



**"DRAFT LAW ON AMNESTY AND DECRIMINALIZATION OF DISSENT IN CUBA".**

**WE MAKE YOU KNOW**

That Title I, Political Foundations, Chapter I, Fundamental Principles, Article 3 of the Constitution of the Republic of Cuba of April 10, 2019, establishes that sovereignty resides untransferable in the people, from whom the power of the State derives.

**PREAMBLE**

Guided and inspired by Martí's thought, the patriotism of those who fought for a free, independent, sovereign, democratic and socially just homeland, we consider it vitally important to begin with the ideas that the master José Martí expressed in a letter to General Máximo Gómez, dated October 20, 1884, whose text we consider fundamental to understand and appraise Martí's ideas on the Independence of Cuba.

Martí says to General Gómez: *"An inopportune outburst by you and a curious conversation that General Maceo [Antonio Maceo] provoked in connection with it, in which he wanted me to understand that we should consider the war in Cuba as an exclusive property of yours, in which no one can put thought or work without committing profanation, and which must be left, if you want to help it, servile. - to give me to understand that we should consider the war in Cuba as your exclusive property in which no one can put thought or work without committing profanation, and which has to be left, if you want to help him, slavishly and blindly in his hands".*

In the same vein, Martí makes clear his ideas on the right of people to express themselves freely in any circumstance and points out: *"A people is not founded, General, as a camp is commanded; And when in the preparatory work of a revolution more delicate and complex than any other, there is no sincere desire to know and reconcile all the work, wills and elements that will make possible the armed struggle, a mere form of the spirit of independence, but the intention, abruptly expressed at every step, or poorly concealed, to make use of all the resources of faith and the will of the people, of making all the resources of faith and of war that the spirit raises serve the cautious and personal purposes of the justly famed chiefs who present themselves to captain the war, what*

PAGE \\*  
MERGEFO  
RMT11



*guarantees can there be that public liberties, the only worthy objective of launching a country into the struggle, will be better respected tomorrow"?*

**WHEREAS**

The approved Cuban Constitution, in force since April 10, 2019, DECLARES to be presided over by this profound yearning of José Martí: *"I want the first law of our Republic to be the worship of Cubans to the full dignity of man"* (our italics).

**WHEREAS**

The Cuban Constitution is considered, like all the constitutions of the world, the Law of Laws of the Republic of Cuba, to which the entire legal order of the country is owed and subordinated, and, therefore, any inferior norm that contradicts it is null and void.

PAGE \\*  
MERGEFO  
RMA11

**WHEREAS**

The Law of Laws of the Republic of Cuba, in its Title V, Rights, Duties and Guarantees, Chapter II, Rights, article 54 states: *"The State recognizes, respects and guarantees people the freedom of thought, conscience and expression"*. This right is also supported by Article 19 of the Universal Declaration of Human Rights and Article IV of the American Declaration of the Rights and Duties of Man.

**WHEREAS**

Article 56 of the aforementioned Law states: *"The rights of assembly, demonstration and association, for lawful and peaceful purposes, are recognized by the State provided that they are exercised with respect for public order and compliance with the precepts established by law"*. These rights are also protected in Article 20 of the Universal Declaration of Human Rights and in Articles XXI and XXIII of the American Declaration of the Rights and Duties of Man.

**WHEREAS**

Title VI , Structure of the State . Chapter I , Principles of Organization and



Article 103 of the Functioning of the Organs of the State states: *"The National Assembly of People's Power is the only organ with constituent and legislative capacity in the Republic"*.

**WHEREAS**

Title VI, Structure of the State, Chapter VIII, On Normative Provisions, Section One, On the Legislative Initiative, states in Article 164 of the Constitution that: *"The initiative of laws is the responsibility of: k) the citizens. In this case it shall be an indispensable requirement that the initiative be exercised by at least ten thousand electors."*

The law establishes the procedure to enforce its exercise.

**WHEREAS**

The Cuban Penal Code has among its objectives to protect people, promote the observance of the rights and duties of citizens, and thus establish among the Causes of Extinction of Criminal Responsibility the one provided for in Title VIII, AMNESTY, whose objectives are to attenuate the rigidity of the criminal sanction for human reasons and to avoid, at a certain moment, the injustice that may result from the application of the legal precept and produce *de jure (de jure)* the rehabilitation of the sanctioned person.

**WHEREAS:**

The fact that our country has legally contemplated the possibility that its citizens may file a legislative initiative, places it in a theoretical position above countries that have not implemented it, such as: Bulgaria, Belgium, Denmark, France, United Kingdom, Chile and Dominican Republic, among others, although this recognition does not guarantee its effectiveness, nor the approval of the Bill, but only the discussion and analysis in Parliament.

**WHEREAS:**

Since the foundation of the Republic of Cuba, several Amnesty Laws have been enacted, among them the one issued in commemoration of the first free October 10 of the Republic of Cuba in 1902, the one of December 21, 1938, considered the most serious

PAGE \\*  
MERGEFO  
RMAT11



breach that criminal justice has had, and the two enacted in December of that year regarding political crimes.

**WHEREAS:**

In May 1955, the Congress of the Republic of Cuba enacted a general Amnesty Law promoted by the government of Fulgencio Batista, which favored an important group of people, including the brothers Fidel and Raul Castro Ruz who had been condemned (under regulated principles of due process), by the Emergency Court of Santiago de Cuba, in a trial held by the First Vacation Chamber of 122 accused on October 16, 1953, in case 37/1953, to 15 and 122 sentences, by the Emergency Court of Santiago de Cuba, in a trial held by the First Vacation Chamber, to 122 defendants on October 16, 1953, in case 37/1953), to sentences of 15 and 13 years, respectively, of imprisonment, on the occasion of the assault that they led and executed in the military barracks "Moncada" in Santiago de Cuba, "Carlos M. de Céspedes" in Bayamo, as well as the civilian Hospital "Saturnino Lora" and the Palace of Justice in Santiago de Cuba, in which 14 soldiers and 6 assailants died, all these acts occurred on July 26, 1953, and that said amnesty, generated by a notorious national social pressure, was dictated in favor of said group, who called themselves "political prisoners". Fidel Castro himself acknowledged at the time of his arrest, which resulted in the aforementioned case 37/1953, that: *"Cuba is suffering a cruel and ignominious despotism, and you are not unaware that resistance to despotism is legitimate; this is a universally recognized principle... Moreover, even if it had not been enshrined in our fundamental law, it is the assumption without which the existence of a democratic community cannot be conceived"*.

PAGE \\*  
MERGEFO  
RMT11

**WHEREAS:**

Sixty-six years later, specifically on July 11 and 12, 2021, a group of civilians, peaceful and unarmed, publicly demonstrated for a change in Cuba, and have been imprisoned and many already sentenced to long and abusive prison terms, with the notable and substantial difference that those who are today in Cuba's ergastulas are there for trying to demand peaceful changes in a non-democratic regime, led precisely by two of the main amnestied of 1955, the brothers Fidel (now deceased) and Raúl Castro and, in addition, Ramiro Valdés Menéndez, among others.



**WHEREAS:**

These detainees and prisoners have raised, as the basis of their demands, the legitimate right to free demonstration in the general interest, and for the common good of all Cubans, and have done nothing more than peacefully and civically oppose a regime that has violated all their political, social and economic rights, recognized by the Cuban Law of Laws (Constitution) and international human rights instruments.

**WHEREAS:**

When the civic marches of July 11, 2021 took place, in response to these marches, what the presidency of the Cuban government did was a belligerent call for citizens, in the midst of a pandemic, to take to the streets to confront each other, thus irresponsibly provoking hatred and confrontation between brothers, which turned people who should listen to each other into enemies.

PAGE \\*  
MERGEFO  
RMAT11

**WHEREAS:**

Cuban society was irresponsibly instigated to a confrontation, in clear violation of the Law of Laws as established in Title V, Rights, Duties and Guarantees, Chapter II, referring to rights, and which are duly set forth in Article 56, previously referred to.

Therefore, it is evident and convenient the approval of a "**Law of Amnesty and Decriminalization of Dissent**" by the National Assembly of People's Power of Cuba, for those who today are internationally recognized as political prisoners and prisoners of conscience by the most important and prestigious human rights organizations in the world, and, moreover, when their freedom is unanimously demanded by the main democratic Parliaments of the world (among them, the United States of America and the European Union ---which have condemned the disproportionate use of the Cuban criminal procedural law) and by international jurists.

**WHEREAS:**

The Working Group on Arbitrary Detention of the United Nations (UN), among them, and without limitation, the one issued on September 8, 2021 (Reference AL CUB 4/2021) considered that certain criminal offenses, being extremely vague, contravene Cuba's



international obligations, and make them invalid as a legal basis for arrest, making any detention based on those offenses arbitrary.

**WHEREAS:**

The Inter-American Commission on Human Rights has pointed out that the deprivation of liberty of women has serious consequences for children, since they are generally cared for by the closest relative, sometimes separating siblings, and in most cases requiring the intervention of social services to support their welfare, and even institutionalization; and because of the special duty to act with the due diligence required to prevent and eradicate forms of violence and discrimination against women, special attention must be paid to the situation of women covered by this law.

**AND INVOKING, THEREFORE,**

A basic legal principle of magnificence for those who have not committed any crime --- based on Articles 45 and 56 of the Cuban Constitution of 2019--- and, even more, comparing this right of demonstration with that which exists in civilized and democratic nations asking for their freedom, constitutes in itself an act of imperious, urgent and total necessity to restore the principle of social coexistence; the peaceful demonstrators imprisoned by a non-democratic regime deserve, at least, the same sense of greatness of State as that General Amnesty Law of 1955; especially when their act of protest has been peaceful, has not caused deaths to the regime, but to Diubis Laurencio Tejeda, one of the young peaceful demonstrators, nor has it been done with the use of weapons to impose their ideals.

**WHEREAS:**

The international system for the protection of human rights is based on the full dignity of the human being, of man, as José Martí aspired, and seeks to exclude the following from its scope

certain criminal acts in the exercise of state functions,

In Cuba it is essential to stop the historical cycle of criminalization, punishment and exclusion of difference and of those who are different, and to begin to recover the culture of law, respect and inclusion within a new type of society: that of the primacy of



the law over the will of governments. For which not even the recognition of certain constitutional rights is enough.

The Inter-American Commission on Human Rights has stated that "the protection of human rights, especially the civil and political rights set forth in the Convention, is based on the affirmation of the existence of certain inviolable attributes of the human person that cannot be legitimately undermined by the exercise of public power. These are individual spheres that the State may not violate or may only penetrate to a limited extent. Thus, in the protection of human rights, the notion of restricting the exercise of state power is necessarily included".

The Republic of Cuba is a signatory not only of the United Nations Charter of 1945 and the Universal Declaration of Human Rights of 1948, but also of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, signed on February 28, 2008 at the United Nations (both pending ratification by the National Assembly of People's Power), of the International Covenant on Civil and Political Rights, and of the International Covenant on Economic, Social and Cultural Rights, signed on February 28, 2008 at the United Nations (both pending ratification by the National Assembly of People's Power). (both pending ratification by the National Assembly of the People's Power), of the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection against Enforced Disappearances, the International Convention on the Rights of Persons with Disabilities, among others, which have been signed and ratified by the government of Cuba.

As soon as this Bill is submitted for its parliamentary processing, whoever legally corresponds should convene a discussion with the citizens, as well as a review in accordance with constitutional rights and the International Bill of Human Rights, of the new Penal Code which, precisely because its preliminary draft is contrary in most of its articles to the Law of Laws of the Republic of Cuba, is expected to be approved by the

PAGE \\*  
MERGEFO  
RMT11





National Assembly without passing through the consideration of the citizens, in whom sovereignty rests.

**WE,**

Consequently, and as an integral, indissoluble and inalienable part of the Cuban people, full holders of our constitutional rights, exercising our sovereignty, we have the constitutional power and authority granted to us, among others, by Article 164 paragraph k) of the current Constitution to propose, demand and claim, both nationally and internationally, we propose and promote the approval of a "Law of Amnesty and Decriminalization of Dissent" to be debated and approved by the National Assembly of People's Power, and, for all its legal effects and entry into force, published in the Official Gazette of the Republic of Cuba.

This Bill will not only include political prisoners and prisoners of conscience, but also citizens who are serving years in prison for pre-criminal dangerousness (a crime that no longer appears, at least in its original form, in the Preliminary Draft of the new Penal Code), a discriminatory penal figure and a presumption that for years has been placed above the modern, universal and democratic notion of the Law of civilized nations, a notion that presumes the innocence of any person prior to conviction for certain and proven crimes.

In this we follow a precedent tradition in Cuban jurisprudence that dates back to the Amnesty Law of December 21, 1938, which granted amnesty to persons convicted of certain crimes established by the Penal Code that was in force until October 8 of that year.

Therefore, returning Cuba to the bosom of civilized nations requires the depopulation of its prisons and, fundamentally, the alignment of the Penal Code with constitutional rights and with international and regional human rights instruments.

This "Bill of Amnesty and Decriminalization of Dissent in Cuba" **is a** first step towards National and Political Reconciliation of all Cubans to coexist peacefully within the same country and scenario of political coexistence.

PAGE \\*  
MERGEFO  
RMAT11





In order to avoid terminological confusion, the crimes covered by this Amnesty are understood for all interpretative purposes of the Cuban Penal Code to include the so-called "counterrevolutionary crimes" and, by extension, all those with political intentions, whatever their denominations may be.

By virtue of the foregoing, and for consideration, debate and approval in the Assembly National, the following is proposed:

**"AMNESTY LAW AND DECRIMINALIZATION OF DISSENT IN CUBA".**

**ARTICLE ONE.** - With immediate and irrevocable effect, a general and full amnesty is granted in favor of all those persons on whom a judicial investigation has begun or ended, by the prosecution, State Security and/or police bodies and forces, administrative or disciplinary sanction, subject to criminal prosecution or trial, indictment or final conviction (with their immediate release without charges or civic-political limitations), administrative proceedings or civil actions by the judicial, disciplinary or administrative bodies for any punishable act or action, firm accusation or conviction (with their immediate release without charges or civic-political limitations), administrative proceedings or civil actions by judicial, disciplinary or administrative bodies for any punishable act or action that between 1959 and the present has been considered "counterrevolutionary", against the Security of the State, against the "construction of the socialist economic-political system" or any other criminal denomination that entails intentionality of criminal rank due to its political nature - accepted as such by the international norms stipulated in the Preamble of this Law -, or infraction for having exercised their constitutional rights to free expression, opinion, oral, written and disseminate by any means, written and by any means of communication of their ideas contrary to the prevailing economic-political order, as well as social or partisan association, demonstration in favor of any political or ideological current in a peaceful and legitimate manner, or having opposed the established political-economic order and against the structures of power of the Government of the Republic of Cuba.

**ARTICLE TWO** - Pursuant to the provisions of the preceding article,

PAGE \\*  
MERGEFO  
RMAT11



1) All judicial, criminal, civil, disciplinary or administrative processes, investigations or proceedings currently in force before the Ministry of the Interior, the General Directorate of State Security, the Technical Department of Investigations and entities or bodies linked to or dependent on it, the National Police are immediately and fully extinguished.

The Revolutionary Armed Forces, the Prosecutor's Office, the Courts in any hierarchical order, civil, criminal, as well as those that are in progress before any jurisdictional body, or before the organs of the public administration for the crimes of treason, subversion or civil or military rebellion, or any other punitive action that may be qualified as a crime against the Independence or Security of the State, whether typified in the civil or military criminal order, as well as the crimes of contempt, public disorder, attacks, rebellion, dangerousness and social dangerousness.

2) Likewise, the competent judicial authority and/or the police agencies and the Ministry of the Interior shall order the immediate release of the beneficiaries of the amnesty who are in prison and shall cancel the search and arrest warrants of those who have been declared in absentia.

3) Likewise, the Judicial Bodies shall initiate an ex officio review of the final sentences for the annulment of those that use a criminal type not included in subsection 1), and deal with the facts in which the present Law grants Amnesty.

4) Actions for the recognition of the rights established in this Law shall not be subject to any statute of limitations.

**ARTICLE THREE** - All those persons who were minors at the time of the alleged commission of the acts with which they are charged, and who have been tried for the demonstrations of July 11 and 12, 2021, in violation of the Convention on the Rights of the Child, signed and ratified by the Cuban government, and the Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted by the General Assembly in its resolution 40/33 of November 28, 1985, shall be subject to special amnesty.

**ARTICLE FOUR:** Women, mothers in most cases, should be granted amnesty as a priority and returned to the bosom of their families and to the care of their children. The right to the family, as well as the Convention on the Elimination of all Forms of Discrimination

PAGE \\*  
MERGEFO  
RMT11



against Women must take precedence in the considerations and conception of an Amnesty Law as a basis and concept of parity justice and gender equity.

**ARTICLE FIVE.** Since this Law also promotes the National Reconciliation of all Cubans, regardless of their political or ideological stance, amnesty is also granted, under the same conditions as those set forth above, for crimes and misdemeanors that may have been committed by authorities, officials and agents of public order, on the occasion or occasion of the investigation and prosecution of the acts included in this Law, as well as those committed against the exercise of the fundamental rights of persons, and provided that they were not carried out by committing crimes against humanity or serious violations of human rights.

**ARTICLE SIXTH** - The same parameter of protection and amnesty is extended to officials who, in the exercise of their political, judicial, administrative, governmental, partisan and/or civil, police or military public service positions, who, as part of their activity in the sphere of the State, Province or Municipality, have not incurred in any of the crimes described above, and provided that they have not involved crimes against humanity or serious violations of human rights.

PAGE \\*  
MERGEFO  
RMA11

**ARTICLE SEVENTH** - For the first two articles mentioned above, the amnesty shall also include related crimes and misdemeanors. And for the purposes of the adequacy of the facts to be amnestied, the moment of realization of the act shall be understood as that in which the alleged criminal or punishable activity began.

**ARTICLE EIGHT.** - 1) In any case, the following are included in the present Amnesty: Any punishable act or action denominated "counterrevolutionary", against State Security, against the "construction of the socialist economic-political system" or any other criminal denomination that entails intentionality of criminal rank due to its political nature -accepted as such by the international norms stipulated in the Preamble of this Law--, or infraction, for which or for which any citizen or public official has been investigated, prosecuted, politically disqualified, or convicted for political reasons, or for having exercised his constitutional rights to the free expression of opinion, oral, written and divulgative by any means, written and divulgative by any means of communication of their ideas contrary to the prevailing economic-political order, as well as social or partisan association, demonstration in favor of any political or ideological current in a



peaceful and legitimate manner, or having opposed the established political-economic order and against the structures of power of the Government of the Republic of Cuba, including acts that have been considered as crimes of treason, subversion or civil or military rebellion, or any other punitive action that may be qualified as a crime against the Independence or Security of the State, whether typified in the civil or military criminal law.

2) Are under the protection of this law, all those persons who have been investigated, prosecuted, convicted or disqualified for having been declared guilty of crimes and infractions (civil, criminal or administrative) related to the situations described above or others of similar entity and nature, including conscientious objection to rendering services "to the revolution" or prevailing political system, and refusal to assist the "revolutionary justice" by refusing to disclose facts of a political nature that have been known in the course of professional practice or due to filial or family ties.

PAGE \\*  
MERGEFO  
RMT11

**ARTICLE NINE.** - All those persons who have been investigated, prosecuted, convicted or disqualified for having been declared guilty of crimes and infractions (civil, criminal or administrative) related to the situations described above or others of similar entity and nature shall be subject to the protection of this law, including conscientious objection to rendering services "to the revolution" or prevailing political system, and refusal to assist the "revolutionary justice" by refusing to disclose facts of a political nature that have been known in the course of professional practice or due to filial or family ties.

**ARTICLE TEN.**- The amnesty renders null and void judicial resolutions and administrative or governmental acts that have resulted in dismissals, sanctions, limitations or suspensions of the active or passive rights of citizens, derived from the facts contemplated in this Law, restoring to the affected persons all the rights they would have had at the time of application of the same if those measures had not been taken, and eliminating criminal and police records and unfavorable notes in all types of personal files, even if the sanctioned person is deceased. Likewise, the offended honor shall be restored and full reparation shall be made for violations of civil and political rights.



**ARTICLE THIRTEEN** - The present "Law on Amnesty and Decriminalization of Dissent" in Cuba shall enter into force on the same day of its publication in the Official Gazette of the Republic of Cuba, producing by operation of law the substantial changes to the Criminal Code and the Criminal Procedure Law.

Cuba, March 28, 2022.

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SIGNATURES: Council for Democratic Transition in Cuba (CTDC).

Ms. Elena Larrinaga de Luis  
Secretary of Foreign Affairs

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PAGE \\*  
MERGEFO  
RMAT11