

PRISONERS DEFENDERS™

ON THE EVE OF THE CUBAN 15N THE UNITED NATIONS DELIVERS A STRONG LEGAL OPINION

UN URGES THE CUBAN GOVERNMENT TO REFRAIN FROM ADOPTING AND ENFORCING LAWS RESTRICTING THE RIGHTS TO FREE EXPRESSION, ASSEMBLY, ASSOCIATION AND INTERNET ACCESS

Three UN Special Rapporteurships, on freedom of expression, freedom of assembly and association, and human rights defenders, **have just issued a letter to the Government of Cuba**, dated 3 weeks ago, on 20 October 2021, in which they have expressed themselves **forcefully** on the legislation on freedom of expression, association and assembly in Cuba and, in particular, Decree Law 35 and its related norms.

Barely a month after the peaceful demonstrations of 11 July, the Cuban government further restricted by law the Cuban people's rights to freedom of expression, assembly and association, as well as access to the Internet.

In Decree Law No. 35 "on telecommunications, information and communication technologies and the use of the radioelectric spectrum", the government considers as "cybersecurity incidents" cases of a heterogeneous nature, from virus attacks and "electrical failures" to the possibility of using the networks to call for a march, criticise the government or call for a change of system. Thus, it considers as cybersecurity incidents the "dissemination of false news, offensive messages, defamation with an impact on the prestige of the country", or the dissemination of "content that undermines the constitutional, social and economic precepts of the State, incites demonstrations or other acts that alter public order" or "seeks to alter public order or promote social indiscipline".

While government's media such as Cubadebate publicised a month after 11 July the words of the Vice-Minister of Communications, Ernesto Rodríguez Hernández, about Decree Law 35, defining it as "the highest-ranking regulation approved in Cuba on information and communications technologies" and assuring that it seeks to offer what they define as "an ethical and good internet for the population", **the UN describes Decree Law 35 as incompatible with the Universal Declaration of Human Rights**, as it allows it to be used to restrict freedom of expression, peaceful assembly and association, as established by articles 19 and 20 of the Declaration, which "is worrying" according to the UN Rapporteurs.

For the UN, the law has "a frightening effect on the work of journalists and human rights defenders".

[1] Annex II, Resolution 105/21: <https://drive.google.com/open?id=1pCwBb0cZrYtH1eduUOL-ZWqgVc6mHqli>

[1] CubaDebate - "Minister of Communications: We are committed to a fair and sustainable digital society that contributes to the country's development": <http://www.cubadebate.cu/noticias/2021/08/17/ministra-de-comunicaciones-apostamos-por-una-sociedad-digital-justa-sostenible-y-que-aporte-al-desarrollo-de-la-economia-video/#anexo-1605467>

In the UN's view, States should not limit access to the internet as a means of impeding their citizens' free access to information, as this "threatens to destroy the space in which civil society and human rights defenders can collectively promote or defend an issue of common concern".

The UN document notes that the Cuban government has established penalties of four years' imprisonment (Articles 103.1 and 115 of the Penal Code) for disseminating "false news or malicious predictions" that cause, for example, "discontent among the population" or "endanger the prestige or credit of the Cuban state or its good relations with another state", which in the opinion of the UN does not constitute "a legitimate objective for restricting freedom of expression".

It also indicates that "the above bans could have serious consequences for the general public, for investigative journalists and for human rights defenders who report on human rights violations and help hold the government accountable".

Moreover, it explains that "it is worrying that service providers are empowered to interrupt telephone or internet access without judicial analysis and supervision to interpret the publication of "information that is false, offensive or detrimental to human dignity" or "public morality and respect for public order".

The UN Rapporteurs state that resolution 105/2021 "empowers the government to carry out constant monitoring of the content that Cubans share on social networks and the Internet", content which, as we have seen, is punishable by 4 years imprisonment in the Penal Code, and that the monitoring and arbitrary interruption of services "can prevent journalists and human rights defenders from freely reporting on events and human rights violations occurring in Cuba".

Therefore, laws analysed by the international body would empower the personnel designated by the Cuban government to monitor and suspend internet access to any user without the slightest judicial control, so the Rapporteurships request its modification, refraining from applying the decree in question and urge the Cuban government to eliminate all the limitations contained in the legislation.

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