



# General Assembly

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## Human Rights Council

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Human rights situations that require the Council's attention

### **Written statement\* submitted by the International Association of Democratic Lawyers (IADL), a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[27 August 2013]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## The case of the Cuban Five

The International Association of Democratic Lawyers (IADL) calls the attention of the Human Rights Council on the case of the five Cubans agents jailed in the United States for fighting terrorism. Fifteen years after their arrest, four of them are still unjustly detained in prison serving life or long term sentences, in a clear act of reprisal against Cuban people. This case raises grave concerns about the U.S. justice system and the U.S. attitude to terrorism which should be urgently addressed by this Council and his mechanisms.

Gerardo Hernandez, Ramón Labañino, Fernando Gonzalez, Antonio Guerrero and René Gonzalez, commonly known as the Cuban Five, were arrested by the FBI in Miami on September 12<sup>th</sup> 1998. They were members of a Cuban government intelligence operation which was charged with infiltrating and monitoring a network of terrorist organizations based in South Florida.

Since the triumph of the Cuban Revolution, these groups, with the knowledge and support of the C.I.A. and the F.B.I., used all possible means to overthrow the Cuban government including direct military invasion, attempts to kill political leaders, bombs, sabotages, murders and biological warfare. Groups as Alfa 66, Brigade 2506, Omega 7, Comandos F4, Brothers to the Rescue, Independent and Democratic Cuba (CID), Cuban American National Foundation are responsible for decades of terror against Cuba and against anyone who advocates a normalization of relations between the U.S. and Cuba.

Their countless criminal actions already killed more then 3.000 innocent people and provoked incalculable damages to the Cuban economy. The U.S. authorities always failed to enforce their own laws against such violence and denied cooperation with their Cuban counterparts to neutralize it. This dangerous network is allowed to operate with complete impunity in South Florida.

Therefore Cuba made the careful and necessary decision to send its own agents to Miami to infiltrate and monitor these terrorist groups, reporting warnings of the plans being developed to attack the Island. The Cuban Five, at great personal risk, quickly succeeded in their mission gathering lot of information about the criminal activities of such groups. In June 1998 the Cuban government transmitted to the F.B.I. enough evidence to stop the terror campaign. But the U.S. authorities decided not only not to act against these groups but to arrest those who were trying to prevent their criminal plots.

The Five were guilty of minor offenses: they did not register as foreign agents and three of them were using false identities but they ended up being accuse, in the words of the prosecutor, of willing to destroy the USA. Among the 20,000 pages of documents seized from them there was not a single page of classified information nor any that compromised U.S. security, unless the U.S. identify itself with the Cuban-American terrorist groups based in Miami.

Since there was no evidence of espionage, they were charged with “conspiracy” to commit espionage with Gerardo Hernandez charged with “conspiracy” to commit murder in connection with the 1996 shoot down of two planes flown by the anti-Cuban organization "Brothers to the Rescue" which had been engaging in illegal invasion of Cuban airspace.

From the moment of their arrest, the Cuban Five were subjected to extremely harsh treatment. In total disregard of U.S. constitutional law and international law they were denied basic legal safeguards such as the right to proper counsel, hindered in this case by keeping the accused in solitary confinement throughout the 17 months previous to their trial to prevent them from freely communicating with their defense attorneys. Moreover the U.S.

government classified the case as one of national security precluding the defense from having access to the existing evidence.

The case was due to be heard in Miami, where there exists a pervasive prejudice against the Cuban government due to the strong political influence by leaders of the powerful Cuban exile community. For this reason, the defense team presented several motions to change venue to a more neutral site. It was clear that the defendants, as admitted agents of the Cuban government, were unable to obtain a fair and impartial trial in the city.

Miami has “a long history of threats, bomb scares, actual bombings, and even murders directed at persons who have dissented from the predominant anti-Castro positions or have demonstrated a perceived “softness” toward the regime”.<sup>1</sup> The possibility of selecting twelve citizens of Miami-Dade County who can be impartial in a case involving acknowledged agents of the Cuban government is virtually zero. Even the U.S. government, in a pretrial motion in another case, argued that it was “virtually impossible” for a fair trial to be held in Miami in a case that touched upon Cuban issues.<sup>2</sup>

Moreover, at the time of the trial, the pervasive preexisting prejudice in Miami against Cuba, its agents and allies was arose and inflamed by the Elián González controversy and fueled by hundreds of articles, radio and television transmissions portraying the defendants as dangerous “Castro's spies”.

Before and during the trial local media sparked an intense hate campaign against the defendants. The inflammatory and prejudicial media coverage surrounding the case made an objective evaluation of the evidence impossible. Jurors were intimidated. Several perspective jurors admitted that they would be afraid to return not-guilty verdicts against the Five. In 2006 it was discovered that many Miami “journalists” who covered the case were secretly and illegally paid by the U.S. government, through its agency the Broadcasting Board of Governors.<sup>3</sup>

Nonetheless, and despite several and well supported motions to change venue, the court ordered the trial be held in Miami. The resulting verdict of the jury, guilty on all 26 counts, was foreseen. The Cuban Five, following a profoundly flawed trial celebrated in the city controlled by the leaders of the terrorist organizations they had under surveillance, received the maximum possible sentences for the crimes they were accused of and were dispersed in different U.S. penitentiaries. Despite being model prisoners they were frequently placed in solitary confinement and denied visiting rights.

In May 2005 the United Nations Working Group on Arbitrary Detentions strongly criticized the trial observing that it “did not take place in the climate of objectivity and impartiality which is required in order to conclude on the observance of the standards of a fair trial”. The U.N. experts, taking also into account that the defendants were denied the right to prepare an adequate defence, declared their deprivation of liberty arbitrary and requested the U.S. government to remedy the situation.<sup>4</sup>

On August 9<sup>th</sup> 2005 the Atlanta Court of Appeals unanimously ruled to reverse their convictions and ordered a new trial. The three-judges panel recognized that the defendants were denied a fair trial by the “perfect storm created when the surge of pervasive community sentiment, and extensive publicity both before and during the trial, merged with the improper prosecutorial references” and that “evidence submitted (before the Miami Court) in support of the motion for change of venue was massive”.

The U.S. government, through its Solicitor General, presented an appeal to review the decision. The Court of Atlanta agreed to hear the case en banc and, on August 11<sup>th</sup> 2006, overturned the decision for a re-trial and upheld the original trial judge's assessment of jury credibility and impartiality and the convictions.

On June 15<sup>th</sup> 2009 the U.S. Supreme Court refused to hear the appeal of the Cuban Five, despite the solid arguments made by the defense and the unprecedented number of amicus briefs received by the Court in support of the call for review of convictions.

The prosecution of these five men is illegitimate and politically motivated, designed mainly to appease the powerful Cuban exile community in Florida which has a considerable influence on United States policies toward Cuba, and is responsible for the failure of the United States and Cuba to normalize relations and for the continuing illegal blockade imposed against the Cuban people for over 50 years.

IADL urges the United States to strongly reject any double standards in the fight against terrorism and therefore to enforce their laws to stop terrorist actions originating from South Florida.

IADL calls upon president Obama to use his power to put an end to this intolerable and shameful injustice releasing immediately the four Cuban agents still arbitrarily detained in the USA and to guarantee the respect of their basic rights until their effective release, starting with rights to visits.

IADL calls upon the Human Rights Council to ensure the fulfillment by the United States of its international engagements in human rights issues.

IADL calls upon all UN Member States to exercise their political influence, both at bilateral and multilateral level, seeking the release of these five men who sacrificed their life and freedom to promote justice and protect human lives.

*Notes:*

- <sup>1</sup> Declaration of Dr. Lisandro Pérez. See also Jim Mullin, "The burden of o Violent History", Miami News Time, 20<sup>th</sup> April 2000.
- <sup>2</sup> Ramirez v. Ashcroft, No. 01-CV-4835 (June 25, 2002).
- <sup>3</sup> Affidavit of Martin Garbus 31/08/2012
- <sup>4</sup> E/CN.4/2006/7/Add.1