

Artists  
at Risk  
Connection



# Art Under Pressure

DECREE 349 RESTRICTS  
CREATIVE FREEDOM IN CUBA

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# Artists at Risk Connection

## ART UNDER PRESSURE

Decree 349 Restricts Creative Freedom in Cuba

March 4, 2019

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**Artists at Risk Connection (ARC)**, a project of PEN America, manages a coordination and information-sharing hub that supports, unites, and advances the work of organizations that assist artists at risk globally. ARC's mission is to improve access to resources for artists at risk, enhance connections among supporters of artistic freedom, and raise awareness of challenges to artistic freedom. For more information, go to [artistsatriskconnection.org](http://artistsatriskconnection.org).

**Cubalex** is a nonprofit organization that focuses on legal issues in Cuba. It was founded on December 10, 2010, in Havana. It has been registered as a charitable organization in the United States since June 2017, after most of its staff was forced into exile. Cubalex's mission is to defend and promote human rights in order to produce a social transformation that will allow the reestablishment of democracy and the rule of law in Cuba. To learn more, go to [centrocubalex.com](http://centrocubalex.com).

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Design by Pettypiece + Co.

Cover image by Nonardo Perea

ARC is a project of PEN America.



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# Executive Summary

In recent years, Cubans have experienced momentous change, from a gradual loosening of economic restrictions to greater access to cell phones, Wi-Fi, and social media. But the Cuban government continues to operate in a highly centralized and controlled way, including in the arts sector, as is apparent from the enactment on December 7, 2018, of Decree 349, which seeks to regulate

**Building on an existing body of laws and regulations that control the evaluation, registration, and contracts for officially recognized artists, Decree 349 codifies, formalizes, and widens the scope of artistic censorship.**

independent artistic production. The Cuban government has always maintained a tight hold on Cuban art and artists and the source of income they represent. But, building on an existing body of laws and regulations that control the evaluation, registration, and contracts for officially recognized artists, Decree 349 codifies, formalizes, and widens the scope of artistic censorship. As independent artists—those who work outside Cuba’s official state-sanctioned cultural organizations—proliferate thanks to new economic developments, the Cuban government is looking for new ways to regulate the cultural sector, and Decree 349 is its most significant attempt.

Unfortunately, it is a step in the wrong direction. Independent and officially recognized artists alike have expressed strong concerns about the measure, which requires everyone providing artistic services to register with the state.<sup>1</sup> The government has responded harshly to artists’ protests, including through arrests. As of the date this white paper was published, the government has not taken any notable steps to address these concerns and has publicly disparaged critics. While the Ministry of Culture has promised additional regulations that will clarify how the decree will be enforced, there is little confidence that such regulations will address its inherent flaws.

This white paper details the most troubling issues, including how Decree 349:

- Requires anyone engaged in artistic activity to be evaluated and registered by government-

affiliated cultural institutions, making unregistered artistic labor illegal and giving the government the power to blacklist artists and unilaterally destroy their ability to legally produce art;

- Enables authorities to exclude audiovisual works of art based on overly broad categories of what constitutes impermissible content;
- Gives broad discretionary powers to a new category of inspectors, who can unilaterally determine if a work complies with the decree’s requirements, and fails to set up a meaningful and impartial appeals process;
- Institutionalizes practices that the Ministry of Culture has been using for several years to intimidate and control all artists, both independent and officially recognized;
- Builds upon an existing body of laws and regulations that already control the provision of artistic services in public spaces or installations by officially recognized artists and expands them to include all artists; and
- Exceeds any legitimate aim to regulate the artistic sphere and directly conflicts with Cuba’s international treaty commitments and obligations with respect to freedom of expression and artistic freedom.

In addition to highlighting the potential for Decree 349 to chill artistic freedom and the cultural sector in Cuba, this white paper elevates the voices of emerging and independent artists who would be most affected by the decree. While the focus is primarily on the independent community, it reflects many concerns and opinions raised by state-recognized artists as well.

Despite changes in Cuba’s top leadership and loosening economic restrictions, little progress has been made on freedom of expression. Journalists, activists, and artists continue to be systematically targeted, harassed, and silenced. Decree 349 is the



Posters for #NoAlDecreto349 campaign, 2018.

As it stands currently, the decree goes against Cuba's commitment to respect fundamental human rights and puts artistic freedom in jeopardy. Unless the regulations promised by the Ministry of Culture address all concerns, we recommend that Decree 349 be repealed.

latest example of Cuba's policy to subjugate artistic expression to the interests of the state. True artistic freedom requires significant space for expression, free from censorship and the editorial dictates of governmental bodies.

While the Ministry of Culture has yet to issue enabling regulations—and while we hope that such regulations will address all significant concerns raised by artists—we remain

worried that Decree 349 is inconsistent with international guarantees of human rights and does not represent a sincere commitment to ensure freedom of expression for all artists.

As it stands currently, the decree goes against Cuba's commitment to respect fundamental human rights and puts artistic freedom in jeopardy. Unless the regulations promised by the Ministry of Culture address all concerns, we recommend that Decree 349 be repealed. In an important period of change in Cuba, the government and its Ministry of Culture have a historic opportunity to mark a change from the previous administration and encourage independent voices and artistic freedom.

# Introduction

Cuba's art and cultural scene has always been an essential component of its economy and international image. For many outside Cuba, the country's rich traditions in music, dance, and visual art are a primary association with the country. At first glance, art in Cuba may seem like neutral territory, divorced from politics or governmental control. In reality, it is impossible to separate Cuba's prominence in the art world from the government's highly centralized system, which promotes and sustains artistic production<sup>2</sup> and limits opportunities for outsiders.<sup>3</sup> Today, however, this system looks less monolithic as freer economic policies<sup>4</sup> and technology<sup>5</sup> that connect artists directly to audiences and patrons have fueled a new generation of savvy and expressive independent artists who are gaining large followings both inside and outside the country.<sup>6</sup>

In early 2018, the Artists at Risk Connection (ARC) and Cubalex determined the need for a deeper look at the methods and effects of Cuba's persecution of artists. The government uses well-documented tactics to control and corral

the independent art scene, including arbitrarily detaining dissenters for short periods of time,<sup>7</sup> permanently closing independent cultural spaces,<sup>8</sup> and discouraging independent cultural events, such as Cuba's first independent biennial, the *#00Bienal de La Habana*, held in May 2018.<sup>9</sup> Researching and monitoring these restrictions has taken on even greater importance since the announcement in July 2018 of Decree 349. Artists of varying political perspectives have responded by organizing to voice their concerns about its potential consequences. Although the government has stated that the decree is meant to target "vulgar, offensive and mediocre content" that violate Cuba's revolutionary values,<sup>10</sup> the implications of this measure as it is currently written are much wider.

This white paper explores the impact of Decree 349, which, despite many artists' protests, took effect in December 2018. We will highlight its flaws and demonstrate how it is likely to be used against all artists and especially independent artists. Finally, we will call on the Cuban authorities to significantly revise or repeal the decree and to engage in a dialogue with all of the country's artists when devising and implementing policies that will affect them.

## ARTIST VOICES

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### Ariel Meceo Tellez

Poet, photographer

**When and how did you hear about this new decree?** I heard about it on the *Gaceta Oficial* in July of this year. I always read through it to see if there is anything related to culture. Since then, I've joined many of the artists who worked on the *San Isidro Manifesto*.<sup>11</sup> We've read the decree, had public debates, and performed poetic and musical presentations. I don't think anyone had seen artists as organized in this way before.

**What do you know about the drafting process of the decree?** No one knows much about the drafting process. I'm sure they involved some artists, but none of this is done or shared publicly. Despite the Castros' officially stepping down and the many changes that have happened in Cuba, the government wants to continue to govern by decrees.

**Do you believe the decree will affect your work and the work of other artists?** I don't think it will change my work. If I do anything differently, it will be to create work with an even stronger message. I'm a young writer and I've published two books, but both had to be published outside Cuba. I characterize myself as making sincere art that the government doesn't like. Can you imagine that a high-ranking official was bothered enough to threaten me because of a poem about a fly and a flan?

**Have levels of repression of artists increased in Cuba?** I think they have increased and are pretty constant now. But it would be an error to minimize the repression that artists experienced before. That really frustrates artists who were active during the '60s, '70s, and '80s. Some of them might even argue that it was even worse without a decree.

# Artistic Expression in Cuba: A New and Old Frontier of State Censorship

## The State of Artistic Freedom in Cuba

Artists' uneasy relationship with Cuba's powers that be long predates the announcement of Decree 349. For more than half a century, Cuba's one-party government has consistently acted as a watchdog against the expression of dissenting views, using a diverse set of tactics for punishing, marginalizing, and targeting critics—including artistic ones.<sup>12</sup> In June 1961, as discontent spread over the censure of *PM.*, a short film about Cuban nightlife,<sup>13</sup> and the closure of *Lunes de Revolución* (Mondays of Revolution), Cuba's premier cultural magazine, Fidel Castro gave a speech titled "Words to Intellectuals" that condemned all expression that failed to conform to official doctrine. A decade later, the imprisonment and forced confession of the once-lauded poet Heberto Padilla<sup>14</sup> became another cautionary tale for artists working within Cuba's network of government-affiliated cultural institutions. The Padilla case had far-reaching repercussions, leading to a difficult break between "the Cuban Revolution," i.e., Fidel Castro, and many literary figures of international renown who, up to that point, had lent the cause valuable intellectual and moral support. The period that followed this rupture became known as the *Quinquenio Gris* (five gray years) when artists seen as too critical were accused of having "ideological problems" and were marginalized.<sup>15</sup> The period ended with the creation of the Ministry of Culture in 1976,<sup>16</sup> but free expression remained limited. In 1991, a group of artists known as *Criterio Alternativo* (Alternative Criterion)<sup>17</sup> were imprisoned after expressing their discontent with the cultural and economic situation in a document known as *Carta de los Diez* (Letter of the Ten). Brutal crackdowns during the so-called *Primavera Negra* (Black Spring) of 2003<sup>18</sup> and against the 2009 *Marcha por la No Violencia* (March for Nonviolence) in response to the arrest of artist Amaury Pacheco,<sup>19</sup> instilled a sense of panic in those wishing to express dissenting opinions.<sup>20</sup>

Beyond these landmark historical events, Cuban artists continue to contend with various routine forms of harassment, such as being "regulated" (unable to travel),<sup>21</sup> facing interrogations,<sup>22</sup> being subject to searches in their homes and galleries,<sup>23</sup> undergoing the seizure of their work and files,<sup>24</sup>

*Harassment has at times extended to artists' loved ones, seeking "to disorient and affect psychologically not only writers, artists, and activists, but also their family, friends, and colleagues. It seeks to isolate them and is a total intrusion in their private life."*

and, for those with formal recognition, enduring the termination of employment or support from official cultural institutions.<sup>25</sup> Additionally, artists have been arrested for their work under laws that either explicitly criminalize peaceful free expression<sup>26</sup> or give the police broad discretionary powers.<sup>27</sup> Artists have reported that the harassment has at times extended to their loved ones,<sup>28</sup> seeking, in the words of Cubalex director Laritza Diversent, "to disorient and affect psychologically not only writers, artists, and activists, but also their family, friends, and colleagues. It seeks to isolate them and is a total intrusion in their private life."<sup>29</sup>

Decree 349 represents both a predictable continuation and a significant escalation of state hostility toward artists. With the loosening of restrictions on private businesses,<sup>30</sup> the legalization of cell phones,<sup>31</sup> easier access to Wi-Fi,<sup>32</sup> and the prominence of social media,<sup>33</sup> the alternative-art sector has thrived. Independent artists can now more easily reach their audiences, sell their work, and air instances of repression without going through government-approved cultural gatekeepers.<sup>34</sup> Cuba's first independent biennial, the #00 *Bienal de La Habana*, held last May, gave a platform to a generation of new independent artists ready to commercialize their work. Decree 349 can be understood as an overreaching attempt to manage these rapid changes. The Ministry of Culture's harassment of the organizers of the biennial,<sup>35</sup> for instance, indicated that the government saw independent artists as a threat. Its response represents an attempt to maintain strict state control over both their ideas and the revenue they bring to the country,<sup>36</sup> a level of control that it already exerts over state-sanctioned artists.

### The First Independent Biennial in Cuba: #OOBienal de La Habana

On May 15, 2018, in Havana, over 170 artists, writers, musicians, and intellectuals participated in Havana's first independent biennial, a 10-day event called #OOBienal de la Habana.<sup>37</sup> The event was a group of artists' response to the postponement, in the wake of Hurricane Irma, of the state-sponsored biennial, which had been planned for October 2018.<sup>38</sup> *La Unión de Escritores y Artistas de Cuba* (UNEAC)<sup>39</sup> and *Asociación Hermanos Saíz* (AHS)<sup>40</sup>, two government-affiliated organizations regulating the art sector, publicly criticized the independent event and called its organizers "unscrupulous."<sup>41</sup>

Fearing retaliation, several participants did not publicize their participation. Those who did received calls from the *Registro del Creador de las Artes Plásticas y Aplicadas*,<sup>42</sup> a division of the Cuban Ministry of Culture, threatening to revoke their artist accreditations. Artists close to the biennial organizers had their materials seized<sup>43</sup> and were arrested or slandered publicly.<sup>44</sup> Harassment by the authorities was not limited to artists residing in Cuba, and several international artists and academics, such as Coco Fusco<sup>45</sup> and Gean Moreno,<sup>46</sup> were questioned at the airport and denied entry.<sup>47</sup>

*"I think that Decree 349 will not only affect my artistic work," Perea said, "but will also make me seem more marginalized in the eyes of others, who will see me as a despicable criminal."*

#### The Meaning of Dissent for Independent and State-Recognized Artists in Cuba

Before the enactment of Decree 349, artists in Cuba essentially faced two choices. They could be officially recognized by the Ministry of Culture, or they could remain independent artists. Admittance to the state-affiliated artistic institutions, which control access to most of the resources that can lead to national and international visibility, is not an option for all: It requires participation of a formal, state-sanctioned art program by a certain age,<sup>48</sup> approval by the relevant Ministry of Culture institute or council to become a professional artist,<sup>49</sup> and regular positive evaluations by a technical artistic council<sup>50</sup> to continue working. Artists who opt in must also agree to create work that does not, in the words of an earlier government decree, "go against the cultural policy that

the Ministry of Culture leads or against the image of its creators."<sup>51</sup> Artists who instead remained independent were subject to fewer regulations regarding their qualifications, contracts, and remuneration. While independent artists could supposedly work with less scrutiny from government censors, they were blocked from the resources, spaces, platforms, patronage, and visibility<sup>52</sup> controlled by the Ministry of Culture.

Government-approved and independent artists have faced distinct consequences for publicly criticizing the government. In the past, most dissent was led by officially recognized artists or intellectuals whose outspoken criticism led to their being ostracized from national cultural institutions.<sup>53</sup> Government-approved entities like the *Unión de Escritores y Artistas de Cuba* (UNEAC) and *Asociación Hermanos Saíz* (AHS) and its councils operate ostensibly as members' guilds for artists, but they also function as government-controlled spaces where adherence to the state's views is a precondition of membership.<sup>54</sup> Those who step out of line risk the revocation of their registration as artists and punishment by the Ministry of Culture, including the curtailment of visa support, invitations to travel abroad, and the possibility of having their work shown in state-run cultural spaces.

Since the announcement of Decree 349, however, independent artists have led a large part of the protests.<sup>55</sup> This new generation of independent artists are not and, for the most part, have never been members of government-sanctioned cultural institutions.<sup>56</sup> The reasons vary: Some of

them did not meet the formal educational criteria,<sup>57</sup> some have been unable to publish their work in Cuba even while enjoying success abroad,<sup>58</sup> and some feel marginalized and persecuted for their artistic practice.<sup>59</sup> At the same time, these independent artists have benefitted from the loosening of economic restrictions and, through the internet, have found new ways to nurture and share their work. The artists who have protested the decree most vehemently are also those who are most vulnerable to its strictures. Nonardo Perea, a multidisciplinary artist, fears that the decree will further stigmatize independent artists. “I think that Decree 349 will not only affect my artistic work,” he said, “but will also make me seem more marginalized in the eyes of others, who will see me as a despicable criminal.”<sup>60</sup>

Despite the higher stakes for independent artists, many contend that the decree does not represent a new cultural policy. They believe that it merely codifies attitudes and practices that the authorities were already using to police artists critical of the status quo. Putting the terms of censorship in writing might even be helpful.<sup>61</sup> “Issuing Decree 349 was an error by the government, a crack in their system,” artist Luis Manuel Otero, an organizer of the #NoAlDecreto349 campaign, told ARC. “Because for 60 years we have suffered censorship, but there was never proof beyond personal experiences. It was easy to dismiss when artists were imprisoned as an exception or the government would create cases against them. Now, with Decree 349, we can prove that repression has been and is happening.”

## ARTIST VOICES



### Yanelys Nuñez Leyva and Luis Manuel Otero Alcántara

Curator, art historian; multidisciplinary artist  
Co-founders of *Museo de la Disidencia* and  
organizers of the #OObienal de La Habana

**When did you first hear about decree 349?** We received a call from a Radio Martí show asking what we thought about this decree. We hadn't heard anything about it, but we figured that if they were calling us and wanting us to share our positions, it must be big. New decrees

are published on *La Gaceta Oficial*, but it's almost impossible to find a printed issue. We found it online despite the fact that the website is very badly designed and that we have very limited access to the internet.

**Does this decree mark a change in Cuba's cultural policy?** No, there is no new cultural policy in Cuba. It has been the same for the last 60 years: You are either with me or against me. This decree is not cultural policy but a political tool. The decree was issued because both the government and the people know that the independent art sector is rising and growing strong.

**Has the repression of artists increased in Cuba?** Issuing the decree in itself marks a rise in the repression of artists. The way we were treated for organizing the biennial, being in prison more than four times year, and the detention of artists like Soandry, Maykel, and Amaury Pacheco show that the Cuban government has increased its criminalization of artists' voices.

**How will this decree change the way you or other artists work?** The decree won't change how we work. But there are many projects, like the *Museo de la Disidencia*,<sup>62</sup> that will not be allowed to exist. Artists will have to deal with more corruption, as they will be required to retrieve permits for a concert, for example. The agents who grant the permits have no background in art or art history and will subjectively make permit decisions depending on whether or not they approve of the lyrics of a song.

## Cuban Cultural Institutions

Below is a list of the most prominent government bodies and government-affiliated institutions that shape the official art scene in Cuba. These entities, many of which have a documented history of black-listing or otherwise targeting nonconforming artists, are empowered by Decree 349 to determine what constitutes “acceptable” art in the eyes of the state.

**Consejo Nacional de las Artes Plásticas** or CNAP (National Council of Fine Arts), a division of Cuba’s Ministry of Culture, is responsible for overseeing the visual arts.

**Registro del Creador de las Artes Plásticas y Aplicadas** (Registry of Fine Art and Applied Art Creators) is a government-affiliated membership body for visual artists.

**Ministerio de Cultura** (MINCULT) is the Cuban Ministry of Culture. The current minister, Alipido Alonso, is the former deputy chief of the

Ideological Department of the Communist Party’s Central Committee.

**Asociación Cubana de Artesanos Artistas** or ACAA (Cuban Association of Craft Artists) is a cultural association for craft and folk artists.

**Unión de Escritores y Artistas de Cuba** or UNEAC (Cuban Writers and Artists Union) is the leading government-affiliated cultural organization for writers, musicians, and other artists over age 35.

**Asociación Hermanos Saíz** or AHS (Brothers Saíz Association) is the cultural wing of the Cuban Communist Party’s official mass organization of Cuban youth, *Unión de Jóvenes Comunistas*.

**Instituto Cubano de Radio y Televisión** or ICRT (Cuban Institute of Radio and Television) is a government institution in charge of radio and TV broadcasting within Cuba.

# Decree 349: A Law That Discourages Dissent and Targets Independent Artists

## Introduction

When Decree 349 was adopted by the Council of Ministers, Cuba’s highest-ranking government body, on April 20, 2018,<sup>63</sup> and enacted on December 7 of that year,<sup>64</sup> the clear division between officially recognized and independent artists nearly vanished. Decree 349 compels all artists—or, more specifically, all those engaging in any artistic output—to be officially registered and “evaluated” as artists by state authorities.<sup>65</sup> No one is quite sure how this change will be enforced, as the Ministry of Culture has yet to release its promised enabling regulations.<sup>66</sup> Until it does, a state of uncertainty prevails.

In 1997, Decree 226 established procedures governing contracts with artists who were members of institutions under the Ministry of Culture, specifying the fines and penalties faced by violators.<sup>67</sup> Neither independent artists nor *cuentalpropistas* (self-employed individuals) were affected since they were not recognized by the government. Decree 349 contains no such limits: It applies to self-employed artists or anyone providing or contracting artistic services, and it is applicable to any “state or non-state public place or installation.”<sup>68</sup> But Decree 349 does far more than broaden the applicability of existing artistic regulations. It also creates wide categories of content that can be censored and prohibited.<sup>69</sup> To enforce these rules, it empowers a new class of art inspectors to evaluate any type of artistic expression in the country and to employ immediate punitive measures.<sup>70</sup>

More concretely, the decree’s most problematic aspects include:

- The mandatory registration of all persons engaged in artistic activity with the relevant Ministry of Culture-affiliated institution;

- The mandatory negotiation of artist contracts and remuneration through state-affiliated cultural institutions;
- The prohibition of broad categories of audiovisual content;
- Broad discretionary powers in the hands of civil servants who can solely determine if a work of art complies with the decree's requirements;
- Excessive punitive measures for violators;
- Intrusive powers of state authorities without adequate safeguards against abuse and politically motivated decisions; and
- Lack of an effective, impartial, and independent appeal mechanism.

### Mandatory Artist Registration

Article 2.1(e) of the decree states that all those who “offer artistic services” will be subject to the

regulations of Decree 349 and that anyone who does so “without being duly authorized to engage in artistic labor by means of an artistic job or occupation” is in breach of the law. Moreover, anyone who wants to engage in artistic activity must be registered and qualified by the state as a professional.<sup>71</sup>

The mandatory registration requirements force all artists into a system where many aspects of their artistic labor—and even their identity as an artist—are subject to bureaucratic approval. Previously these rules applied only to artists who chose to go through the official evaluation system, set by the Resolution 45 of 2014, which permits artists to be officially recognized. As recognized professionals, artists would become members of official cultural institutions and could be hired for work.<sup>72</sup> Resolution 63 of 2011 specifies who has the right to be a member<sup>73</sup> of the *Unión de Escritores y Artistas de Cuba* and of the *Asociación Cubana de Artesanos Artistas*.<sup>74</sup> Other official cultural institutions, like the *Instituto Cubano de Radio y Televisión*<sup>75</sup> and the *Registro del Creador de las Artes Plásticas y Aplicadas*,<sup>76</sup> mandate additional requirements.<sup>77</sup> Without the

## ARTIST VOICES



### Nonardo Perea

Writer, ceramist, photographer, audiovisual artist, performance artist

**What do you know about the drafting of the decree?** I don't know who or what group of people was involved in the drafting of the decree. I don't even know if young people, old people, artists, or the Minister of Culture were involved. All I know is that it was signed by President Miguel Díaz-Canel. There was already a similar decree from 1997 called Decree 226, but Decree 349 offers new infringements that limit artistic creation.

**What do you believe is the impetus behind the decree?** I think the decree is a response to the #00Bienal and a way to ensure that events like that one don't happen again. The Ministry of Culture and the Cuban state are opposed to all activity that is not in some way related to a national institution.

**What has been the reaction of civil society to this decree?** There isn't a deep knowledge about the decree because the national media has given it little coverage. In digital media, where there has been a stronger response, there is an issue of visibility. The majority of Cubans who use the internet only have the time and money to use it to communicate with family. They are not interested in utilizing the internet to receive this type of information.

**Do you believe the decree will affect your artistic work?** I'm a gay feminist artist who works on issues of homoeroticism. I think that the Decree 349 will not only affect my artistic work but will also make me seem more marginalized in the eyes of others, who will see me as a despicable criminal. I will feel tied at my feet and hands by not being able to advance my artistic endeavors. In some ways, it forces me to rethink if it's worth it to continue living in my own country.

complementary regulations clarifying the decree, it is unclear if these preexisting rules will now apply to the entire artistic community and, if so, how they will be implemented.

Perhaps most important, since government institutions already possess the ability to “disqualify” artists<sup>78</sup> who “go against the cultural policy that the Ministry of Culture leads,”<sup>79</sup> and since Decree 349 makes providing artistic services without being registered illegal,<sup>80</sup> the government could not only blacklist artists by expelling them from the institution’s ranks but also go as far as destroying an artist’s ability to legally produce art. “It would be a painful return to a gray, anti-cultural past of censorship,” Marco Castillo, of the recently disbanded collective *Los Carpinteros* (The Carpenters), told *Reuters*, expressing the fear of many that Decree 349 would revive a period in Cuba’s history when artists were persecuted for their supposed lack of commitment to the Revolution.<sup>81</sup>

#### Remuneration and Work Contracts Under the Supervision of State Institutions

According to Chapter II of Decree 349, any individual artist or collective that approves or permits an artistic service, realizes or permits a payment for artistic services, or offers an artistic service “without having been approved by the cultural institution that authorizes the provision of services”<sup>82</sup> is committing a violation. Unless additional regulations clarify otherwise, not just the artists themselves but also all individuals, organizations, or companies that contract with them will have to go through state institutions,<sup>83</sup> following the system set forth in the Resolution 44 originally intended only for official artists. Resolution 44 of 2014 details how official artists are to be contracted differentiating between contracts by project, short-term contracts, open contracts, and a few permissible exceptions.<sup>84</sup> Resolution 70 of 2013 holds that regulating institutions will keep up to 30 percent of the value of the Artistic Services Contract<sup>85</sup> and that the rest is to be distributed among the artists in accordance with the Artistic Representation Contract.<sup>86</sup> Each artistic presentation is to be negotiated individually, with the remuneration subject to taxation.<sup>87</sup>

#### ARTIST VOICES

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### Lía Villares

Writer, filmmaker, musician

**Do you believe the decree will affect how artists work in Cuba?** I think that those artists who have been working within the system are going to continue to do their thing, crouching and staying within the lines as a form of self-protection.

**Does this decree mark a change in Cuba’s cultural policy?** The thing to know is that the campaign against the decree is not just about Decree 349. It’s just the beginning and helps bring attention to a whole slew

of things that have been happening. We won’t achieve anything if we can get the decree repealed, but things like what happened to me<sup>88</sup> continue to go on. Those things have always happened without a decree.

**What has been the reaction of civil society to this decree?** Artists and people are afraid. Cubans in many ways have lost their culture of protest, a tradition dating back four or five generations. We don’t even have the memory of how to resist and protest. We don’t have the necessary knowledge about our rights or even how to advocate for them.

**Have you been threatened or persecuted because of your work as an artist?** I’ve been outside Cuba for about six months after being “regulated” (unable to travel outside) for a year. They would tell me I could travel, and then I would be denied at the airport. This happened numerous times. They treat you like a child so you know that you are not in control. The event we helped put together in our independent space, *El Círculo*, during the #OOBienal was the only one that police made sure didn’t happen.<sup>89</sup> They took all my electronic devices, drives, and files. They took my entire life’s work, and I doubt they will ever return it.



## Rassandino

Reggae musician, cultural producer

**When did you first hear about Decree 349?** I learned about the decree on Facebook through a friend who actually lives in Italy. As soon as I heard about it, I reached out to artists I know who are very involved, and we decided to meet and discuss what this new decree would mean for our work.

**Does this decree mark a change in Cuba's cultural policy?** Government censorship has always existed, but since the change of government, the situation has become even harder, and the decree has officialized the censorship. Now, with the fines and the decommissioning of music equipment, things will be much harder. We can already see them getting tougher. We have two musicians behind bars: Maykel, who is now going through a hunger strike and sewed his lips shut, and Pupito, who was beaten up by police and now is being charged.

**Do you believe the decree will affect your artistic work?** Yes, definitely. Before we had spaces like our homes, neighborhoods, or independent bars where we could do art and find a way to get ahead economically. I'm a reggae promoter and organizer of hip-hop events, but with 349 I'll have to do construction. I can't do my job without the risk that police will come and give me a fine or take away my DJ's equipment. They have our phones tapped. They know exactly what we are doing, and without a permit, they will stop us.

**Could you find a way to continue to do your work under Decree 349?** I would have to belong to an agency, but that doesn't exist for reggae. Reggae has always been left last and has not been able to grow due to institutional racism. The reggae movement has been squashed, censored, and many Rastafarians have been thrown in prison. I am one of the few independent artists working with reggae music, and there are only two bands left. As part of the government's fight against drugs, they did an operation called *Coraza* in 2003. They decimated the Rastafarian movement by putting everyone in prison, whether they had proof or not. I was 19 and was taken from a concert and spent six months in jail. Those that they couldn't accuse of drug trafficking were given prison time for not working.<sup>90</sup>

In other words, the state profits from the artist services contract, the artistic representation contract, and the taxation regime (from the artist as well as from the third party who contracts them through the state institution). While governments have a right to impose taxes, here Decree 349 essentially forces all artists to adopt the state as their own personal manager, and to pay accordingly, with no possibility for negotiation or exiting the contract.

It's not just independent artists who have expressed concern over this section of the new decree. Singer Silvio Rodriguez said that he would start "working independently given the proven inefficiency of the state mechanisms for contracting and coordinating." He recommended that a moratorium be set on the decree until it is discussed and acceptable modifications are created.<sup>91</sup>

### Censorship and Unjustified Restrictions of the Right to Freedom of Artistic Expression

Some of Decree 349's most problematic sections

police audiovisual work. The decree enables the authorities to exclude art from audiovisual channels that touches on issues that might be considered controversial, with extremely broad and vague definitions of what constitutes crosses the line. Articles 3.1 and 4.1 of the decree contain broad prohibitions against various types of artistic expression, with Article 3.1 barring certain types of artistic content and Article 4.1 prohibiting certain types of conduct. The result is a laundry list of infringing expression, such as:

- The illegal use of "patriotic symbols";
- Pornography, violence, and sexist, vulgar, or obscene language, or art that "generate[s] violence through such language";
- Content that discriminates based on race, gender, or "any other prejudice against human dignity";

- Anything detrimental” to children’s development; and
- The sale of books with content that is “prejudicial to ethical and cultural values.”

Article 3.1(a) bans the use of patriotic symbols in the audiovisual field. Paragraph (g) of the same article forbids “anything that violates the normal development of the society in cultural matters.” Article 4.1(a) allows for the censorship of works that “generate violence through sexist, discriminatory, vulgar and obscene language.” Article 4.1(f) prohibits the commercialization of books with content that is considered prejudicial to “ethical and cultural values.” Article 4.1(g) criminalizes conduct that “exceeds permitted sound and noise levels or uses electrical and other equipment abusively.” This last measure seems to especially target rap and reggae musicians, many of whom are not members of official institutions<sup>92</sup> and have already faced heavy censorship and exclusion from state cultural authorities.<sup>93</sup>

The exact definitions of these terms are apparently

left to the sole discretion of state authorities, who can easily use the vague language to overstep their roles and silence voices that criticize the government. But even if all of these terms were precisely and narrowly defined, they would still represent a wholesale attack on free artistic expression. The articles within the decree provide, as clearly as any guidebook or recipe, a set of pre-built justifications of censorship. While governments across the world have a legitimate interest in countering discrimination and protecting children’s development, such rationales cannot legitimize or excuse the blatant censorship that this decree promotes. Prior censorship and restraint should be a highly exceptional measure, limited only to the most serious crimes.

Furthermore, the lack of a clear definition of “art” means that this decree can apply to essentially any activity with a performative or artistic component, even if its performers believe in good faith that they are not engaging in artistic labor. If the decree is strictly applied, for example, Yoruba- or Orisha-based religious groups could be required to hire artists through state institutions for their

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## ARTIST VOICES



### Yulier Rodríguez Pérez

Urban artist

**What do you know about the drafting process of the decree?** The decree took everyone by surprise. As far as I know, there were no open or democratic open meetings about the measure. It was a lightning measure!

**What do you believe is the impetus behind the decree?** The intention is clear. Art has always exposed the realities of the societies it lives in. We know that in the Cuban context there is one entity responsible for

the many difficulties and limitations that affect the Cuban people. It has a name and it’s the government, whether it’s intentional or by ineptitude. What it wants through this decree is to have the legal tools to silence the voices of artists who might manifest an image that is contradictory to the one it shows the world.

**Does this decree mark a change in Cuba’s cultural policy?** The excessive repression against artists has always existed. We can’t forget past decades. But I do believe that the level of repression has increased against those publicly against the decree. Officials have also intimidated artists so that artists will give information to the political police.

**Do you believe the decree will affect your artistic work?** Yes, I think it will have an effect on my body of work and on me as an artist. Firstly, because I have the right to self-determination as a human being. I have the right to be an independent artist, free of any parameters, controls, and interests that I don’t choose. Secondly, these people and institutions are the ones who are establishing what is permissible and correct in cultural policy and free expression. Finally, it forces artists to be part of the institution, even though one knows that the institution is not inclusive since it only accepts artists whose message aligns with its own interests.

*Giving a single person the power to “veto artistic events based on their subjectivity” would represent the return of “the figure of the censor or ‘cultural police’ that punished Cuban culture during the decade of the seventies and during very unhappy periods for the creativity of artists on the island.”*

religious ceremonies and may find those ceremonies subject to artistic censorship. Because the Ministry of Culture has not yet issued its enabling regulations, there is no guidance as to whether such religious performances fall under the ambit of the decree.

The guidance on spaces that are subject to the expanded measures are similarly broad and unclear. Whereas Decree 226 was limited to “public spaces and installations,” Decree 349 applies to any “state or non-state public place or installation.”<sup>94</sup> Without additional clarification, the ambiguity regarding what constitutes a “non-state public place or installation” risks putting Decree 349 in direct opposition to the right to peaceful assembly and association.

**Wide Discretionary Powers to Government Agents**  
Decree 349’s mandatory registration scheme, along with the government’s previously existing systems of evaluation and registration, gives Cuban authorities the tools to select and discriminate against artists and their work. While Cuba already regularly evaluates the work of officially sanctioned artists,<sup>95</sup> Chapters IV and V of Decree 349 create an entirely new category of government inspectors and supervisor-inspectors,<sup>96</sup> with the power to unilaterally determine what art is permissible and what is unlawful. These two chapters, respectively titled “Empowered Authorities for the Imposition of Measures and the Resolution of Appeals” and “Responsibilities of the Supervisor-Inspector or Inspector,” delineate many of the powers that state employees possess to execute the decree.<sup>97</sup>

As already noted, these inspectors have a wide array of subjective criteria to choose from when determining whether a work of art is acceptable or objectionable. There is no mention, however, of what kinds of credentials, training, or background in the cultural sector, if any, are required of inspectors, who are appointed by the local government, or of supervisor-inspectors, who are appointed directly by the Ministry of Culture.<sup>98</sup> Nor is there any reference to how these inspectors would be trained on issues of international or domestic law that safeguard free expression.

This is a departure from earlier measures like Resolution 45, which specifies that members of the Technical Artistic Councils and Artistic Evaluation Tribunals must be recognized artists with a proven ability to assess the quality of the artwork and the technical aptitude of artists.<sup>99</sup> Even absent the Cuban government’s long history of silencing critics, it is understandable that many fear that the civil servants empowered by Decree 349 are more likely to act as agents of censorship than as cultivators of artistic expression.

#### **Excessive Punitive Measures**

Chapter III describes the punitive measures to be taken against those who violate the decree’s provisions. According to Article 5.1, the Cuban authorities have the power to issue admonitions, impose fines, and seize “instruments, equipment, accessories and other goods.” A fine can range from 1,000 Cuban pesos to 2,000 Cuban pesos (CUC), depending on the “seriousness” of the violation. (In 2017, the official average monthly salary was 767 pesos—about \$29—according to Cuba’s National Office of Statistics,<sup>100</sup> making the punishment clearly excessive and prohibitive.) A seizure can take place independently of or alongside the imposition of fines, and a penalty can be applied by the authorities at any time and “irrespective of their classification in this Decree.”<sup>101</sup>

Article 11, the section of the decree that allows state authorities to seize “instruments, equipment, accessories and other goods,” applies for the entire period of the appeals process, plus 10 days after a decision has been delivered. Along the same lines, a supervisor-inspector can suspend a spectacle or artistic representation when “the circumstances call for intervention” and can propose that an artist’s authorization to work be revoked.<sup>102</sup> An inspector has 72 hours to justify a suspension and write a report explaining the reasons for it. These provisions are particularly dangerous as they can be used to stop performances and creative expressions even when the claim



## Michel Matos

Cultural producer, curator

**What do you believe is the impetus behind the decree?** I think the decree is a direct response to the #00Bienal de la Habana because that event challenged the government's supremacy in convening cultural events. They have been trying to control culture and the arts for years in Cuba, and they insist that in this field the "enemy" works to destabilize. With this logic, any creative who is working independently can be labeled subversive. That is how we [the organizers of #NoAlDecreto349] are seen today.

**Does this decree mark a change in Cuba's cultural policy?** As illogical as it sounds, in Cuba we have gotten used to censorship after years of enduring it and trying to deal with its effects. In 2011, the groups behind the *Festival Rotilla* and *Poesia Sin Fin* (Poetry Without End) suffered massive pressure. The government used military force and police to threaten us, detain us, and separate us from our audiences. These types of actions continue and are being strengthened.

**Have you been threatened or persecuted because of your work as an artist?** Yes, on multiple occasions. It's a strategy that tries to force any dissenting voice to surrender due to hunger or ostracism. Myself and many others have been threatened physically, hearing threats like "Here anyone can have an accident." We are also regularly threatened with not being able to leave the island.

**How have Cuban artists inside and outside Cuba responded to this decree?**

There has been a lot of support for the campaign against the decree, even from artists who are very close to the state sector. Most people who hear about it can realize the danger of a law that has a very wide margin of maneuver. A lot of letters have been written and meetings among artists have been organized, which is really exciting.

of a decree violation is clearly frivolous or arbitrary. Retrospective judicial authorization does not offer sufficient safeguards from abuse and politically motivated decisions. Even if an artist's appeal of an exhibit shutdown is successful, the harm has already been done. Moreover, these provisions provide no criteria to assess which restrictive measure applies to what violation. The analysis is left entirely to civil servants, who have absolute authority to impose punishment.

### Lack of Meaningful Appeal Options

Avenues for appeal or redress are woefully deficient. Article 10.1 of Chapter IV establishes that the same authority of the Ministry of Culture that designates inspectors or supervisor-inspectors to regulate artists and adjudicate their guilt also will review and resolve appeals. Artists have voiced concern with this enforcement mechanism, objecting that giving a single person the power to "veto artistic events based on their subjectivity" would represent the return of "the figure of the

canceler or 'cultural police' that punished Cuban culture during the decade of the seventies and during very unhappy periods for the creativity of artists on the island."<sup>103</sup>

Decree 349 specifies that the only way to contest an inspector's decisions is by appealing to the inspector's supervisor. The Ministry of Culture will review the decisions of supervisor-inspectors and provincial directors, while the director of the special municipality of the Isle of Youth Culture will review the decisions of inspectors for those regions.<sup>104</sup> If the appeal is not accepted, Decree 349 explicitly states that no other appeal option will be permitted.<sup>105</sup> Given these drawbacks, it is obvious that the decree does not give censored artists a meaningful right of appeal. Even in situations where an appeal is hypothetically granted, the decree does not anticipate any redress for the harm that artists, artistic spaces, or employers may have incurred through these acts of censorship beyond returning seized property.<sup>106</sup>

## Conclusion

Decree 349 greatly exceeds any legitimate attempt to regulate the artistic sphere in Cuba. Instead, it appears to be a governmental attempt to control all artistic expression in the country. It introduces a series of provisions that unduly impedes artists' rights to freedom of expression, nondiscrimination, and equality of opportunity and treatment. Through its mandatory registration scheme, its newly created inspectors with unrestricted power to penalize artists and creative expression, and its long list of prohibited content, the decree brings the state of artistic censorship in Cuba to new lows.

The purposely vague and incomplete provisions

will likely encourage a culture of secrecy and pave the way for abuse and arbitrary decision-making. As it stands and without additional regulations, the decree can easily be deployed to constrain the country's artistic activity and silence the regime's political opponents. Its harsh punitive measures will certainly have a chilling effect on free speech and lead to self-censorship and reluctance on the part of Cuban artists to engage, undermining one of the fundamental pillars of a democratic society. Decree 349's policies present a serious challenge for anyone wishing to express critical or unpopular opinions or to create work that reflects viewpoints that conflict with Cuba's centralized cultural agenda.

# Decree 349: Compliance With Cuba's International Treaty Obligations and Commitments

By ratifying international treaties, states assume obligations and duties under international law to respect, protect, and promote human rights. These obligations include ensuring that domestic laws are consistent with international human rights standards.

## Core International Standards and Customary International Law

Cuba's international obligations emerge primarily from its membership of the United Nations. Like all UN members, Cuba has signed the 1948 Universal Declaration of Human Rights (UDHR), committing itself to guarantee that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."<sup>107</sup> While the UDHR, as a declaration, is not a legally binding instrument, today it is well accepted by the international community that it has a binding force due to its classification as customary international law, which all states are obligated to uphold.

International law has since developed a three-part test for assessing state interference with freedom of expression. This test has been created based on numerous judgments by international courts tasked with overseeing the interpretation of human rights treaties and is included in the body of subsequent international human rights law. It is therefore well established that any state interference with freedom of expression must (1) pursue a "legitimate aim," (2) be proven "necessary," and (3) be provided by a law that meets standards of clarity and precision. The decree's vague and unclear provisions fail to meet these required standards. Without clarity and precision, the decree lacks predictability and legal certainty, essential for the rule of law.

Article 20 of the UDHR acknowledges that everyone has the right to freedom of peaceful assembly and association and that no one may be

compelled to belong to an association. Yet Decree 349 compels artists to join a state-controlled association of artists, a clear contravention of the declaration. This requirement denies those who choose not to join access to cultural practices, goods, or services—which in turn denies them the agency to choose their employment freely, develop their potential, and reap economic rewards on the basis of merit.

Cuba has signed, but not ratified, two major human rights treaties: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. As a signatory, Cuba is obligated to "refrain from acts which would defeat the object and purpose" of these two treaties. Article 19 of the International Covenant on Civil and Political Rights reiterates and reinforces Article 19 of the UDHR, holding that everyone has the right to freedom of expression and to possess opinions without interference.

Article 15 of the International Covenant on Economic, Social and Cultural Rights states that everyone has the right to take part in cultural life. The full realization of this right requires that individuals and communities, rich and poor, urban and rural, have access to effective and concrete opportunities. It also encompasses the right of all people to search for, receive, and share information about all the manifestations of culture in the language of their choice, as well as the right of communities to gain access to the means of expression and communication.

It is impossible to believe that Decree 349—which endows a set of bureaucrats with veto power over all artistic expression on the island, with obvious implications for cultural, religious, and communal expression—is compatible with the guarantee of these rights. On the contrary, the decree empowers institutions and civil servants to arbitrarily determine the type and content of cultural goods and services that are accessible to others and to completely control artists' participation in the nation's cultural life.

In addition, Decree 349 foreseeably impinges on a variety of other core human rights. Through its provisions, it severely curtails the liberty of artists to choose their own work and their right to an adequate standard of living, both recognized by the UDHR, in Articles 23 and 25, respectively. Equally, the decree's lack of meaningful and effective appeal options and its expansive seizure provisions impede the rights to a fair trial and to due process, both undergirded by a substantial body of international law.

### The United Nations Educational, Scientific and Cultural Organization (UNESCO)

Cuba became a member of UNESCO in 1947. Membership carries with it an obligation to uphold UNESCO's 1980 Recommendation Concerning the Status of the Artist, which states that "since freedom of expression and communication is the essential prerequisite for all artistic activities, Member States should see that artists are unequivocally accorded the protection provided for in this respect by international and national legislation concerning human rights."

Furthermore, UNESCO's 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions (the 2005 UNESCO Convention), ratified by Cuba in 2007, gives states an array of instruments to reinforce individual rights, promote creative industries, implement cultural policies and public funding for artists and institutions that offer a public service, and develop audiovisual media—all while respecting cultural diversity in all its forms. Article 2 provides that "cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information, and communication, as well as the ability of individuals to have access to diverse cultural expressions, are guaranteed." By ratifying the 2005 UNESCO Convention, Cuba committed not only to implementing its provisions but also to increasing transparency and periodically submitting a report on actions taken to further it.<sup>108</sup>

### Discrimination (Occupation and Employment) Convention

The Convention Concerning Discrimination in Respect of Employment and Occupation falls under the International Labour Organization (ILO). Ratified by Cuba in 1965, it defines discrimination as any distinction, exclusion, or preference made on the basis of race, color, sex, religion, political opinion, national extraction, or social origin. Ratifying states have committed to promote equality of opportunity and treatment in employment, with a view to eliminating discrimination—including discrimination related to access to employment and to the terms and conditions of employment.

Decree 349's provisions forcing artists to register with state institutions clearly violate the ILO convention's standards for equality of opportunity and treatment. It gives Cuban officials the authority to anoint some artists and discriminate against others. It discriminates against unaffiliated artists by punishing them for refusal to comply, nullifying their right to choose their own work, and denying their right even to seek an adequate standard of living through fair contracts and remuneration.

The decree also violates Article 20's freedom of association stipulations, which hold that no individual can be discriminated against for choosing to belong, or not belong, to a group or for choosing to participate, or not, in a cultural activity.

# The Passage of Decree 349 and the Response from Artists

As with most Cuban government decrees, the drafting and issue of Decree 349 have been notably convoluted and opaque. Although the decree was signed by the new president, Miguel Díaz-Canel Bermúdez, on April 10, 2018, it was not published until July 10, and then only on *Gaceta Oficial*,<sup>109</sup> which Cubans would have difficulty accessing on the internet and even more trouble finding in print. The decree officially went into effect on December 7, 2018.<sup>110</sup> The lack of transparency during its drafting<sup>111</sup> and passage has contributed to substantial confusion about the timeline for implementation and about additional administrative regulations that the government has promised to announce.<sup>112</sup>

Musician Silvio Rodríguez stated that “it might be that the Decree 349 has very good intentions, but I’m sure that it would be better if it was discussed with artists,” adding that it seems it was something “cooked up amongst a few people.”<sup>113</sup> Many other activists and artists have taken stronger stands against the decree.<sup>114</sup> Protesting artists have caught the attention of both national and international media by issuing a manifesto in Havana denouncing government censorship,<sup>115</sup> organizing a series of protests and public performances,<sup>116</sup> producing a protest music video,<sup>117</sup> and gathering signatures for an open letter to President Díaz-Canel and Minister of Culture Alpidio Alonso.<sup>118</sup> Numerous protest statements and actions have been organized in Cuba<sup>119</sup> and abroad<sup>120</sup> without a single unifying platform. Those falling under the banners of the *Sin349* (Without349) campaign and the *#NoAlDecreto349* (*#NoToDecree349*) campaign vary in their inclusion of either mostly recognized or independent artists, and in their focus on either seeking a dialogue with the Ministry of Culture or protesting and bringing visibility to the new measure.

The Cuban government has not responded with constructive engagement. Despite its defense that the Ministry of Culture has provided ample public information on the decree and many avenues to debate it, this discussion has included only unionized artists<sup>121</sup> and those with a “committed and proven

*“The government does not want to meet with [independent artists] because that would legitimize us as artists,” Nuñez said. “They meet with artists who are part of the system, who are privileged, white, graduated from their universities.”*

artistic trajectory.”<sup>122</sup> Independent artists have faced rejection and repression.<sup>123</sup> In the months before the decree went into effect, artists protesting it were repeatedly detained.<sup>124</sup> Some have continued to protest the government’s actions under detainment. For instance, the imprisoned rappers Maikel Castillo Pérez (aka El Obsorbo) and Lázaro Leonardo Rodríguez Betancourt (aka Pupito En Sy) went on a hunger strike.<sup>125</sup> Actor Luis Alberto García, initially quiet about his misgivings, shared publicly that the ministry had asked him and other artists not to voice their reservations and that he felt misled into remaining silent. “I gave my word . . . to not heat up the internet ‘as a verbal terrorist,’ and I did that,” García explained on his Facebook page in December. But, he added, the ministry “never called us again, they didn’t inform us of anything else. They tricked all of us. Again.”<sup>126</sup>

To date, the Ministry of Culture has not formally replied to the first public letter sent by a broad coalition of artists on June 26,<sup>127</sup> despite the requirement to provide an official response within 60 days.<sup>128</sup> Another public letter, submitted by the coalition behind *Sin349* on September 14, 2018, and signed by more than 120 artists,<sup>129</sup> resulted in a meeting between several artists and representatives of the Ministry of Culture, including the vice minister.<sup>130</sup> Attendees voiced strong criticisms. Visual artist Reynier Leyva Novo, for example, proposed a total rewrite of the decree.<sup>131</sup> Multidisciplinary artist Henry Eric Hernández said that some disillusioned artists left before the meeting was over, and his sense was that “the bureaucrats don’t want to have any desire to dialogue, and even less to get to the root of the problem. Rather, they are stuck in their authoritarian posture.”<sup>132</sup> When the meeting did not successfully address

the concerns of the signatories, they re-sent their letter on October 19, 2018, along with a request for a meeting with the minister of culture himself.<sup>133</sup>

Official public statements confirm the government's desire to avoid real debate. On the day the decree was enacted, Minister of Culture Alpidio Alonso and Vice Minister of Culture Fernando Rojas appeared on television with artists Heidi Igualada, Digna Guerra, Fernando, and Fernando Medrano. The government officials announced that the decree would be implemented in a "consensual" and "gradual" manner. The artists refrained from sharing any criticism of the measure<sup>134</sup> but the government officials did criticize its opponents as "ignorant" and "ill-informed."<sup>135</sup>

Such displays, said curator Yanelys Nuñez Leyva, an organizer of the *#NoAlDecreto349* campaign,

amount to "a simulation of confrontation and dialogue."<sup>136</sup> Actual dialogue should not exclude the views of independent artists, who have less opportunity to be heard than those who enjoy institutional support. It should not muffle the most outspoken artists, whose willingness to dissent leaves them vulnerable to retaliation, while amplifying the most compliant ones.<sup>137</sup> "The government does not want to meet with [independent artists] because that would legitimize us as artists," Nuñez said. "They meet with artists who are part of the system, who are privileged, white, graduated from their universities." Silencing the views of independent artists doesn't just hurt the artists themselves. It also deprives Cuban society of bold, new ideas, and of art that is more likely to be provocative, call out injustices, and empower marginalized people.

# Conclusion and Recommendations

Decree 349 represents an unacceptable assault on the right to freedom of expression in Cuba. It both institutionalizes and expands limits on the right of all artists to create freely. It ensures that individual artists can no longer be independent and that all are now subject to government control. ARC has identified numerous areas of concern, including the criminalization of any unregistered artistic labor, broad categories of censorship, unaccountable discretionary powers to a new category of inspectors, and lack of significant appeal options. Given the Cuban government's lack of consultation with those most affected by the decree, their dismissal of the concerns that have been raised, and the recurring arrests of artists protesting the measure, it is highly unlikely that the Decree 349 will protect art in Cuba. As it stands, the decree will intimidate, silence, and criminalize any and all dissenting voices.

ARC and Cubalex have developed the following recommendations for the Cuban government and its relevant cultural institutions:

- Immediately release all artists imprisoned for nonviolent protests against Decree 349 or other forms of censorship and attacks on free expression in Cuba;
- Stop all forms of persecution and intimidation toward artists protesting against the decree or against government control over

independent artistic production in Cuba, including, but not limited to, arbitrary short-term detentions, search and seizure of property, interrogations, prohibition to leave the country, and expulsion from cultural institutions;

- Repeal Decree 349, given its broad and unclear categories, lack of respect for due process and transparency, and undue punitive measures. We believe that even if additional administrative regulations are announced, they will be insufficient to ensure that all the rights of Cubans are duly respected;
- Ensure that moving forward, any regulation or policy affecting artistic communities in Cuba is implemented only after meaningful prior consultation with all artists and other actors in the artistic field, including those outside the formal government-affiliated arts organizations;
- Ensure that all new or existing cultural policies respect the right to opinion and free expression, peaceful assembly and association, access to cultural heritage, and other fundamental rights, regardless of race, sex, language, or religion; and
- Ensure that all new or existing policies have a mechanism in place for proper judicial review to secure a meaningful and effective right to appeal.

# Acknowledgments

ARC is highly indebted to the numerous artists and experts who took the time to speak with us for this white paper. We want to especially thank the artists who were willing to share their experiences and be featured: Michael Matos, Ariel Meceo Tellez, Yanelys Nuñez Leyva, Luis Manuel Otero Alcántara, Nonardo Perea, Yulier Rodriguez Perez, Rassandino, and Lía Villares.

A special thanks goes to our colleague James Tager for his invaluable guidance and constant input in the development of this white paper. We are extremely grateful for the contributions of the various PEN America teams to this project, especially to Juliann Nelson, PEN America's online editor, for her thoughtful copyediting.

We want to also thank ARC's interns, Reed Cannaan and Lena Schubert, as well as volunteer Nadia Ahmed for their help.

Every effort has been made to verify the accuracy of the information contained in this document. All information was believed to be correct as of the end of February 2019. Nevertheless, ARC cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

# Decree No. 349/2018

WHEREAS: It is necessary to update the provisions of Decree No. 226 “Personal violations of the regulations governing the provision of artistic services,” of 29 October 1997, and thereby establish the violations with regard to cultural policy, the provision of artistic services and different artistic manifestations, to determine the applicable measures, to define the authority to impose them and the ways to resolve the disagreements that arise.

THEREFORE: The Council of Ministers, in the exercise of the powers that are conferred in subparagraph (k) of article 98 of the Constitution of the Republic of Cuba, hereby decrees the following:

## CHAPTER I: Violations of Cultural Policy Regulations and with Regards to the Provision of Artistic Services

ARTICLE 1. The following conducts against enforceable norms and provisions by a natural or juridical person in a state or non-state public place or installations are considered violations of this Decree regarding cultural policy and the provision of the full range of artistic services established by the Ministry of Culture.

## CHAPTER II: Regarding Violations

ARTICLE 2.1. In the offering of artistic services, the following conducts shall be considered violations:

- a) he who approves or permits the realization of artistic services or enables them by the use of his equipment or facilities or those associated with the authorized commercial activity, without those artistic services having been approved and contracted by the cultural institution that authorizes the provision of said services.
- b) he who realizes or permits the payment to an artist or an artist collective, without those services having been contracted by the cultural institution that authorizes the offering of these services;
- c) he who as an individual artist or acting on behalf of a collective to which he belongs, offers artistic services without authorization from the entity designated to permit such activity;
- d) he who, without authorization from the entity to which the artist or artist collective belongs, acts as a representative of that entity;

e) he who offers artistic services without being authorized to engage in artistic labor by means of an artistic job or occupation.

ARTICLE 2.2. The conducts referred to in subparagraphs a), b) and c) are considered to be very serious and those referred to in d) and e) are considered serious.

ARTICLE 3.1. It is considered a violation when a natural or juridical person, in the use of audiovisual media, exhibits content with:

- a) the use of patriotic symbols that violates current laws;
- b) pornography;
- c) violence;
- d) sexist, vulgar or obscene language;
- e) discrimination based on the color of one’s skin, gender, sexual orientation, disability or any other prejudice against human dignity;
- f) anything detrimental to the development of children and adolescents; and
- g) anything that violates the legal provisions that regulate the normal development of our society in cultural matters.

ARTICLE 3.2. The conducts outlined in the preceding paragraph are considered to be very serious.

ARTICLE 4.1. Similarly, when a natural or juridical person engages in the following conduct it will be considered a violation:

- a) distributes music or carries out artistic presentations that generate violence through sexist, vulgar, discriminatory or obscene language;
- b) establishes spaces for the commercialization of fine art without the required authorization, or without being registered with the Registry of Fine Art and Applied Art Creators;
- c) does not use the established contracts for the artistic presentations;
- d) does not comply with the contracts arranged by the corresponding entity in relation to the regulation of standard sound levels in the performance of live shows or activities of any other kind;
- e) does not comply with rules regarding author’s rights;
- f) commercialized books with content that is prejudicial to ethical and cultural values; and
- g) exceeds the permitted sound and noise levels or uses electrical and other equipment abusively.

ARTICLE 4.2. The violations established in subparagraphs a), b), c) and f) of the last section are

considered very serious and those outlined in point d), e) and g) are considered serious.

### CHAPTER III: About the Measures

ARTICLE 5.1. In response to committing violations outlined in this Decree, the following measures can be applied, either on their own or several them:

- a) admonition;
- b) fine; and
- c) seizure of instruments, equipment, accessories and other goods.

ARTICLE 5.2. Together with the measures imposed for violations committed, the empowered authorities may:

- a) immediately suspend the show or projection in question; and
- b) propose the cancellation of the authorization to engage in artistic work on a freelance basis, as appropriate.

ARTICLE 6.1. To determine the measure to be imposed, the empowered authority will abide by the classification of conduct outlined in this decree and the impact it represents.

ARTICLE 6.2. When the infraction committed has been classified as serious, the fine imposed will be one thousand Cuban pesos and if the infraction is classified as very serious the fine will be two thousand pesos.

ARTICLE 6.3. Seizures can take place independently or together with the imposition of fines, according to the seriousness of the infraction.

ARTICLE 6.4. The admonition may be used exceptionally in cases of conduct that, irrespective of their classification in this Decree, the empowered authorities determine that despite the political and cultural impact, even if they have some of the elements described in articles 2 and 4, they do not merit a more severe measure. Its application will be in writing and will be considered a precedent for another infraction.

ARTICLE 7. The empowered authority that determines a violation and proves additionally that in the period of one year the same person has committed more than one violation as defined by this Decree or that that person has received an admonition will consider that person a recidivist and will impose a one fine for double the amount

of the fine classified as very serious.

### CHAPTER IV: Empowered Authorities for the Imposition of Measures and the Resolution of Appeals

ARTICLE 8. The authorities empowered to inspect, to be cognizant of the violations represented in this Decree and to impose proper measures are the supervisor-inspectors designated by the corresponding authority of the Ministry of Culture, as well as the inspectors that are approved by the provincial directors and the director of the special municipality of the Isle of Youth of Culture.

ARTICLE 9. The person upon who is imposed on one of the measures in this Decree may appeal in writing within ten days of being notified of the measure.

ARTICLE 10.1. The empowered administrative authority for recognizing and resolving appeals is:

- a. the Ministry of Culture, for the cases in which the measures are imposed by the supervisor-inspector; and
- b. the provincial directors and the director of the special municipality of the Isle of Youth of Culture, when the measure is imposed by an inspector in that area.

ARTICLE 10.2. The authority should resolve the appeal within 30 days of receiving it, by means of a Resolution. The adopted decision cannot be appealed administratively through any other means.

ARTICLE 11. The instruments, equipment, accessories or other goods subject to seizure will remain in the custody of the empowered authorities; once ten days have passed after the resolution of an appeal, if the appeal decision is in favor of the appellant, the seized goods will be returned; if not, the seized goods will be turned over to the corresponding representative responsible for the artistic endeavor. If there is no appeal, the seized goods will be turned over to the aforementioned authority.

### CHAPTER V: Functions of the Supervisor-Inspector or Inspector

ARTICLE 12.1. The supervisor-inspector or inspector that suspends a show or an artistic presentation when they ascertain a violation has occurred, and the circumstances call for intervention, in addition to imposing measures, should

make a request to the corresponding institution, the provincial director of culture or the special municipality of the Isle of Youth, that it provides for the definitive suspension of the show or artistic presentation in question.

ARTICLE 12.2. The supervisor-inspector or inspector that requests the suspension of a show or artistic presentation considers that the authorization to engage in such activities on a freelance basis should be nullified, should write a report about the causes for the proposal of this nullification within 72 hours, and that report should be endorsed immediately by his boss and presented to the appropriate authorities.

ARTICLE 13. In all cases, the applied measures will be made known to the highest authorities of the business entity that the violator has a relationship with. The application of disciplinary measures will also be made known.

#### Final Provisions

FIRST: The Ministry of Culture is authorized to determine complementary provisions needed to comply with the terms of this Decree,

SECOND: Decree No. 226 “Personal contraventions of the regulations on the provision of artistic services,” of 29 October 1997, is hereby repealed.

THIRD: This decree enters into effect from one hundred and fifty days after the date of its publication in the *Gaceta Oficial* of the Republic of Cuba.

PUBLISHED in the *Gaceta Oficial* of the Republic of Cuba.

STATED in the Palace of the Revolution, in Havana, at 20 days of April of 2018.

Miguel Díaz-Canel Bermúdez President of the Council of State and Ministers

A special thanks to Coco Fusco for the translation of this Decree to English.

# Endnotes

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