

COVER PAGE

Joint presentation

"Freedom of Movement and the 8-Year ban Law"

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BY:

PRISONERS DEFENDERS

ACTIVE LEGAL DEFENSE OF HUMAN RIGHTS - JURISTS - RAPORTEURS - HUMANISTS

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A. EXECUTIVE SUMMARY

1. In the third cycle of the Universal Periodic Review on Cuba, only Estonia made an explicit recommendation (24.181) to the State of Cuba regarding the violation of Article 13 of the UDHR. However, both the Migration Law in several of its sections, as well as the previous and current Penal Code, as well as other laws in force in Cuba, punish in an arbitrary manner and with heavy prison sentences the exit from the country, as well as the laws prohibit the free entry of its citizens and the free movement within the country, without any criminal or military reasons.

2. These situations have been denounced by the Committee on the Rights of the Child in the Conclusions of its Periodic Review of Cuba of June 2022,¹ and are the cause, as indicated therein, of the forced separation of tens of thousands of children from their parents, and of many more thousands of Cuban citizens. Also the United Nations Special Rapporteurs in charge of human rights defenders, Afro-descendants, arbitrary detention (WGAD), cultural rights, freedom of opinion and expression, freedom of peaceful assembly and association, against racism, have condemned these situations in the accusatory communications JAL CUB 1/2021, JAL CUB 3/2018 and AL CUB 2/2018.²

3. The prohibition of arbitrary entry and exit from the country affects the entire population. However, the groups of Cuban civilian workers abroad (doctors, sailors, engineers, technicians, architects, nurses, etc.) suffer especially from these measures of prohibition of entry into the country, by means of a set of laws called the 8-year law.) suffer especially from these measures of prohibition of entry to the country, by means of a set of laws that are called the **Law of 8 years**, according to which a Cuban civilian worker abroad who refuses to continue working, or who finishes his work but does not return immediately to Cuba, suffers the express prohibition of not being able to return to Cuba, loses all his properties, separating him also from his loved ones, children and spouses, who are not allowed family reunification abroad either. This keeps thousands of children forcibly separated from their mothers and fathers for periods of more than 8 years. This situation was condemned in June 2022 by the Committee on the Rights of the Child in the Conclusions of its Periodic Review of Cuba of June 2022³ and by the Rapporteurs on Human Trafficking and Slavery, both of the United Nations High Commissioner for Human Rights, on November 6, 2019 in the Accusatory Letter ALCUB6/2019⁴. The European Parliament, in two condemnatory resolutions approved by a large majority (TA-9-2021-0292 / TA20210389)⁵, has also highlighted these situations of Cuban workers abroad. So has Human Rights Watch⁶, the IACHR⁷, Human Rights Foundation⁸, and numerous NGOs.

¹ Conclusions of its June 2022 Periodic Review of Cuba:

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsogu%2BrcYtuo0ebg3v3LZyh%2FkdEw4WmpeU9QV48NBzsHlJ%2F56Qg%2FfdFExiNzVk5YlGyGRcuV%2B8hjXl9mYjJG4mkNHQ1DTmsLOn2ziM5TW1gFQ>

² Indictments [JAL CUB 1/2021](#), [JAL CUB 3/2018](#) and [AL CUB 2/2018](#)

³ Conclusions of its June 2022 Periodic Review of Cuba:

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsogu%2BrcYtuo0ebg3v3LZyh%2FkdEw4WmpeU9QV48NBzsHlJ%2F56Qg%2FfdFExiNzVk5YlGyGRcuV%2B8hjXl9mYjJG4mkNHQ1DTmsLOn2ziM5TW1gFQ>

⁴ Letter of Accusation [ALCUB6/2019](#)

⁵ Condemnatory resolutions approved by a large majority in the European Parliament: [TA-9-2021-0292](#) and [TA20210389](#).

⁶ Cuba: Repressive rules against doctors on mission:

<https://www.hrw.org/es/news/2020/07/23/cuba-normas-represivas-contra-medicos-en-mision>

⁷ Excerpt from the IACHR 2020 Report on Cuba:

https://drive.google.com/file/d/14LhMp7DxPynMhvaN0Bd0H_Lst6SE3krw

⁸ HRF Report: Human Trafficking in Cuba's Medical Missions:

<https://hrf.org/hrf-report-human-trafficking-in-cubas-medical-missions/>

B. METHODOLOGY

4. During the years 2018 to the present, UNPACU and Prisoners Defenders have conducted field and documentary research on the situation of workers abroad and, among many other situations, their prohibition to enter the country. To this end, 1,378 first-hand testimonies were gathered from workers who have suffered forced family separation when they left their jobs or did not return immediately to Cuba after finishing their work. The study was carried out by legally analyzing all legislation and its progressive changes, analyzing thousands of documents obtained through the 1,378 testimonies and through related research. Official documents with international legal validity have been obtained, first hand and on which we have the originals, which prove all the findings that will be exposed in this document.

5. Likewise, since 2019, UNPACU and Prisoners Defenders have been studying, with first-hand testimonies and victims, the prison of conscience motivated by the fundamental right to leave the country, which is denied through the Penal Code and articles that punish with high prison sentences any attempt to leave the country that does not occur through government approval. Hundreds of thousands of people are "regulated", that is, they cannot leave the country even when they have no criminal proceedings or criminal investigation in progress against them. The in-depth study of numerous Cuban legislation, such as Decree 306 of 2012, *"On the treatment towards cadres, professionals and athletes who require authorization to travel abroad"*, which affects all professionals, officials of all kinds and all athletes are affected by this measure, and many other legislations, as will be seen, have been vital to understand the magnitude of this situation in Cuba.

6. In this way, and restricting the multiple violations of human rights only to the scope of freedom of movement and what its violation causes, the following violations of international precepts have been identified: **A) United Nations - Universal Declaration of Human Rights: Arts. 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 15, 19 and 20; B) International Covenant on Civil and Political Rights: Arts. 2.1, 12, 17, 19, 21, 23; C) International Covenant on Economic, Social and Cultural Rights: Arts. 2.1, 12, 17, 19, 21, 23, 12, 13, 15, 19 and 20; B) International Covenant on Civil and Political Rights: Arts.2.1,12,17,19,21,23; C) International Covenant on Economic, Social and Cultural Rights: Arts.2..2,4,5.1,10; D) UNICEF - Convention on the Rights of the Child: Arts.3.2,5,9.1,9.2,9.3,10.1,10.2,12.1,12.2,20.1,41; E) Cuba - Constitution of the Republic of Cuba Arts. 41,42,46,47,52,56,81,81,83,84,86,87,88,89,95,99.**

C. GENERAL CONTEXT

7. Since 2018 alone, almost two dozen communications by special procedures are on record, among which the most relevant OHCHR Fundamental Rights Mandates have been filed⁹.

8. In paragraph 54 of the report A/77/56 of the Committee on Enforced Disappearances,¹⁰ highlights how Cuba is the country in the world in 2021 with the highest number of Urgent Actions for Enforced Disappearances. It can also be seen how cumulatively since 2012 it is the third country in the world, only behind Iraq and Mexico.

9. As for the Working Group on Arbitrary Detention, it has issued very strong opinions on the arbitrary detentions of 19 artists, intellectuals, religious and activists such as Maykel Castillo, Denis Solis, Luis Robles, Keilylli de la Mora, Keilylli de la Mora, Roberto Quiñones, José Daniel Ferrer,

⁹ Communications by special procedures of various OHCHR Fundamental Rights Mandates: [CUB1/2022](#), [CUB7/2021](#), [CUB6/2021](#), [CUB2/2021](#), [CUB4/2021](#), [CUB3/2021](#), [CUB1/2021](#), [CUB1/2021](#), [CUB1/2020](#), [CUB7/2019](#), [CUB6/2019](#), [CUB5/2019](#), [CUB2/2019](#), [CUB1/2019](#), [CUB6/2018](#), [CUB4/2018](#), [CUB3/2018](#), [CUB2/2018](#), [CUB1/2018](#)

¹⁰ Report A/77/56 of the Committee on Enforced Disappearances:
<https://drive.google.com/file/d/1VCsuOEqqKEexDcYvHfOd6ulE5-rZbvIz>

Aymara Nieto, Eliecer Bandera, Humberto Rico, José Pompa, Melkis Faure, Mitzael Díaz, Silverio Portal, Josiel Guía, Marbel Mendoza, Ivan Amaro, Eduardo Cardet, Ariel Ruiz and Omar Rosabal.¹¹

10. In its report of September 20, 2018, the Committee on the Elimination of Racial Discrimination made critical recommendations to Cuba regarding human rights defenders that speak to the seriousness of the situation they live in the country (CERD/C/CUB/CO/19-21).¹²

D. ON FREEDOM OF MOVEMENT WITHIN CUBAN TERRITORY

11. Although the current Constitution seems to explicitly recognize freedom of movement in Article 52, nevertheless, in the same article it expresses open and indeterminate limitations: "*with no other limitations than those established by law*". Given, moreover, that the Constitution does not define or create, nor in the rest of Cuban legislation, any mechanism for the Constitution to be in effect the fundamental law of the State, that is to say, it does not establish any court or mechanism of constitutional guarantees for the laws to be subrogated to the constitutional principles, the very enunciation of "*with no more limitations than those established by law*" evokes laws that do violate the freedom of movement within the country in a flagrant manner.

12. The only process for the protection of constitutional rights has been enacted by Law 153 of May 15, 2022.¹³ But it excludes from any amparo process: "*(a) Claims for non-conformity with judicial decisions adopted in other matters; (b) the declaration of unconstitutionality of laws and other normative acts; and (c) claims relating to national defense and security, measures adopted in exceptional and disaster situations to safeguard the independence, peace and security of the country*". In other words, The Constitution cannot prevail against other laws that contradict it, and the exclusions of rights in the very articles of the Constitution are in effect exceptions that allow the violation of the very rights that appear to be protected.

13. Thus, with respect to freedom of movement within the country, the most notorious norm that violates the freedom of movement of Article 13 of the UDHR is Decree 217 of April 22, 1997 "*Internal Migratory Regulations for the City of Havana*", which prohibits all citizens of Cuba who do not reside in Havana from domiciling, residing or living permanently, or transferring their residence, to the city of Havana.

14. The previous Decree 217 of 1997, moreover, does not fix or determine in any way the permissible temporary stay, which allows the authorities to prevent the stay, even for hours, of persons disaffected with the government who visit Embassies, Consulates, organizations and personalities present in Havana. Since 1997 to the present day, dissidents, opponents and human rights activists have been routinely detained and expelled by the authorities immediately upon visiting Havana, on the occasion of Decree 217 of 1997.

15. Decree 217 of 1997, moreover, establishes a discrimination of rights between citizens of the provinces and citizens of Havana, since the latter do not have to go through the procedures of the others to be able to change from one place of residence to another within the city of Havana. This discrimination creates first and second class citizens, and violates all international law, including the UDHR.

D1. RECOMMENDATIONS ON INTERNAL FREEDOM OF MOVEMENT

¹¹ Link to the opinions of the Working Group on Arbitrary Detention: [Maykel Castillo](#), [Denis Solís](#), [Luis Robles](#), [Keilylli de la Mora](#), [Roberto Quiñones](#), [José Daniel Ferrer](#), [Aymara Nieto](#), [Eliecer Bandera](#), [Humberto Rico](#), [José Pompa](#), [Melkis Faure](#), [Mitzael Díaz](#), [Silverio Portal](#), [Josiel Guía](#), [Marbel Mendoza](#), [Ivan Amaro](#), [Eduardo Cardet](#), [Ariel Ruiz](#) and [Omar Rosabal](#).

¹² Report CERD/C/CUB/CO/19-21 of 20 September 2018, the Committee on the Elimination of Racial Discrimination: <https://daccess-ods.un.org/tmp/3296126.12724304.html>

¹³ Law 153 of May 15, 2022, on the process of protection of constitutional rights: <https://drive.google.com/file/d/16sY5tIweCkhCFEDZubMyND9tb60MjfCV>

16. Eliminate from Article 52 of the Constitution, or leave without legal effect, the phrase "*without limitations other than those established by law*" which flagrantly limits the application of the freedom of movement apparently protected by Article 52 of the Cuban Constitution.
17. Repeal and reform all laws and regulations that violate the application of Article 13 of the UDHR without just cause, such as Decree 217 of 1997, among others.
18. To repeal Decree 217 of 1997, which violates Article 13 of the UDHR, and to offer equal opportunities to all citizens of Cuba to reside, if they so desire, in any part of Cuban territory.

E. ON FREEDOM OF ENTRY AND EXIT TO AND FROM THE COUNTRY

19. If internal mobility within the country is limited by legislation, mobility to and from the national territory has hardly any degree of freedom in Cuba, as we will see below.

20. **Decree 306 of 2012, "On the treatment of cadres, professionals and athletes who require authorization to travel abroad",¹⁴** affects all persons with higher or medium studies, all professionals, almost all officials with medium or higher responsibility and all athletes. It establishes the permit procedures to be able to leave any of those millions of people in Cuba to travel abroad, leaving the authorities to decide whether to authorize or deny them.

21. As Decree 306 of 2012 dictates, in the case of "*managers*" of companies or organizations and other "*executives*", "*higher education graduates*", such as doctors, and "*mid-level technicians*", such as nurses, cannot go abroad except with arbitrary authorization from the authorities: "*they may be authorized, after a case-by-case analysis, to travel abroad for particular matters*", without any guarantee of response. The Decree dictates that "*when the request is to reside abroad, they are authorized within a period not exceeding five calendar years, from the date on which it is requested.*" The excuse given by the legislation is that "*during this period the training of the relief in the vital activity in question is carried out, in the cases that correspond.*" In other words, you are not allowed to leave in 5 years, due to the need to find the necessary human resource for the relief in the activity you perform.

22. The positive outcome of this 5-year wait after expressing a desire to leave the profession to leave the country is referred to by the authorities and physicians as "liberation". The opposite, the de facto prohibition to leave the country, is called "regulation" or being "regulated".

23. In addition to violating with this principle all labor legislation and the fundamental rights of the civilian worker, the Cuban government is not in a position to defend that such a motive of "*relief*" is in line with reality, since as everyone knows contingents of hundreds and thousands of doctors, and many other professionals, are sent in a matter of weeks abroad, leaving vacant jobs in health care in Cuba without periods of 5 years being necessary to find such reliefs.

24. The Law 1312, "Migration Law",¹⁵ underwent a series of amendments in 2012. Although it apparently eliminated the explicit "*prohibition of exit*" by default, in practice it incorporated numerous exit barriers that make it impossible for many citizens to leave Cuba. Likewise, the amendments to this law have created numerous barriers to entry into the national territory for many Cuban citizens.

25. In order to leave the country, Law 1312, "Migration Law", requires a "Current" passport. But this "Ordinary" passport is not issued to citizens affected by Decree 306 in the case of going abroad to work in civil matters. In such cases, the State provides them with what the Law calls an "Official" passport. It has hardly any temporary validity and is only issued for the specific work assignment

¹⁴ Decree 306 of 2012, "On the treatment towards cadres, professionals and athletes who require authorization to travel abroad": https://drive.google.com/file/d/1_B1bJDo4AUoYeOnemvBzwPVBaZpIHr8

¹⁵ Law 1312, "Ley de Migración": <https://drive.google.com/file/d/0BykeosyKG0nGVFVQd1EyeTZ1bXpteW1OQUt0enQ0dWdleWhi>

and the specific country. Thus, the contingents of doctors, engineers, teachers or technicians who travel abroad on civilian work missions on behalf of the State of Cuba, cannot have the "ordinary" passport that would allow them to travel around the world and emigrate, but only the temporary and specific passport called "Official". This subterfuge makes it possible to repress the departure of professionals to emigrate. In addition, the "Official" passports are considered by Cuban officials as State passports, and therefore, since State Security officials always accompany civilians on missions, they confiscate them when they pass through customs in the receiving countries.

26. **Article 23 of Law 1312** states that *"Cuban citizens residing in the national territory cannot obtain a current passport while they are under any of the following circumstances:"*, and then goes on to wield a series of normal conditions (criminal case, military service) but other conditions that are highly arbitrary and violate Article 13 of the UDHR by leaving millions of citizens without the possibility of leaving their country freely: *"(d) When reasons of National Defense and Security so advise; (e) Having obligations with the Cuban State or civil liability, provided that they have been expressly ordered by the corresponding authorities; (f) Lacking the established authorization, by virtue of the **rules aimed at preserving the qualified labor force** for the economic, social and scientific-technical development of the country, as well as for the security and protection of official information; (g) Minors or incapable persons who do not have the **authorization of the parents or legal representatives, formalized before a Notary Public**; (h) When for **other reasons of public interest**, as determined by the authorized authorities; (i) Failure to comply with the requirements demanded in the Immigration Law, its Regulations and in the **complementary provisions** related to the application, issuance and granting of passports;"*

27. **Article 24.1 of Law 1312**, the Migration Law, states that *"For the purposes of entry into the national territory, any person who is included in any of the following cases is inadmissible:"*, including in this section Cuban citizens, which is inadmissible to any degree from the point of view of Article 13 of the UDHR, but also includes some arbitrary assumptions that are used to fiercely "punish" people disaffected with the government, or people they wish to punish for other reasons, such as these assumptions that Law 1312 indicates below: *"...c) **Organizing, stimulating, carrying out or participating in hostile actions against the political, economic and social foundations of the Cuban State.** (d) When reasons of National Defense and Security so advise. (e) Being prohibited from entering the country, for **being declared undesirable or expelled.** (f) Failure to comply with the regulations of the Immigration Law, its Regulations and the **complementary provisions** for entry into the country."*

28. As if the limitations on exit were not limited by Article 23, which prevents the obtaining of an ordinary passport, **Article 25 of Law 1312**, the Migration Law, states that *"Any person who is in the national territory may not leave the country while he is under any of the following circumstances:"*, indicating as always some reasonable circumstances (criminal proceedings, military service), but also indicating others that are arbitrary and in violation of Article 13 of the UDHR: *"(d) When **reasons of defense and national security** so advise. (e) Have **obligations with the Cuban State or civil liability**, provided they have been expressly ordered by the corresponding authorities. (f) Lack the established authorization, by virtue of the **norms aimed at preserving the qualified labor force** for the economic, social and scientific-technical development of the country, as well as for the security and protection of official information. (g) Minors or incapable persons whose **parents' or legal representatives' authorization, formalized before a Notary Public**, has been revoked. (h) When for **other reasons of public interest**, as determined by the authorized authorities. (i) Fail to comply with the requirements of the Migration Law, its Regulations and **complementary provisions** for leaving the country"*.

29. The current Cuban Penal Code,¹⁶, like the previous one, prohibits in **Article 282.1**, on its part, the entry into the country of Cuban citizens expressly and exempts foreigners seeking asylum, in such a way that Cubans who enter the country, for example, by sea to Cuba without going through the ordinary channels prior to their intention to enter, even if they present themselves to the authorities a posteriori to give reason for their entry, immediately face between one and three years of imprisonment: *"Article 282.1. Whoever, without complying with the legal formalities or immigration provisions, enters the national territory, incurs the penalty of deprivation of liberty from one to three years or a fine of three hundred to one thousand quotas, or both. Whoever performs the act described in the preceding paragraph in search of asylum is exempt from criminal liability."*

30. The current Cuban Penal Code, like the previous one in identical form, prohibits in **articles 283, 284 and 285 of the Penal Code** the departure of Cuban citizens from the country, subjecting them to one, three, five, eight and up to 15 years of imprisonment. It is especially worrisome that if a Cuban citizen organizes the departure from Cuba of several of its citizens, he can be convicted of *"human trafficking"*. This not only violates Article 13 of the UDHR, but is a transgression of the entire logic of human trafficking, since it is illegal under international law to even prohibit the departure of such persons from their national territory. The exercise and encouragement of the exercise of a fundamental right of citizens cannot therefore be considered human trafficking. It is the government that, by holding citizens against their will in its country, transgresses and violates all national legislation and it can even be contemplated in many cases that it does so (*"rules aimed at preserving the skilled labor force"* of Law 1312, *"authorized [to leave] within a period not exceeding five calendar years, from the date on which it is requested"* of Decree 306) for the sake of a practice very close and assimilable to forced labor.

31. In the list of political prisoners and prisoners of conscience compiled by Prisoners Defenders we usually find cases of citizens who are criminally charged with years of imprisonment for attempts to leave the national territory, for the mere exercise of their fundamental right to leave the country (Art.13 of the UDHR).

32. Numerous human rights organizations count by the hundreds the cases of human rights defenders, activists and religious who are prevented from leaving the country when they were already prepared at the airport to do so, in order to prevent their messages from being transmitted in forums such as the European Parliament, Geneva and many others.

33. There are many more thousands of human rights defenders, activists and religious who are permanently "regulated", that is to say, they are prevented from leaving the country or even from obtaining a regular passport, for reasons of ideological persecution, based on the provisions of Law 1312 described above. Numerous organizations accumulate hundreds of complaints of this type.¹⁷

34. On the other hand, Resolution 994 of 2015 of the Ministry of Public Health of Cuba, which came into force on December 1 of that year is the internal procedure to be applied by the administration of the units of the National Health System, to workers who are subject to the regulations of Decree 306 of October 11, 2012. Although this Resolution of law has been intensely publicized, however, it has never been published in the Official Gazette of the Republic of Cuba, so there is no transparency for doctors about how to apply to be able to "free themselves" from the

¹⁶ Cuban Penal Code in force: <https://drive.google.com/file/d/1f02Ht4RbElhbmZvSzpH3Fkl8ztGNqzbz>

¹⁷ List of regulated companies publicly denounced by the Patmos Institute: <https://institutopatmosonline.org/category/regulados/>

profession (a term used in Cuba when a doctor is allowed to leave the profession and finally leave the country).¹⁸

35. As for religious people, another area of control of freedom of movement by the Cuban State, the entry and exit of religious people is exhaustively controlled by the Office of Religious Affairs of the Communist Party of Cuba (OAARR), an entity that has the same capillarity in the country as the party itself.

36. The OAARR controls all activities and has full powers and absolute power to use any institution and organism of the State in the service of the control of the religious and religions. Works, reforms, processions, Yoruba rites, burials, donations, imports, travel, visits... the OAARR has the power to allow or deny rights to religious and congregations in any area of State control, that is, in all areas.

37. Prisoners Defenders took statements from 56 religious and lay leaders of 4 religions in Cuba (Catholic, Protestant, Yoruba and Islamic), among them Bishops, Congregation Presidents, Imams and Yoruba Ifas, who mostly confirmed the situation of freedom of movement:

- The entry into the country of a foreign religious is only granted by means of a "religious" VISA that allows preaching and officiating, granted arbitrarily by the OAARR.
- Without such a religious VISA, a religious person who preaches, works in the religious field or participates in religious services is fined and expelled from the country and there are negative consequences for the church/religious congregation.
- The missionaries and religious who enter with a "religious" VISA receive the permission on a temporary basis. If their actions are not compatible with the interests of the State, the VISA is not renewed and the missionary has to leave his mission.

E1. RECOMMENDATIONS REGARDING FREEDOM OF ENTRY AND EXIT TO THE COUNTRY

38. To comply with Article 13 of the UDHR and to this end repeal all provisions which, such as Decree 306, Articles 23, 24.1 and 25 of Law 1312 "Migration Law", or Articles 282, 283, 284 and 285 of the current Penal Code, prevent Cuban professionals and citizens who are not involved in criminal proceedings or military service from leaving the country freely.

39. Eliminate the "religious visa" as a form of interference in the religious freedom of the congregations of the different religions and stop the interference in the travel restrictions of religious abroad by the Office of Religious Affairs.

F. ABOUT THE 8-YEAR LAW

40. Civilian professionals working outside Cuba on behalf of the State in what Cuba calls "missions" leave the country under very special conditions. They are doctors, sailors, engineers, technicians, teachers, architects, artists, athletes and all kinds of professionals. In total, every year Cuba has between 50,000 and 100,000 professionals working abroad for other governments, multinational companies and various organizations.

41. The current Cuban Penal Code and the previous one¹⁹ have in common the article that criminalizes with up to 8 years of imprisonment to leave civilian work abroad or, having finished it, not to return to Cuba immediately. The crime has been called "Abandonment of Functions" and applies to all civilian employees abroad on behalf of or through the State: "Article 176.1. The public

¹⁸ Information note on immigration regulations for the departure of workers in the sector:

<https://salud.msp.gob.cu/nota-informativa-sobre-regulaciones-migratorias-para-la-salida-del-pais-de-los-trabajadores-del-sector/>

¹⁹ Existing Penal Code until December 1, 2022:

https://drive.google.com/file/d/1_kf0R8TsMlxtFIRqAEDleeMfPNGCGTr

*official in charge of fulfilling a mission in another country who abandons it or, once it has been fulfilled, or when requested at any time to return, expressly or tacitly refuses to do so, incurs the penalty of **deprivation of liberty for a term of three to eight years**. 2. The same penalty shall be incurred by any public official who, on the occasion of the performance of a mission abroad and against the express order of the Government, moves to another country. 3. If the acts provided for in the preceding paragraphs are committed by a public employee, they are punishable by deprivation of liberty for a term of two to five years."*

42. This article has not changed in any degree with respect to the previous article 135 of the Penal Code existing until December 1, 2022: "*ARTICLE 135. 1. The official or employee in charge of fulfilling a mission in a foreign country who abandons it, or, having fulfilled it, or having been requested at any time to return, refuses, expressly or tacitly, to do so, incurs the penalty of **deprivation of liberty for a period of three to eight years**. 2. The same penalty shall be incurred by the official or employee who, on the occasion of the fulfillment of a mission abroad and against the express order of the Government, moves to another country.*"

43. The problem lies in the fact that, being outside Cuba, when a doctor or a professor decides not to return to Cuba at the end of his work or decides to leave his job (both are officially called in Cuba "DESERTAR" despite being civilians with a labor contract), it is impossible to apply a penalty of deprivation of liberty to the subject. Therefore, a penalty is applied that is granted by the Declaration of **Abandonment of Mission**. Subsequent to this declaration, he is officially declared **DESERTOR** by the authorities. Immediately he/she is declared **EMIGRATED**, and subsequently declared **INDESEABLE**, a term that comes from **Article 24.1 of Law 1312**.

44. All of this is perfectly explained in the Consular Certificates that Cuba issues to people who suffer these situations. Below, we can see several examples of consular certificates of which Prisoners Defenders has an original copy.²⁰

45. As can be read in the Consular Certificates:

- The Government of Cuba calls the professional who did not return to Cuba after finishing his job a DESERTOR.
- One of these certificates clearly states: "*Citizen XXXXXXXX did not return to Cuba at the end of her work and therefore it is considered that she did not comply with her contract. As a consequence, the Ministry of the Interior of Cuba declared her a deserter since she abandoned a State Mission. **A Cuban citizen who is declared a deserter by the competent Cuban authorities automatically loses his/her residence in Cuba and is denied entry to Cuba for a period of 8 years from the date of the declaration of abandonment of the State Mission.** This is an internal regulation of the Cuban Ministry of the Interior. In the case of XXXXX, the Directorate of Identification, Immigration and Foreigners of Cuba, announced her Abandonment of Mission, which makes her a **deserter**, as of April 5, 20XX. In such sense, and as we already made reference in this document the citizen XXXX **lost her residence in Cuba and cannot enter the country for a term of 8 years**, nor for this sanction can she request her repatriation for the same period of time, **this decision is irrevocable**. In 2017, the Government of Cuba made 4 immigration reforms, where one of them refers to the entry into the country of Cuban citizens who left illegally; however, within this group are excepted those who left through the Guantanamo Naval Base and those who are*

²⁰ **Consular Certificate 1** with attachments of Selecmar, detailing all the particularities of the declaration of DESERTOR (in this case a waitress of the luxury cruises MSC Cruises, the largest European company in the world in its sector): [SEE](#); **Consular Certificate 2**, detailing the method used: [SEE](#); **Consular Certificate 3**, detailing particularities and method used: [SEE](#); **Consular Certificate 3**, detailing particularities and method used: [SEE](#); **Consular Certificate 4** ratifying the prohibition of entry to the country for 8 years, the loss of rights as a Cuban citizen, and the impossibility of appealing such decision: [SEE](#)

considered **deserters**. In the **category of Deserters is any Cuban citizen who abandons a State Mission, including that of a Marine.**"

- Another of the certificates also reads: "Citizen XXXX breached her work contract **by not returning to Cuba within the established time**, and for this reason **the company SELECMAR notified the Cuban Ministry of the Interior of her termination from the entity, which declared her as a DESERTOR**. Our Consulate confirmed this information through a document issued by said company, which is attached to this statement (...) The internal regulations of the Ministry of the Interior of Cuba provide that **when a Cuban citizen leaves a State Mission and is declared a DESERTOR, this person has a sanction of limitation of entry to the country for a period of 8 years**. Likewise, Decree-Law number 302 of 2012 [Migration Law 1312] explains in its **article 24.1** the assumptions for which the entry of persons to Cuba is not admitted (...) XXXX **lost his residence in Cuba automatically, as well as his right to enter his country of origin for a period of 8 years**, which began to count from 05/04/20XX. During this period of time, XXXX cannot apply for the repatriation process. XXXX has approached the Consulate on several occasions and has shown his interest in traveling to Cuba, however, **due to the sanction imposed by the Cuban Ministry of Interior he is unable to enter the country.**"

46. The declaration as a DESERTOR is made by the employer. For doctors it is CSMC,S.A. In the case of seafarers, it is SELECMAR. In the certificates of these companies you can read how they describe the "desertion" process: ²¹

Havana, Havana, 21, XXXX of 20XX

"Year 6X of the Revolution"

Ref.:SEDIRX/20XX

Sincerely Major Agdarys Morales Cordero

Head of Identification and Records Unit

DIIE MININT

Subject: Report of contracted marine who did not return to the country

Below we report the general data of a marine contracted through SELECMAR that did not return to the country, and was discharged from our entity for which it was declared DESERTOR.

NAME AND SURNAME

Position: Apprentice Bar Attendant

C.I.XXXXXX

Resided at:XXXXX

Municipality:XXXXX

Province: Havana

AIRWAY

Vessel: MSC OPERA Company MSC CRUISES on XXXXX in ITALY

Thanking you in advance for your kind attention, I send you my best regards.

²¹ Certificate of Desertion Selecmar - censored_Copy:

https://drive.google.com/file/d/1VLRNxeUb8fYbQpuDp3flmun1dNeh_Wu

47. This declaration as DESERTOR reaches the Ministry of the Interior, which declares the worker DESERTOR and immediately issues two certificates. One declares him EMIGRADO.²² The declaration of EMIGRADO means, in Cuban legal terms, that the citizen loses ALL his property in Cuba and many of his rights.

48. Therefore, the person who leaves a job abroad, or who does not return immediately to Cuba becomes an official DESERTOR, is declared INDESEABLE and is forbidden to enter Cuba for 8 years, and at the same time is immediately declared an EMIGRATE, taking away all her property and a good part of her rights as a citizen: **it is the Law of 8 years.**

49. If the children of the DESERTORA are in Cuba, because of the Migration Law, she will not be able to sign her departure before a notary, which will prevent her from reuniting with them for many years, and they will remain orphans for at least 8 years.

50. More than 5,000 children are currently separated from their parents and this has been the case for decades. The Committee on the Rights of the Child in the Conclusions of its Periodic Review of Cuba in June 2022(p34/p35)²³ denounced this specific situation. This has also been partially described by the United Nations Special Rapporteurs on Human Trafficking and Slavery in the letter ALCUB6/2019.²⁴

F1. RECOMMENDATIONS ON THE 8-YEAR LAW

51. To repeal all provisions and laws that prevent professionals abroad (doctors, sailors, teachers, technicians, athletes and artists) from returning to Cuba for 8 years, declaring them deserters and emigrants, forcibly separating children from their parents.

52. Eliminate Article 176 of the Penal Code and all provisions, norms and laws that punish with family separation professionals abroad who decide to leave work or not return to Cuba.

²² Declaration of EMIGRADO from the Ministry of the Interior:

<https://drive.google.com/file/d/1VS2jIBiqQAgSkiVJSjUOfyb66ibSD0LS>

²³ UN Committee on the Rights of the Child - Conclusions of the Periodic Review of Cuba June 2022 (p34/p35):

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsogu%2BrcYtuo0ebg3v3LZyh%2FkdEw4WmpeU9QV48NBzsHIJ%2F56Qg%2FdfExiNzVk5YlGyGRcuV%2B8hjXI9mYjG4mkNHQ1DTmsLOn2ziM5TW1gFQ>

²⁴ Letter ALCUB6/2019 from the United Nations Special Rapporteurs on Trafficking in Persons and Slavery:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24868>