

**HUMAN RIGHTS FIRST SUBMISSION TO THE OFFICE OF THE HIGH
COMMISSIONER FOR HUMAN RIGHTS**

UNIVERSAL PERIODIC REVIEW: CUBA, SESSION 4 – FEBRUARY 2-13, 2009

1. Introduction

1. This report is a Human Rights First submission to the Office of the High Commissioner for Human Rights (OHCHR) for consideration in its summary of stakeholder submissions for Cuba's appearance before the fourth Universal Periodic Review session, scheduled from February 2 to 13, 2009.
2. This submission is consistent with the guidelines approved by the Human Rights Council¹ and the Civil Society Unit of OHCHR.² This submission focuses on the situation of human rights defenders, which is of particular relevance to sections I(B) and (C) of the Human Rights Council's Guidelines, and to sections 8(d)-(f) of the Civil Society Unit's Guidelines.

2. Executive Summary

3. Human rights defenders in Cuba face grave risks while attempting to carry out their work. Cuba remains the only country in the Americas to outlaw peaceful advocacy for human rights and democratic reforms. Independent civil society in Cuba—including democracy activists, independent journalists and scholars—is the target of constant persecution. The universally-recognized rights to freedom of expression, association and assembly are systematically violated by the State and victims have virtually no means of redress within the judicial system.
4. This submission focuses on four serious issues faced by Cuban human rights defenders: criminalization of legitimate human rights activities, detention in sub-standard prison conditions, widespread threats and intimidation, and restrictions on freedom of movement that in turn restrict other fundamental human rights. To address these challenges and better protect human rights defenders, the submission recommends that Cuba immediately acknowledge and affirm the importance of the work of human rights defenders, starting with releasing all defenders imprisoned for their non-violent promotion of human rights. Cuba should also ratify the international covenants to which it is a signatory and take immediate steps to align its domestic laws with the provisions of these covenants.

3. The State's Failure to Adequately Protect the Rights of Human Rights Defenders in Cuba³

¹ Human Rights Council, *Follow-up to Human Rights Council resolution 5/1*, UN Doc. A/HRC/DEC/6/102, September 27, 2007.

² OHCHR, *Information and Guidelines for Relevant Stakeholders on the Universal Periodic Review Mechanism*, July 1, 2008.

³ This section is relevant specifically to OHCHR, *Information and Guidelines for Relevant Stakeholders*, section 8(d): "Cooperation of the country under review with human rights mechanisms, and with national human rights institutions, NGOs, rights holders, human rights defenders, and other relevant national human rights stakeholders."

A. Overview

5. Cuba signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) on February 28, 2008, but has yet to ratify the treaties. As a signatory to the treaties, Cuba “is obliged to refrain from acts which would defeat [their] object and purpose.”⁴ At the signing, Foreign Minister Felipe Pérez Roque asserted that Cuba has been working to uphold the rights enshrined in the treaties since 1959.⁵ Furthermore, in seeking election to the Human Rights Council, Cuba expressed its commitment to uphold “all human rights for all peoples.”⁶
6. These government proclamations stand in stark contrast to the reality lived by Cuban human rights defenders. The government routinely ignores and systematically violates fundamental rights provided for in the Universal Declaration of Human Rights (UDHR), the ICCPR and ICESCR. Cuba fails to adequately protect human rights defenders and to recognize the value of their work.

B. Criminalization of Legitimate Human Rights Activities

7. Under the guise of protecting national interests, the Cuban state has criminalized the peaceful exercise of fundamental human rights. Article 91 of the Cuban Penal Code and the Law for the Protection of Cuba’s National Independence and the Economy, known as Law 88, are the laws most commonly used to prosecute human rights defenders. For example, Law 88 states, “Any person who... collaborates by any means with foreign radio and television stations, newspapers, magazines or other media outlets commits a crime punishable by a prison sentence of two to five years, or a fine of three thousand quotas, or both.” These laws impose long prison sentences for those found guilty and severely curtail freedom of expression and association, which are protected by the UDHR and ICCPR.
8. Seventy-five peaceful human rights, democracy and political activists, known collectively as the “Group of 75,” were arrested in the spring of 2003, summarily tried, and sentenced to jail terms of up to 28 years. All of them were charged under the provisions of Law 88, Article 91, or both.
9. A specific example is the case of Alfredo Felipe Fuentes, a human rights defender, independent journalist, and member of the Group of 75. Fuentes was charged with “acts against the independence and the integrity of the state” under Article 91 and sentenced to 26 years in prison after organizing three seminars for public officials and local activists to familiarize them with the principles of international human rights documents.⁷ This is a clear violation of his right to expression and assembly, as well as Article 7 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and

⁴ *Vienna Convention on the Law of Treaties*, article 18(a). Done at Vienna on May 23, 1969. Entered into force January 27, 1980. United Nations Treaty Series. Vol. 1155. p. 331.

⁵ Dalia Acosta, “Havana signs treaties—with reservations,” *Inter Press Service News Agency*, February 29, 2008.

⁶ *Aide-Memoire of Cuba Supporting its Candidacy to the Human Rights Council*, March 16, 2006, <http://www.un.org/ga/60/elect/hrc/cuba.pdf>.

⁷ Human Rights First telephone interview with Loyda Valdés González, wife of Mr. Fuentes.

Fundamental Freedoms (“UN Declaration on Human Rights Defenders”), which affirms the right to “develop and discuss new human rights ideas and principles, and to advocate their acceptance.”⁸

C. Detention of Human Rights Defenders in Sub-Standard Prison Conditions

10. Cuban human rights defenders who have been convicted of crimes commonly serve time in sub-standard prison conditions, sharing large cellblocks with common criminals. The quality of food they receive is poor, routine exercise and even access to sunlight are often denied, and it is common practice to transfer them to prisons far from the place of residence of their families.⁹ Because of the conditions in which they are held, many human rights defenders who were healthy at the time of their arrest have developed severe illnesses. The Cuban government does not provide adequate medical treatment for these ill prisoners.
11. The Cuban government has not guaranteed that the conditions of detention conform to basic international standards as defined under the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, nor does it uphold basic rights to health enshrined in the ICESCR.
12. As one example, Normando Hernández González, 38, is an independent journalist who was accused of reporting on and criticizing government practices in tourism, agriculture, fishing, and cultural affairs. Hernández González worked for Radio Martí, a US-based radio station, and received an income from the United States. He was held in an insect- and rodent-ridden cell with dangerous and mentally unstable prisoners, and was subsequently transferred to an isolation cell. The poor living conditions and lack of proper nutrition have led to multiple health conditions, including anemia, high blood pressure, and tuberculosis, none of which he exhibited before entering prison.¹⁰ The denial of medical care to Hernández González and other ill human rights defenders detained by the state violates the principles of minimum prison standards. These practices may also undermine the object and purpose of ICESCR by denying these prisoners their right the highest attainable standard of physical and mental health enshrined in its Article 12.

D. Threats to and Intimidation of Human Rights Defenders

13. The state exposes human rights defenders to threats and intimidation, both directly and in collaboration with non-state actors. For example, “acts of repudiation” are regularly carried out against peaceful human rights activists and their families by the government and its civilian “Rapid Response Brigades.” These groups gather outside the homes of defenders, chanting insults and revolutionary slogans and throwing eggs and rocks. One defender reported that a Rapid Response Brigade threatened to burn her house down.¹¹ Alejandrina García de la Riva, a founding member of

⁸ *U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN. Doc. A/RES/53/144 (March 8, 1999) art. 7.

⁹ See, e.g., Human Rights First, “Human Rights Defender Cases: Dr. José Luís García Paneque.”

http://www.humanrightsfirst.org/defenders/hrd_cuba/hrd_cuba_paneque.htm

¹⁰ See Human Rights First, “Demand That Dangerously Ill Cuban Activist Receive Proper Medical Care.” June 4, 2008.

http://www.humanrightsfirst.org/defenders/hrd_cuba/alert_060408_normando.htm and Human Rights First, “Human Rights Defender Cases: Normando Hernandez González.”

http://www.humanrightsfirst.org/defenders/hrd_cuba/hrd_cuba_González.htm

¹¹ Human Rights First telephone interview.

the Ladies in White, the wives and relatives of imprisoned human rights defenders who peacefully advocate for their release, reported that nearly 200 unknown people gathered outside the funeral parlor where she was having services for her recently deceased father in early June 2008.¹² García de la Riva had recently participated in several peaceful protests urging better treatment for her husband and believes that the group was attempting to intimidate her into ceasing her activism.

14. Government agents and civilian groups also disrupt the work of human rights defenders. For example, five members of the Ladies in White and five other women gathered at the Plaza de la Revolución in Havana early on the morning of April 21, 2008 to deliver a letter to Interior Minister Abelardo Colomé Ibarra requesting a meeting to discuss the release of their imprisoned relatives. While waiting for a response, they locked arms and sat down. A group of approximately 100 people, mostly women and comprised of both uniformed state security officers and civilians, confronted the seated women, lifting them off the ground and onto a bus. They were returned to their homes within a few hours, covered in bruises.¹³

E. Restrictions on Freedom of Movement and Other Fundamental Rights of Human Rights Defenders

15. The right to freedom of movement is enshrined in both the UDHR and the ICCPR.¹⁴ Cuba, however, routinely restricts free movement of defenders within the national territory. By violating this right, the Cuban government also often violates its citizens' fundamental rights to association and expression by preventing defenders from attending meetings, peaceful protests, and other legitimate human rights defender activities protected by the UN Declaration on Human Rights Defenders.¹⁵ That is, the Cuban government effectively bans certain types of gatherings by repressing freedom of movement. Human rights defenders attempting to travel from other parts of Cuba to Havana for meetings, commemorations and events have been removed from buses after boarding. Others have had their national identification card confiscated, which is needed to travel. Finally, and perhaps most disturbingly, "acts of repudiation" have been strategically carried out on the day that defenders were attempting to travel, preventing them from leaving their homes.
16. Similarly, the Cuban government does not allow human rights defenders to leave the country to carry out their work. For example, the Ladies in White have been honored internationally for their peaceful protection and promotion of human rights on several occasions, but have never been present to receive the honors. In 2005, they were awarded the Sakharov Prize for Freedom of Thought by the European Parliament. Five members of the group were invited to attend the award ceremony and requested an exit visa from the appropriate authorities. Most of them never received

¹² See Human Rights First, "Human Rights Defender Cases: Cuba's 'Ladies in White.'" http://www.humanrightsfirst.org/defenders/hrd_cuba/hrd_cuba_blanco.htm. Human Rights First telephone interview with Alejandrina García de la Riva.

¹³ Human Rights First, "Letter to Cuban Government Regarding Protest of the Ladies in White." May 21, 2008. <http://www.humanrightsfirst.info/pdf/080521-HRD-damas-letter.pdf>

¹⁴ See Article 13 of the UDHR and Article 12 of the ICCPR.

¹⁵ See, e.g., Article 5 of the UN Declaration on Human Rights Defenders, which affirms that "for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others...to meet or assemble peacefully..." See further Human Rights First, "Protecting Human Rights Defenders: Analysis of the newly adopted Declaration on Human Rights Defenders." http://www.humanrightsfirst.org/defenders/hrd_un_declare/hrd_declare_1.htm

an answer to their request; one was denied less than four hours before her flight was to depart. In 2006, Human Rights First honored the Ladies in White with our annual Human Rights Award. Again, two women were invited to attend the event; they submitted the appropriate visa requests to authorities in a timely manner but received no response. This refusal to respond to visa requests contradicts Article 6 of the UN Declaration on Human Rights Defenders, which affirms the right to draw public attention to human rights issues as well as breaching the right to freedom of movement protected by the UDHR and ICCPR.¹⁶ The attendance of the women at these events would have honored their work and educated the international community about the state of human rights in Cuba.

17. Article 12 of the ICCPR notes that the right to freedom of movement may be curtailed in the name of national security and public order.¹⁷ However, human rights defenders in Cuba have been prevented from freely moving, both within the national territory and beyond it, while exercising legitimate, peaceful fundamental human rights affirmed in the UDHR, ICCPR, and UN Declaration on Human Rights Defenders, which do not pose threats to public order or national security.

4. Recommendations

18. To give effect to its obligations and commitments discussed above, the Cuban government should immediately take the following steps:
 - Publicly acknowledge and affirm the importance of the work of human rights defenders and end the threats and intimidation that impede their efforts.
 - Immediately release all human rights defenders held for the non-violent promotion of human rights. While it continues to detain them, the state should ensure that their prison conditions meet minimum international standards and that they receive adequate medical treatment.
 - Take immediate and concrete steps to protect the right of human rights defenders to travel freely within Cuba and outside the country. It should respond to every visa request in a timely manner and cease the practice of confiscating identification cards.
 - Fulfill its promise to ratify the ICCPR and ICESCR, having signed both instruments in February 2008. The Cuban government must also take all steps necessary to bring the relevant Cuban laws into accord with the Covenants and other international standards.
 - Issue a standing invitation to the UN Special Rapporteur on Human Rights Defenders. Cuba could use the date of the Special Rapporteur's initial visit as a marker by which to achieve some preliminary reforms. The Special Rapporteur's subsequent report will assist Cuba in better protecting human rights defenders.

¹⁶ *Ibid.*

¹⁷ Article 12(3) of the ICCPR states, "The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant."