope John Paul II in Rome later in the year. Pablo Alfonso, "Castro Meets with Vatican Envoy in Havana, Speaks with Cuban Bishops in Rare Encounter," *Miami Herald*, July 13, 1995.

### **Anniversary of the Sinking of the *13 de Marzo***

*The first thing dictators do is to finish the free press and establish censorship. There is no doubt that the free press is the first enemy of dictatorship.*

—Fidel Castro, speaking before a luncheon meeting of newspaper editors in 1959<sup>59</sup>

On July 13, 1994, about forty people died, including many children, when a Cuban government boat rammed and sank the *13 de Marzo*, a hijacked tugboat loaded with civilians fleeing Cuba.<sup>60</sup> Since then, particularly in the Miami exile community, the tragedy of the sinking of the *13 de Marzo* has been held up as a reminder of the repressive practices of the Cuban government. In January 1995, the House Subcommittee on the Western Hemisphere of the new Republican-controlled U.S. Congress examined the incident during its first hearings. Later, as the anniversary of the incident drew near, Cubans in Miami organized a flotilla to be launched on July 13, to go into or near Cuban territorial waters to honor the victims. They hoped that Cubans on the island would line Havana's seawall and commemorate the occasion with them. A large commemorative mass was also planned for that date, to be held at a Catholic church in central Havana.

Human rights monitors in Cuba reported that a notable police and military presence began building up all over the country after July 1.<sup>61</sup> In the week prior to July 13, the Cuban authorities began detaining and harassing people. Independent journalists, whose numbers have grown recently, were particularly targeted for harassment, apparently to prevent them from drawing public attention to the anniversary of the tragedy.

On July 8, state security agents detained Orestes Fondevila, Luis López Prendes and Lázaro Lazo, members of the Independent Press Association of Cuba (APIC) (Asociación de Periodistas Independientes de Cuba). The three journalists were interrogated regarding their work with the APIC, specifically their reporting on a retired military officer's statements of dissatisfaction with the government. They were all released within two days, but after being warned not to cover certain sensitive stories.

On July 10, state security agents cut the telephone lines and searched the home of Néstor Baguer, the director of the APIC, completely disabling the organization's operations. During the search, the agents confiscated his fax machine.<sup>62</sup>

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<sup>59</sup> As quoted in Tad Szulc, *Fidel: A Critical Portrait* (New York: Avon Books, 1987), p. 538.

<sup>60</sup> To date, despite the seriousness of the incident, the Cuban authorities have reportedly only undertaken a limited police investigation of it. None of the naval authorities responsible for sinking the boat have been prosecuted, nor has a serious, public investigation of the incident been otherwise initiated.

<sup>61</sup> These police were described as special forces (*fuerzas especiales*), distinguishable from other police by their berets and uniforms. In street terminology, they are referred to as black berets (*boinas negras*) and black wasps (*avispas negras*).

<sup>62</sup> On July 19, Baguer filed a complaint in the municipal court of the Plaza neighborhood, demanding the return of his fax machine. The court's secretary refused to hear the complaint.

A substantial number of human rights monitors and political dissidents were detained and questioned between July 11 and July 13, including Eugenio Rodríguez Chaple of the José Martí Democratic Bloc (Bloque Democrático José Martí), Alberto Perra of the Independent Cuban Committee for Peace, Progress and Liberty (Comité Cubano Independiente por la Paz, Progreso y Libertad), Migdalia Rosado Hernandez and Irene Almira Ramírez of the Nationalist Agenda Movement (Movimiento Agenda Nacionalista), Pastor Herrera Macurán of the Democratic Liberal Alliance (Alianza Liberal Democrática), Esteben Pérez Castillo of the National Civic Union (Unión Cívica Nacional), Juan Leonardo Prades Ramírez, Jesús Castillo, María Elena Argote González, Cesar Jesús Guerra Pérez, René Montero Goray, Jesús Cárdenas Lopes and Juan Guarino of the Confederation of Democratic Workers of Cuba (Confederación de Trabajadores Democráticos de Cuba), Osmel Lugo of the 30th of November Movement (Movimiento 30 de Noviembre), Odilia Collazo, Roberto Martínez Roja, Lourdes García Pelegrin, Lázaro González Valdez, Evelio Hastín Cedeño and René Pico García of the Cuban Human Rights Party (Partido Pro Derechos Humanos de Cuba), Horacio Casanova and Susana Ramos of the Cuban Patriotic Alliance (Alianza Patriótica Cubana), Ruben Ruiz and Reinaldo Cosano of the Cuban Democratic Coalition (Coalición Democrática Cubana), and Agustín Acosta Moya.<sup>63</sup> Most of them were detained for less than a day, although some were detained for two or three days. Other activists reported that state security agents or members of the Committees for the Defense of the Revolution visited their homes on July 11, warning them to stay inside all day on the 13th or face arrest.<sup>64</sup>

The following day, Rafael Solano was detained and interrogated for several hours by state security forces. Solano, who previously worked for Radio Rebelde, a government radio station, is an award-winning journalist and director of the Havana Press. He founded the Havana Press on May 1, 1995, along with other journalists fired from jobs in the state media. The agency reports on the situation in Cuba for media in the United States and Europe, including Radio Martí, *The Miami Herald*, and the *Diario de las Américas*. In a thinly veiled reference to these recipients, the authorities threatened Solano with ten years in jail unless he stopped transmitting news reports to “subversive” radio stations and “counterrevolutionary” newspapers.

On July 13, the anniversary of the sinking of the *13 de Marzo*, state security forces searched the home of José Rivero García, director of the Circle of Journalists of Havana. As in their raid on Néstor Baguer’s organization, they confiscated Rivero’s professional equipment, including a fax, video camera and typewriter. The operations of his press agency were similarly disabled. State security agents also returned again to the home of Rafael Solano and detained him temporarily.

That same day, Lázaro Cabrera Fuente of the Republican Alliance for National Reconstruction (Alianza Republicana por la Reconstrucción Nacional), was arrested. He was detained at Villa Marista, the Havana headquarters of the state security police, for over a month. As far as is known, no charges were brought against him.

The most important commemorative mass that was planned, which was to have been held at the Sacred Heart of Jesus Church (Iglesia del Sagrado Corazón de Jesús) in central Havana, was canceled by the authorities and the church was locked. Smaller commemorative masses were reportedly held at other churches, however.

Despite prior warnings from the Cuban government against incursions into its territorial waters, a flotilla of over a dozen vessels from Miami carrying about a hundred Cubans—led by a boat symbolically named the *Democracia*—entered Cuban waters on July 13. Cuban vessels caught up with the flotilla and warned it to leave and

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<sup>63</sup> One reliable source reported that a total of three dozen activists were detained.

<sup>64</sup> Among them were Gustavo Arcos of the CCPDH, Elizardo San Pedro San Marín, Fernando Sánchez and Héctor Palacio of the Democratic Solidarity Party (Partido Solidaridad Democrática), and Aída Valdés Santana of the Human Rights Information Office (Oficina de Información de Derechos Humanos). Marta Gómez of the Nationalist Agenda Movement and Isabel del Pino of the Followers of Christ the King (Seguidores de Cristo Rey) were warned against attending the planned memorial mass for the victims. The authorities also searched the home of San Pedro San Marín.



finally, after about fifteen minutes of repeatedly warning the boats to turn back, two Cuban vessels collided with the *Democracia* in a pincer movement. Then the boat turned back, damaged and with three passengers injured. At the same time, however, planes from a Cuban exile organization known as Brothers to the Rescue flew undisturbed over Havana, dropping pamphlets with the message “not just comrades, brothers.” The Cuban government responded to the incident with a communiqué warning that future such violations of Cuban airspace or territorial waters by Cuban exiles would be met with military force.<sup>65</sup>

### **Restrictions on Travel Abroad**

As a way of isolating human rights monitors and political dissidents from contact with the outside world—where they might gain foreign support for their cause—the Cuban government often bars them from traveling abroad.

In May, Oswaldo Payá Sardiñas, leader of the Christian Liberation Movement (Movimiento Cristiano Liberación) was denied an exit visit to visit Spain on the invitation of the Spanish magazine *Nueva Revista*.

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<sup>65</sup> FBIS-LAT-95-136, July 17, 1995. Cognizant of the potential for conflict, the U.S. Department of State released a public announcement stating that, as with other countries, travelers to Cuba should comply with the applicable Cuban immigration laws and warning that the U.S. government could do little to help persons arrested for violating those laws. Document on file with Human Rights Watch/Americas. Although Cuban exiles nonetheless planned to stage a protest off the Cuban coast on September 2, their flotilla was forced to turn back far from Cuba after one boat sank.

Elizardo Sánchez Santa Cruz, the leader of the Cuban Commission for Human Rights and National Reconciliation, has been informed that he cannot travel outside of Cuba. In June, when a group of Mexican intellectuals, including the writer Carlos Monsivais, invited Sánchez to visit Mexico to exchange opinions and experiences with them, they issued a press statement denouncing the Cuban government's refusal to allow him to leave.<sup>66</sup> Sánchez was also unable to visit Canada earlier this year, despite the invitation of an international labor rights group.

In a more general restriction on the travel right of its citizens, the Cuban government recently imposed fees totaling nearly U.S. \$1,000 for medical tests, exit permits and other prerequisites to emigration. Previously, these documents and services cost only a few dollars and could be paid for in Cuban pesos. Beginning June 1, however, the government began demanding enormously increased fees as well as requiring payment in dollars or convertible pesos (pesos worth one dollar).<sup>67</sup> With the U.S. government promising to allow the legal immigration of at least 20,000 Cubans per year, the Cuban authorities have found an easy source of foreign exchange. Although the government asserts that given the current economic crisis it should not be forced to subsidize services to prospective emigrants, the extent to which it is profiting from the desperation of some of its citizens to emigrate is unjustifiable, and constitutes a clear infringement of the internationally protected right of citizens to leave their country.

### **Other Arbitrary Detentions and Incidents of Harassment**

On November 14, 1994, the day before the visit of U.N. High Commissioner Ayala Lasso, the Cuban authorities arrested and jailed Ileana Curra Luzón, vice-president of the Nationalist Agenda Movement (Movimiento Agenda Nacionalista). Curra Luzón had previously been tried and sentenced in 1993 to three years' imprisonment for spreading enemy propaganda, but her sentence had been suspended while she appealed the underlying conviction. When the conviction was affirmed, the prosecutor told her that she would have to come in to begin serving her sentence on December 6. The authorities arrested her twenty-two days early, however. She is presently serving her sentence in the Western Women's Prison (Prisión Occidental de Mujeres).

Similarly, on November 17, 1994, Lázaro Alberto Valdés López, the president of the Máximo Gómez Human Rights Front, was arrested and imprisoned to serve a one-year sentence for illegal exit that he had accrued two years previously. He has reportedly been released.

On June 21, 1995, Nilvio Labrada Vincent, a retired lieutenant colonel of the Ministry of the Interior, was reportedly interned into a psychiatric hospital after he threw his military medals and a portrait of President Castro into the street and loudly criticized the government. He has since been released.

On July 2, 1995, Genaro Cortés of the Cuban Committee for Human Rights (CCPDH) in Cienfuegos, was arrested after state security agents searched his home. He had just returned from a three-day visit to Havana, where he had spent time with Sebastián Arcos, the vice-president of the CCPDH who was released from Ariza prison in May. Cortés had been Arcos's principal support during his stay at Ariza prison, which is located near Cienfuegos. Although he was released from detention in early September, Cortés has reportedly been charged with falsification of documents, an accusation that Arcos qualifies as "absurd" and unfounded. No trial date has been set.

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<sup>66</sup> "Mexican Intellectuals Denounce Cuban Repression of Human Rights Activists," BBC Monitoring Summ. of World Broadcasts, July 15, 1995.

<sup>67</sup> "Foreign Currency Required for Emigration Transactions," *Havana Radio Rebelde Network*, May 26, 1995, in FBIS-LAT-95-103, May 30, 1995.

In July, state security agents carried out a sweep against members of the Martiana Civic League (Liga Cívica Martiana), (LCM), a dissident youth group. The sweep began on July 8, when Miguel Angel Oliva, a Calabazar member of the LCM was arrested and detained at Villa Marista, where he remains to date. Then on July 31, state agents searched the home of Ramón Varela Sánchez, vice-president of the LCM, seizing some documents. Varela was subsequently arrested and brought to Villa Marista, where he remains to date. There are reports that Angel and Varela will be charged with sabotage.<sup>68</sup> Carlos Alberto Guzmán González and Novel Pérez Marero, also members of the LCM, were reportedly also arrested that month. No information is available as to whether they have been released.

In the past couple of years, but particularly in the past year, there has been a significant decline in the frequency and severity of “acts of repudiation”: officially sponsored protests in which a mob is assembled outside the home of a “counterrevolutionary” to shout slogans and insults, sometimes defacing or otherwise damaging property.<sup>69</sup> The most serious such incidents may involve hundreds of hostile protesters.<sup>70</sup> On August 10, the first reported act of repudiation of 1995 occurred at the Havana home of Victoria Ruíz Labrit, president of the Cuban Committee of Peaceful and Independent Opposition. A crowd of sixty to eighty persons armed with pipes and chains reportedly surrounded her home at 8:00 a.m. in order to prevent a planned meeting of dissidents. At 8:30 a.m., two officials, one from the Assembly of People’s Power and the other from the Federation of Cuban Women, came to her door and stated that they had been informed that a “counterrevolutionary” meeting was supposed to take place there. They threatened to beat Ruíz and members of her family and to smash up her house if she tried to hold the meeting.

Also on August 10, the authorities conducted a sweep against members of the Democratic Martiano Party. State security agents searched the houses of six members of the party living in the town of Artemisa—Lorenzo Pérez Núñez, Luis Alberto Lazo Borrego, Javier Márquez Borrego, Maritza Nuñez, Osmiel Pérez Abreu and Ana Julia Hernández—and then arrested them and brought them to Villa Marista. That same day, state agents also searched the home of Juan Francisco Monzón Oviedo, who lives in the town of El Mariel, and then arrested him. Of the seven arrested, the two women were released that day, but the five men were reportedly detained for at least several days.

On August 18, state security agents confiscated the fax machine of Néstor Bager, president of the APIC, and cut off his telephone. For Bager, this was the second such confiscation in less than two months.<sup>71</sup>

Other forms of harassment that occur commonly—some almost constantly—include the practice of calling activists into the headquarters of state security forces for questioning, cajoling and threatening, which usually occurs once a month to known activists; short-term detentions; attacks by anonymous thugs or collisions with vehicles in suspicious circumstances; arbitrary house searches; anonymous threatening phone calls, often at all hours of the night; constant surveillance, including telephone taps; and discriminatory firings.

Other Cubans have been held in long-term detention without trial. For example, several members of the Máximo Gómez Human Rights Front, including Antonio Guea Vigoa, Martín Izaguirre García, Eduardo Izquierdo Carmona, Nemesio Santos Alonso, Marcelino Santos Chirino, Jorge Omar Pérez Soto, Israel Cabrera Quiñones,

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<sup>68</sup> The charge of sabotage has reportedly been used spuriously to imprison peaceful political dissidents. The case of Rafael Ibarra Roque, president of the 30th of November Democratic Party, is one possible instance where the criminal law was manipulated in this way. On February 23, 1995, he was tried for sabotage and sentenced to twenty years’ imprisonment. Only four family members were allowed to attend his trial; the rest of the courtroom was filled with state security agents. Not enough is known about the facts of his case, however, to determine if the charges were justified.

<sup>69</sup> See Comisión Cubana de Derechos Humanos y Reconciliación Nacional, *Informe al Relator Especial de la Comisión de Derechos Humanos de las Naciones Unidas* (1995) (stating that in the past couple of years the practice of acts of repudiation has practically ceased).

<sup>70</sup> See, e.g., Americas Watch, *Attacks Against Independent Associations*, p. 7 (describing a March 1990 attack against the Cuban Committee for Human Rights in which hundreds participated).

<sup>71</sup> See discussion above.

Roberto Padrón Rodríguez, Orlando Gotera Perogurría and Jorge Luis Romero Hevia were reportedly held without trial from October 1993 until March 1995. The most disturbing of such cases is that of José Miranda Acosta, who has reportedly been detained for about a year without even being permitted any contact with his family.

## PRISON CONDITIONS

Cuban prison conditions violate the U.N.'s Standard Minimum Rules for the Treatment of Prisoners in several important respects.<sup>72</sup> Inmates — both political prisoners and prisoners held for common crimes — report that minimal infractions or nonviolent protests such as hunger strikes spawn retaliation in the form of beatings, confinement in harsh punishment or isolation cells, violent, arbitrary searches and confiscation of belongings, denial of medical attention, suspension of visits and transfer to prisons far from their relatives. The latter sanction causes considerable hardship for families at a time when the country is coping with severe fuel and transportation shortages.

Although the prison authorities' treatment of a recent hunger strike by seven prisoners in Boniato prison in Santiago de Cuba initially seemed to indicate significant improvements in this regard, in the end the authorities relied on repression rather than negotiation to handle the incident. The prisoners, who began a hunger strike on August 13 to demand improvements in their conditions of confinement, requested that the Catholic priest José Conrado Rodríguez mediate with the authorities on their behalf. Conrado is known for being active and outspoken on human rights topics and, in what appeared to demonstrate a new and promising flexibility in the attitude of prison authorities, he succeeded in negotiating an agreement between the two sides. With the promise of improved treatment and no reprisals, the prisoners suspended their hunger strike and were treated to a full meal. Unfortunately, the authorities immediately broke the agreement by transferring the prisoners to Kilo 7 prison in Camagüey province, far from their families.<sup>73</sup> The prisoners have since reinitiated their hunger strike.

The severe shortages that today affect all Cubans are worse in the prisons. Prisoners complained of the lack of medicines, soap, toothpaste and razor blades for shaving. Typical meals consist of lemonade or orangeade for breakfast; and small portions of broth with a little rice or casava, or just a few spoonfuls of plain white rice, for lunch and dinner. While relatives are allowed to bring food to prisoners, visits are not frequent enough to compensate for the inadequate rations, and sometimes guards keep this food. Prisoners typically lose enormous amounts of weight in prison.<sup>74</sup> Besides shortages of food and other supplies, there are also frequent complaints of overcrowding, poor hygiene, vermin and insufficient time outdoors.

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<sup>72</sup> Standard Minimum Rules for the Treatment of Prisoners, approved by the U.N. Economic and Social Council by resolutions 663 C, July 31, 1957, and 2076, May 13, 1977. Although not itself a binding agreement, the Standard Minimum Rules is recognized as offering authoritative guidance as to binding customary international law and treaty standards on the treatment of prisoners.

<sup>73</sup> Pablo Alfonso, "Párroco Denuncia Represalia con Presos en Huelga," *El Nuevo Herald*, September 1, 1995.

<sup>74</sup> The April human rights delegation to Cuba, which interviewed twenty-four political prisoners, found that they had lost an average of twenty pounds each since being incarcerated. In some cases, the loss of weight was much more dramatic. Carlos Pérez Truebas, for example, who is 1.72 meters tall (about 5'8"), went from his normal weight of 160 pounds to his present weight of 124 pounds in prison.

Conditions are often worse for political prisoners in Cuba, who may be singled out for abuse. To begin with, political prisoners are kept together with common criminals—often criminals convicted of violent offenses or those with psychological problems—exposing them to a serious risk of harm.<sup>75</sup> They also report harassment from prison authorities for their political beliefs, and continued efforts to “reeducate” them. Many political prisoners are allowed family visits only once every two months.

Among the many political prisoners that have reportedly been beaten by prison authorities during the past ten months are: Jesús Chambert Ramírez (Kilo 7 prison, beaten in March), Juan Miguel López Acosta (Kilo 7 prison, beaten early in the year by the prison guard Manzanillo), Ramón Ramos Nodarse (Guanajay prison, beaten by Lieutenant Orozco until he lost consciousness), José Antonio Soria Salinas (Guanajay prison, beaten by Lieutenant Orozco), Raúl Ayarde Herrera (Guantánamo prison, beaten in July by the prison guards Garbey, Corea and Chibas until he lost consciousness, denied medical treatment), Dania Cruz Hernández (Western Women’s Prison, beaten in January by Captain Disoduard), Marta María Vega Cabrera (Western Women’s Prison, beaten in January by prison guard Gisela Gallinat Perdomo), Ileana Curra Luzón (Manto Negro prison, beaten in early 1995); Angel Prieto Méndez, and Carlos Novoa Ponce (Guanajay prison, beaten in late spring by Sergeant Pomo); and Fidel Viera (Las Mangas prison, beaten on February 5 by an official of the Ministry of the Interior).

Lt. Nelson Castro, second in command at the Guanajay prison, has reportedly threatened to kill several political prisoners. Capt. Julio César Pavón of Las Mangas prison has also been noted for his frequent harassment of and threats against political prisoners.

A number of political prisoners have reportedly suffered from severe medical problems that were not properly treated, including Jorge Luis Ortega Palacio (sentenced to one year, three months for public disorder), who is losing his eyesight; Rubén Hoyo Ruíz (sentenced in 1990 to eight years for enemy propaganda), who suffers from cataracts in his right eye that require surgery; José Ramón Batista Pérez (sentenced to eight years for rebellion), who has heart problems; Rafael Vera Trabajo (sentenced to ten years for enemy propaganda), who has glaucoma and is losing his eyesight; José Heriberto Alfonso Aguilar (sentenced to three years for enemy propaganda), who suffers from chronic asthma and hypertension; Mario Viera González (a political dissident sentenced for “attempted illegal exit”), who at least at one point suffered from continuing severe fevers; and Edelmira Sánchez González (sentenced to seven years for contempt of authority), who suffers from coronary problems and hypertension.

The case of Dr. Omar del Pozo Marrero, one of the political prisoners interviewed by the April 1995 international delegation to Cuba, is particularly notable. Because he had lost approximately forty-four pounds during his imprisonment and was diagnosed as suffering from, among other problems, severe hypertension, del Pozo was among the handful of prisoners whose release for humanitarian reasons was requested by the delegation. While the Cuban government refused to release del Pozo, who since 1992 has been serving a fifteen-year sentence for revealing state secrets, it did promise to provide him with the necessary medical treatment. For a five week period, del Pozo was held at the Finlay Military Hospital. It has been reported to Human Rights Watch/Americas, however, that he never received adequate treatment there and has since been transferred back to a maximum security prison in Guanajay province, where he is again kept in an isolation cell in miserable conditions.

Sebastián Arcos, also interviewed by the delegation and released from imprisonment in May, has been diagnosed as suffering from cancer. The doctor who is treating Arcos in Miami, where he flew for medical treatment in September, said that Arcos’s rectal tumor has been growing for well over a year and is quite large. It would have been detected by a standard medical exam for men his age.

Alfredo Mederos Noriega, vice-president of the United Front for Liberty (*Frente Unido por la Libertad*), reportedly died in the Valle Grande prison last October 6 for lack of medical attention, having spent three years there

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<sup>75</sup> In a list of prison reform proposals given to the delegation of the April human rights mission to Cuba by Aída Rosa Jiménez, the president of the Democratic Civic Association, the first recommendation was to separate political prisoners from common prisoners. Document on file at Human Rights Watch/Americas.

for enemy propaganda. Héctor Álvarez Salcegomo, in Holguín prison for enemy propaganda, reportedly died of a heart attack on June 3, having been greatly weakened by shortages of food in the prison.

Serious and reportedly untreated outbreaks of tuberculosis have been reported this year at Kilo 7 and Canaleta prison in Camagüey.

## UNITED NATIONS COMMISSION ON HUMAN RIGHTS

In its November/December 1994 session, the U.N. Human Rights Commission's Working Group on Arbitrary Detention adopted a decision condemning the arbitrary imprisonment of ex-Gen. Patricio de la Guardia. At a 1989 trial for drug trafficking in which four of his co-defendants, including his twin brother Antonio, were condemned to death, de la Guardia was sentenced to thirty years' imprisonment. The working group found that the principle of due process was violated at this trial, which consisted only of a summary proceeding before a special military tribunal.<sup>76</sup>

The U.N. Special Rapporteur on Human Rights in Cuba, Amb. Carl-Johan Groth, released his third annual report on Cuba in January. It stated that he had found no improvement with respect to basic rights in Cuba. It specifically noted fifteen prosecutions in 1993-94 for "enemy propaganda" or similar crimes, as well as the widespread harassment of political dissidents and human rights activists. Overall, it provides an informative and even-handed analysis of the Cuban government's human rights practices. The rapporteur's recommendations should serve as a solid foundation for the Human Rights Commission to continue to press Cuba to improve its human rights record.

In March, the Human Rights Commission voted 22-8 (with 23 abstentions) in favor of a resolution condemning Cuban human rights abuses.<sup>77</sup> The resolution "regrets profoundly the numerous unanswered reports of violations of basic human rights and fundamental freedoms . . . and expresses particular concern at the prevailing intolerance for freedom of speech and assembly in Cuba." It maintains the pressure on Cuba by extending the mandate of the special rapporteur for another year.

## U.S. POLICY

### The New Immigration Agreement

Regularizing migration is a reasonable action on the part of any government. However, the text of the May 2 announcement of the new U.S.-Cuba immigration agreement, and the numerous public statements by U.S. officials which accompanied it, blurred the distinction between "illegal migration" and refugee flight. Not surprisingly, the Cuban government and press interpreted the May 2 agreement as demonstrating U.S. concurrence with Cuba's longstanding position that emigration from Cuba was "illegal." Yet under international law it is not illegal for a refugee to flee; rather, it is illegal to return a refugee to a country where he or she may be persecuted.<sup>78</sup>

Those attempting to flee an economically depressed and politically repressive country such as Cuba are likely be drawn from a broad spectrum of people, including political refugees. The fundamental issue is not whether Cubans fleeing by sea are all economic migrants or all political refugees (judgments that tend to be made on political rather than legal grounds), rather it is whether the United States is properly identifying and protecting the latter group. As

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<sup>76</sup> For a further account of the trial's gross denial of due process, see Americas Watch, *Human Rights Activists Behind Bars in Cuba* (New York: Human Rights Watch, 1989), p. 1.

<sup>77</sup> Resolution 1995/66.

<sup>78</sup> The principle of *non-refoulement* is contained in Article 33 of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, which enjoin governments from repatriating refugees to a country where they may face persecution. States, however, have no corresponding obligation to resettle refugees in their territories.

originally formulated, the procedures used by the United States to accomplish this task were seriously flawed. They have since been improved, however, and now appear generally to comply with international requirements.

It is important to note in this regard that nothing in the new agreement prevents the Cuban government from persecuting repatriated Cubans on political grounds. Under the agreement, the Cuban government promised to “ensure that no action is taken against those migrants returned to Cuba *as a consequence of their attempt to emigrate illegally.*”<sup>79</sup> The government did not, however, promise to refrain from acting against repatriates for other reasons. Indeed, a week into the new policy, National Assembly President Ricardo Alarcón was careful to point out that the agreement “does not preclude the obligation of the Cuban authorities to act against [repatriates] for reasons or crimes committed before or after the attempt [to leave the country].”<sup>80</sup>

Despite the continued possibility of political persecution, none among the first groups of Cubans repatriated in May were informed of their right to a fair hearing if they feared return to Cuba. As a result, most of them did not receive any kind of interview prior to their repatriation. Those who claimed to be refugees were told to apply for refugee status at the U.S. Interests Section in Havana, and were met at the dock by Interests Section officials who informed them about application procedures.

On May 6, 1995, thirteen Cuban rafters were rescued by a Norwegian cruise ship near the Cayman Islands and turned over to a U.S. Coast Guard cutter. The Coast Guard repatriated the thirteen on May 9 without conducting refugee status determinations or pre-screening interviews for any of them.<sup>81</sup> On May 12, the Coast Guard repatriated eleven Cuban rafters. State Department official Richard Nuccio told *The Miami Herald* that one of the Cubans presented a possible claim for refugee status, but was found by U.S. officials not to have a credible fear of persecution.<sup>82</sup> On May 14, the Coast Guard interdicted a vessel carrying twenty-four Cubans including a young woman believed to have died at sea under unknown circumstances. Two Cubans with U.S. residency aboard the vessel were brought to the United States to face smuggling charges. The others were taken to the U.S. Naval Base at Guantánamo Bay as potential witnesses to both the alleged smuggling and the death at sea.

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<sup>79</sup> White House Office of the Press Secretary, Joint Statement, May 2, 1995 (emphasis added).

<sup>80</sup> Larry Rohter, “Coast Guard Returns 13 Boat People to Cuba Under New Policy,” *New York Times*, May 10, 1995.

<sup>81</sup> Antonio Álvarez, one of the thirteen, was recently granted a refugee visa by the U.S. Interests Section and has since left Cuba. Andrés Viglucci and Cecile Betancourt, “En Miami el Primero de los Balseros Devueltos a Cuba,” *El Nuevo Herald*, Sept. 10, 1995.

<sup>82</sup> Don Bohning and Christopher Marquis, “U.S., Cuban Generals Talk at Guantánamo; 11 Rafters Returned,” *Miami Herald*, May 13, 1995.

In June, U.S. officials apparently began informing Cubans from the outset that if they had legitimate fears for their safety they would be allowed to speak confidentially with an INS representative.<sup>83</sup> However, the procedural protections afforded those claiming a fear of persecution were inadequate for the task of identifying refugees. Although it is not clear precisely what standard was used in assessing the asylum-seekers' claims, it is clear that the standard used was unduly strict. One INS official was quoted saying that Cubans had to show a credible fear of "imminent danger" of serious human rights violations.<sup>84</sup> Similarly, a State Department official said that Cubans had to show a credible fear of "serious violations of human rights that [could] not be satisfied by access to in-country processing," a standard that he described as "very high."<sup>85</sup> The underlying idea was that asylum-seekers had to demonstrate not only that they feared persecution, but also that this persecution would prevent them from safely applying for refugee status in Havana.

This standard is clearly more demanding than the international law standard defining who should be recognized as a refugee. Under international law—as well as U.S. domestic law—persecution is not limited to immediate physical abuse or imprisonment, but may take many other forms, including arbitrary detention and other tactics typically used by the Cuban authorities.<sup>86</sup> By employing a higher standard, therefore, the United States may have illegally returned political refugees to Cuba.<sup>87</sup> Even though approximately half of the eighty-one Cubans intercepted between May 2 and June 21 were interviewed by an INS officer, and many of the others were taken to the United States for medical reasons, none were exempted from repatriation based on their fear of persecution.

Fortunately, the administration has recently amended its screening procedures to bring them generally into compliance with international law.<sup>88</sup> As described to us, the main elements of the revised procedures are as follows:

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<sup>83</sup> This change was reported to Human Rights Watch/Americas in late June by the INS General Counsel's Office.

<sup>84</sup> *The Miami Herald* article quotes INS officer Russ Bergeron saying that no person who is found at sea would be granted a political asylum interview "unless he claims a genuine need for protection which can't be satisfied by the consular office in Havana." Bergeron is further quoted saying that this includes "a threat of bodily harm, or an allegation that their right to file for refugee status would be hindered in Cuba." Anne Day, "13 Refugees Returned as Policy Shifts," *Miami Herald*, May 10, 1995.

<sup>85</sup> Human Rights Watch/Americas telephone interview, May 10, 1995, with a State Department source who asked not to be identified. This source defined "serious violations" as being killed or immediately imprisoned upon return.

<sup>86</sup> In contrast, the evidentiary standard used—the "credible fear" standard—is a lesser standard than the "well founded fear" standard generally used in assessing claims of refugee status. (Under the Refugee Act of 1980 and the 1951 Convention and 1967 Protocol Relating to the Status of Refugees, a refugee is someone with a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.)

By using a modified standard for the interviews, the U.S. government could claim that the Cubans thus identified were not necessarily refugees. This is an important distinction, since refugee status triggers certain obligations on the part of the state while assistance to non-refugees is generally characterized as a "gratuitous humanitarian act."

<sup>87</sup> The United States' reliance on in-country processing also created a difficult situation for repatriated refugees since under the term's international law definition a refugee is someone outside of his country of origin. Under the U.S. procedures, nonetheless, to be eligible for refugee treatment the individual first had to renounce his or her condition as a refugee by returning home.

<sup>88</sup> Human Rights Watch was informed of the revised procedures in a letter from INS Commissioner Doris Meissner dated July 31, 1995 (hereinafter "Meissner letter"), sent in response to a letter we wrote in May expressing our concerns about the new policy. The Meissner letter did not state precisely when the amended procedures were adopted. Document on file at Human Rights Watch.



Cubans picked up at sea will be advised that they can have a confidential interview with an INS official if they have concerns about returning to Cuba. These interviews will be conducted by experienced, trained INS Asylum Pre-Screening Officers (APSOs), who will assure the Cuban interviewees that any information given will be kept confidential. The interviews will be properly translated, if needed. The APSO will determine whether the claimant has a credible fear of persecution, in keeping with U.S. standards (which mirror international standards). In assessing whether the claimant has a credible fear, the APSO will consider, among other factors, "the existence of an in-country processing program."<sup>89</sup> However, if it appears that someone who is a bona fide refugee would be returned under this standard, then his or her claim will be examined under the well-founded fear standard without reference to the existence of in-country processing. In addition, the APSO decision will be reviewed by the INS office of International Affairs and the Office of the General Counsel before the person is repatriated. We have been assured that no person found to be a refugee will be returned, despite his or her ability safely to access the in-country program.

While these procedures appear generally consistent with international standards, there are still aspects that negatively affect the fairness of the screening process. The U.S. experience in interdicting Haitians during the 1980s demonstrated certain difficulties posed by shipboard screening that should be rectified by the current procedures: at minimum, asylum-seekers must be allowed adequate time to rest and recover from the trauma of the sea voyage before they are interviewed by an APSO who has sufficient time to evaluate the claim presented, and whose decision is reviewed by a higher authority. The appeals process, currently limited to a paper review conducted in Washington, should include a second interview if warranted. The asylum-seeker should be allowed to speak to a UNHCR representative upon request, and ideally to nongovernmental experts as well. Reasonable access for independent monitoring of the screening process should also be provided. Finally, the availability of in-country refugee processing should not be considered relevant to the refugee determination, as it has no bearing on the U.S. government's obligations under the principle of *non-refoulement*. While a fair hearing aboard a ship is not impossible, land-based screening should be considered as more conducive to a fair hearing with appropriate procedural safeguards, particularly if the numbers of Cuban asylum-seekers were to increase significantly.

Besides its effect on political refugees, another important aspect of the new agreement is its provision for monitoring of repatriates by the U.S. Interests Section in Havana. Although the United States reportedly suggested that the monitoring be carried out by an independent international organization, the Cuban authorities refused this option, insisting on U.S. monitoring.<sup>90</sup> To date, Interests Section personnel appear to have been diligent in investigating reports of reprisals against repatriates. Nonetheless, the lack of independent human rights monitoring is worrisome.

While responsible monitoring may create a disincentive for reprisals, it is unlikely to act as a complete bar to them. Unsurprisingly, several cases of reprisals have been reported since the repatriations began.

Ulises Cabale and his brother César Cabale were among first group of Cubans repatriated on May 9. In a telephone interview with *The Miami Herald*, the two reported that since their return to Camagüey they had been harassed and watched by state security agents. Four other repatriates made similar statements.<sup>91</sup> However, U.S. officials in Cuba apparently visited all of the repatriates and reported no significant problems. One State Department official admitted that the repatriates were being watched, but added that the vigilance was probably to make sure that nothing happened to them (despite the fact that such vigilance is typical of the Cuban authorities' practice of intimidating suspected dissidents).<sup>92</sup>

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<sup>89</sup> Meissner letter.

<sup>90</sup> Pablo Alfonso, "EU Firme en las Sanciones Impuestas a Cuba," *Nuevo Herald*, September 10, 1995 (citing State Department official Richard Nuccio's account of the immigration negotiations).

<sup>91</sup> Armando Correa, "Cuban Rafters: 'Harassment has begun,'" *Miami Herald*, May 11, 1995.

<sup>92</sup> Human Rights Watch/Americas interview with State Department source, May 10, 1995.

On May 18, a local policeman badly beat seventeen-year-old José Acevedo, a Cuban rafter who was repatriated on May 12. The beating reportedly occurred as the policeman was arresting Acevedo for killing a pig prior to his departure (which constitutes illegal destruction of state property). Acevedo reported, however, that the policeman jeered at him for attempting to leave the country. The State Department appears to have accepted the Cuban government's explanation that the beating was a mistake caused by the fact that local police had not gotten the word that repatriates were not to be bothered. Acevedo has also reported ongoing harassment, which the Interests Section has been unable to verify after numerous contacts with him.

Other possible cases of reprisals and discrimination are a professor who was unable to return to his job because his attempt to flee made him unsuitable for direct contact with students; two people who reported excessive visits to their home of police, local CDRs, and state security agents; and a man whose son was expelled from school because the father's attempt to leave branded him as a "counterrevolutionary."

### **Policy Regarding Travel and Other Contacts**

Because of the economic embargo, most Americans are barred from traveling to Cuba. The terms of the travel ban were tightened in August 1994 in retaliation for the mass exodus from Cuba. On August 26, the administration revoked the general license for family visits to Cuba by Cuban-Americans, as well as the general license for professional research in Cuba and the general license for newsgathering—significantly reducing the number of U.S. travelers to Cuba.<sup>93</sup>

These restrictions on travel violate Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which protects freedom of expression, defined as including "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers." As Article 19 suggests, one of the key methods by which information is shared is through travel and the free exchange of ideas. In the context of Cuba-U.S. relations, the right of Americans to travel to Cuba is critical to their ability to participate fully in public debate on foreign policy matters, to share information with Cubans who are largely isolated from American viewpoints and opinions, and to return to the United States capable of informing their fellow citizens of conditions in Cuba.<sup>94</sup>

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<sup>93</sup> People seeking to travel under any of these three categories are now required to apply to the Treasury Department for a specific license. Cuban-Americans wishing to visit their family members in Cuba have to claim compelling family need, i.e., grave illness of a family member. At present, only professional full-time journalists are allowed a general license for travel to Cuba.

<sup>94</sup> An exhibition of American books that took place in Havana from February 27 to March 3 of this year—the first such exhibition since 1959—exemplified to participants the benefits of increased human contacts between the two countries. The event, sponsored by the Association of American Publishers, brought some sixty members of the U.S. publishing community, including a handful of writers, to Cuba. Equally significant, several thousand American books were displayed and, at the close of the event, donated to Cuban libraries. The exhibition was somewhat marred by repeated reminders of the Cuban government's intolerance of criticism, however. These reminders included the confiscation of Human Rights Watch/Americas Cuba reports from delegates' bags upon arrival in Havana, the immediate "disappearance" of three politically sensitive books from the exhibit (most notably, Georgie Anne Geyer's critical biography of President Castro, *Guerrilla Prince* (New York: Little, Brown, 1991) and Jorge Valls's harrowing account of being imprisoned in Cuba, *Twenty Years and Forty Days*), and restrictions on access both to the exhibit itself and, in particular, to an accompanying seminar—which was abruptly closed to several dissident Cuban writers that had been invited by members of the AAP delegation. (Nonetheless, some potentially controversial books, including several by Cuban exile authors, a copy of *Index on Censorship*, and a biography of Lech Walesa were permitted to remain on display at the exhibition.)

Members of the AAP delegation found the opportunity of actually seeing Havana and of meeting a number of Cubans to be of tremendous value. As evidenced by the participants' disparate written assessments of the Cuban situation, no one image of Cuba held sway among the delegation, but their disagreements were grounded in their direct experience. See, e.g., Jeri Laber, "Is Cuba Really Changing?," *New York Review of Books*, April 20, 1995 (the author's answer is a little bit, maybe); *Libros USA '95 - Havana, Cuba* (New York: Association of American Publishers, 1995) (forthcoming) (compilation of articles and letters stemming from the book exhibition).

With respect to the need of Americans to stay informed in order to think intelligently about Cuba-U.S. relations, restrictions on journalism are particularly irksome. Not only is journalists' travel limited, but, in addition, the embargo bars news organizations from setting up permanent news bureaus in Cuba. At present, the ban is reciprocal. Neither the United States nor Cuba permits the establishment of U.S. news bureaus in Cuba, while the United States does not permit the establishment of Cuban news bureaus in the United States.

Yet recently, in an encouraging move, the administration floated the possibility of relaxing restrictions on travel and allowing the establishment of permanent news bureaus. Under the changes being considered, academics and religious activists would be allowed a general license to travel to Cuba. Permanent news bureaus would also be authorized in Cuba, and permanent Cuban news bureaus would be permitted in the United States in exchange for the Cuban government's agreement to drop its ban on U.S. news bureaus.<sup>95</sup>

Besides these suggested revisions, there is also the possibility that the restrictive travel regulations will be struck down in court. Last year, the ban on travel to Cuba was challenged in federal district court as unconstitutional. Although the court dismissed the challenge,<sup>96</sup> the case is now on expedited appeal to the Ninth Circuit Court of Appeals.<sup>97</sup>

#### **APPENDIX: PRISONERS SERVING SENTENCES FOR "ENEMY PROPAGANDA"**

The following Cubans are among those currently imprisoned for the crime of enemy propaganda:<sup>98</sup> Rubén Hoyo Ruiz, a member of the Cuban Committee for Human Rights, imprisoned for writing a critical letter to the Secretary General of the United Nations (six-year sentence); Adriano González Marichal, imprisoned for telephoning the Cuban American National Foundation in Miami and denouncing human rights violations, and for painting slogans such as "Fidel assassin" and "liberty for political prisoners" (ten-year sentence); Pedro Bienvenido Armenteros Laza, imprisoned for writing and distributing a document critical of the government; Juan Carlos Castillo Pastó, imprisoned for distributing flyers critical of the government and painting critical slogans on the walls of public places (five-year sentence); Alexis Maestre Saborit, imprisoned for visiting various high schools for four nights in a row and painting slogans such as "religious freedom" and "no more censorship" on their walls, and while in prison, for distributing anti-government flyers to other prisoners (two sentences for a total of eight years); Domiciano Torres Roca, who was vice-president of the Democratic Civic Party, imprisoned for regularly denouncing human rights abuses to Radio Martí and other U.S. radio stations, for publishing articles critical of the Communist Party in the Miami newspaper *El Nuevo Herald*, and for painting "down with Fidel" on walls of public buildings (three-year sentence); José Ramón Rodríguez Benítez and Juan Graveran Piloto, members of the Human Rights Party of Cuba, imprisoned for painting slogans such as "down with Fidel Castro" and "long live democracy" on the walls of buildings, and for distributing pamphlets during a meeting of the Communist Party (eight-year sentences); Leonardo Coizeau Rizo, imprisoned for distributing anti-government tracts (three-year sentence); Carlos Pérez Trueba, imprisoned for writing a book—which he never published

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<sup>95</sup> Michael Dobbs, "U.S. Weighs Eased Cuba Travel Restrictions," *Washington Post*, July 6, 1995; Steven Greenhouse, "U.S. Seeking Deal with Cuba To End a 26-Year Ban on Each Other's News Bureaus," *New York Times*, July 18, 1995.

<sup>96</sup> *Freedom to Travel Campaign v. Newcomb*, No. C 94-2190(EFL), 1995 U.S. Dist. LEXIS 1397 (N.D. Ca. January 30, 1995).

<sup>97</sup> Human Rights Watch joined the American Civil Liberties Union and other groups in filing a brief *amicus curiae* (friend of the court brief) in support of the petitioners, the Freedom to Travel Campaign, in this appeal. Oral argument before the court was held on September 11.

<sup>98</sup> The executive director of Human Rights Watch/Americas, José Miguel Vivanco, visited all of the following prisoners on his recent mission to Cuba, from April 27 - May 5, 1995. (See discussion above.)

nor even finished—about the political, economic and social situation in Cuba.<sup>99</sup> Sebastián Arcos Bergnes, the vice-president of the Cuban Committee for Human Rights who was released from prison in May, had been imprisoned for collecting information regarding human rights abuses and sending it each month to the U.N. Human Rights Commission in Geneva. Agustín Figueredo Figueredo, also released in May for health reasons, had been imprisoned for distributing tracts and books hostile to the government and painting anti-government slogans on the walls of buildings (twelve-year sentence).

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<sup>99</sup> The facts of his case as described by the Cuban authorities differ. No book is mentioned; rather, the authorities state that Pérez wrote flyers calling upon the population to revolt against the government and used “offensive and insulting” phrases against the leaders of the country. *Información de las Autoridades Cubanas*.

Other Cubans currently imprisoned for the crime of enemy propaganda include:<sup>100</sup> Agustín Arce López (sentenced to seven years); Luis Gustavo Domínguez Gutiérrez (sentenced in 1993 to seven years); Alberto Aguilera Guevara (ten year sentence),<sup>101</sup> Angel Prieto Méndez (ten year sentence for giving an interview to *France-Press*), Nelson Duarte Montalvo, Salvador Reyes Peña (seven year sentence), Rolando Cabrera Torres, Ernesto Daniel Planas Tamayo, Carlos Julio Gato Casal (four year sentence), Orlando Canto Capetillo (three year sentence), Antonio Boza Segura (three year sentence), José Antonio Carrasco Velar (seven year sentence), René León Alemán (six year sentence),<sup>102</sup> Nelson López Novegil (six year sentence), José Tomas Alvaríño Pérez (six year sentence); Armando Alonso Romero (twelve year sentence),<sup>103</sup> Osmani Pelegrin (seven year sentence),<sup>104</sup> Eddy Emilio González Mateos (six year sentence), Ileana Curra Luzón (three year sentence), Jesús Chambert Ramírez (sentenced in 1991 to ten years), María Viera González (three year sentence),<sup>105</sup> and Ciénaga de Zapata (sentenced in 1992 to six years).

## ACKNOWLEDGEMENTS

This report was written by Joanne Mariner, Orville Schell Fellow with Human Rights Watch/Americas; the section on refugee policy was written by Gretta Tovar Siebentritt, research associate with Human Rights Watch/Americas. It is based, in part, on information gathered in Cuba in April 1995 by an international delegation that included José Miguel Vivanco, executive director of Human Rights Watch/Americas. Interviews with Cuban government officials and political prisoners were conducted by José Miguel Vivanco. Paul Paz y Miño, associate with Human Rights Watch/Americas, provided production assistance. It is the twelfth report on Cuba published by Human Rights Watch since 1986.

Human Rights Watch/Americas, which has never been allowed formally by the Cuban government to conduct the kind of fact-finding investigation it undertakes elsewhere in the region, is grateful to the many individuals and organizations that document human rights violations in Cuba under very difficult circumstances. We are indebted to the Cuba-based Cuban Commission for Human Rights and National Reconciliation, Cuban Committee for Human Rights, and Cuban Human Rights Party; the U.S.-based Human Rights in Cuba, and Information Bureau of Human Rights Movements in Cuba; as well as to many individuals too numerous to mention. We also thank the Jesuit Refugee Service/USA for its substantial support of our research on refugee issues.

### *Human Rights Watch/Americas*

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. The staff includes Kenneth Roth, executive director; Cynthia Brown, program director; Holly J. Burkhalter, advocacy director; Robert Kimzey, publications director; Jeri Laber, special advisor; Gara LaMarche, associate director; Lotte Leicht, Brussels office director; Juan Méndez, general counsel; Susan Osnos, communications director; Jemera Rone, counsel; Joanna Weschler, United Nations representative; and Derrick Wong, finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. José

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<sup>100</sup> The following prisoners include those named by prisoners visited during the April mission to Cuba and those whom Human Rights Watch/Americas has previously been tracking.

<sup>101</sup> Also convicted of contempt of authority and attempt.

<sup>102</sup> León Alemán, López Novegil and Alvaríño Pérez were also convicted of rebellion.

<sup>103</sup> Also convicted of attempt against state security.

<sup>104</sup> Also convicted of sabotage.

<sup>105</sup> Also convicted of illegal exit.

Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro is the Brazil director; Joel Solomon is the research director; Sebastian Brett, Sarah DeCosse, Robin Kirk, and Gretta Tovar Siebentritt are research associates; Joanne Mariner is the Orville Schell Fellow; Paul Paz y Miño and Steve Hernández are associates. Peter D. Bell is the chair of the advisory committee and Stephen L. Kass and Marina Pinto Kaufman are vice chairs.