Cuba – Researched and compiled by the Refugee Documentation Centre of Ireland on 6 December 2010

If "Deserters" are prohibited from returning to Cuba for 5 years, what would happen to them if they tried to re-enter Cuba during that period? Is there any COI evidence of the arbitrary detention and abuse to "deserters"? Are there any particular countries that will provide "deserters" with protection?

In a section headed "Travel Restrictions and Family Separation" the 2010 *Human Rights Watch* annual report on Cuba states:

> "The Cuban government forbids the country's citizens from leaving or returning to Cuba without first obtaining official permission, which is often denied." (Human Rights Watch (January 2010) *World Report 2010 – Cuba*)

In a section headed "Fundamental Freedoms" the 2010 *United Kingdom Foreign and Commonwealth Office* annual report on Cuba states:

> "Freedom of movement remains an issue of concern. Cuba limits domestic migration into the capital, and for travel outside the island Cuban citizens require expensive, government-authorised exit permits. If a Cuban citizen stays outside the country for longer than their exit permit validity, they risk being denied re-entry to their own country and are rendered effectively stateless." (United Kingdom Foreign and Commonwealth Office (March 2010) *Annual Report on Human Rights 2009 – Cuba*)

See also *Immigration and Refugee Board of Canada* response to information request relating to Cuban exit procedures.

In a section headed "Entry/Exit Requirements, Travel Transaction Limitations" a document issued by the *US Department of State* refers to the possible consequences of unauthorised entry into Cuban territory as follows:

> "Entering Cuban territory, territorial waters or airspace (within 12 miles of the Cuban coast) without prior authorization from the Cuban government may result in arrest or other enforcement action by Cuban authorities. Immigration violators are subject to prison terms ranging from four years for illegal entry or exit to as many as 30 years for aggravated cases of alien smuggling." (United Sstates Department of State (Bureau of Consular Affairs) (29 April 2010) *International Travel Information – Cuba: Country Specific Information*)

In a section titled "Sanctions and Criminal Measures for Violation of Travel Laws" an article published in the *Emory International Law Review* states:

> "Should a Cuban citizen (or any person in Cuba) attempt to bypass any of these procedures, the person faces potentially draconian consequences. The

> Migration Act provides that ‘anyone who infringes any of the provisions of this Law and its Rules, will be imposed an administrative fine of up to 100 pesos, without prejudice to the other penalties they may have incurred.’ That ‘penal responsibility’ is codified in Articles 216 and 217 of the Cuban Penal Code. The Cuban Penal Code provides, in relevant part, that anyone who, ‘without completing the legal formalities, leaves or completes acts designed to leave national territory, will incur a punishment of deprivation of liberty of one to three years or a fine of 300 to 1000 cuotas [convertible pesos].’ That incarceration time increases to three to eight years if violence, intimidation, or force is used in the commission of the escape. The Code also provides that the crime of illegal exit will be ‘punished independently from those committed in the execution or at the time of the crime.’ Article 216.3 of the Penal Code thus establishes that those whose acts lead them to be convicted of illegal exit will serve consecutive sentences for any tangential or related crimes, setting up the possibility of exceedingly lengthy terms. Because many of the crimes contained in the Cuban Penal Code have very vague definitions, this possibility is very real. In the same vein, those who ‘organize, promote or incite an illegal exit’ will be incarcerated for two to five years. Those who give material, information, or help of any kind to those who leave the country illegally will be incarcerated for one to three years or pay a fine between 300 and 1000 pesos.” (Emory International Law Review: Volume 23, Issue2 (2009) *You Can Check Out Any Time You Like, But We Might Not Let You Leave: Cuba’s Travel Policy In The Wake Of Signing The International Covenant On Civil And Political Rights*, pp669-670)

This article also states:

> “Currently, there are over a dozen people jailed in Cuba for illegal exit or related crimes. For some, the sentence is longer than provided for in the Penal Code. Illegal exit is one of many political crimes aimed at clamping down on those who are ‘deemed a threat to the state’ by the Cuban government. As one commentator has pointed out: ‘[T]he punishment on political criminals tends to be grossly disproportionate to the alleged offenses.’ The crime of illegal exit is overwhelmingly aimed at curbing defections, but one cannot help but see the burden the ‘illegal exit’ provision places on ordinary Cubans seeking to leave the country on a temporary basis, especially when coupled with the complicated bureaucratic process that one must navigate in order to obtain an exit permit. With the omnipresent potential of government crackdown on defectors and dissidents, ordinary Cubans cannot escape the shadow of the criminal system, and ‘the rule of law as a restraint on despotic governance is nowhere to be found when the prevailing regime deploys the Cuban legal system against its perceived enemies.’” (ibid, p.670)

An article published on the *Qorreo* website refers to the treatment of Cuban dissidents in Spain as follows:

> “Amid such a hurried sequence of events, the Cubans were not only adjusting to their new-found freedom, but also trying to understand the exact nature of their legal status in Spain. Ruiz, like the other freed Cubans in Spain, has been told that he is officially an immigrant, but he sees himself as a refugee. 'I consider myself a political exile. I didn’t come here for economic reasons, I came here for political reasons,' he said. Some, like Ruiz, hope to move to the United States, where they already have family, although it is still not clear

> whether that is possible. After some initial confusion, the released prisoners were told they will be relocated to different provinces around Spain, including in Valencia and Málaga. Ruiz is one of several freed dissidents who believe the Spanish authorities have not given them enough information. The Red Cross and Comisión Española de Ayuda al Refugiado (CEAR) are organizing the Cubans' accommodation, as well as offering employment advice, psychological support and medical care." (Qorreo (21 July 2010) *Freed Cuban dissidents adjust to life in Spain* (Translation of article originally published in Spanish by El Nuevo Herald)

A *Sydney Morning Herald* article states:

> "The federal government has agreed to resettle three Cuban refugees in Australia at the request of the United States." (Sydney Morning Herald (5 April 2010) *Cuban refugees to settle in Australia*)

This article also states:

> "In 2002, Australia resettled a Cuban and a Haitian family who had been intercepted in waters off the United States and found to be in need of protection. Some 40 Cuban refugees were resettled in Australia in 1981." (ibid)

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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