

Nothing but a Dialogue on Human Rights

The EU agreement with Cuba and the Current Political Developments
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Executive Summary

Considering Fidel Castro's death and the increasing repression against the democracy movement in Cuba, the EU Council and the European Parliament should ask themselves if the Political Dialogue and Cooperation Agreement (PDCA) that will be signed shortly truly is the best the EU could do to promote human rights and democracy in Cuba.

The increase in political repression started just after the negotiations ended in March and the visit of President Obama to the island a couple of weeks later. This should be seen as a consequence of the Government's self-confidence after successfully establishing new relations to the international community without having to change its political system.

This report analyses the PDCA as part of the current political strategy of the Cuban government. It concludes that the Cuban government's strategy over the coming years is transparent and does not include any reforms when it comes to the political system or human rights. When comparing the agreement with the Association Agreement the EU signed with six countries in Central America in 2012, it is clear that the demands concerning democracy and human rights in formally democratic states are a lot higher than in authoritarian ones like Cuba.

From this perspective, the agreement rather complements the government's strategy to transfer the political power from the revolutionary generation to their political heirs, and the economic power to the hands of the military, than it promotes the human rights agenda as the EU is claiming. The Cuban government can therefore comply with the PDCA without changing anything substantial when it comes to human rights.

By defending the status quo in Cuba, the international community is also delegitimizing the democracy movement's strategy to work for change with non-violent means. Frustrated citizens might lose faith in peaceful change and advocate for violence. Should those circumstances occur, the international community would have to intervene. The agreement is, however, not only a misstep in relation to Cuba, but also in relation to other authoritarian governments. If the EU loosen its demands on one authoritarian country, it will be even harder to push for change in others.

Introduction

Purpose

The Political Dialogue and Cooperation Agreement (PDCA) between the EU and Cuba that has been negotiated since early 2014 and that was adopted by the EU Commission in September 2016, will be tabled at the EU Council and debated in the European Parliament during the upcoming months.¹ The purpose of this report is to highlight the fact that in the agreement both parties are showing no real commitment to human rights and democracy, and provoke a debate on whether this really is the best the EU can do to promote democratization and respect for human rights in Cuba.

Civil Rights Defenders believes that neither the negotiation process nor the final agreement reach the level of respect for the rights of the Cuban citizens to take part in the political developments of their own country that the EU should strive for. When the negotiating directives were adopted by the EU Council in February 2014, then high representative Catherine Ashton said they did not imply a policy shift and stressed that human rights would remain at the core of the relationship. She also said that the pace of the negotiations would reflect the will of the Cuban government “to do what is necessary on its side”.²

The question *What will happen when Fidel Castro dies?* has been part of the international debate on Cuba for decades. This report demonstrates that by lowering demands on democratization and human rights, the EU is accommodating its ambition to the strategy of the Cuban political leadership to transfer the political power to a new generation of revolutionary leaders and to facilitate the transformation of the Cuban economy according to the interests of the Cuban military.

Scope

This report focuses on the policy that the European Union has been developing towards Cuba over the last couple of years, as codified in the PDCA. We will put the agreement’s role in the context of the current political situation in Cuba and compare it to the previous policy, as defined in the EU Common Position on Cuba that was adopted by the EU Council in 1996.

We will also compare the way human rights and democracy are dealt with in the Cuba PDCA agreement with the Association Agreement that was signed in 2012 with six

¹ The PDCA will first be signed by the Council, then sent to the European Parliament to obtain consent and finally concluded unanimously by the Council. European Commission proposal JOIN(2016) 43 final 2016/0298(NLE) [online] Available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1477385698830&uri=CELEX:52016JC0043> (14 November 2016)

² Council adopts negotiating directives for bilateral Political Dialogue and Co-operation Agreement with Cuba EU Council Press Release February 2014 [Online] Available at:

http://collections.internetmemory.org/haeu/20160313172652/http://www.consilium.europa.eu/uedocs/cms_Data/docs/pr_essdata/EN/foraff/140946.pdf

countries in Central America.³ The comparison is valid as it shows how the EU put different demands on formal democracies than on authoritarian countries. The report is also a continuation of a discussion paper published in August 2014 by the Cuban campaign organisation *Por Otra Cuba* and Civil Rights Defenders.⁴ The discussion paper used the articles on human rights and democracy from the agreement with Central America, arguing that the EU should demand at least as much from Cuba.

Background

The world opened up to Cuba

The start of the PDCA negotiation process with the EU in 2014 is one of the core factors that has changed the international political context vis-à-vis Cuba. The reestablishment of diplomatic relations between Cuba and the US at the end of the same year, Francoise Holland's visit to Cuba, and Raúl Castro's visit to France the following year, the Pope's visits to Cuba in 2015 and 2016 and several bilateral agreements with countries in Europe are also part of this new context.

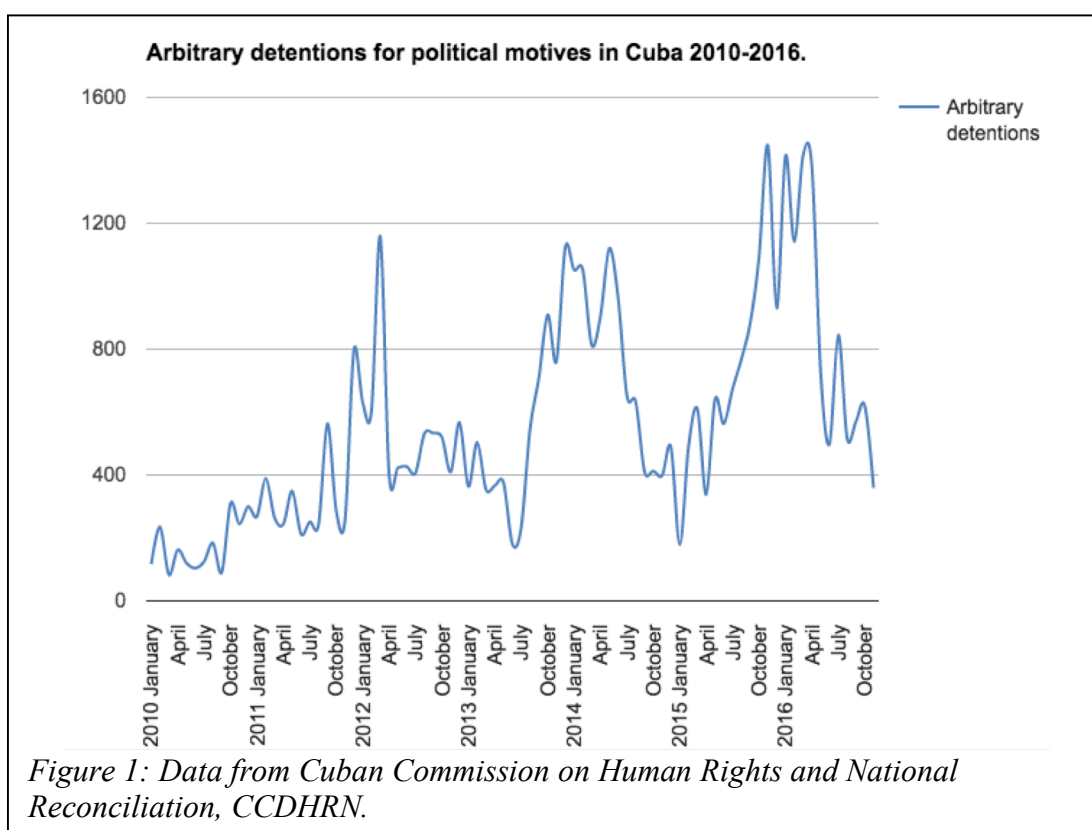
The western democracies have opened up to dialogue with the Cuban government, believing previous policies have not worked to promote political and economic change in the island, and Raúl Castro has accepted this offer, knowing that the Cuban government cannot depend on financial support from Venezuela and other allies in Latin America when commodity prices go down and governments change. Another reason for the change is that Raúl Castro needed to gain legitimacy in the democratic world and create conditions for foreign investments in order to promote economic stability and growth, aiming at leaving the house in order when the revolutionary generation will hand over power to the next generation in the coming years.

What has not changed, though, is the Cuban government's relationship with its own people. Even though there have been some important reforms since Raúl Castro formally became president in February 2008 - the most important from a human rights perspective being the abolishment of the requirement to have a permission to travel abroad in 2013 and the increased access to mobile phones, computers and internet since 2009 - there has been absolutely no change in the political or legal systems, or in the government's attitude towards human rights defenders, democracy activists or any other part of independent civil society.

³ The Association Agreement with the countries of Central America is the continuation of a PDCA with the same countries from the early 2000s. The PDCA is shorter but includes most of the aspects of the Association Agreement in the chapters on Political Dialogue and Cooperation. [Online] Available at: http://trade.ec.europa.eu/doclib/docs/2004/december/tradoc_120620.pdf (14 November 2016)

⁴ *Platform for Discussion on the Current EU-Cuba Negotiations*, Por Otra Cuba and Civil Rights Defenders, (2014). [Online]. Available at: <https://www.civilrightsdefenders.org/news/svenska-eu-maste-pressa-kuba-till-att-respektera-manskliga-rattigheter/> (1 November 2016).

During the ten first months of 2016 the number of arbitrary arrests for political reasons has already been higher than any of the previous years for which the Cuban Commission on Human Rights and National Reconciliation, CCDHRN, has been keeping track of the data. (Figure 1.) After the EU and Cuba finished the negotiations in March, and Barack Obama visited the island a couple of weeks later, the Cuban authorities decided to make it even more difficult to demonstrate. The Ladies in White, who have been marching for the liberation of political prisoners on Sundays since 2003, and members of various other organisations that have joined the protests lately have had police officers outside their houses a couple of days before every Sunday, making sure they cannot leave for the protest and arresting them if they do.



The positive development regarding the possibility for Cuban citizens to travel abroad without a permission has also been backtracked on when it comes to democracy activists. Dozens of activists have been arrested by the security police days before travelling or on their way to the airport and thus prevented from participating in trainings or conferences organised by international human rights organisations abroad. Most of them have just been held long enough to miss the plane but some have spent up to a week in prison.

Human rights work is illegal

The core human rights problem in Cuba is the fact that the constitutional and legal framework makes repression legal and therefore engenders widespread human rights violations by state authorities. The Cuban constitution describes the country as a “socialist State”, where the “revolutionary political system ... shall be irrevocable” and where the “Communist Party ... is the superior leading force of the society and the State.”⁵ Article 53 of the Constitution establishes that “the mass media are State or social property and can never be private property.”⁶

The Penal Code contains several laws that restrict the right to freedom of expression. The Association Law effectively prevents the recognition of an independent civil society and the election law only permits Cubans to vote for candidates vetted by the mass organisations loyal to the Communist party. They are not allowed to choose another government.⁷

Finally, article 62 in the constitution is a catch-all clause that irrevocably outlaws human rights work: “None of the freedoms which are recognized for citizens can be exercised contrary to what is established in the Constitution and the law, or contrary to the existence and objectives of the socialist State, or contrary to the decision of the Cuban people to build socialism and communism. Violations of this principle can be punished by law.”⁸

Within the current Cuban legal system, it is not only illegal to work for human rights and democracy but also extraordinarily difficult, as the government essentially owns all means of production relevant to civil society work, from print shops, cinemas, public spaces, sport arenas and culture venues to internet service providers.⁹

No respect for the human rights covenants

In February 2008, during his first week in office as president, Raúl Castro sent his foreign minister Felipe Pérez Roque to the UN headquarters in New York to sign the International Covenant on Civil and Political Rights, ICCPR, and the International Covenant on Economic, Social and Cultural Rights, ICESCR. However, when signing Pérez Roque requested that a declaration be appended to the signature, saying:

The Republic of Cuba hereby declares that it was the Revolution that enabled its people to enjoy the rights set out in the International Covenant on Civil and Political Rights. The economic, commercial and financial embargo imposed by

⁵ Government of Cuba, (1976). *La constitución política de la Republica de Cuba 1976 con reformas hasta 2002*. [Online]. Available at: <http://pdba.georgetown.edu/Constitutions/Cuba/vigente.html> (01 November 2016).

⁶ Government of Cuba, (1976). *The constitution of the Republic of Cuba, 1976 (as amended to 2002)*. [Online]. Available at: <http://www.constitutionnet.org/files/Cuba%20Constitution.pdf> (01 November 2016).

⁷ For a detailed description of the restrictions on basic human rights in the Cuban judicial and political system, see the country report on Cuba attached to this report.

⁸ Government of Cuba, (1976) *The constitution of the Republic of Cuba, 1976 (as amended to 2002)*. [Online] Available at: <http://www.constitutionnet.org/files/Cuba%20Constitution.pdf> (01 November 2016).

⁹ San Pedro, E. (2016) *Cuba Internet access still severely restricted*. BBC, [Online] Available at: <http://www.bbc.com/news/world-latin-america-35865283> (1 November 2016).

*the United States and its policy of hostility and aggression against Cuba constitute the most serious obstacle to the Cuban people's enjoyment of the rights set out in the Covenant. The rights protected under this Covenant are enshrined in the Constitution of the Republic and in national legislation. The State's policies and programs guarantee the effective exercise and protection of these rights for all Cubans. With respect to the scope and implementation of some of this international instrument, Cuba will make such reservations or interpretative declarations as it may deem appropriate.*¹⁰

The declaration describes fairly well the government's attitude to human rights, which is that it already respects and implements them and therefore fails to understand that there is any cause for international criticism towards it. Up to this day, Cuba has not ratified the two Covenants.

Outlook

International community closes door to civil society

For many years the international community's approach to Cuba was clear when it came to democracy and human rights. The purpose of the US Cuban Liberty and Democratic Solidarity (Libertad) Act (also known as the Helms-Burton Act), adopted in 1996 is "to assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democratic countries" and "to encourage the holding of free and fair democratic elections."¹¹ Some of the provisions of the Act are contrary to international law, and should be abolished because of that. But it is also true that all US sanctions against Cuba would be lifted if the Cuban government allowed for democratic elections.

The European Union Common Position on Cuba that was adopted the same year is even clearer, stating: "The objective of the European Union in its relations with Cuba is to encourage a process of transition to pluralist democracy and respect for human rights and fundamental freedoms". It rejects the idea of bringing about change "by coercive measures" but states that "full cooperation with Cuba will depend upon improvements in human rights and political freedom". The intensification of political dialogue, economic cooperation and a cooperation agreement with the EU will come only "[as] the Cuban authorities make progress towards democracy."¹²

¹⁰ United Nations. 2008, 4. International convention on civil and political rights [Online]. Available at: <https://treaties.un.org/doc/publication/mtdsg/volume%20i/chapter%20iv-4.en.pdf> (1 November 2016).

¹¹ Senate and House of Representatives of the United States of America, 1996. *Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996*. [Online]. Available at: <https://www.congress.gov/104/plaws/publ114/PLAW-104publ114.pdf> (1 November 2016)

¹² 96/697/CFSP: Common Position of 2 December 1996 defined by the Council on the basis of Article J.2 of the Treaty on European Union, on Cuba. [Online]. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996E0697:EN:HTML>

It is evident that these policies did not work. They did not contribute either to democratisation or to respect for human rights. But at the same time they made it clear that the US and the EU acknowledged that the Cuban system does not respect the human rights of the Cuban citizens and does not let them take part in the development of their country through democratic means. The policies showed that the US and the EU were on the side of the Cuban citizens and not with the Cuban government.

The change of position towards the Cuban government over the last couple of years is based on the claim that a more open attitude to the Cuban government would create conditions for change and that a dialogue with the Cuban government would be a better tool to foster respect for human rights and democracy than the previous positions.

However, if the strategy of opening up to the Cuban government was theoretically viable in 2014, it is clear now, after a couple of years of new relations, that the Cuban government has no intention to change the fundamental aspects of the political system. Maybe this was a risk worth taking, but it has also had a significant price. Civil Rights Defenders' contacts on the island unanimously state that they have never in any way been invited to participate in formal discussions on the negotiations by any of the parties. The number of informal contacts between human rights defenders and the US and the EU have also decreased. The discussions that still take place are nothing more than informal conversations on the situation on the island in general. When opening the door to the Cuban government, the international community has accepted the government's requirement to close the door to the democracy movement.

No prospect for change

Once the EU and Cuba negotiation teams had signed their proposal for an EU-Cuba agreement in Havana in March 2016 and Barack Obama had left the island after a visit at the end of the month, the Cuban government shut the doors to all aspirations for change in the island. Fidel Castro wrote an article in the Cuban newspaper *Granma* rejecting Barack Obama's offered hand saying, "We do not need the empire to give us anything."¹³

Three weeks later, the Cuban Communist Party (PCC) gathered for its 7th regular congress. In his opening speech, President Raúl Castro described the US as "the enemy" and made it clear that there would be no reforms that could risk the "unity of the majority of the people behind the Party" or "cause instability and insecurity."¹⁴ Referring to international demands for a multiparty system, Raúl Castro responded "nor today, nor ever," and continued saying that "if they one day succeed in fragmenting us, it would be the beginning of the end of our fatherland, of the Revolution, socialism and national independence." Foreign minister Bruno Rodríguez claimed in a later speech to the

¹³ Fidel, C. 2016. *Brother Obama*, Granma. [Online]. Available at: <http://en.granma.cu/cuba/2016-03-28/brother-obama> (1 November 2016).

¹⁴ Speech given by first party secretary Raúl Castro, 2016. [Online]. Available at: <http://en.cubadebate.cu/news/2016/04/22/full-text-speech-given-by-first-party-secretary-raul-castro-closing-the-full-text-speech-given-by-first-party-secretary-raul-castro-closing-7th-congress-yesterday-april-19/> (1 November 2016).

Congress that the visit of Barack Obama had been “an attack on our conception, on our history, on our culture and on our symbols.”¹⁵

The purpose of the Party Congress was to discuss several political documents detailing the social and economic development of the country in the coming decades.¹⁶ The two most important ones, on the principles and theories of the economic and social model, and a national economic and social development plan up to 2030, explain the reforms necessary for “advancing and consolidating the principles of our socialism”. The documents will be discussed within the party during 2016 and 2017 and after that formally adopted.

The first document describes how property of means of production and the planning of the economy and social policies shall evolve. It does not, however, describe any reforms of the political system but clearly reasserts the current one. It describes how Cuban society is in the historical process of constructing socialism and explains that “with the triumph of the Revolution on January 1st 1959, the Cuban people began exercising its full sovereignty.” As every official description of Cuban history, it defines the “strengths” of Cuba as the “unity of the Cuban people, its firmness and sovereign decision to be independent and construct a socialist society.” Another strength is the “existence of an active and diverse socialist civil society, prepared and organized to defend the Revolution.”

When describing the principles sustaining the system, the core ones are the “Cuban Communist Party [...] the superior leading force of the society and the State”, and the “socialist democracy”. The objective of the reforms described in the guidelines/policies is “to consolidate the principles of our socialism and perfect economic and social development.”¹⁷

The second document, the national development plan, outlines the “Vision of the Nation” for 2030, which shall be “sovereign, independent, socialist, democratic, prosperous and sustainable”. To achieve this, the document states it will be necessary to have an “efficient and socialist government.” The first five guiding principles on how this will be reached are GDP growth, social property of the means of production, efficiency at all levels, national defence against aggression and national security.¹⁸

¹⁵ *Las críticas del canciller a la visita de Obama a Cuba delatan nerviosismo*. 14 y Medio. [Online]. Available at: http://www.14ymedio.com/nacional/criticas-canciller-Obama-Cuba-nerviosismo_0_1983401652.html (1 November 2016).

¹⁶ Congreso del partido, XXXX. *Conceptualización del Modelo Económico y Social Cubano de Desarrollo Socialista y el Plan Nacional de Desarrollo Económico y Social hasta 2030: Propuesta de Visión de la Nación, Ejes y Sectores Estratégicos*. [Online]. Available at: <http://www.granma.cu/file/pdf/gaceta/Copia%20para%20el%20Sitio%20Web.pdf> (1 November 2016).

¹⁷ Congreso del partido, XXXX. *Conceptualización del Modelo Económico y Social Cubano de Desarrollo Socialista y el Plan Nacional de Desarrollo Económico y Social hasta 2030: Propuesta de Visión de la Nación, Ejes y Sectores Estratégicos*. P. 3-4. [Online]. Available at: <http://www.granma.cu/file/pdf/gaceta/Copia%20para%20el%20Sitio%20Web.pdf> (1 November 2016).

¹⁸ Congreso del partido, XXXX. *Conceptualización del Modelo Económico y Social Cubano de Desarrollo Socialista y el Plan Nacional de Desarrollo Económico y Social hasta 2030: Propuesta de Visión de la Nación, Ejes y Sectores Estratégicos*. P. 16-19. [Online]. Available at: <http://www.granma.cu/file/pdf/gaceta/Copia%20para%20el%20Sitio%20Web.pdf> (1 November 2016).

The fourth and fifth principles reinforce the current defence doctrine that includes the “war of the whole of the people” and that government institutions, political and mass organisation and the rest of the population will participate in confronting the activities of the enemy.¹⁹ The militarization of society and inclusion of the ordinary citizens in the surveillance system has been one of the most effective strategies to curb self-organizing in Cuban civil society.

These documents should be taken very seriously as they were the core outcome of the Party Congress and will be discussed during the course of almost two years within the communist party to ensure that everybody is on board. They are logical and coherent and describe how the communist party will continue to develop its socialist state. There is no ideological space in the document for anything remotely radical in terms of change. Freedom of expression, of assembly or multiparty democracy can never be part of the storyline of the communist party. That would break with the idea of unity of the Cuban people and defy the official history of the nation.

When the PCC says that these are “our principles” and this is “our vision” for the coming 15 years, they do not have anything else in mind. There is no plan for change and the Cuban political system cannot be reformed step by step into a liberal democracy that respects fundamental human rights. It is built on completely adverse principles and will either continue into the future as it is, or be entirely replaced by another.

Transfer of power from one generation to another

The only real reforms within the political system announced by Raúl Castro at the Congress concerned the age of individuals entering the highest positions of the Party - the Central Committee, the Secretariat and the Political Bureau - and for how long they would be allowed to hold the position. In the future nobody should be allowed to enter after 60 years of age or sit for more than two five-year mandates.²⁰ Castro promised that these changes should also be included in the constitution, proposing a constitutional reform and subsequent referendum, a process that would also “ratify the irrevocable nature of the political and social system,” including the leading role of the PCC in society, as described in Article 5 of the Constitution.²¹

The fact that there are no political reforms to expect from the PCC or the government does not mean that the political structure is static, though. The leadership has a strategy on how to transfer political power from the revolutionary generation that has been running

¹⁹ Congreso del partido, XXXX. *Conceptualización del Modelo Económico y Social Cubano de Desarrollo Socialista y el Plan Nacional de Desarrollo Económico y Social hasta 2030: Propuesta de Visión de la Nación, Ejes y Sectores Estratégico..* P. 20. [Online]. Available at:

<http://www.granma.cu/file/pdf/gaceta/Copia%20para%20el%20Sitio%20Web.pdf> (1 November 2016).

²⁰ Speech given by first party secretary Raúl Castro, 2016. [Online]. Available at:

<http://en.cubadebate.cu/news/2016/04/22/full-text-speech-given-by-first-party-secretary-raul-castro-closing-the-full-text-speech-given-by-first-party-secretary-raul-castro-closing-7th-congress-yesterday-april-19/> (1 November 2016).

²¹ Government of Cuba, 1976. *La constitución política de la República de Cuba 1976 con reformas hasta 2002.* [Online]. Available at: <http://pdba.georgetown.edu/Constitutions/Cuba/vigente.html> (01 November 2016).

the country since 1959 to the next generation in an orderly way. There is no point in speculating on who will be the core figures of the new political leadership but Raul Castro was very clear in his speech to the Congress on the dangers of not rejuvenating the leadership. The party should never forget what happened to the Soviet Union where “in a short period of time three secretary-generals of the Central Committee of the Party died,” not feeling it necessary to say that these deaths paved the way for Mikhail Gorbachev and his reformist agenda.²²

It has not been announced yet how this transfer of power will be run but it will start after the election of the national assembly in early 2018. Raúl Castro has promised not to stand for president and to let the state council elect a new one. On the other hand, he has not promised to resign from the other positions he holds as Secretary General of the Communist Party and Commander in Chief of the Armed Forces.²³

In addition to this transfer of political power to the next generation, the Cuban government has been transferring the economic power from the ordinary state structures into the hands of the Revolutionary Armed Forces (FAR). This is however not the main issue in the international debate on Cuba, where the economic reform program adopted by the Communist Party in 2011, aiming at creating a small business sector that could generate employment and improve services, is most talked about even though the results of the last couple of years are meagre.²⁴ The number of small businesses grew from 147 000 in 2010 to 480 000 in 2014, but has since then only increased insignificantly.²⁵

From 2014 to today, the concentration of economic power in the hands of the FAR has, however, continued to increase. FAR are estimated to now own at least 57 hotels and half of the retail business in Cuba, along with car fleets, gasoline stations and supermarkets - all key sectors of the economy.²⁶ The controlled companies of FAR represent at least 40 percent of the foreign capital in the country through its holding company, GAESA.²⁷ This means that any international investors in Cuba will need to have direct relations to GAESA and its CEO General Luis Alberto Rodriguez, Raul Castro’s son-in-law and loyal supporter since decades.²⁸

²² 7th PCC Congress Central Report, 2016. *The development of the national economy along with the struggle for peace and our ideological resolve, constitute the Party's principal missions*. [Online]. Available at: <http://en.granma.cu/cuba/2016-04-18/the-development-of-the-national-economy-along-with-the-struggle-for-peace-and-our-ideological-resolve-constitute-the-partys-principal-missions> (1 November 2016).

²³ A&E television Networks. 2016. *Raúl Castro bibliography*, BIO. [Online]. Available at: <http://www.biography.com/people/raul-castro-183536> (2 November 2016).

²⁴ Frank, M. 2011. *Cuba approves landmark reforms*. Financial Times. [Online]. Available at: <https://www.ft.com/content/c541244e-6a53-11e0-a464-00144feab49a> (3 November 2016).

²⁵ Santana, F, O. 2016. *Por qué ha disminuido el número de cuentapropistas?* [Online]. Available at: http://www.diariodecuba.com/cuba/1453106990_19538.html (1 November 2016).

²⁶ Cuba Independiente, 2015. *How Obama's Cuba deal is strengthening its military*. [Online]. Available at: <http://cubaindependiente.blogspot.se/search/label/Gaesa> (2 November 2016).

²⁷ Azel, J. 2013. *The illusion of Cuban reform: Castro strikes out*. World affairs. [Online]. Available at: <http://www.worldaffairsjournal.org/article/illusion-cuban-reform-castro-strikes-out> (2 November 2016).

²⁸ Smith, M. 2015. *Want to Do Business in Cuba? Prepare to Partner With the General*, Bloomberg. [Online]. Available at: <http://www.bloomberg.com/news/features/2015-09-30/want-to-invest-in-cuba-meet-your-partner-castro-s-son-in-law> (1 November 2016).

Analysis of the PDCA

EU agreements with Cuba and Central America

The Political Dialogue and Cooperation Agreement that the EU and Cuba started negotiating in April 2014 and the EU Commission adopted in September 2016, initiated a new phase of the EU-Cuba relation. When it is signed by the EU Council in December 2016, the EU Common Position on Cuba will also be repealed.²⁹ In the following chapter we will analyse four areas of the agreement: principles and objectives; political dialogue; cooperation; and civil society. We will also make a comparison between this text and what the EU-agreement with the countries of Central America state on these areas.

High principles but no objectives

The PDCA covers three core areas: political dialogue, cooperation and trade. It defines the General Provisions in the beginning of the agreement and the Institutional and Final Provisions at the end.

The General Provisions define the principles and objectives of the agreement, the first *principle* being the “commitment to a strong and effective multilateral system”. The third principle states that “all actions under this Agreement shall be implemented in accordance with the Parties’ respective constitutional principles, legal frameworks, legislation, norms and regulations, as well as the applicable international instruments to which they are parties.”

This means that the current legal system sets the limits for the dialogue and cooperation. All articles on democracy and human rights in the agreement have to be read from the perspective that they should not challenge existing norms. With that in mind, principle number five, the core article on human rights in the agreement, loses its impact: “Respect for and the promotion of democratic principles, respect for all human rights and fundamental freedoms as laid down in the Universal Declaration of Human Rights and in the core international human-rights instruments and their optional protocols which are applicable to the Parties, and respect for the rule of law constitute an essential element of this Agreement.”

Principle three supersedes principle five, as it is illegal to promote democratic principles and respect for human rights within Cuba’s current legal framework. The fact that both principles only include international instruments that are “applicable to the Parties” means that the ICCPR and the ICESCR are not part of the principles of the agreement, as Cuba has not ratified them.

²⁹ The European Commission proposal for Council decision can be found here: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1477385698830&uri=CELEX:52016JC0043> and here: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012D0734>.

When the parties in the second article describe the *objectives* of the agreement, they do not mention democracy and human rights but focus instead on fostering better relations, development, economy, trade, regional cooperation, etc. Human rights and democracy are not mentioned among the objectives of part II on the Political Dialogue either.

The differences between the PDCA with Cuba and the Association Agreement with the countries of Central America are very clear. When Cuba commits to a multilateral system, Central America commits in the first principle of its agreement to respect for democratic principles and fundamental human rights. A principle on good governance and rule of law in the Association Agreement includes the criteria “separation of powers, the independence of the judiciary, clear decision-making procedures at the level of the public authorities”, something the agreement with Cuba does not include when talking about good governance.

The core objectives in the agreement with Central America are to consolidate relations and to build a partnership on “respect for and the promotion of democracy and human rights”. This is also the first objective in the chapter on the Political Dialogue and the second in the chapter on Cooperation, after strengthening peace and security.

By excluding democracy and human rights from the objectives of the agreement with Cuba and only defining them as principles, the parties avoid explaining what will change concerning these issues because of the agreement. This is one of the central problems of the agreement and stands in stark contrast to the agreement with Central America and the EU Common Position on Cuba from 1996, which said that the objective of the EU was to promote a transition to pluralist democracy.

Nothing but a dialogue on human rights

The most important result concerning human rights in the agreement is the establishment of a human rights dialogue: “The agenda for each dialogue session shall be agreed by the parties, reflect their respective interests and take care to address in a balanced fashion civil and political rights and economic, social and cultural rights.” The result is ambiguous, though, as the agreement nowhere even mentions the International Covenants and how Cuba should go from only signing them, as the situation is today, to ratifying and implementing them, which is the demand from the vast majority of the democracy movement. This is another example of how the agreement has avoided defining objectives or goals when it comes to basic human rights.³⁰

A positive part of the agreement is that the Parties also agree to cooperate to “ensure respect for the core labour standards identified in the International Labour Organization's Conventions” (Article 38e). This is important as Cuba has ratified the ILO conventions that include the right to freedom of association and the right to collective bargaining,

³⁰ See for example letter to Federica Mogherini from various Cuban and European organisations sent in September 2015. <https://www.civilrightsdefenders.org/news/open-letter-to-eu-on-cuba-negotiations/>

which are among other rights that Cuba does not respect today.³¹ If this could be the start of an open and direct cooperation between European and independent Cuban trade unions, it would be an important contribution not only to freedom of association in Cuba but also to the economic rights of Cuban workers. However, the agreement could also have included the UN Guiding Principles on Business and Human Rights in the chapters on political dialogue and trade. Cuba was part of the United Nations Human Rights Council when the principles were adopted unanimously in 2011. According to the EU Commission strategy on Corporate Social Responsibility, the Commission also intends to identify ways to "promote responsible business conduct in its future policy initiatives" towards growth in third countries.³²

The Political Dialogue part of the agreement with the countries of Central America is a lot clearer on democracy and human rights and includes among other aspects the "international conventions on human rights" and their effective implementation in accordance with the Parties' commitments. This means that in its agreement with the countries of Central America, the EU will work to implement the Covenants on human rights, as all the countries are part of them, while in its agreement with Cuba it has accepted that Cuba is not part of the Covenants and will not demand the Cuban government to ratify them.

Cooperation under Cuban conditions

In the cooperation part of the EU-Cuba agreement the Parties agree to implement actions "that complement the efforts of the Parties in implementing the priorities set by their own development policies and strategies."³³ Five areas are prioritized:³⁴

- Democracy, Human Rights and Good Governance
- Promotion of Justice, Citizen Security and Migration
- Social Development and Social Cohesion
- Environment, Disaster Risk Management and Climate Change
- Economic Development

The fact that the first area is Democracy, Human Rights and Good Governance is positive and the first paragraphs make several important statements.³⁵ "Mindful that the protection and promotion of human rights and fundamental freedoms is the first responsibility of governments, bearing in mind the significance of national and regional particularities and of various historical, cultural and religious backgrounds and acknowledging that it is their duty to protect all human rights and fundamental freedoms regardless of their political, economic and cultural systems."

³¹ Ratifications for Cuba, International Labour Organization. [Online]. Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102603 (2 November 2016).

³² See art 4.8.3 in the strategy published here: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0681>.

³³ Article 16

³⁴ Title II-VI

³⁵ Article 22

The Parties also recognize that “democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of life”, and agree to cooperate to “strengthening democracy and their capacity to implement the principles and practices of democracy and human rights, including minority rights.”

The article on Democracy and human rights continues with a long list of activities that *can* be implemented through cooperation, but it also states that the activities should be “mutually agreed upon by the Parties”. Together with the provision earlier that cooperation should complement the development strategies of Cuba - which do not include democratization - this means that the EU needs to include the Cuban government in the process of selecting partners to work with and activities to organize. The corresponding article in the agreement with the countries of Central America does not include that provision.³⁶ It says nothing about how activities are implemented and it is assumed that the cooperation agencies involved can decide that by themselves. (For ease of comparison, the respective chapters on Democracy in the two agreements are attached in Annex I.)

No role for the Civil Society

The last aspect we will bring up is the role of the Cuban civil society in the new relationship between the Parties. Civil Society is mentioned several times in the Cuba agreement, which recognizes its “potential contribution” to fulfilling the objectives and its role in several activities. Nevertheless, civil society is not given any formal role in the institutional structure built to implement the agreement. This is not only a failure of the text of the agreement but of the whole negotiation process. The parties did not hold a single formal consultative meeting with the Cuban or European civil societies during the negotiation process, although civil societies of both parties demanded it on a number of occasions.³⁷ This was contrary to the practice established during the negotiations with the countries of Central America.

When Civil Rights Defenders asked to see the text that was signed by the negotiation teams in Havana in March 2016, the EEAS rejected the claim. Civil Rights Defenders complained to the EU Ombudsman, who decided to open an inquiry. The answer from the EEAS was that it would “transmit the requested document to the complainant once it has been adopted by the Commission”. Since the Ombudsman had not taken a decision by the time the document had been adopted by the Commission and subsequently shared with Civil Rights Defenders, the case was closed on the basis that EEAS had settled the matter. The decision, though, interestingly stated that “the Ombudsman wishes to make

³⁶ Article 29

³⁷ Civil Rights Defenders, 2016. *EU and Sweden Strangling Transparency in Negotiations with Cuba*. [Online]. Avble at: <https://www.civilrightsdefenders.org/news/svenska-eu-och-sverige-bryter-mot-offentlighetsprincipen-for-att-inte-riskera-relationen-till-kuba/> (3 November 2016).

clear that this conclusion should not be understood as implying that the disclosure by the EEAS was in fact timely.”

This complete lack of transparency in the negotiation and adoption processes clearly breaches the principles of transparency of the EU. The lack of civil society’s integration in the formal structure for the implementation of the agreement also violates its participation principles. Both decisions cannot be interpreted as anything else but indulgence to the demands of the Cuban government.

The agreement with Central America in comparison gives civil society a clear and formal role. It establishes a Joint Consultative Committee (JCC) which shall submit the opinions of civil society organisations on the implementation of the agreement to the Council - the body that oversees the fulfilment of the objectives of the agreement. The JCC shall also promote dialogue and cooperation among civil society organizations in Central America and Europe.³⁸ The Parties shall “call for regular meetings with these representatives in order to inform them about the implementation of this Agreement and to gather their suggestions in this respect.”³⁹

Conclusions and recommendations

Conclusions

Any serious approach to democratization and respect for basic human rights in Cuba must clearly address the existing restrictions within the Cuban legislation and political system. When the EU accepts that all actions conducted within the agreement shall be implemented in accordance with the norms of the current constitution and legislation, it avoids this problem and gives the current system a legitimacy it has never given it before.

A similar problem is created when democracy and human rights are *principles* the agreement is based on rather than *objectives* that the agreement will contribute to fulfil. Principles do not imply change, on the contrary. Objectives, on the other hand, cannot be met without change. This lack of clear objectives for the cooperation between the EU and Cuba when it comes to democratization and human rights gives the Cuban government the possibility to comply with the agreement without changing anything in its political or legal system. These two fundamental flaws in the text also create the false idea that democracy and respect for human rights can be achieved within the political and legal system of Cuba today.

When the EU follows a strategy that does not envisage change, it increases space for the Cuban government to continue its political and economic ‘reforms,’ the aims of which are to transfer the political power over the country to a younger generation of loyal party

³⁸ Article 10

³⁹ Article 11

leaders and the economic power to the hands of the part of the military most closely linked to the Castro family.

The ambition to defend the status quo that is implicit in the agreement could be seen as a strategy to reduce the risk for power vacuum in the country that could originate from popular protests and a political conflict. If the Cuban government was to lose its control over the territory and its population, Latin American drug networks would quickly move to use Cuba to build bases for transport of drugs to the North American and European markets, with a surge in violence as a direct consequence.

However, the lack of change can also spur violence. The harder the government repression of protests against the lack of everything from food, consumer goods and freedom to the possibility to realize life projects gets, the greater the frustration of Cuban citizens. If the Cuban democracy movement can no longer argue that the international community is on its side in the fight for change, its ability to convince the population of the importance of conducting this fight with non-violent means will shrink. From this perspective, the decision of the international community to neglect the will of the Cuban democracy movement and to open the doors for cooperation with, and financial support to the Cuban government could also be the spark.

The differences between the agreement with Cuba and the agreement with Central America when it comes to principles and objectives, political dialogue, cooperation and civil society show that the EU demands a lot less from authoritarian governments than from formally democratic ones. This is not only a problem in the relation with Cuba but also for future negotiations with other authoritarian governments. If the EU does not demand more than this from Cuba, why should it demand more from countries like Ethiopia, Vietnam or Saudi Arabia in the future? When letting principles go in the relations with one country, it is extremely difficult to stand up for them in the relations with others.

The transfer of power from the first revolutionary generation to the second has already begun but the death of Fidel Castro will make it the prime objective of the rest of the old guard the years to come. This is the moment when the demand for change should be at its peak. From a human rights perspective, it is sadly very clear, though, that the EU could and should have done a great deal more for the Cuban citizens.

Recommendations

To the European Union:

1. The European Parliament should not give its consent the proposed agreement with Cuba.
2. The EU should restart a negotiation process that formally includes Cuban and European civil society organizations.

3. The new agreement should include the full respect for human rights as a clearly stated objective.
4. As a pre-condition to the adoption of a new agreement, the EU should ask for the ratification of the ICCPR and ICESCR; amnesty for all political prisoners; and a stop to the ongoing repression of human rights defenders and democracy activists.
5. In the absence of a new agreement, the EU should maintain its 1996 Common Position as the guiding policy for all EU Member States, including in the negotiation of bilateral agreements with Cuba.

However, if the European Parliament gives its consent to the agreement, the EU should take note of the following recommendations when implementing the agreement. The EU should at least:

6. Publicly and continuously denounce the Cuban governments repression of human rights defenders and democracy activists and demand the immediate liberation of all political prisoners.
7. Include ratification and implementation of the ICCPR and ICESCR as core items for the human rights dialogue.
8. Invite human rights defenders, democracy activists and the independent civil society to formal and continuous follow-up meetings on the implementation of the agreement.
9. Initiate a dialogue with all European companies investing in Cuba on how to work with the UN Guiding Principles on Business and Human Rights.
10. Include the ILO and international trade union organizations in the follow-up to the implementation of the ILO Conventions.
11. Evaluate the results of the agreement in the area of human rights within three years. Should the result be assessed as insufficient, open a discussion on the possibility of denouncing the agreement.
12. Avoid using similar arguments and negotiating similar agreements with other authoritarian governments until positive results have been met with the Cuban government.

Cuba Country Report:

No Civil and Political Rights in Sight

Introduction

Cuba is a country under authoritarian rule, where civil and political rights are severely restricted by law and by practice and often violated.⁴⁰ The Constitution itself subordinates the exercise and enjoyment of rights to the protection of the revolution⁴¹ and political power is concentrated in the ruling Communist Party, headed since more than fifty years by the Castro family. A very restrictive Association Law further prevents the development of a healthy civil society in the country. All this together means that human rights and democracy work is actually illegal in Cuba; human rights organizations cannot be registered and therefore officially do not exist and are not entitled to receive funding; and human rights defenders can be and actually are legally persecuted. This also applies to trade unions, lawyers, political parties and some religious denominations, and their members.

⁴⁰ Civil Rights Defenders publishes country reports on all countries it works in. They all have the same structure and analyze to what extent the country has ratified international human rights conventions, the situation for human rights defenders, and the government's respect for ten core civil and political rights. All reports can be found online at www.civilrightsdefenders.org/category/country-reports/.

⁴¹ See for example article 62: "None of the freedoms which are recognized for citizens can be exercised contrary to what is established in the Constitution and the law, or contrary to the existence and objectives of the socialist State, or contrary to the decision of the Cuban people to build socialism and communism. Violations of this principle can be punished by law."

⁴² "Upon receipt of reliable information on serious, grave or systematic violations by a State party of the conventions they monitor, (the respective Committees) may, on their own initiative, initiate inquiries if they have received reliable information containing well-founded indications of serious or systematic violations of the conventions in a State party. (...) Inquiries may only be conducted with respect to States parties that have recognized the competence of the relevant Committee

International Human Rights Law Framework

Between 1972 and 2009 Cuba ratified eight international human rights conventions, the last one being the Convention for the Protection of All Persons from Enforced Disappearance (CED). It accepted the inquiry procedure for two of them (the Convention against Torture and CED)⁴² and the individual complaint procedure for none.⁴³ Cuban law is deficient with regard to the incorporation of international treaties into national law, as the 1976 Constitution does not regulate the issue and subsequent legislation fails to clearly resolve it (in particular the Decree Law 191 of 1999), thus leaving great uncertainties on the application of international human rights law in the country.⁴⁴

in this regard. States parties may opt out from the inquiry procedure, at the time of signature or ratification or accession (...) The Convention on Enforced Disappearances is an exception as the competence to conduct inquiries is not subject to the acceptance by States parties", from the website of the Office of the High Commissioner for Human Rights (OHCHR), <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTPetitions.aspx#individualcomm>.

⁴³ "Currently, eight of the human rights treaty bodies (CCPR, CERD, CAT, CEDAW, CRPD, CED, CESC and CRC) may, under certain conditions, receive and consider individual complaints or communications from individuals", also from OHCHR's website, cited above.

⁴⁴ "The regulation of the reception of international treaties in our normative framework is remiss, since our Constitution does not contain a clause regulating how the norms that the Cuban state has generated in the international environment will have validity in its own territory, nor the hierarchy that they will have in the internal body of laws. The Decree Law 191 and its complementary Resolutions do not fill the constitutional omission, deficiently regulating the issue of publication as a mechanism for the treaty to be integrated into the

In 2008, the Cuban Government signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. At the moment of signature, the Cuban Government stated: “The Republic of Cuba hereby declares that it was the Revolution that enabled its people to enjoy the rights set out in the International Covenant on Civil and Political Rights. The economic, commercial and financial embargo imposed by the United States and its policy of hostility and aggression against Cuba constitute the most serious obstacle to the Cuban people’s enjoyment of the rights set out in the Covenant. The rights protected under this Covenant are enshrined in the Constitution of the Republic and in national legislation. The State’s policies and programs guarantee the effective exercise and protection of these rights for all Cubans. With respect to the scope and implementation of some of this international instrument, Cuba will make such reservations or interpretative declarations as it may deem appropriate.” Up to this day, though, none of the two Covenants has been ratified.

At the regional level, Cuba is a member of the Organisation of American States (OAS) but has not ratified the Inter-American Convention on Human Rights, which means that the Inter-American Court on Human Rights has no jurisdiction in the country. According to OAS interpretation, though, the Inter-American Commission of Human Rights (created before the Convention) “possesses additional faculties which pre-date and are not derived directly from the Convention, such as the processing of cases involving countries which are still not parties to the Convention.”⁴⁵ In keeping with this interpretation, the Commission monitors the human rights situation in Cuba, makes statements about it and requests the Government to adopt precautionary measures, in particular to protect human rights defenders. The Cuban Government, though, refutes the Commission’s

mandate and has therefore never complied with the Commission’s requests so far.

The Situation of Human Rights Defenders in Cuba

Over the years, the Cuban Government has created a legal framework that severely restricts the capacity of human rights defenders to operate in the country. Apart from several articles in the Constitution subordinating the exercise of rights to the objectives of the socialist society, in particular in the civil and political areas,⁴⁶ additional laws have been adopted to make human rights work a dangerous endeavour and human rights defenders a category highly at risk. Perceived threats to Cuba, its political regime or its sovereignty – particularly in the form of supposed foreign interference in internal affairs – have been used as reasons to hinder, repress and punish human rights work and those attempting to conduct it. Political rights and freedoms of association, expression, speech and movement have been particularly affected.

Faced nevertheless with persistent attempts to encourage democratic developments in the island, the Government has used a number of different tactics to prevent human rights work from being conducted. In recent years, human rights defenders have increasingly been the target of so-called acts of repudiation,⁴⁷ arbitrary arrests followed by short-term arbitrary detentions and restrictions to travel, both within the country (particularly in conjunction with their participation in human rights events or pacific demonstrations against the Government) and outside it. For 2015 the Cuban Commission for Human Rights and National Reconciliation reported 8,616 cases of individuals arbitrarily arrested for political reasons and detained during hours or days. Almost 8,000 cases have already been reported up to August 2016. Human rights

internal legal system and as a way for it to be known and applied.” Rodriguez, Levya and Martinez, “Recepción de los Tratados Internacionales en el Ordenamiento Jurídico Cubano”, in *Entre Líneas*, April-June 2010 (own translation).

⁴⁵ See for example Precautionary Measure 236/16, issued by the Commission in July 2016 – Juana Mora Cedeño et al., Cuba, available at <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

⁴⁶ See for example art. 53 of the Cuban Constitution, stating: “Citizens have freedom of speech and of the

press in keeping with the objectives of socialist society.” (emphasis added).

⁴⁷ Acts of repudiation (“actos de repudio” in Spanish) are supposedly spontaneous but always well-organized citizens’ demonstrations of disapproval vis-a-vis individuals or organizations perceived to behave against Cuba or the revolution’s interests. For a visual rendering of such an act, see the video “Documental Gusano” by the organization Estado de Sats, available at <https://www.youtube.com/watch?v=pW7i48fSCZ4>. It also shows how children are often co-opted from school to take part in these acts and how the Police, sometimes in plain clothes, participates.

defenders also often face dismissals from work or school, which have an immediate impact on the enjoyment of their rights and their capacity to continue human rights work.

Nine Rights in Focus

The right to life and physical integrity

The death penalty still exists in Cuba. It is inadequately regulated by a number of articles in the Penal Code – main concerns relate to the vagueness of definitions used, the wide range of crimes covered⁴⁸ and the potential unfairness of trials, due to the lack of competent, independent and impartial courts. Although there is no formal moratorium, the last known executions took place in 2003 and in 2008 all death row prisoners saw their sentences commuted to 30 years' or life detention. The Government, nevertheless, has publicly stated its determination to keep death penalty as a possible punishment, in particular in the context of increasing challenges related to regional security,⁴⁹ and has abstained in the voting of the 2012 and 2014 United Nations General Assembly Resolution on the death penalty moratorium.

Cuba has ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1995, declining to accept its individual complaint procedure. In spite of the obligation to do so stated in the Convention (art. 4), it has not typified torture as a crime in national legislation. This gap seriously affects the possibility of processing and punishing cases.⁵⁰ A great number of cases of torture and cruel, inhuman and degrading treatment have been reported over the last five decades, particularly in detention facilities and prisons and including extended solitary confinement, beatings, restrictions on family visits and denial of medical care. Reports of

beatings while in detention, including short-term ones, or during arrest and transfer to police stations are routinely received from human rights defenders.

The right to liberty and security of person

The reason why people can be deprived of their liberty is at the basis of the exercise of their right to it. A great number of arrests and detentions in Cuba are based on constitutional and legal provisions that link legally-accepted behaviour to the socialist nature of the State. The Constitution restricts freedoms and therefore allows subsequent punishment when their exercise is deemed as “*contrary to the existence and objectives of the socialist State.*” As a legal construct of particular concern, Title XI of the Penal Code, also referred to as the ‘Ley de Peligrosidad’ (‘Dangerousness Law’), defines the security measures allowed by law to deal with ‘dangerous state’, defined in art. 72 as “the special proclivity of a person to commit crimes, demonstrated by the conduct they observe *in manifest contradiction with the norms of socialist morality.*” Such security measures, applicable as prevention before any crime is actually committed, include therapeutic, re-educational and vigilance measures of periods up to four years and that can comprise detention.⁵¹ Decree Law no. 128 of 1991 further establishes that the declaration of ‘dangerous state’ is emitted at the end of a summary judgement – thus potentially making the use of this figure even more arbitrary.

Individuals can be arrested by the Police or other undefined authorities for crimes as widely interpretable as “creating alarm or being among those most frequently committed in the territory of the municipality.”⁵² Once under arrest, they can be detained for up to 24 hours by the Police; further 72 hours by the person instructing the

⁴⁸ Crimes punishable with the death penalty are crimes against peace, the State, life and physical integrity, family, etc. such as murder, aggravated rape, conspiracy, piracy, sabotage, etc.

⁴⁹ See article on La Nación of 19 November 2015 <http://www.lanacion.com.ar/1549737-cuba-el-presidente-raul-castro-justifico-la-pena-de-muerte>.

⁵⁰ See for example the Concluding Observation of the Committee against Torture to Cuba's report of 1997, available at <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8607.pdf?view=1>.

⁵¹ Art. 75 establishes that those who have ties or relations with people who are potentially dangerous to society can be given official warnings by “the competent police authority.”

⁵² Article 243 of the Cuban Criminal Procedure Code. The possibility of “other authorities” and – in specific cases – of any citizens to conduct arrests are of particular concern. Since many years, there have been reports of para-authorities such as the Quick Response Brigades, reportedly recruited and paid by the Ministry of Interior, operating in Cuba at the margin of the law to punish dissidents, disrupt demonstrations, conduct acts of harassment, etc.

case; and 72 more hours by the prosecutor in charge of the case – for a total of seven days before appearing in front of a court, which is in excess of the reasonable time allowed under international human rights standards. Many individuals are kept in pre-trial detention for long periods, in violation of legal obligations. In 2015, the artist Danilo Maldonado, known as ‘El sexto’, was held in prison for a period of ten months without trial: he had painted two pigs green and, having written ‘Fidel’ and ‘Raul’ on them, was planning to bring them to a square in Havana.

While in the past the Government used to arrest defenders and get them tried and sentenced quickly to long-term prison terms, since the early 2000s tactics have switched to repeated short-term detentions that have the advantage of coupling maximum disruption of human rights work with minimum consequences for the Government. Such detentions are usually arbitrary, at least with regard to the legal requirement for detainees to sign the legal act requested by art. 244 of the Criminal Procedure Code to acknowledge the detention. The increase of short-term arbitrary detention of defenders is reported to have quadrupled since 2010. In a further development, defenders are now often subjected to forms of illegal house arrest by which Police and other authorities are stationed outside their homes and detain them if they try to get out to conduct human rights work.

Recent reports (official and from independent organizations) place the number of prisoners in Cuba between 60 and 70,000, hosted in around 200 places of detention. For 2013, the rate of 510 prisoners per 100,000 inhabitants placed Cuba sixth in the list of countries with most detainees in the world.⁵³ Conditions in prison have been reported as unhygienic and unhealthy and prisoners have denounced various types of ill-treatments as well as lack of access to health assistance and adequate food. Since the Penal Code contemplates forced labour as a subsidiary sanction to imprisonment, prisoners can be forced to work up to twelve hours a day. Prisoners have reported being punished if they do not meet the production quotas.

According to the Cuban Commission for Human Rights and National Reconciliation at present there are approximately 70 to 100 political prisoners in the country. However, this number could be higher, considering that political prisoners are usually formally accused of common crimes. The Cuban Government denies holding any political prisoners.⁵⁴ Political prisoners regularly recur to hunger strikes to protest against their treatment. In January 2012, political prisoner William Villar Mendoza died after 50 days of hunger strike.

The right to security of person is also endangered by the practice of the Government to vilify perceived opponents of the regime in a way that incites and legitimizes violence against them by the population. The public solicitation of hatred – particularly when originating in state agents – creates an atmosphere of violence that is a danger to the security of those it targets.

The right to respect for private and family life

The right to respect for private and family life is enshrined in the Constitution (art. 56 and 57). Nevertheless, cases of grave concerns as to the protection of these rights in the island have been and continue to be reported on a daily basis. In particular, territorial and communications’ privacy is threatened by Government-led or Government-supported surveillance. It is widely reported that all means of communications are controlled by State security, including internet. The use of neighbourhood organization in the form of the ‘Committees for the Defence of the Revolution’ to control and denounce the activities of human rights defenders to state agents is also of great concern.

A specific form of violation of the right to private life (and in particular to honour and reputation) that continues to be used against human rights defenders are the so-called ‘acts of repudiation.’⁵⁵ The participation of State agents in these acts directly violates the rights of those subjected to them; at the same time, the fact that

⁵³ “Tough Times in Cuba’s Prisons”, by Arián Guerra Pérez on Institute for War and Peace Reporting, 20 October 2015: <https://iwpr.net/global-voices/tough-times-cubas-prisons-0>.

⁵⁴ “The Cuban government claims it holds no prisoners of conscience, but various rights groups assert that there remained between 27 and 70 political prisoners at the end of 2015”, Freedom House Annual Report 2016.

⁵⁵ For a description of such acts see footnote no. 10. The Inter-American Commission on Human Rights “has confirmed that these acts of harassment are calculated to discredit the victims and damage their reputations and good name vis-à-vis the public” – see report N° 67/06 case 12.476 available at <https://www.cidh.oas.org/annualrep/2006eng/CUBA.12476eng.htm>.

State agents are not deployed to protect those subjected to such acts implies a violation by omission of the right to the protection of the law from interferences and attacks against private and family life.

House raids without a warrant or judicial order are also a common violation of the right to private life, targeting in particular human rights defenders and their families. During the raids, the illegal seizure of personal belongings is frequent. In an evident attempt to hinder human rights work, most targeted items include those used to register, store and disseminate written and visual information on human rights violations such as mobile phones, computers, memory sticks, cameras, photocopy machines, scanners, etc. Abusive house searches are also conducted in disregard of the obligations not to undertake them during night hours or not to create undue distress in those on the premises at the time of the search, in particular children.

Another form of violation of family life is guilt by association, whereby family members of perceived dissidents are the targets of school or work discrimination, arbitrary arrests and detentions, unfair trials, etc. – all in an attempt to convince individuals to renounce their activities in order to protect their relatives.

The right to a fair trial and an effective remedy

The Cuban legal framework presents several weaknesses, both at constitutional and at lower levels, with regard to the right to a fair trial. Art. 121 of the Constitution, while establishing functional independence of courts also states their subordination to the National Assembly and the Council of State, headed by the President, thus defeating the principle of independence of the judiciary vis-à-vis the other powers of the State. The Inter-American Commission on Human Rights has in several instances defined tribunals in Cuba as lacking in independence, competence and impartiality.⁵⁶

The crucial principle of presumption of innocence is put in jeopardy by the existence of

preventive measures foreseen in the Penal Code, targeting individuals before any crime is even committed and allowing detention for up to four years through summary trials.

The fact that individuals accused of crimes are only allowed to have access to defence counsel late in the instruction procedure is also of concern as it increases the chances of violations of the rights of the accused. Overall, delays in processing persons in preventive detention are common and a source of concern particularly as they are regularly practiced against human rights defenders. The legal construct of summary trials, included in the Criminal Procedure Code,⁵⁷ is a specific problem as it is of common use in cases of political interest and does not provide sufficient guarantees for the accused to prepare a defence or to collect and present evidence in their favour.

Defence rights are also severely affected by the lack of independent lawyers. All lawyers must be part of the National Organization of Collective Law Firms (ONBC), an entity dependent on the Ministry of Justice, that inspects it, supervises it and controls it. To be members, lawyers must “have moral conditions in agreement with the principles of socialist society.”⁵⁸ While those who are not members can theoretically exercise the profession for non-governmental organizations, the fact that so far no such organizations have been able to receive authorization to register makes this option virtually inexistent. As a result, the great majority of lawyers have direct links with the State, which makes their independence – particularly in defence of dissidents – highly questionable.

The right to freedom of thought, conscience and religion

The fact that the exercise of freedoms is limited by their abidance to the norms of the socialist order, as specified by the Constitution, makes it impossible for Cubans to fully enjoy the right to freedom of thought and conscience. Freedom of religion is guaranteed under article 55 of the Constitution. Nevertheless, “Churches may not

⁵⁶ See for example par. 55-57 of the 2015 Annual Report of the Commission (section on Cuba – page 625).

⁵⁷ Book six, Title XI of the Criminal Procedure Code, as revised by Decree Law 151 of 10 June 1994.

⁵⁸ Law Decree No. 81 “On the exercise of the law profession and the National Organization of Collective

Law Firms” of 8 June 1984. The quote is from the Cubalex article “The exercise of the legal profession in Cuba” of June 2014, available at <https://centrocubalex.com/2014/06/09/el-ejercicio-de-la-abogacia-en-cuba/>.

conduct ordinary educational activities, and many church-based publications are plagued by state as well as self-censorship.”⁵⁹ As of late, reports of repression against officially unrecognised apostolic churches, including the destruction of places of cult, have increased.

As previously shown, citizens feel obliged to participate in ideology-based organizations, such as the Committees for the Defence of the Revolution (officially counting almost eight million members), or in ideology-based acts, such as the repudiation acts to which children from school are often taken. While there are no legally-specified sanctions for refusal to participate in such entities or events, it is clear that there frequently are consequences for dissenting individuals, including the risk of losing one’s job and housing or seeing access to higher education and health services severely limited.

Article 75.1 of the Penal Code specifies that persons who without being themselves ‘dangerous’ have links or relationships with people potentially dangerous to other people and to the social, economic and political order of the socialist State can be the object of official warnings by the competent police authorities. This means that even being friend with someone can create serious consequences in Cuba.

The right to freedom of expression

Article 53 of the Constitutions establishes that “citizens have freedom of speech and of the press in keeping with the objectives of socialist society”⁶⁰ and that the law regulates the exercise of freedoms. The legal framework adopted further limits the right to freedom of expression. The Penal Code lists a number of crimes that are used to restrict this right: contempt, dissemination of false information, defamation, etc. Such crimes can be punished with detention sentences of up to four years – or more, if it is found that they created a danger to the State. Special laws – such as the infamous ‘Gag Law’ (‘Ley Mordaza’) no. 88, with its “high levels of

abstraction and ambiguity (...) making the interpretation and application of this legal disposition a source of arbitrariness”⁶¹ – further restrict the exercise of freedom of expression.

The will of the Government to strictly control what citizens say about its rule makes freedom of expression one of the most restricted rights in Cuba. Artistic expressions such as music and painting are also restricted if they are considered a risk to national security or a way to offend public authorities. According to article 144 of the Penal Code, a person who “threatens, slanders, defames, insults, libels or in any way outrages or offends, orally or in writing, the dignity or decorum of an authority, public functionary, or his agents or assistants” can be punished with imprisonment of three months to one year – extendable to three years if the authorities in question are the President of the State Council, the President of the Nacional Assembly, members of the State Council or of the Ministerial Council, Ministers or Parliamentarians.

Also of particular concern is section V of the Penal Code on enemy propaganda. Article 103 in particular establishes that those who “incite against the social order, international solidarity or the socialist State, through oral or written or any other kind of propaganda” can be sentenced to between one and eight years of detention. Also punishable are those who put together, distribute or own such propaganda. This makes work for democracy impossible.

The right to freedom of the press is also constitutionally limited to the aims of the socialist society. The State has a constitutional monopoly on communication media and the private property of them is forbidden. This means that there are no legally recognized independent media in the country. Independent and critical journalists and bloggers are continuously harassed for their reporting on topics that are considered sensitive, suffering arbitrary short-term detentions, internal deportations, house arrest, public acts of repudiations, demotions and the blocking of individuals’ mobile-telephone service are frequent occurrences for them.

⁵⁹ Freedom House Annual Report 2016, Cuba, available at <https://freedomhouse.org/report/freedom-world/2016/cuba>.

⁶⁰ State ideology – as opposed to national security – cannot be considered an accepted ground for the limitation of freedom of expression in international human rights law. For a summary of Cuban laws affecting right to freedom of expression, see “The Right

to Freedom of Expression: Restrictions on a Foundational Right”, International Center for Not-for-Profit Law, 2015, page 8 – available at <http://www.icnl.org/research/trends/trends6-1.pdf>.

⁶¹ “Situation of the Right to Freedom of Opinion and Expression in Cuba”, Report to the Special Rapporteur on Freedom of Opinion and Expression prepared by a group of Cuban NGOs, July 2016, page 9.

The state has also a strict control of access to and surveillance of internet. Control of access is achieved by restricting private connections, access to needed hardware and high connection costs (\$2 dollars per hour in a country where the official average salary for 2015 was \$25 per month). The Government also blocks access to a number of international websites, particularly social media, blogs and newspapers critical to it.

The right to freedom of assembly and association

The Cuban Constitution (art. 54) has a highly unusual formulation when it comes to the right to freedom of assembly and association as instead of stating that this is a right it goes directly into defining who can exercise it as a right: “The rights of assembly, demonstration and association are exercised by workers, both manual and intellectual; peasants; women; students; and other sectors of the working people, [rights] to which they have the necessary ability (*los medios necesarios*) to exercise. The social and mass organizations have all the facilities they need to carry out those activities in which the members have full freedom of speech and opinion based on the unlimited right of initiative and criticism.”⁶²

Similarly, the Association Law no. 54 of 1985 surprisingly provides a detailed list of associations allowed by law (scientific or technical; cultural and artistic; sportive; of friendship and solidarity; and any others that in conformity with the Constitution and this law have objectives of social interest) that sees human rights organizations left in a limbo. The procedure provided by the law to gain recognition for an organization is cumbersome and arbitrary and in practice no human rights organizations so far have managed to successfully go through it. As a result, “independent racial advocacy or civil rights organizations are illegal”,⁶³ as are people working for them.

Freedom of assembly is similarly curtailed in practice. Peaceful demonstrations are as a rule disbanded, sometimes violently, and demonstrators beaten, arrested, detained, ill-

treated or tortured. Several human rights defenders have been arrested a great number of times and their movements are monitored and restricted. The Sunday demonstration of the Forum for Rights and Liberties and the Ladies in White have been particularly targeted.

The need for a Government authorization in order to reside elsewhere than in the original place of birth is also commonly used to prevent individuals from participating in associations or demonstrations: there have been reports of several human rights defenders being forced to return to their place of origin when trying to work in or travel to Havana.

Cuba has ratified the International Labour Organization (ILO) Conventions no. 87 and 98 on the right to freedom of association and collective bargaining. The right of workers to freely associate has been recently recognized in the new Labour Law (Law no. 116 of December 2013). It appears, though, that in spite of a theoretical right to freedom of association, trade unions in Cuba are still not officially recognized – with the exception of the traditional Cuba Workers Union (CTC), which is considered to be to all effects an appendix of the State and has been severely criticized for its role in support of Government policies to the detriment of workers. Several independent unions have been created over the years and are recognized internationally, including by ILO, but their members have not been able to get their organizations registered according to the Association Law and continue to be the frequent victims of repression, including harassment, beatings and imprisonment.

The right to political rights

Cuba is a one-party republic where, as established by article 5 of the Constitution, the Communist Party (PCC) “is the highest leading force of society and the state.” While other political parties currently do exist in Cuba, they are not officially recognised and their activities are as a consequence restricted by law. Political opponents are regularly targeted by the Government, arbitrarily arrested and prevented from carrying out political work.

⁶² Translation available at https://www.constituteproject.org/constitution/Cuba_2002?lang=en

⁶³ Freedom House, 2016 Annual Report.

Citizens in Cuba have a right to vote but not a right to choose. Individuals who have a desire to be elected must make it known at the district assemblies taking place one month before elections. Participants in the assembly vote for each of the candidates by show of hands, meaning that opposition candidates would have to be publicly supported by other citizens in a strictly monitored environment. Candidates who are supported at district level are then presented for election to the Municipal Assemblies. Once that election has taken place, Nomination Committees, composed of Government-controlled mass organizations,⁶⁴ decide which candidates to present to each of the available posts at provincial and national level. Only one candidate per post is allowed: electors can only decide whether to approve them or not. If the candidate does not get more than 50% of the votes, another candidate is presented at a partial election. Throughout the process, no campaigning is allowed and candidates are only made known to the electorate by their CV and previous history.⁶⁵

In 2015, two dissidents (Hildebrando Chaviano, an independent journalist and lawyer, and Yuniel Lopez, a member of the Independent and Democratic Cuba Party) were the first opposition candidates ever to “be selected by a show of hands in a local neighbourhood meeting.”⁶⁶ The Government accused them of being contra-revolutionaries and members of anti-governmental organizations and they failed to be elected in the final scrutiny.

The right to protection against discrimination

Cuba’s official demographics of 2012 show a population composed of people with white skin (64%), mulatto/mestizo skin (27%) and black skin (9%).⁶⁷ Article 42 of the Constitution formally prohibits discrimination on the grounds of “race, colour of the skin, sex, national origin, religious creeds, or any other type offending human dignity.”

Concerns have nevertheless been expressed by national and international organizations about the effective enjoyment of equal rights by women, Afro-Cubans and people with different sexual orientations. In particular, in its Annual Report 2015 the Inter-American Commission on Human Rights highlighted the challenges faced by such groups with regard to their rights to work, pay, and education and specifically for Lesbians, Gays, Bisexuals and Transsexuals (LGBT) to physical integrity and freedom of expression. The issue of the different degrees of economic and social development for predominantly Afro-Cuban areas and/or for Afro-Cuban populations has also been regularly raised in reports on the island and is a continued source of concern.

⁶⁴ The six organizations involved in this process are the Cuba Workers Union, the Committees for the Defence of the Revolution, the Cuban Women Federation, the National Association of Small Peasants, the Federation of University Students and the Federation of Middle-Education Students.

⁶⁵ For a more detailed description of the system, see “You have to get the Police out of your head”, E.

Jennische, Ertigo 2016, chapter 26 (Spanish and Swedish only).

⁶⁶ “Two Cuban dissidents concede defeat in local elections”, BBC News, 20 April 2015.

⁶⁷ The question appearing in the 2012 Census, required people to state whether the colour of their skin was white, black or mulatto/mestizo.

The EU-Cuba agreement

TITLE II

DEMOCRACY, HUMAN RIGHTS AND GOOD GOVERNANCE

ARTICLE 22

Democracy and human rights

1. Mindful that the protection and promotion of human rights and fundamental freedoms is the first responsibility of governments, bearing in mind the significance of national and regional particularities and of various historical, cultural and religious backgrounds and acknowledging that it is their duty to protect all human rights and fundamental freedoms regardless of their political, economic and cultural systems, the Parties agree to cooperate in the area of democracy and human rights.
2. The Parties recognise that democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of life.
3. The Parties agree to cooperate in strengthening democracy and their capacity to implement the principles and practices of democracy and human rights, including minority rights.
4. Cooperation may include, *inter alia*, activities, mutually agreed upon by the Parties, with the aim of:
 - (a) respecting and upholding the Universal Declaration of Human Rights and promoting and protecting civil, political, economic, social and cultural rights for all;
 - (b) addressing human rights globally in a fair and equitable manner, on an equal footing and with the same emphasis, recognising that all human rights are universal, indivisible, interdependent and interrelated;
 - (c) effectively implementing the international human-rights instruments and optional protocols applicable to each Party, as well as the recommendations emanating from the United Nations human-rights bodies and accepted by the Parties;
 - (d) integrating the promotion and protection of human rights into internal policies and development plans;
 - (e) raising awareness and promoting education in human rights, democracy and peace;
 - (f) strengthening democratic and human-rights-related institutions, as well as the legal and institutional frameworks for the promotion and protection of human rights;

The EU-Central America agreement

TITLE I

DEMOCRACY, HUMAN RIGHTS AND GOOD GOVERNANCE

ARTICLE 29

Democracy and Human Rights

1. The Parties shall cooperate to achieve full compliance with all human rights and fundamental freedoms, which are universal, indivisible, inter-related and inter-dependant, as well as the building and strengthening of democracy.
2. Such cooperation may include *inter alia*:
 - (a) the effective implementation of the international instruments of human rights, as well as the recommendations emanating from Treaty Bodies and Special Procedures;
 - (b) the integration of the promotion and protection of human rights in national policies and development plans;
 - (c) the strengthening of the capacities to apply the democratic principles and practices;
 - (d) the development and implementation of action plans on democracy and human rights;
 - (e) awareness raising and education in human rights, democracy and culture of peace;
 - (f) the strengthening of democratic and human rights-related institutions, as well as the legal and institutional frameworks for the promotion and protection of human rights;
 - (g) the development of joint initiatives of mutual interest in the framework of relevant multilateral *fora*.



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