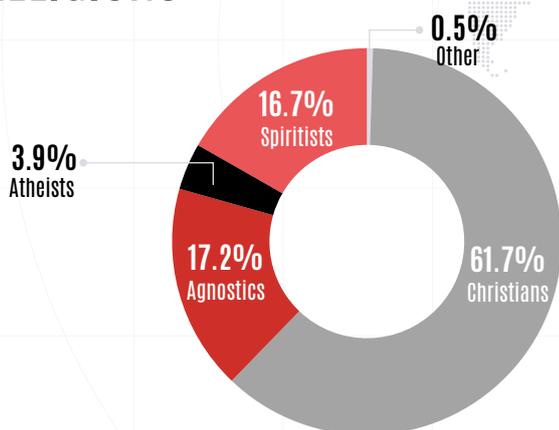




CUBA

RELIGIONS



LEGAL FRAMEWORK ON FREEDOM OF RELIGION AND ACTUAL APPLICATION

On 10th April 2019, a new constitution was promulgated in Cuba.¹ In Article 15, it says: “The State recognizes, respects, and guarantees religious liberty.” At the same time, for the first time since the 1959 Revolution, the state is explicitly defined as “secular”. Thus, in the Republic of Cuba, “religious institutions and fraternal associations are separate from the State and they all have the same rights and duties.” Article 15 also ensures that “Distinct beliefs and religions enjoy equal consideration.”

Article 42 establishes that “All people are equal before the law, receive the same protection and treatment from the authorities, and enjoy the same rights, liberties, and opportunities without any discrimination for reasons” such as “religious belief”. Any violation will be “sanctioned by law.”

Article 57 recognises everyone’s right “to profess or not profess their religious beliefs, to change them, and to practice the religion of their choice with the required respect to other beliefs and in accordance with the law.”

However, Article 5 presents the Communist Party of Cuba as “the superior driving political force of the society and the State”, and describes it as “unique, [. . .] Marxist-Leninist,”

inspired by José Martí and Fidel Castro, the “vanguard” that “organizes and orients the communal forces towards the construction of socialism and its progress toward a communist society.”

In practice, this article subordinates many activities associated with religious freedom to the state and goes against the third dimension of the fundamental right as defined by Article 18 of the United Nations Universal Declaration of Human Rights, which includes “the right to freedom of thought, conscience and religion,” as well as a person’s right “to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”²

According to the new constitution, the Communist Party of Cuba continues to maintain total control of these aspects through the Ideological Department, which oversees the Office of Religious Affairs.

In a statement on the new constitution, published on 2nd February 2019, during the debate prior to the vote to adopt it, the Catholic Bishops’ Conference of Cuba described the fundamental problem of religious practice in Cuba: “It is not the simple freedom to hold religious beliefs but the freedom of each person to live according to their faith and to express

it publicly.”³

For the Catholic bishops, the constitutional text is missing “the legal recognition of the Church and its own identity and mission, including the right to communicate its moral teachings according to the Gospel; to have regular access to communication media; to teach and evangelise freely; to erect its own buildings; to acquire and possess its own assets for its own activities; to associate freely for purposes that are not exclusively religious, like education, culture, health and charity work.”⁴

Cuba’s Evangelical Churches also presented their own proposals to amend some of the articles of the draft constitution.⁵

Another reason why religious practice in Cuba is restricted is closely related to the fact that ecclesiastical and religious associations are expressly prevented from registering with the Ministry of Justice’s National Association Registry, as indicated in Article 2 of the Associations Law (No. 54) of 1985. Through this registry, the Ministry regulates “legal issues related to ecclesiastical or religious institutions and those based on the religious creed of its members”.⁶

The transitional provisions of the 1985 Associations Law stipulated that a future “Law on Religion regulating their activities”⁷ would be adopted; however, this has not happened yet. Religious organisations continue to depend on the same Associations Law. According to certain reports from Cuba, the Law on Religion is expected to be on the agenda of the 2023-2028 legislature.⁸

Article 206, Chapter VI of the 1987 Cuban Penal Code says that anyone who “abuses freedom of worship as guaranteed by the Constitution,” which is part of the right to freedom of conscience, “shall be punished with deprivation of their freedom for a period of three months to one year”. This applies to anyone who “opposes religious beliefs to educational goals, the duty to work, [and] the armed defence of the Nation”.⁹

Article 208 (1), Chapter VIII on Associations, Meetings and Unlawful Demonstrations, of the Penal Code, warns that anyone who belongs to or is affiliated with “an association that is not listed in the appropriate registry” can be punished with “deprivation of their freedom for a period of one to three months”. Similarly, Article 209 stipulates that participation in meetings or protests held by this type of association will be sanctioned by the “deprivation of freedom for a period of one to three months”.¹⁰

The Office of Religious Affairs of the Central Committee of

the Communist Party administers the different aspects of religious life: it approves or denies visits by foreigners to religious associations; authorises the construction, repair or acquisition of places of worship; grants permits to perform public religious services; oversees the importation of religious literature, etc.

Rulings 43 and 46 of February 2005, published in the Official Gazette (No. 8, April 2005), regulate and restrict the use of places of worship. The first one requires that, in case of repairs (even if they are minor), extensions and new construction, religious organisations must obtain prior government authorisation. The second one lays down the guidelines to apply for authorised religious worship in private homes.¹¹

An organisation can be denied legal recognition if it is determined that it duplicates the activities of another registered group. Once recognised, religious entities have to request authorisation from the Office of Religious Affairs to carry out their activities.

INCIDENTS AND DEVELOPMENTS

In the period under review (15th June 2018 to 15th November 2020), most reported incidents were due to offences related to the aforementioned legal vacuum or to the shortcomings of the constitution itself, since it subordinates everything – religious freedom as well as freedom of expression and conscience¹² – to the building of socialism and to progress towards a communist society under the leadership of a Marxist-Leninist party.

In light of Article 5 of the constitution, where it is stated that the State organizes every aspect of public life (see above), the lack of the third dimension of religious freedom in Cuba (the right to manifest one’s religion alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance) is reflected in many situations. One case involves Pastor Ramón Rigal and his family, who were jailed for educating their children at home, which is expressly prohibited.¹³

Other incidents are the result of the proliferation of independent Churches and new religious groups, usually associated with Protestant or Evangelical groups. Since many of them do not have legal recognition, nor enjoy the rights of association and assembly, and are not allowed to buy real estate, their religious practice is much more limited compared to groups who are registered.¹⁴ Some of these

groups choose to join independent civil society organisations, some of them political in nature, or are backed by US associations.¹⁵

The Council of Churches of Cuba, a fellowship of Christian Churches, ecumenical movements and other Christian organisations denounced a US campaign against Cuba through its reports on religious freedom.¹⁶

In certain cases, the main issue was the great arbitrariness with which the government or its representatives apply the law to practising believers or individuals in order to intimidate and frighten them.¹⁷ It is hard to verify if laws are applied arbitrarily or what the real motives are for the way they are applied.

After years of litigation, the authorities notified Evangelical Pastor Osmel Pozo Serrano on 20th April 2019 that they would be expropriating the building in Manzanillo, Granma province, where his congregation, the Church of the Nazareno, had been meeting for 20 years.¹⁸

On 29th December 2019, the Municipal Prosecutor's Office in Nuevitás, Camagüey province, ruled against a couple, Mr and Mrs Tejada and Yeliney Lescaille, threatening to jail them for a year if they did remove their sons' kippah before they came to school.¹⁹

The UN, together with other rapporteurs and the Working Group on Arbitrary Detention, have reported a number of incidents,²⁰ which are closely related to Article 5 of the constitution. One of these incidents elicited a letter dated 13th May 2020 to the Cuban government, centred "the alleged continued harassment inflicted upon Rev Alain Toledano, pastor of the Cuban Apostolic Movement, his family and the members of his congregation, who constitute a religious minority in Cuba."²¹

Without government authorisation, it is also impossible to meet in private homes. This was the case for members of the Jehovah Shalom Church, who were not allowed to meet on the property of one of its members on 9th July 2020.²²

Although the Catholic Church, the country's largest denomination, was not involved in any major incident, as noted above Catholics still do not enjoy full freedom of action. By and large, the Catholic Church tries to respect the laws of the state to avoid conflicts with the government, which has

often attacked the Church to prevent it from criticising the system.²³ Nevertheless, some priests have been openly critical of the lack of freedom in Cuba, like Fr Alberto Reyes who on Facebook wrote on 1st November that the Cuban people lives amid fear and lies.²⁴

Still, there have been some positive developments in recent years. For instance, the authorities have accepted that religious groups can get involved in subsidiary charitable projects. Thus, after 13 years of construction, the Catholic Church was able to inaugurate on 25th May 2019 a nursing home for seniors in Camagüey.²⁵ An Evangelical Church already manages a similar facility.²⁶

Amid the coronavirus emergency, the government also took an especially remarkable and historic step for Holy Week 2020: It allowed Catholic bishops to deliver a 30-minute address to the faithful of their dioceses via radio on four separate occasions.²⁷ Cuban television also broadcast the Way of the Cross led by Pope Francis on Good Friday as well as Holy Mass during Holy Week and the following Sundays.²⁸

On 24th October 2020, the Cuban Embassy to the Holy See in Rome hosted an exhibit of Cuban art to mark 85 years of uninterrupted diplomatic relations between Cuba and the Holy See.²⁹

PROSPECTS FOR RELIGIOUS FREEDOM

A lot of hope has been vested in the new Cuban constitution with respect to religious freedom and the rights of religious groups in Cuba. While the state is secular and religious persecution is no longer pursued in the proper sense of the word, the real issue is the new constitution's role for the (Marxist-Leninist) Communist Party of Cuba, which is defined as "the superior driving force of the society and the State." As such, it controls and subordinates everyone to the construction of a communist society, and this automatically limits and curtails many rights that are basic in other countries, such as the right to free expression and the right to freedom of conscience.³⁰ As the Party arbitrarily monitors the actions and activities of religious organisations, it creates a suffocating atmosphere for them. Therefore, prospects for religious freedom in Cuba remain negative.

SOURCES / ENDNOTES

1 Constitución de la República de Cuba, Granma, <http://www.granma.cu/file/pdf/gaceta/Nueva%20Constituci%C3%B3n%20240%20KB-1.pdf> (accessed 14th November 2020); Cuba 2019, Constitute Project, https://www.constituteproject.org/constitution/Cuba_2019?lang=en (accessed 16th December

- 2020).
- 2 “Universal Declaration of Human Rights,” United Nations, <https://www.un.org/en/universal-declaration-human-rights/#:~:text=Article%2018,%2C%20practice%2C%20worship%20and%20observance>. (accessed 29th December 2020).
 - 3 “Mensaje de la COCC en relación con la nueva constitución de la república de Cuba que será sometida a referendo,” Conferencia de Obispos Católicos de Cuba, 4th February 2019, https://palabranueva.net/new/sometida-a-referendo/#_ftn6 (accessed 14th November 2020).
 - 4 Ibid.
 - 5 “Unas 45 iglesias evangélicas buscan que la reforma constitucional abra el camino a una Ley de Culto en Cuba,” Diario de Cuba, 3rd October 2018, https://diariodecuba.com/cuba/1538592344_42216.html (accessed 09 November 2020).
 - 6 “LEY NO. 54, Ley de asociaciones,” Parlamento Cubano, <http://www.parlamentocubano.gob.cu/index.php/documento/ley-de-asociaciones/> (accessed 14th November 2020).
 - 7 Ibid.
 - 8 Dianet Doimeadios Guerrero, Edilberto Carmona Tamayo, and Lisset Izquierdo Ferrer, “¿Qué leyes deben aprobarse durante 2020 en Cuba?,” Cuba Debate, 16th January 2020, <http://www.cubadebate.cu/especiales/2020/01/16/que-leyes-deben-aprobarse-durante-2020-en-cuba-infografias-y-video/#.X6hmkVAXnb0> (accessed 8th November 2020).
 - 9 “Ley N° 62 Código Penal,” 29th December 1987, Observatorio de Igualdad de Género de América Latina y el Caribe, https://oig.cepal.org/sites/default/files/1987_codigopenal_cuba.pdf (accessed 14th November 2020).
 - 10 Ibid.
 - 11 Dr. René López Benítez, “Regulaciones para la aprobación de licencias a instituciones religiosas,” Referencia Jurídica, 24th January 2013, <https://referenciajuridica.wordpress.com/2013/01/24/regulaciones-para-la-aprobacion-de-licencias-a-instituciones-religiosas/> (accessed 14th November 2020).
 - 12 Comisión Interamericana de los Derechos Humanos, “Situación de los derechos humanos en Cuba,” 3rd February 2020, Organización de los Estados Americanos (OEA), <https://www.oas.org/es/cidh/informes/pdfs/Cuba2020-es.pdf> (accessed 15th November 2020).
 - 13 “Ya está en casa el pastor cubano Ramón Rigal, condenado por educar a sus hijos en el hogar,” Diario de Cuba, 26 June 2020, https://diariodecuba.com/derechos-humanos/1593162518_23387.html (accessed 15th November 2020).
 - 14 Tomás Cardoso, Derechos humanos,” Radio Televisión Martí, 7th May 2020, <https://www.radiotelevisionmarti.com/a/apost%C3%B3licos-cubanos-reclaman-cese-de-represi%C3%B3n-contra-pastores-y-feligreses/264757.html> (accessed 15th November 2020).
 - 15 “Encargada de Negocios de EE.UU en Cuba visita al líder religioso Alain Toledano,” CiberCuba, 13th September 2019, <https://www.cibercuba.com/noticias/2019-09-13-u1-e199352-s27061-encargada-negocios-eeuu-cuba-visita-al-lider-religioso-alain> (accessed 15th November 2020); “¡Liber en la ayuda humanitaria retenida en Mariel!, exigen activistas cubanos,” Diario de Cuba, 14th August 2020, https://diariodecuba.com/derechos-humanos/1597358790_24322.html (accessed 15th November 2020).
 - 16 Claudia Florentín, “Estados Unidos acusa falsamente a Cuba de limitar la libertad religiosa, dice el CIC,” ALC Noticias, 22nd June 2020, <https://alc-noticias.net/es/2020/06/22/estados-unidos-acusa-falsamente-a-cuba-de-limitar-la-libertad-religiosa-dice-el-cic/> (accessed 15th November 2020).
 - 17 Rodríguez Fernández, “Las autoridades no consiguen confiscar el templo evangélico amenazado en La Habana,” Diario de Cuba, 30th April 2020, https://diariodecuba.com/derechos-humanos/1556644929_46080.html <https://diariodecuba.com/etiquetas/iglesia-asamblea-de-dios.html> (accessed 1st January 2021); “Cuban authorities harshly mistreat a Christian,” Evangelical Focus, 9th September 2020, <https://evangelicalfocus.com/world/7914/cuban-authorities-mistreat-a-christian> (accessed 15th November 2020).
 - 18 “El Gobierno cubano expropiará a una iglesia evangélica el local que lleva 20 años utilizando,” Diario de Cuba, 20 April 2019, https://diariodecuba.com/cuba/1555771096_45874.html (accessed 15th November 2020).
 - 19 “Judíos en Cuba retiran la kipá a sus hijos por amenazas de cárcel,” Central de Noticias Diario Judío, 8th January 2020, <https://diariojudio.com/noticias/judios-en-cuba-retiran-la-kipa-a-sus-hijos-por-amenazas-de-carcel/317840/> (accessed 15 November 2020); Esteban Lubochiner (Tebu), Aurora, 25th December 2020, <https://www.aurora-israel.co.il/autoridades-de-educacion-en-cuba-prohiben-a-un-nino-el-uso-de-la-kipa-en-su-escuela> (accessed 10th November 2020).
 - 20 “Relatores especiales de la ONU acusan al régimen cubano de perseguir la libertad religiosa,” Diario de Cuba, 20th July 2020, https://diariodecuba.com/derechos-humanos/1595233110_23853.html (accessed 1st January 2020).
 - 21 “13 May 2020 Cuba JAL CUB 1/2020,” Communication report and search, United Nations Human Rights, [https://spcommreports.ohchr.org/TmSearch/Results/DownloadPublicCommunicationFile\(ohchr.org\)](https://spcommreports.ohchr.org/TmSearch/Results/DownloadPublicCommunicationFile(ohchr.org)) (accessed 1st January 2020).
 - 22 Yaisset Rodríguez Fernández, “Altos funcionarios del Gobierno cubano fuerzan el cierre de una iglesia evangélica en Holguín,” Diario De Cuba, 12th September 2020, https://diariodecuba.com/derechos-humanos/1599896458_24973.html (accessed 9th November 2020).
 - 23 Henry Constantin, “Fieles Católicos piden pronunciamiento de sus obispos sobre la ayuda humanitaria retenida,” Cuba decide, 4th September 2020, <https://cubadecide.org/2020/09/16/70-fieles-catolicos-piden-pronunciamiento-de-sus-obispos-sobre-la-ayuda-humanitaria-retenida/> accessed 19th December 2020).
 - 24 Alberto Reyes, 1st November 2020, <https://www.facebook.com/100008460667968/posts/2615107345447929/?d=n> (accessed 13th November 2020).
 - 25 “Iglesia en Cuba inaugura hogar en beneficio de ancianos,” Aci Prensa 1st June 2019, <https://www.aciprensa.com/noticias/iglesia-en-cuba-inaugura-hogar-en-beneficio-de-ancianos-87337> (accessed 15th November 2020).
 - 26 “Hogar de ancianos evangélico reabre en Matanzas en medio de la pandemia de Covid-19,” Diario de Cuba, 6th November 2020, https://diariodecuba.com/cuba/1604662337_26255.html (accessed 10th November 2020).
 - 27 Miguel Ángel Malavía, “Decisión histórica en Cuba por el coronavirus: el régimen concede a la Iglesia la mayor visibilidad mediática en 60 años,” Vida Nueva Digital, 2nd April 2020, <https://www.vidanuevadigital.com/2020/04/02/decision-historica-en-cuba-por-el-coronavirus-el-regimen-concede-a-la-iglesia-la-mayor-visibilidad-mediatica-en-60-anos/> (accessed 10th November 2020).
 - 28 “Cuba: Semana Santa por TV,” Progreso Semanal, 8th April 2020, <https://progresosemanal.us/20200331/cuba-semana-santa-por-tv/> (accessed 15th November 2020).
 - 29 “Cuba y la Santa Sede celebran 85 años de relaciones diplomáticas,” Vatican News, 26th October 2020, <https://www.vaticannews.va/es/iglesia/news/2020-10/gallagher-aniversario-85-relaciones-diplomaticas-cuba-santa-sede.html> (accessed 15th November 2020).
 - 30 Comisión Interamericana de los Derechos Humanos, op. cit.