

Cuba: New criminal code is a chilling prospect for 2023 and beyond

Cuba's new Penal Code, which was approved in May but came into force on 1 December, risks further entrenching long-standing limitations on freedom of expression and assembly and is a chilling prospect for independent journalists, activists, and anyone critical of the authorities, said Amnesty International today.

“Over many decades, the Cuban authorities have consistently used the criminal law — or the threat of it — to silence dissent. The new Criminal Code contains a suite of chilling provisions that give the authorities even greater powers to continue smothering freedom of expression and assembly in 2023 and beyond,” said Erika Guevara-Rosas, Americas director at Amnesty International.

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Cuba's new 141-page Penal Code replaces the previous one, which dates back to 1987, and contains a number of new and old provisions that are concerning for human rights. It takes effect at a time when many hundreds remain in prison for protesting in [July 2021](#), and after waves of protests in October this year were also [repressed](#).

Here are five alarming aspects of the new Penal Code:

1. Many provisions of the criminal code that have been used to silence and imprison activists for decades remain

Following the crackdown on protests in July 2021, Amnesty International named six prisoners of conscience — just a few emblematic cases that represent only a tiny fraction of the total number of people who likely deserve the designation. Three of those prisoners of conscience remain imprisoned, while the others, according to the information available to Amnesty International, were forced into exile by the authorities.

All of Amnesty International's prisoners of conscience, and many hundreds of others criminalized in the context of protests, were charged under several provisions of the Penal Code that have historically been used to silence dissent. These include “public disorder,” “resistance,” and “contempt.” For example, the artist [Luis Manuel Otero Alcántara](#) was convicted of “public disorder,” “contempt” and “insulting national symbols.” The leader of Cuba's unofficial political opposition group, [José Daniel Ferrer García](#), who has frequently been held with limited access to the outside world since his detention in July 2021, was charged with “public disorder.”

All these provisions remain in the new Criminal Code, with some changes to the wording, but with increased minimal penalties. For example, “contempt”, “public disorder”, and “resistance” now carry minimum penalties of six months in prison to a year and/or a fine, compared with a minimum of three months to a year in prison and/or a fine under the previous penal code. Similarly, “insulting national symbols”, which includes defiling or other acts that show contempt for the flag or national anthem, now includes a penalty of imprisonment for two to five years or a large fine or both, compared with a penalty of three months to a year or a fine under the previous criminal code.

In a context where the judiciary continues to be neither independent nor impartial and allows criminal proceedings to be brought against those critical of the government as a mechanism to prevent, deter or punish them from expressing such views, this could result in human rights activists or critical actors being imprisoned for even longer periods of time.

Additionally, Amnesty International believes that public officials should tolerate more criticism than private individuals. The use of criminal defamation laws with the purpose or effect of inhibiting legitimate criticism of government or public officials violates the right to freedom of expression. Amnesty International also opposes laws prohibiting insult or disrespect of heads of state or public figures, the military or other public institutions or flags or symbols (such as lèse-majesté and desacato laws). Amnesty International opposes laws criminalizing defamation, whether of public figures or private individuals, which should be treated as a matter for civil litigation.

2. The new Penal Code penalizes anyone who “endangers the constitutional order and the normal functioning” of the government

Article 120.1 of the new law allows anyone who “endangers the constitutional order and normal functioning of the State and the Cuban government” to be punished with imprisoned from four to 10 years.

According to international human rights law, the right to freedom of expression can only be restricted in very limited circumstances. Any restrictions must meet all elements of a strict three-part test: they must be provided by law, necessary and proportionate for the purpose of protecting national security, public order, or public health or morals, or the rights or reputations of others. Additionally, to prevent abusive impositions of restrictions, there must be an effective appeal process in place to an independent body, or judicial review. Vaguely worded provisions, such as “endangering the constitutional order” and “normal functioning of the State and the Cuban government” are incompatible with international standards and laws on the right to freedom of expression.

3. It criminalizes receipt of funding, further stifling independent journalists and activists

Article 143 of the new criminal code stands to further stifle the ability of civil society organizations, activists, and independent journalists to operate in the country, by prohibiting any receipt or use of finances that are deemed to “fund activities against the Cuban state and its constitutional order.” Anyone found guilty of being in possession of funds deemed to be used in this way faces a punishment of four to 10 years in prison.

Under international human rights law, the criminalization of human rights defenders based on receiving foreign funding is prohibited. Such restrictions on foreign funding are contrary to the right of association as they constitute an impediment for human rights defenders to perform their duties, as funding is an essential tool for the existence and effective operation of any association.

This new provision is already creating a chilling effect on independent journalists, who according to the NGO Article 19, have been [pressured to resign](#) ahead of the new penal code coming into effect.

4. It severely limits freedom of expression online

For the first time, Cuba's new penal code explicitly allows the authorities to severely limit freedom of expression on social media and creates a range of vaguely worded offences related to "telecommunications, information and communication technologies" which in a context where freedom of expression has historically been squashed by the authorities, risk being abused.

Additionally, under the new law (Article 391.1) anyone who knowingly shares "fake information" (*hechos falsos*) can face six months to two years in prison or a fine, or both, and is subject to higher penalties, among other things, if the information is shared on social media or in online or offline media. Similarly, anyone who intentionally "offends another person in their honor", either in writing or drawing or through acts or gestures, can also face six months to a year in prison or a fine, or both. This offence is also considered aggravated if the information is shared on social media.

According to international human rights law, vague and overly broadly worded laws, for example, which prohibit spreading "fake information", or which penalize a person for offending someone's "honor", do not meet the three-part test described above and are incompatible with the right to freedom of expression.

5. The new penal code retains the death penalty for 23 different crimes

As most countries in the world move towards abolition of [the death penalty](#), Cuba's new penal code moves against that trend by retaining the death penalty for severe crimes.

The death penalty is the ultimate cruel, inhuman and degrading punishment. Amnesty International opposes the death penalty in all cases without exception — regardless of who is accused, the nature or circumstances of the crime, guilt or innocence, or method of execution.

"As we approach the end of 2022, hundreds of Cubans remain in prison for peacefully expressing their beliefs, protest continues to be repressed, and we are seeing one of the biggest waves of forced migration out of Cuba in recent history, as people seek to build new lives with greater freedom overseas," said Erika Guevara-Rosas. "We will be watching the authorities carefully in 2023 and calling on the international community to condemn in the strongest terms abuses of the criminal law to silence dissent."

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Artist Luis Manuel Otero Alcántara was convicted of "public disorder", "contempt" and "insulting national symbols". Amnesty International continues to campaign for Luis Manuel's release and to defend the rights of many others who have been criminalized for being critical of the Cuban authorities.

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