

INTERNATIONAL COMMISSION  
OF INQUIRY INTO THE CASE OF THE



# **International Commission of Inquiry into the case of the Cuban Five**

**Law Society, London  
7-8 March 2014**

**Preliminary Report**

## **The International Commission of Inquiry into the case of the Cuban Five**

On the 7<sup>th</sup> and 8<sup>th</sup> of March 2014 over 300 people from 27 countries gathered at the prestigious Law Society in London to participate in the International Commission of Inquiry into the case of the Cuban Five. The Commission brought together more than 20 expert witnesses, attorneys and family members to give testimony on the fairness of the trial, the conditions of imprisonment and calls for justice and freedom for the Cuban Five.

The Commission of Inquiry was initiated by Voices for the Five, an international coalition of campaigners calling for freedom and justice for the Cuban Five. It was considered that such a quasi-judicial process through an independent Commission of Inquiry would allow eminent legal figures to consider a wide range of evidence and draw conclusions about the case that could be presented to the US government. At the same time, the proceedings and final report could be circulated to inform others.

The Commission was widely endorsed by internationally renowned personalities including lawyers, parliamentarians, human rights organisations, religious leaders, trade unions and cultural figures including Lord Rowan Williams, former Archbishop of Canterbury; Adolfo Pérez Esquivel, Nobel Peace Prize, Argentina; Miguel d'Escoto Brockmann, President, UN General Assembly (2008-2009); and Monsignor A.-J. Leonard, Archbishop of Belgium.

The Commission had two main objectives. Firstly, to examine Cuba's right to assign agents like the Cuban Five to defend itself against terrorist attacks; and secondly, to examine whether the Cuban Five received a fair trial.

The hearings were presided over by three internationally recognised legal figures, all of whom have achieved great prominence in their profession and have served on numerous international committees and working groups: Yogesh Kumar Sabharwal, former Chief Justice of India; Philippe Texier, former Judge, French *Cour de Cassation*; and Zakeria Mohammed Yacoob, former Justice of the Constitutional Court of South Africa.

The Commission proceedings were coordinated by Professor Sara Chandler, Chair of the Human Rights Committee of the Law Society of England and Wales and leading barrister Elizabeth Woodcraft.

The primary witness was due to be René González, the first of the Five to be released. At the final hour René received the news that the British Government had denied him a visa to travel to the UK. He was therefore only able to present partial testimony by Skype.

It is to be noted that the United States Ambassador, Matthew W. Barzun, was invited to attend and testify or submit responses. The Commission received his apologies.

The Commission sessions held over two days explored the history of terrorist attacks against Cuba, the right of nations to defend their sovereignty against aggression, the activities of the Cuban Five in the United States, the fairness of the trial and the treatment of the prisoners and their families.

At the end of the two days the Commissioners presented their preliminary findings which are presented here. The Final Report will be available in due course.

The International Commission of Inquiry into the case of the Cuban Five was coordinated by  
[www.voicesforthefive.com](http://www.voicesforthefive.com)      [voicesforthefive@gmail.com](mailto:voicesforthefive@gmail.com)

# **Preliminary Report of the International Panel of Independent Legal Experts on: the case of the Cuban Five**

**Law Society, London, 7-8 March 2014**

It is appropriate that these preliminary thoughts on this hearing, a hearing that could make some contribution to the realization of human rights in general and fair trial rights in particular, of five Cuban human beings be placed in the public domain now. All these persons are Cuban nationals: Mr Gerardo Hernández Nordelo, Mr Ramón Labañino Salazar, Mr Antonio Guerrero Rodríguez, Mr Fernando González Llort, and Mr René González were all convicted in the United States of America during 2001 of certain state security related offences. Mr Hernández was, in addition, convicted of a conspiracy to commit murder.

**We plead fervently that the course of action suggested by us below be adopted for the reasons that follow, reasons that will be elaborated in the report to follow:**

**1.** There are serious concerns about whether any of these people have had the full benefit of the fundamental human right to a fair and speedy trial before an independent and impartial tribunal or court, recognized universally in the International Covenant on Civil and Political Rights as ratified by the United States of America.

These material concerns emerge in the light of facts like:

**a.** all five Cuban nationals were placed in solitary confinement for about seventeen months before the trial began;

**b.** none of them have had sufficient access to documents relevant to the trial and necessary for the adequate preparation of a defense;

**c.** the opportunity to consult with their legal representatives was, in all the circumstances, less than sufficient;

**d.** the trial was held in a part of Miami, Florida where, according to three respected judges of the Eleventh Circuit of the United States Court of Appeals, a fair trial could not be guaranteed;

**e.** Serious allegations have been made that the United States Government paid the media to ensure prejudicial publicity against these persons both before and during the trial;

**f.** these five human beings were certain of their fate only eight years after the trial in the District Court had been concluded.

**2.** According to all the judgments not one of these persons either committed or intended to commit any act of violence.

**3.** No conduct of any of these persons was aimed at the United States of America or its Government. The Cuban Five gathered information aimed at preventing privately inspired violence and other anti-Cuban action emanating from United States soil.

**4.** The perception of the Cuban Five, indeed their firm belief, that the United States Government was not doing enough to stem violent anti-Cuban action from United States soil.

**5.** There is no doubt at all that hundreds of compatriots and countrymen who were ordinary citizens of Cuba have died in unacceptably horrendous circumstances as a result of the actions of Cubans opposed to the Castro government in Cuba from United States soil. The families of the deceased would have suffered immeasurably.

**6.** Two of the members of this group of persons have already served their full sentences, and there can be no prejudice in pardoning them now.

**7.** The other three persons have, in any event, already served inordinately long periods of imprisonment in all the relevant circumstances summarised in this statement.

**8.** The families of these people have undergone tremendous suffering and hardship in consequence of the internment of their loved ones, and it can be said without any fear of contradiction that enough is enough.

**9.** None of these persons acted out of malice or any kind of ill will towards the United States or its Government, people, or policies: each of them was carrying out the instructions of their government.

**10.** Private anti-Cuban aggression from American soil is quite impossible to be justified from any viewpoint.

**11.** It is urged that the normalization of relations between Cuba and the United States is a laudable and achievable goal, in the interests of both the United States of America and the Republic of Cuba, and that the generous grant of pardons by the President of the United States of America to the people who have been described as the Cuban Five will contribute immeasurably to the achievement of this vitally important purpose.

**12.** The President of the United States is also respectfully informed of the prevailing reasonable view that it is important to signal that the achievement of fairness and justice is not the preserve of the judiciary alone of any country, but, ultimately, a vital political responsibility that must be embraced when the moment comes.

**13.** It is suggested, with the greatest of respect, that the grant of these pardons will have a significant impact on world justice and world peace.

In summary, the grant of unconditional Presidential pardons to the members of the Cuban Five has the real potential to achieve effective justice for the five human beings who have been the concern of this enquiry, demonstrate the adherence of the President of the United States of America and its Government today to universally accepted norms of morality, fairness and justice, contribute substantially to the normalization of relations between the United States and Cuba and represent a meaningful stride towards world peace.

Having heard two full days of compelling evidence, we would urge the President of the United States of America, President Barack Obama, to pardon completely all these five persons and to release immediately and unconditionally the three persons who continue to languish in prison in the United States.

Signed,

**Commissioner Zakeria Mohammed Yacoob**, South Africa, former Justice of the Constitutional Court of South Africa.

**Commissioner Philippe Texier**, France, former Judge, French *Cour de Cassation*.

**Commissioner Yogesh Kumar Sabharwal**, India, former Chief Justice.

## The Commissioners:

**YOGESH KUMAR SABHARWAL** is the former Chief of Justice of India. From 1964, Justice Sabharwal practised mainly as an arguing Attorney on the civil and constitutional sides in Delhi High Court. He was an Attorney for Indian Railways in Delhi High Court (1968-1981), Delhi State Government (1973-1976) and Standing Counsel for Delhi State Government in the High Court (1981-1986). As an Attorney, he participated in the activities of the Bar Association of Delhi High Court, including serving as both Secretary and President. Additionally, he was a member of the Bar Council of Delhi and member of the Bar Council of India, representing Delhi (1969-73). Justice Sabharwal was elevated as a Judge of Delhi High Court on November 17<sup>th</sup>, 1986. He has been Chairman of various Boards and Honorary Secretary as well as President of the International Law Association (Indian Chapter). After his elevation as a Judge, he later became Acting Chief Justice of Delhi High Court, Chief Justice of Bombay High Court, followed by Judge of the Supreme Court (2000-2005) and Chief Justice of India (late 2005-2007). As Judge of the Supreme Court and Chief Justice of the country, landmark judgments were delivered, several relating to the power and privileges of Parliament.

**PHILIPPE TEXIER** is a former judge of the *Cour de Cassation* in France. He started his career at the French embassy in Bogota, Colombia and in the early eighties represented the French Government in the working group of governmental experts for the implementation of the International Covenant on Economic, Social, and Cultural Rights. From 1984, Texier became a member of the National Consultative Commission on Human Rights, which he still is. At the end of the eighties, he worked as an independent expert of the Commission on Human Rights for Haiti. In 1991, he was the director of the Division of Human Rights at the United Nations Observer Mission in El Salvador (ONUSAL), an integrated peace-keeping operation. In 1992 he became the President of the Chamber at the Court of Appeal of Paris and in 1996 a member of the *Cour de Cassation* (Social Division), until 2009. During those years, Texier also participated in numerous Human Rights missions in South and Central America, Africa, and Asia. Moreover, he worked as a consultant, both for the Center for Human Rights of the UN and on behalf of non-governmental organizations. Texier was an expert-member on the Committee on Economic, Social, and Cultural Rights, from 1988 until 2012, and he was its president in 2007-2008.

**ZAKERIA MOHAMMED YACOOB** is a former Justice on the Constitutional Court of South Africa. Yacoob served as a member of the Society of Advocates of Natal for several years and took silk in May 1991. He belonged to the Democratic Lawyers Association from 1979 to 1984. In 1981 he became a member of the executive of the Natal Indian Congress and was also an executive member of the United Democratic Front (UDF) in Natal. Yacoob served on the Independent Electoral Commission from December 1993 to June 1994 and was a member of the Panel of Independent Experts of the Constitutional Assembly. Yacoob has also advised local-government bodies, the National Land Committee, and the Department of Finance. From 1998 until last year, Yacoob was a Justice on the Constitutional Court of South Africa. In 2011, the University of KwaZulu-Natal conferred an honorary doctorate in Law on Yacoob, as did the University of Fort Hare in the Eastern Cape. Today Yacoob is leading an enquiry for the Minister of Finance into the conduct of the commissioner of the SA Revenue Services and is participating in civil society organizations like Section 27 and the Socio-Economic Rights Institute. He is the president of the KwaZulu-Natal Blind and Deaf Society.