

### Cuba: new rules to keep muzzling citizens and journalists

#### Executive summary

Cuba, along with its allies Venezuela and Nicaragua, is among the countries posing the most obstacles to freedom of speech and press in the Americas, according to the Chapultepec Index. Cuba is rated at 6.2 points out of a maximum of 100, only over Venezuela. In the study period, since spring 2019, the government sponsored a constitutional reform vesting it with new means to muzzle the press and persecute journalists and dissidents.

#### Introduction

The island of Cuba, in reason of its single-party and state-owned media system, is one of the ten countries with the highest levels of censorship in the world, according to the Committee to Protect Journalists (Committee to Protect Journalists, 2019). For six decades, the Cuban government has kept the press muzzled and freedom of expression limited "in accordance with the ends of the socialist society" (Miembros de la Comisión Redactora, 2019). Once the constitution was reformed in 2019 to suit a new government that consolidated the transition of power without free elections, the Cuban press has been subjected to a new onslaught from high-ranking officials.

The new Magna Carta (Miembros de la Comisión Redactora, 2019), enacted in April 2019, establishes that in no event will the fundamental media be privately owned. The Communist Party, solely authorized by statute, is the owner of all media in the hands of the State for all practical purposes.

In July 2019, and particularly in 2020 with the spread of the coronavirus pandemic, the Cuban government issued and enforced Decree Law 370 (Decreto Ley 370) (Cael, 2019), which establishes as an offense, in a vague and imprecise manner, the action of "disseminating, over public data transmission networks, information contrary to social interest, morals, decency, and the honor of persons".

Since this decree was issued, over 30 individuals have been subjected to interrogations, threats, and seizures for voicing their opinions on social media, and over 30 have been fined with 3,000 Cuban pesos, (\$120), three times the average salary on the island. Various independent media and Human Rights organizations have condemned this decree law.

#### Analysis of results

Between May 1, 2019 and April 30, 2020, the exercise of journalism in Cuba continued to be persecuted and harassed by those in power according to multiple reports from international organizations (SIP, 2019).

From positions of power, attacks on independent journalists, blockade of news sites critical of the regime, arbitrary detentions and arrests continued.

## **Executive Environment**

The executive environment is the worst rated by the experts surveyed with a very strong influence, at 8.08 out of a maximum of 10, on situations discouraging free speech. Those inquired agree that the executive environment is the main obstacle to freedom of expression and the press in Cuba.

Under the government of Miguel Díaz-Canel (2018-present), freedom of the press has regressed (Redacción Radio Televisión Martí, 2020a) in Cuba with a Constitution that muzzles and considers freedom of expression and the independent press criminal behavior.

Díaz-Canel has strengthened the power of the Communist Party over the media and made access to public information even more difficult thereby prosecuting the exercise of independent journalism. During the coronavirus pandemic, the government has used the public media to stir up hatred towards independent journalists.

From official government accounts and those of public officials on social media, smear tactics continue. There is also evidence (Gámez, 2020a) of an orchestrated government operation to influence public opinion by using bots and trolls.

## **Judicial Environment**

Of the three environments, that is, the branches of government, the Judiciary appears to have the least impact on situations unfavorable to free speech in Cuba. This result does not mean that it does not affect the exercise of such freedom. The influence of this environment was rated at 6.27 out of 10 possible ones by the experts inquired, within the range of strong influence.

In Cuba, laws and court proceedings serve to perpetuate the power of the Communist Party over the population and curtail any scintilla of criticism towards the regime. The most concerning incidents have been the imprisonment of journalist Roberto de Jesús Quiñones (Diario de Cuba, DDC, 2020), which took place in September 2019, while he was covering a trial in Guantánamo, additionally, the enactment of Decree 370, which restricts the exercise of free speech, as we will review below.

Quiñones (Quiñones, 2019) was sentenced to one year in prison for the alleged crime of resistance and disobedience in reason of covering a trial for the Cubanet agency.

During this period under analysis, travel ban measures, raids in journalists' homes, confiscation of devices used for work purposes, and house arrest of newsmen have been witnessed.

## **Legislative environment**

The Legislative environment was rated as strongly influential, at 7.03 out of a maximum of 10, on the situation of lack of freedom of expression in Cuba. Following the issuing of Decree Law 370 regarding the digitization of society on the island, in force since July 4, 2019, fines levied on dozens of journalists to prevent them from sharing content critical of the regime on social media have been constant during this period.

Although a series of bills are being drafted in the country as the necessary regulatory framework emanating from the new constitution, it should be noted that the Parliament adopts a submissive position towards the dictates of the Executive. In the latest months, there has been an attack against citizens and private businesses, even showing hundreds of allegedly criminal cases on TV thereby violating essential principles of presumption of innocence and journalistic ethics.

The government has stated that it is considering the enactment of a Media Law (Ley de Medios), which would set the legal framework for publications on the island. Journalists fear that such a law would further restrict the few spaces for critical voices.

## **Realm A: Cuban citizens do not have the right to express themselves freely or to be informed**

The government of Miguel Díaz-Canel has intensified persecution of independent journalists and hate speech on social media and state-owned media. During the study period, at least 245 activists and independent journalists have been banned from traveling overseas.

The actions regarding the sub-realms of information flow and free speech were rated respectively at 1 and 0 points out of 11 and 12 possible, in reason of the appalling conditions to exercise these freedoms on the island. In the midst of an economic crisis, the government has forbidden citizens from taking photos or videos of the rows or empty shelves in stores. It has also prohibited cooperating with independent media, under penalty of fine (Redacción, 2020).

Cuban law makes it impossible for a person subject to a penalty or undergoing criminal proceedings to exit the country. The government uses the vague term of "public interest reasons" (Oppenheimer, 2020) to punish independent journalists and activists, preventing them from traveling abroad to take courses or for leisure (Suárez, 2020).

The government has blacklisted" (Huerga, 2020) media outlets which Cubans are not allowed to follow on social media. Meanwhile, last year, the presence of digital mercenaries, known as "cyber-spin doctors" (*ciberclarías*) (Gámez, 2020a) who seek to steer the public opinion favorably towards the regime on the Internet, has increased.

The state has ordered that citizens respond to what it considers attacks on the socialist system through social media and uses its propaganda machine to quell criticism on sensitive issues such as the commissioning of physicians overseas, considered by several NGOs as a form of forced labor (Diario de las Américas, 2018).

Therefore, unsurprisingly, Cuba has been rated as a society with no free speech, at 1 out of 23 points possible in this realm.

### **Realm B: Exercise of journalism:**

Over the past year, the government has persisted in its practice of holding activists and independent journalists at home when officials seek to prevent them from going out and cover events. Journalists such as Luz Escobar (CubitaNow, 2019), from *14ymedio* (loosely, 14 and ½ media); Mónica Baró (Chirinos, 2020), from *El Estornudo* (The Sneeze); Camila Acosta, and Iliana Hernández (Redacción de CiberCuba, 2020), among other reporters, have denounced being put under house arrest multiple times.

Cuba, through its state-owned telephone company, Etecsa, keeps all sites critical of the government, such as *Diario de Cuba* (Cuba Daily), *Cubanet*, *14ymedio*, *Radio Martí* and *Televisión Martí*, *Cibercuba*, *Cubanos por el Mundo* (Cubans all over the World), *El Estornudo*, *Tremenda Nota* (Some Big News), and *ADNCuba* among others, blocked. It also cuts off mobile data service to journalists in order to prevent whistleblowing on social media.

The exercise of journalism in Cuba is limited by statutory restrictions on achieving newsperson status. The Union of Journalists and Writers of Cuba (Unión de Periodistas y Escritores de Cuba), an official body to control journalists, establishes that those who obtain, among other requirements, a certificate of journalistic practice from the management of a media outlet for which they work shall be recognized as such within the framework of said official union (Unión de Periodistas de Cuba, 2019).

Independent journalists are often threatened with prosecution for "misappropriation of legal capacity" (Inter-American Commission on Human Rights, 2018), a figure devised by the regime to muzzle the independent press. Also in force is Law 88 (Ley 88), or the Gag Law ([Ley Mordaza] officially, on the Protection of Cuba's National Independence and Economy [Protección de la Independencia Nacional y la Economía de Cuba]), which allows holding journalists and activists over 10 years on charges of collaborating with the United States or practicing journalism in the interests of the Helms-Burton Act.

The impossibility of practicing independent journalism from a legal standpoint adds to the long list of difficulties that make the profession a dangerous job, with consequences ranging from social disrepute, by means of government media campaigns, to prison.

Cuba's Criminal Code offers the government a variety of legal provisions to suppress dissent and punish those who are openly critical of the official ideology.

In Cuba, the state denies access to public information, manipulates government statistics (Rallo, 2018) and prevents independent journalists from obtaining statements from official sources. Of the 10 possible points, the experts rated this item at 1.60.

Cuban journalists often suffer disruptions in their phone and data lines. Their email is also censored by means of keywords. Consequently, emails or SMS texts running on island-based servers may never reach their destination (Sánchez y Escobar, 2016).

### **Realm C: Violence and impunity**

This is one of the worst rated realms in Cuba, where journalists fear being harassed or imprisoned every day for publishing critical content. The experts scored this realm with 0 out of 42 for the reasons below:

The Criminal Code (Committee to Protect Journalist, 2016) defines three forms of defamation: libel, slander, and contempt for authority. In Cuba, it is a crime punishable by up to three years in prison to publish any criticism of the country's "heroes or martyrs," as well as of the nation's high-ranking officials.

Criminal Code Article 103 provides for penalties of up to 15 years' imprisonment for involvement in "enemy propaganda," which includes collaborating with news outlets considered hostile to the Revolution by the government. Charges of rebellion, pre-criminal social endangerment, unlawful liaisons, resistance, and espionage are some of those faced by Cuban newsmen last year (Diario de Cuba, 2019).

Cuba has enhanced its control over the media agenda in the wake of the economic and legitimacy crisis faced by the regime, undergoing a generational change in its leadership. During this period, propaganda has intensified and any dissent is deemed as complicity with the "enemy" in an increasingly evident besieged city mindset.

With one journalist in prison and dozens of journalists banned from leaving the country, authorities act in total impunity. The government frequently makes intimidating, stigmatizing, and hate statements against journalists whom it accuses of being paid by the United States. By late 2019, the official Union of Journalists and Writers of Cuba and ruler Díaz-Canel attacked the Press and Society Institute (Instituto de Prensa y Sociedad), which they accused of being involved in an "international conspiracy" of counterrevolution (Cubonet, 2019).

On the other hand, in Cuba there are no laws to protect the exercise of journalism. Furthermore, there are not special categories of hate crimes against members of the press or bans on the statute of limitations thereof.

### **Realm D: The Communist Party is the sole owner of all the media in Cuba**

True to its Soviet model whereby the communist State claims the right to suppress all dissent, the Cuban government eliminated freedom of the press early on. In its latest constitutional reform, the article regarding the media barely changed to include non-mainstream outlets emerged during the so-called digital spring.

The experts inquired agree that Cuba cannot be considered a State that respects freedom of expression and press, and rated this item at 3.6 out of 25 points possible.

The Communist Party and its affiliates hold power over national-scope media and set a political propaganda and disinformation agenda (Sánchez, 2019). The alternative media that escape the power of the State are silenced by means of digital blockades (Salomón, 2017) and siege on journalists, thereby forced to accept the guidelines of the regime (Cubanet, 2017).

Cuba keeps a strict censorship against newspapers critical of the government, which citizens cannot access on the networks of the state communications monopoly. It also restricts the credentials of press agencies and openly or covertly threatens their stay in the country in case of critical reports.

In the summer of 2020, EFE news agency correspondent Lorena Cantó was publicly threatened by high-ranking officials of the Foreign Affairs Ministry (Ministerio de Relaciones Exteriores) on Twitter, after she published that State Security agents were surveilling the houses of independent journalists and preventing them from going out (Redacción Radio Televisión Martí, 2020b).

Cuba has two national newspapers, *Granma* and *Juventud Rebelde* (Rebel Youth), as well as a weekly, *Trabajadores* (Workers). All are property of the Communist Party, which establishes their ideological policy. As with the rest of the media – radio, press, and web sites, their objective is to make government propaganda, not journalism. The government subsidizes these propaganda-driven outlets, but does not offer any support to independent media. Instead, it persecutes the sources of funding for non-official press and considers it enemy agencies.

## Conclusions

Currently, Cuba remains one of the most difficult and dangerous places to practice journalism in the Western Hemisphere. This last year, arrests, harassment, residential raids, fines, and bans on traveling abroad were the credentials earned by independent journalists.

The island has forged alliances with friendly autocratic governments, such as those of Nicolas Maduro and Daniel Ortega, to quell any criticism about such regimes and coordinate strategies to control online chatter regarding their administrations.

With a statutory framework tailored to persecute and harass critical journalism, the government has in its hands the tools to imprison or destroy the character of any newsperson who dares to confront the regime.

During the review period, conditions for exercising freedom of expression and the press have worsened in the wake of the regime's internal crisis and the coronavirus pandemic, which have been used to increase persecution of independent journalism.

In the upcoming Chapultepec Index, the trend of perceptions on free speech in Cuba could continue to decline. After the period under analysis, the president has



labeled independent journalists as "mercenaries" (Gámez, 2020b). On the Plaza de la Revolución (Revolution Square), ruler Miguel Díaz-Canel used this adjective to describe (Periódico Cubano, 2020) the media that dared to reveal that the government was planning to open stores selling on US dollars throughout the island to get hard currency. The perspectives seem to be negative.

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