

# Platform for Discussion on the Current EU-Cuba Negotiations

By Por Otra Cuba\* and Civil Rights Defenders\*\*

Havana and Stockholm, August 2014.

## Executive Summary

The European Union bilateral relationship with Cuba has always been guided by the promotion of human rights and democracy, as explicitly stated in its “Common Position” toward Cuba. Therefore such values should also form the cornerstone of on-going negotiations between the EU and Cuba regarding the bilateral *Political Dialogue and Cooperation Agreement* that was initiated in April 2014.

In 2008, the Cuban government took its first positive step towards respecting human rights by signing the International Covenants on Civil and Political Rights (ICCPR) and the Economic, Social and Cultural Rights (ICESCR). The following years, Cuba released many political prisoners; including the 75 human rights defenders imprisoned during the spring of 2003. However, Cuba has not taken any further effective steps to ratify or implement the International Covenants. Political persecution and repression continues, while any space for opposition in official Cuban political life remains wholly elusive.

The EU must therefore first seek to include Cuban civil society and political opponents in the negotiation process with the Cuban government in order to ensure legitimacy to the final agreement for the Cuban population. The EU should then move on to include basic steps regarding the ratification and implementation of the ICCPR and ICESCR, as well as their respective additional protocols in the agreement.

The implementation should be understood, in a first step, as the incorporation of these instruments into the Cuban constitution, and national laws so that basic human rights, such as the right to association, the right to form unions, the right to own property and the right to freedoms of expression, press and movement are guaranteed.

Finally, the EU should ensure that civil society and Cuban political opponents have the opportunity to maintain open dialogue with the EU throughout the follow up process of the agreement.

The 2012 EU agreement with Central America includes chapters on *Political Dialogue, Cooperation and Trade*. It should constitute a basis for the agreement with Cuba in its first two chapters. When Cuba has ratified the International Covenants and implemented the basic reforms implied, the EU should then open the negotiation process for a beneficial trade agreement and not before. It is therefore a worrying sign at this stage that negotiations already seem to include a trade agreement, although the EU has never communicated this before negotiations commenced.

A fundamental condition, before the EU consider signing such an agreement should stipulate that Cuba advances to comply with its commitment to ratify and implement the International Covenants; sets free all political prisoners and halt the arbitrary arrests of Cuban democracy activists.

\* The Por Otra Cuba campaign is a citizen initiative, which seeks the ratification and implementation of the ICCPR and the ICESCR in Cuba as well as respective additional protocols contained within the Covenants. [www.porotracuba.org](http://www.porotracuba.org)

\*\* Civil Rights Defenders is an international human rights organisation founded in Stockholm, Sweden in 1982, with the aim of defending people's civil and political rights and empowering human rights defenders at risk. [www.civilrightsdefenders.org](http://www.civilrightsdefenders.org)

## Introduction

When the Cuban government in February 2008 signed the ICCPR and ICESCR, it was a landmark development in Cuba's political history. It was the first time since the revolution of 1959 that the government attempted to relate the entire Cuban political, economic, social and cultural system to international norms, and by that opened up new opportunities for comparisons with other countries.

Although the government added a declaration to the signature, stating that "it was the Revolution that enabled its people to enjoy the rights set out" in the Covenants, and that the rights protected under the Covenants "are enshrined in the Constitution of the Republic and in national legislation"<sup>1</sup>, it is obvious to any observer that the reality in Cuba stands in stark contrast to basically all the paragraphs of the International Covenants. This reality can be seen on terms of the daily arbitrary arrests of human rights defenders to the basic principles in the constitution that prohibit peaceful engagement for democracy.

The Por Otra Cuba campaign and Civil Rights Defenders are partners in this project with the aim of promoting respect for human rights in Cuba. Our goal with this document is to ensure that the current EU-Cuba negotiations on the bilateral Political Dialogue and Cooperation Agreement leads to improved respect for human rights and triggers a democratisation process.

The Por Otra Cuba campaign has gathered momentum, delivering thousands of signatures from Cuban citizens demanding the ratification and implementation of the UN Human Rights Covenants to the Cuban parliament. The campaign also aims to promote a complaint and petition procedure, within in Cuban legislation that will urge the Cuban government to fulfil its public commitment to ratify the Covenants.

Another core part of the campaign is to distribute information explaining how the implementation of the Covenants would impact daily life in Cuba. (The petition and information materials are attached)

Civil Rights Defenders (previously the Swedish Helsinki Committee for Human Rights) has its roots in the Helsinki Movement. It is based on the agreement between the countries of the Eastern and Western blocs signed in the Finnish capital in 1975 to promote human rights. The basis of this agreement encompassed that respect for human rights was a precondition for peace. This inspired citizens all over Europe, including the former Soviet Union, in Canada and in the USA to monitor their own government's compliance record with human rights. The Por Otra Cuba campaign enshrines its goals in the same way as the Helsinki movement.

## Cuba and the European Union

The lack of respect for basic human rights in Cuba has always been a defining component when it comes to relationship between Cuba and the European Union. The objective of the European Union in its relations with Cuba is according to its Common Position from 1996 "to encourage a process of transition to pluralist democracy and respect for human rights and fundamental freedoms" as well as improving the living standards of the Cuban people.<sup>2</sup>

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<sup>1</sup> The International Covenant on Civil and Political Rights, with its list of participants and their declarations can be found here: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

<sup>2</sup> The Common Position in various languages: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31996E0697>

In the aftermath of the prison sentences of the 75 Cuban democracy activists in the spring of 2003, the EU reiterated its Common Position and declared that:

*"The EU, deeply concerned about the continuing flagrant violation of human rights and of fundamental freedoms of members of the Cuban opposition and of independent journalists, being deprived of their freedom for having expressed freely their opinion, calls once again on the Cuban authorities to release immediately all political prisoners."*<sup>3</sup>

The EU also decided to limit bilateral high-level governmental visits to Cuba from member states, and to invite Cuban dissidents to national day celebrations at the various embassies in Havana. This declaration was an important recognition from the EU of the importance of Cuban democracy activists in the shaping of the future trajectory of the country.

International pressure on the Cuban government to stop repressing activists in the country and initiate a reform process towards a democratic political system has gained momentum throughout the years. However little or nothing has been concretely done in this regard. The reluctance of the Cuban government is not a sufficient reason to reduce demands on the government though, but indeed a reason to challenge and change current methodology. The recently initiated negotiations between the EU and the Cuban government can therefore provide new grounds to work for reform.

When the EU High Representative Catherine Ashton received negotiating directives from the EU Council in February 2014, she also explained that it was "not a policy change from the past", and that the EU has "consistently raised human rights concerns which will remain at the core of this relationship". She hoped that Cuba would do what is necessary "on the question of human rights", and stated that the "pace of our negotiations will reflect this."<sup>4</sup>

## The Negotiations and the Agreement

In order to make the most of the negotiations with Cuba, the EU needs to take two principal aspects into consideration: 1) How to include Cuban society in the negotiations and 2) what to demand in the actual final agreement. These aspects are relevant to all three phases of the process; during the negotiation process, in the final agreement and in the follow up process after an agreement has been reached.

### *During the negotiation process*

The fact that there is no political opposition in the Cuban national assembly and no public debates on political issues in the Cuban media, makes it incredibly difficult for EU negotiators to know what expectations Cuban society might have regarding the negotiations and the final agreement. The EU should therefore open up the possibility of allowing Cuban society to submit opinions, questions and ideas on what should be included in the agreement. By doing so it would also become possible to explain that the motives for the EU to enter into negotiations are to promote human rights for the Cuban population.

This far in the negotiations process, the EU has only maintained a dialogue with the Cuban government. If the EU does not open up to Cuban society, it will enter an agreement with the government that the Cuban people have never had the possibility to express its opinions about.

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<sup>3</sup> <http://www.consilium.europa.eu/uedocs/NewsWord/en/cfsp/76075.doc>

<sup>4</sup> [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/140946.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/140946.pdf)

That would of course undermine the legitimacy of the agreement, and the actual possibilities of its fulfilment.

### *The final agreement*

The EU has bilateral agreements with all countries within Latin America and the Caribbean, with the exception of Cuba. One of the most recent agreements entered into is the Association Agreement signed in 2012, with the countries of Central America.<sup>5</sup>

It comprises of three main chapters on Political Dialogue, Cooperation and Trade. Due to the fact that the directives from the Council for negotiations with Cuba include a “bilateral Political Dialogue and Cooperation agreement”, the first two chapters of the agreement with Central America should serve as a template for the agreement with Cuba.<sup>6</sup>

#### Political Dialogue

In the chapter on Political Dialogue in the agreement between the EU and Central America, the parties define the objectives of the dialogue in terms of: “establishing a privileged political partnership based notably on the respect for and the promotion of democracy, peace, human rights, the rule of law, good governance and sustainable development”. The political dialogue shall also pave the way for new initiatives for pursuing common goals such as “the rule of law; good governance; democracy; human rights” etc. Furthermore, the parties to the agreement have stated that the Political Dialogue

*“shall also cover the international conventions on human rights, good governance, core labour standards and the environment, in accordance with the Parties' international commitments and raise, in particular, the issue of their effective implementation.”*

There is no reason why these wordings should not be also included in any agreement with Cuba. The latter would amongst other things facilitate conditions for continuous dialogue with Cuba on how it should fulfil its promise as laid out in 2008 when it comes to ratifying and implementing the UN Covenants.

This is also where the negotiators can have a strong impact when it comes to making concrete demands on the Cuban government. Although the chapter on Political Dialogue with Central America never asks for the implementation of a specific reform of an individual party - it only defines the areas of dialogue and how the parties should “contribute to the strengthening of” or “promote the full implementation of” etc. - it is completely possible to name the UN Covenants on Civil and Political Rights as well as Economic, Social and Cultural Rights, and stress the importance regarding their full implementation.

#### Co-operation

The agreement between the EU and Central America concerning cooperation defines clearly the objectives of the cooperation are to:

*“(a) strengthening peace and security; (b) contributing to reinforcing democratic institutions, good governance and full applicability of the rule of law, gender equality, all forms of non-*

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<sup>5</sup> EU-Central America association agreement <http://trade.ec.europa.eu/doclib/press/index.cfm?id=689>

<sup>6</sup> Council adopts negotiating directives for bilateral Political Dialogue and Co-operation Agreement with Cuba [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/140946.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/140946.pdf)

*discrimination, cultural diversity, pluralism, promotion and respect for human rights, fundamental freedoms, transparency and citizen participation” etc.*

It also provides provisions regarding the alleviation of poverty, promoting economic growth and sustainable development as objectives, but peace and democracy are to be considered of prime importance. Article 29, which has the title Democracy and Human Rights, states that:

*“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.”*

Such cooperation may include:

*“(a) The effective implementation of the international instruments of human rights, as well as the recommendations emanating from Treaty Bodies and Special Procedures;”*

In any agreement with Cuba, “effective implementation” should be understood in terms of International Human Rights Law, such as integration of the UN Human Rights Covenants and its respective additional protocols into the Cuban constitution and national legislation. In the short term this should mean the creation of a new law of association, the right to form unions, legal guarantees for property rights, and a modification of the penal code in order to permit the freedom to exercise fundamental rights and freedoms of expression, press and movement. It should also include the abolition of “social dangerousness” as a punishable crime.

The list continues:

*“(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; ENTR-AM/EU/en 43*

*(d) The development and implementation of action plans on democracy and human rights;*

*(e) Awareness in raising 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;”*

Since 2008, when the EU-Cuba cooperation talks were resumed, the EU has committed around 80 million Euros to humanitarian and post-hurricane reconstruction projects.<sup>7</sup> With a Cooperation agreement between the two parties it is likely that this contribution would increase substantially. This would give the EU the possibility of including concrete measures in any agreement, i.e. from (a) to (f) above.

As the EU’s principle objective in its relationship to Cuba is to promote democracy and respect for human rights, as stated above, this should also be clearly considered as the core objective in the chapter regarding Cooperation.

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<sup>7</sup> [http://eeas.europa.eu/cuba/index\\_en.htm](http://eeas.europa.eu/cuba/index_en.htm)

### *When the Agreement is signed*

In the EU agreement with Central America there are various articles concerning the participation of the civil society in the follow up process of the agreement. It establishes a "Joint Consultative Committee", with the task of submitting the opinions of civil society organisations to the council responsible for overseeing the fulfilment of the objectives of the Agreement.

The Joint Consultative Committee shall also promote dialogue and cooperation between organisations within civil society the EU and Central America. Another task of the parties is to call for regular meetings with representatives of civil society groups in order to inform them about the implementation of the agreement and to canvass their suggestions.

These aspects of the agreement with Central America will be even more important to include in any agreement with Cuba, as civil society and the political opposition in Cuba has no access to its government, and no possibility to receive opinions represented in the major mass media outlets. The agreement should also state clearly that both Cuban and European civil societies should be invited to meetings with government representatives from the two parties.

All countries in Central America are electoral democracies, with constitutions that respect the basic human rights fundamentals, although the reality can often be very different. This however should not be a reason for demanding less from Cuba, but more.

### **Current state of negotiations, August 2014**

When negotiations started in Havana in late April 2014 the Council directives to the negotiators was to create an agreement on Political Dialogue and Cooperation. But after the first negotiation session the head of the EU negotiation team, Christian Leffler, told both Granma and El País that the negotiations were focused on three pillars, Political Dialogue, Co-operation and the "economic ties" between the two, according to Granma<sup>8</sup>, and "economy and trade", according to El País<sup>9</sup>.

The fact that trade will be a part of the agreement was not made public when Catherine Ashton presented the directives for the negotiations, and has not been announced on the EU web-page concerning its relation with Cuba. According to official documents emanating from the negotiation process within the EU concerning the directives given to the EU negotiation team, the template for the political part of the agreement with Cuba shall be the EU bilateral agreement with Canada, and for the trade part, agreements with non-specified countries in Asia.

El País also quoted Christian Leffler saying that the human rights aspects of the agreement will only be included in the chapter on Political Dialogue, although the chapter on Co-operation with Central America has very strong wordings on human rights and democracy.

This demonstrates two worrying signs. First of all, the Cuban government has not yet proven its commitment to ratifying the UN Human Rights Covenants nor has it made any improvements concerning human rights in the country. Starting a discussion on a trade agreement at this point in time would be to give too much away. The logic should be that when both parties are satisfied with how the political dialogue and the reforms are progressing, and the co-operation is managed according to the criteria set out in the agreement, negotiations could then start on how the relationship can be deepened further. A trade agreement with the EU should work as strong

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<sup>8</sup> Granma, May 1 2014 <http://www.granma.cu/impreso/2014-05-01>

<sup>9</sup> El País, May 1 2014

[http://internacional.elpais.com/internacional/2014/05/01/actualidad/1398914265\\_015417.html](http://internacional.elpais.com/internacional/2014/05/01/actualidad/1398914265_015417.html)

incentive for other reforms. For example, the EU did not sign full association agreements with the countries of Central Europe until the mid 1990s, several years after the democratization had begun.<sup>10</sup>

Secondly, according to the above-mentioned interview in El País, Christian Leffler is not going to include human rights in the chapter on Cooperation with Cuba. That would be a serious break with practice from previous agreements particularly from the one, which was signed with Central America. There are no reasons as to why human rights and democratisation should be core aspects of the EU cooperation with Nicaragua and Honduras, but not with Cuba.

But, the negotiation process and the content of the agreement are not the only important aspects of the negotiations. It is also fundamental that the government of Cuba demonstrates some intent to fulfil the values and reforms that will be eventually included in the agreement. To the Por Otra Cuba campaign and Civil Rights Defenders it is of utmost importance that no agreement is signed before the Cuban government has released all political prisoners and has stopped the arbitrary arrests of peaceful democracy activists.

## Conclusions

The results of the negotiations on a bilateral *Political Dialogue and Cooperation Agreement* between the EU and Cuba will define the relationship between the two for years to come. The EU has stated that the guiding principle for its relationship with Cuba is to promote human rights and democracy.

Its own agreement with Central America from 2012, which also has chapters on *Political Dialogue and Cooperation*, should therefore serve as a template. It clearly states that the goals for the dialogue and the cooperation are to promote human rights and democracy.

If the EU wants the agreement to have legitimacy in the Cuban population it will need to open a dialogue with the civil society and political opposition on the island, both during the negotiations and in the following up process.

A concrete theme for the agreement with Cuba should be promoting the ratification and implementation of the UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights that the Cuban government signed in 2008.

It is a worrying sign though; that the negotiations already seem to include a trade agreement, which EU never communicated was the intention before the negotiations started. A trade agreement with Cuba, before the Cuban government has ratified and implemented the basic rights of the International Covenants, would be to give away too much.

A fundamental condition for the EU to sign any agreement should be that Cuba advances to comply with its commitment to ratify and implement the International Covenants; sets free all political prisoners and halt the arbitrary arrests of Cuban democracy activists.

## Contact Information

Por Otra Cuba: Antonio Rodiles, Director, Ph: +5353716460, email: [antonio@estadodesats.com](mailto:antonio@estadodesats.com)

Civil Rights Defenders: Erik Jennische, Programme Director for Latin America,  
Ph: +46707818145, email: [erik.jennische@civilrightsdefenders.org](mailto:erik.jennische@civilrightsdefenders.org)

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<sup>10</sup> Association agreements <http://eeas.europa.eu/association/>



Raúl Castro Ruz

Bruno Rodríguez Parrilla

Jefe de Estado y de Gobierno

Ministro de Relaciones Exteriores

Quien suscribe solicita, como ciudadano de la República de Cuba y al amparo del artículo 63 de la Constitución, las respuestas pertinentes, en el plazo de sesenta días establecido por el artículo 52.r) del Decreto-Ley 67/1983, a la queja y petición siguientes:

**QUEJA**

El Pacto Internacional de Derechos Civiles y Políticos (PIDCP), y el Pacto Internacional de Derechos Económicos, Sociales y Culturales (PIDESC) fueron firmados por la República de Cuba el 28 de febrero de 2008. Después de más de cuatro décadas de la adopción de dichos Pactos por la ONU en 1966, la República de Cuba forma parte del reducido grupo de ocho naciones que no ha concluido el trámite de ratificación para otorgarles validez e implementarlos en el orden jurídico interno. Igualmente, La República de Cuba se ha comprometido en los exámenes periódicos universales (EPU) de la ONU de 2009 y 2013 a avanzar en la ejecución de dichos instrumentos de derechos humanos, sin resultados concretos hasta la fecha.

**PETICIÓN**

Que el Ministerio de Relaciones Exteriores, en cumplimiento de la función atribuida por el artículo 80.b) del Decreto-Ley 67/1983, concluya los trámites necesarios para la ejecución de ambos pactos internacionales y sus protocolos facultativos mediante su adopción en el derecho interno.

Que el Consejo de Ministros someta al Consejo de Estado la ratificación sin reservas del PIDCP, del PIDESC, y sus respectivos protocolos facultativos, en virtud de las facultades previstas en los artículos 98.ch) y 90.m) de la Constitución. Sirvanse el Ministro de Relaciones Exteriores y/o el Jefe de Estado y de Gobierno admitir, sustanciar y responder en el plazo legal requerido esta petición ciudadana, que presento en las oficinas del Consejo de Ministros a los \_\_\_\_ días del mes de \_\_\_\_ de 2014.

Nombre: \_\_\_\_\_

Firma: \_\_\_\_\_

CI: ( \_\_\_\_\_ )

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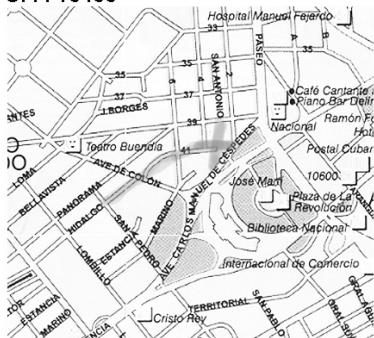
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[www.porotracuba.org](http://www.porotracuba.org)

Campaña Por Otra Cuba



Una demanda ciudadana por nuestros derechos

[www.porotracuba.org](http://www.porotracuba.org)

Campaña Por Otra Cuba

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2008-2014

La demanda ciudadana "Por otra Cuba" firmada por miles de cubanos de la isla y la diáspora, exige al gobierno cubano la ratificación e implementación de los pactos de la ONU, firmados por Cuba el 28 de febrero de 2008 en New York.



#ratificapactos

#PorOtraCuba

La ratificación de los Pactos de la ONU por el gobierno cubano implicaría el reconocimiento legal y constitucional de derechos tales como:

- Eliminación de las restricciones migratorias para todos los cubanos
- Libertad de movimiento dentro del país
- Reconocimiento pleno de los derechos de propiedad
- Libertad de reunión y asociación pacífica
- Independencia del sistema judicial
- (procesos judiciales transparentes con representación legal desde el inicio)
- Derecho de los padres a escoger libremente la educación de sus hijos
- Posibilidad de inversión a todos los cubanos residentes o no en el país
- Libertad para recibir información y diseminarla (libertad de opinión, expresión y prensa)
- Libre acceso a Internet
- Pluripartidismo y elecciones libres con derecho a voto para todos los cubanos
- Implantación de un Estado de Derecho

Nos sentimos comprometidos con una transformación democrática. Invitamos a todos los cubanos dentro y fuera de la Isla identificados con esta demanda, a sumarse a este reclamo.



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## Campaña Por Otra Cuba

Una demanda ciudadana por nuestros derechos

- Los ingresos miserables y altos impuestos
- El grave deterioro de los sistemas de Salud Pública y Educación
- La marginalidad, escasez de alimentos y precarias condiciones de vivienda
- La masiva emigración por falta de oportunidades
- La represión al pensamiento diferente
- La ausencia de espacios de debate público
- La falta de garantías legales y jurídicas
- El no acceso a Internet y a las nuevas tecnologías
- La discriminación al cubano frente al inversionista extranjero
- La corrupción y la inamovilidad de la élite gobernante

Son síntomas de la difícil realidad que enfrentamos que nos obligan, desde la sociedad civil, a demandar nuestros derechos y libertades fundamentales. Sobre la base de que la Constitución de la República de Cuba establece En su Artículo 3: En la República de Cuba la soberanía reside en el pueblo del cual dimana todo el poder del Estado.

Y en su Artículo 63: Todo ciudadano tiene derecho a dirigir quejas y peticiones a las autoridades y a recibir la atención o respuestas pertinentes y en plazo adecuado, conforme a la ley.

Esta demanda exige al gobierno que ratifique el Pacto de los Derechos Políticos y Civiles y el Pacto de los Derechos Económicos Sociales y Culturales de las Naciones Unidas, firmados por el Gobierno cubano el 28 de febrero del año 2008 en la ciudad de Nueva York.

Que ponga en práctica las imprescindibles garantías legales y políticas concebidas en la Declaración Universal de Derechos Humanos.

Consideramos estos derechos esenciales en la formación de una Cuba moderna y nos inserte en un mundo dinámico y cada vez más global.



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