

# **RETHINKING THE ROLE OF U.S. AND FOREIGN-BASED NONGOVERNMENTAL ORGANIZATIONS IN CUBA**

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## **INTRODUCTION**

In March 2003, Fidel Castro's government rounded up seventy-five "dissidents" and sentenced them, on charges that many considered false, to extended jail terms. In April 2003, Cuban authorities executed three men by firing squad for their attempt to hijack a ferry to flee to the United States. Though particularly brutal, these recent events are only two examples in a long history of human rights abuses endemic to the Cuban government since Sre. Castro came to power four decades ago. Although the government outwardly maintains that it does not violate international human rights accords to which it is a signatory, international bodies and nongovernmental organizations (NGOs) have vociferously criticized the Cuban government for its human rights record. However, the impact of NGO efforts on human rights in Cuba remains uncertain.

Allegations of human rights abuses occur in the United States on a regular basis. Why should this paper focus on addressing the human rights abuses in Cuba? The U.S. government has been in the business of alleging grave human rights abuses by certain governments throughout the world for decades, including recent allegations against the Taliban's treatment of women and the Iraqi treatment of the Kurds in Northern Iraq. Are there really major human rights abuses in Cuba or can reports in the U.S. press be attributed to an administration that wants to sway U.S. public opinion against the Cuban government and Sre. Castro?

This paper seeks to determine which approaches U.S. and foreign-based NGOs have taken vis-à-vis human rights in Cuba and how those approaches might effectively impact human

rights in Cuba. Section One describes the current human rights situation in Cuba by examining recent reports on human rights violations in Cuba. Section Two examines the activities of fourteen U.S. and foreign-based NGOs and the different approaches they have taken to affect human rights in Cuba. This article limits its focus by excluding Cuba-based NGOs from its analysis. Section Three assesses the impact of these NGOs. Finally, Section Four provides several recommendations and concluding remarks to NGOs and policymaking communities about conducting human rights activity in Cuba.

## **I. HUMAN RIGHTS VIOLATIONS**

In order to determine the appropriate role for NGOs with regard to human rights violations in Cuba, the current situation on the island must first be examined. Overwhelming empirical evidence indicates the Cuban government regularly and systematically violates its citizens' human rights. The literature supporting these facts is published by leading human rights organizations, including some of the organizations profiled in Section III and Appendix A below. Three of the leading sources that document human rights violations in Cuba are annual publications released by Amnesty International,<sup>1</sup> Human Rights Watch,<sup>2</sup> and Freedom House

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<sup>1</sup> In pursuit of a world in which every person enjoys the human rights enshrined in the Universal Declaration of Human Rights, Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights. A non-governmental organization with more than 1.5 million members worldwide from 150 different countries, AI was founded in the United Kingdom in 1961. For more information, see <http://www.amnesty.org>.

<sup>2</sup> Human Rights Watch (HRW) is an independent, non-governmental organization, supported by contributions from private individuals and foundations worldwide. HRW was founded in 1978 and is the largest human rights organization based in the U.S. HRW conducts fact-finding investigations into human rights abuses in all regions of the world and then publishes those findings in dozens of books and reports annually. HRW meets with government officials to urge changes in policy and practice at the United Nations, the European Union, in Washington and in capitals around the world. For more information, see <http://www.hrw.org>.

(independent of its Cuba Democracy Project).<sup>3</sup> A brief review of selections from the 2000, 2001, 2002 and 2003 reports detail Cuba's systematic human rights violations.

Freedom House, in its annual report, *Freedom in the World*, reviews the state of civil liberties and political rights in every country throughout the world. The most repressive states from *Freedom in the World* are highlighted in a separate report on states that rank lowest in the Freedom House analysis, internally dubbed "The Worst of Worst." The 2000 report stated "repression appeared on the upswing again in Fidel Castro's Cuba."<sup>4</sup> The report cited "continued evidence of torture and killings in prison and in psychiatric institutions, where a number of dissidents arrested in recent years are held."<sup>5</sup> The report also acknowledged severe limitations on choosing one's education, residence, or place of employment, especially for individuals who are not members of the Cuban Communist Party. Unspecified individuals were "the object of a targeted campaign of intimidation" by the Cuban government, a small number of independent journalists "have been subjected to continued repression," and still others have been labeled counterrevolutionaries as conspirators paid by the United States.<sup>6</sup>

Human Rights Watch, which also publishes an annual survey on more than seventy countries throughout the world, reported a similar situation in 2001. "Despite a few positive developments over the course of the year, the Cuban government's human rights practices were generally arbitrary and repressive."<sup>7</sup> The report stated that several hundred "peaceful opponents" to the Cuban government remain incarcerated.<sup>8</sup> Dissidents and human rights activists are subjected to "short-term detentions, house arrest, surveillance, arbitrary searches, evictions,

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<sup>3</sup> For a detailed profile of Freedom House and its Cuba Democracy Project, see Appendix A, Item VIII below.

<sup>4</sup> THE MOST REPRESSIVE REGIMES IN THE WORLD: A SPECIAL REPORT TO THE 56<sup>TH</sup> SESSION OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS IN GENEVA, 2000. 19 (2000).

<sup>5</sup> *Id.*, at 26.

<sup>6</sup> *Id.*, at 21-22.

<sup>7</sup> *Human Rights Watch World Report 2001*, available at <http://www.hrw.org/wr2k1/americas/cuba.html> (last visited March 19, 2005).

<sup>8</sup> *Id.*

travel restrictions, politically-motivated dismissals from employment, threats, and other forms of harassment.”<sup>9</sup> The report also detailed cases of imprisonment for turning the Cuban flag upside down (a crime based on dishonoring patriotic symbols), “hoarding” toys, and insulting Castro.<sup>10</sup>

In 2001, Amnesty International reported the Cuban Constitution and Penal Code are frequently manipulated as a legal tool for repressing political dissent. Legal offenses include “enemy propaganda,” “disrespect” against the government, and “dangerousness,” although these vaguely defined offenses are predominantly invoked in politically motivated cases.<sup>11</sup> Finally, the report noted the detention of at least three individuals for participating in a peaceful demonstration to commemorate the 51st Anniversary of the Universal Declaration of Human Rights.<sup>12</sup> Ironically enough, Cuba is a signatory to the Declaration.<sup>13</sup> It seems odd that open commemoration of a declaration to which Cuba is a signatory should be made a crime.

In 2002, the Freedom House report stated, “Under Castro the cycles of repression have ebbed and flowed depending on the regime’s need to keep at bay the social forces set in motion by his severe post-Cold War economic reforms.”<sup>14</sup> The report declared that Cuba is able to severely limit human rights activities because political and civic organizations outside the Cuban Communist Party are illegal. Consequently, it is possible for the Cuban government to construe all written or spoken information from such organizations as “dissent” and, therefore, illegal. Finally, although the report noted a nearly 400% drop in the number of imprisoned dissidents

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<sup>9</sup> *Id.*

<sup>10</sup> The cases of Dr. Oscar Elías Biscet González, Victor Rolando Arroyo Carmona, and Leonardo de Varona González, respectively.

<sup>11</sup> *Amnesty International, Report 2001 (2001), available at* <http://web.amnesty.org/web/ar2001.nsf/webamrcountries/CUBA?OpenDocument>.

<sup>12</sup> *Id.* The three individuals were Angel Moya Acosta, Guido Sigler Amaya and Ariel Sigler Amaya.

<sup>13</sup> *Id.* The three individuals were Angel Moya Acosta, Guido Sigler Amaya and Ariel Sigler Amaya.

<sup>14</sup> THE WORLD’S MOST REPRESSIVE REGIMES: A SPECIAL REPORT TO THE 58<sup>TH</sup> SESSION OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS IN GENEVA 22 (2000).

after Pope John Paul's 1998 visit to Cuba (leaving a total of 381 incarcerated), it also stated that Cuba is the per capita leader of capital punishment in the Western Hemisphere.<sup>15</sup>

In 2002, Human Rights Watch reported, "Human rights defenders were systematically harassed. The authorities routinely used surveillance, phone tapping, and intimidation in its efforts to restrict independent monitoring of the government's human rights practices."<sup>16</sup> The report cataloged an extensive list of tactics the government employed to restrict or deter dissident and human rights activity, including arbitrary searches, short-term arrests, evictions, travel restrictions, politically-motivated dismissals from employment, threats and other forms of harassment against local activists.<sup>17</sup>

Amnesty International's 2002 survey went on to state that , "Harassment was at times carried out by state security agents or police officers, as well as by members of local groups such as the *Brigadas de Respuesta Rápida* ("Rapid Response Brigades") or the *Comités de Defensa de la Revolución* ("Committees for the Defense of the Revolution")."<sup>18</sup> The Cuban government established these two organizations in 1991 and 1960, respectively, specifically to monitor and deter dissent.<sup>19</sup>

In its 2003 report, Freedom House reiterated allegations of human rights violations by the Cuban government, although noting a slight improvement in the general human rights situation as a result of peaceful protest activity against the Cuban government.<sup>20</sup> The peaceful protesting included the "Varela Project," an initiative for a national referendum on certain civil and political rights. Although the effort gathered 11,020 signatures that were subsequently submitted to the

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<sup>15</sup> *Id.*, at 27.

<sup>16</sup> *Human Rights Watch World Report 2002*, available at [http://hrw.org/doc/?t=americas\\_pub&c=cuba](http://hrw.org/doc/?t=americas_pub&c=cuba).

<sup>17</sup> *Id.*

<sup>18</sup> *Amnesty International, Report 2002* (2002), available at <http://web.amnesty.org/web/ar2002.nsf/amr/cuba!Open>.

<sup>19</sup> *Id.*

<sup>20</sup> THE WORLD'S MOST REPRESSIVE REGIMES 2003: A SPECIAL REPORT TO THE 59<sup>TH</sup> SESSION OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS GENEVA 17(2003).

National Assembly, the leading proponent of the effort, Oswaldo Payá, was jailed. The report also stated that there are 320 “prisoners of conscience” in Cuba.<sup>21</sup>

Similarly, the Amnesty 2003 survey noted continued human rights violations by the Cuban government, which concluded the year with more prisoners of conscience in prison than during the previous year.<sup>22</sup> The survey noted an incident in which a busload of Cubans, seeking asylum, crashed into the Mexican Embassy in Havana. Cuban police eventually raided the embassy and took the Cubans into custody. Both during and after the police raid, there were reported beatings of Cubans, of two Reuters journalists, and of locals in the surrounding neighborhood. There were also reports of extensive harassment and beatings of dissidents both inside and outside of prison.<sup>23</sup>

Human Rights Watch reported in 2003 (also prior to March 2003) that human rights monitoring was “stigmatized as a disloyal betrayal of Cuban sovereignty. No local human rights groups enjoyed legal status. As a result, human rights defenders faced systematic harassment.” The report cited government surveillance of individuals who had not committed illegal acts, restrictions of defendants’ right to a defense, violations of due process for defendants under Cuban law, and tactics such as evictions, travel restrictions and politically-motivated employment dismissals to deter human rights activities.<sup>24</sup>

It should be noted that the reports by Amnesty International, Freedom House, and Human Rights Watch cite certain positive developments vis-à-vis human rights. Women are reported to have a high rate of employment and opportunity relative to the past.<sup>25</sup> Blacks are reported to

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<sup>21</sup> *Id.* at 19-21.

<sup>22</sup> *Amnesty Survey, Report 2003* (2003), available at <http://web.amnesty.org/report2003/cub-summary-eng>.

<sup>23</sup> *Id.*

<sup>24</sup> *Human Rights Watch World Report 2003*, available at <http://hrw.org/wr2k3/americas5.html>.

<sup>25</sup> See generally Amnesty International, Freedom House, and Human Rights Watch reports.

have equal opportunities for education.<sup>26</sup> The Roman Catholic Church reportedly has greater religious freedom than in past years.<sup>27</sup> There was also a several year moratorium on the death penalty.<sup>28</sup> Finally, the Cuban health and education systems received positive commentary.<sup>29</sup> But these positive developments aside, the overall tenor of the 2003 reports point to the Cuban Government's lack of regard for international human rights standards.

The events of 2003 in Cuba, to be reported in each organization's 2004 annual report, will draw harsh criticism from the human rights organizations. In March and April of 2003, the Cuban government rounded up seventy-five dissidents.<sup>30</sup> Amnesty International has called at least seventy-one of the seventy-five dissidents "prisoners of conscience" and has questioned trial procedures for all dissidents that led to prison terms of up to twenty-eight years.<sup>31</sup> On the heels of the round-up, the Cuban government detained three men for an attempted hijacking, swiftly convicted them in trials criticized for lack of due process, and executed them by firing squad less than a week after their trials.<sup>32</sup>

Based on these reports, it is not clear to what extent, if any, U.S. and foreign-based human rights organizations have impacted the human rights situation inside Cuba. On the one hand, human rights monitoring may have prevented the regime from perpetrating greater human rights abuses, yet on the other hand, such increased human rights activity may have contributed to the crackdown in March 2003. What is clear is that foreign-based human rights organizations work with local dissidents and human rights activists to convey information to the international

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<sup>26</sup> See generally Amnesty International, Freedom House, and Human Rights Watch reports.

<sup>27</sup> See generally Amnesty International, Freedom House, and Human Rights Watch reports.

<sup>28</sup> The authors observe that this positive development was harshly eviscerated in mid-2003 when three boat "hijackers" were executed for their crime. The incident is explored below.

<sup>29</sup> See generally Amnesty International, Freedom House, and Human Rights Watch reports.

<sup>30</sup> Cuba: "Essential measures"? Human rights crackdown in the name of security, Amnesty International (2003), available at <http://web.amnesty.org/library/index/engamr250172003>.

<sup>31</sup> *Id.*

<sup>32</sup> For more information, see the Human Rights Watch Press Release, available at <http://www.hrw.org/press/2003/04/cuba041203.htm>.

community. Amnesty International, Freedom House and Human Rights Watch could not consistently produce annual and special reports on human rights violations in Cuba without extensive communication networks and collaborative efforts. There are a myriad of foreign and Cuban NGOs that form this communication network, and this paper analyzes several of these organizations.

## **II. NONGOVERNMENTAL ORGANIZATION ACTIVITY IN CUBA**

It is imperative to consider the activities of such NGOs in any effort to analyze how effective U.S. and foreign-based NGOs are vis-à-vis human rights in Cuba. This section presents the findings of extensive research and interviews with fourteen NGOs that address human rights in Cuba. These organizations are not based in Cuba and were specifically chosen because they are based outside Cuba. In so doing, the section presents five broad spheres of NGO activity, but detailed organizational information about each NGO including location, stated organizational goals, funding, affiliates and other general information can be found in Appendix A. NGOs not mentioned in a given section have not provided information that they engage in that particular broad area.

Section II(a), in three subparts, discusses information sharing—the transfer of information from Cuba to the world, from the world to Cuba, and the dissemination of information about Cuba outside of its borders. Section II(b) examines the concept of regime change, focusing on the NGOs that overtly advocate for regime change and the manner in which they do so. Section II(c) analyzes the various manners in which NGOs contact and support dissidents, human rights activists, and their relatives. Next, section II(d) considers the efforts of various NGOs to bring non-political humanitarian assistance to the Cuban people. Finally,



sectionII(e) lays out the various manners in which NGOs advocate for human rights by utilizing popular campaigns and international legal measures to pressure the Cuban government.

**a. Information Sharing**

Most NGOs contacted engage in formalized information sharing. While certain information-sharing campaigns have clear objectives to facilitate regime change, other projects merely represent an effort to link Cuba to the rest of the world through cultural exchange. The free flow of information to and from Cuba is made difficult by the U.S. embargo and, more so, by the Cuban government's reluctance to allow unfettered communication between the Cuban people and foreigners. As this section demonstrates, several organizations share information about revolutionary causes and the dissident movement to an international audience, while others provide empirical and anecdotal data about economic conditions within Cuba to that international audience. In so doing, NGOs utilize conventional print methods, discussion fora and scholarly exchange, public presentations, testimony before government bodies, and, increasingly, the Internet and other forms of electronic communication.

**i. Bringing Information Out of Cuba**

In spite of the Cuban government's efforts to restrict the flow of information about human rights abuses in Cuba, NGOs annually produce scores of publications in English and Spanish, that document conditions in Cuba. Among the conventional print publications are *Steps to Freedom* (Directorio Democrático Cubano), *A Guide to Civil Society in Cuba* (Cuban American National Foundation), *Cuba Brief* (formerly published by the Center for a Free Cuba), *Freedom in the World*, *The World's Most Repressive Countries* and *Press Freedom in the World*

(all by Freedom House), the *Annual Report* (Institute for Cuban and Cuban American Studies), *Boletín* (the Fundación Hispano Cubana), and *Encuentro* (Asociación Encuentro de la Cultura Cubana). While a thorough commentary on each publication would exceed the scope of this article, the authors note these publications cover issues ranging from profiles of the seventy-five dissidents arrested in March 2003 to articles by notable dissidents on socio-political transition, and from documentation of human rights abuses and prison conditions to generalized discussions of economic difficulties for the Cuban people. Most publications target Cubans on the island, the Cuban exile community in the United States and around the world. However, a number of the publications are also intended to inform policymakers.

Also, as Internet usage exploded throughout the world over the last decade, NGOs have increasingly employed the Internet to transmit information out of Cuba, and to disseminate that information to the international community. The Center for a Free Cuba produces a weekly email update in Spanish and English called *This Week in Cuba*, which discusses political and human rights issues from the island.<sup>33</sup> The Institute for Cuban and Cuban American Studies at the University of Miami developed *Cuba On-Line*, an information center with a database of information on Cuba.<sup>34</sup> The Czech-based People in Need Foundation regularly disseminates information it receives from Cuba through its website. The Fundación Hispano Cubana makes its quarterly publication available online.<sup>35</sup> Finally, the Asociación Encuentro de la Cultura Cubana makes its daily periodical, *Encuentro*, available on the Internet.<sup>36</sup> *Encuentro* is based in Spain, and provides a wealth of information about Cuba from sources both on and off the island.

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<sup>33</sup> At <http://www.cubacenter.org>.

<sup>34</sup> At <http://cuba.iccas.miami.edu/>.

<sup>35</sup> At <http://www.hispanocubana.org/inicio.html>.

<sup>36</sup> At <http://www.cubaencuentro.com/>.

In addition to publications and online material, certain NGOs use lobbyists to disseminate information about Cuba with the intent to influence policymakers around the globe, particularly the U.S. policymaking community. Mr. Frank Calzon of the Center for a Free Cuba in Washington is such an example. He has testified before Congressional committees, provides seminars to Congressional staff and members of Congress, drafts op-ed pieces, and makes television appearances to share information his organization gathers about human rights in Cuba.<sup>37</sup> The People in Need Foundation held a photographic exhibit of relatives of political prisoners in the U.S. House of Representatives during the 40<sup>th</sup> Anniversary of Castro's seizure of power.<sup>38</sup> The Cuban American National Foundation also targets the policymaking community in Washington, DC.

Lastly, a number of NGOs conduct community activities outside of Cuba to share the information brought from the island. The People in Need Foundation conducts awareness campaigns in Prague, and even produced a documentary about the current situation in Cuba entitled *Voces de la Isla de la Libertad*.<sup>39</sup> The Institute for Cuban and Cuban American Studies sponsors speakers, presentations and cultural events about Cuba in the greater Miami region, and Florida International University's Cuba Research Institute (CRI) holds annual colloquia and brings Cuban scholars to teach at the university in an effort to facilitate exchange of information.<sup>40</sup>

## **ii. Sending Information Into Cuba**

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<sup>37</sup> At [http://www.cubacenter.org/media/news\\_articles/frank/index.html](http://www.cubacenter.org/media/news_articles/frank/index.html).

<sup>38</sup> At <http://www.pinf.cz/english/>.

<sup>39</sup> *Id.*

<sup>40</sup> At <http://lacc.fiu.edu/cri/>.

In comparison to wide recognition for participation in the process of receiving information that is sent *from* Cuba to the outside world, far fewer organizations admit to sending information *into* Cuba. Some organizations probably do not engage in such activities, but others probably do not publicly acknowledge engaging in such activities.

However, Freedom House, through the Transitions Project, boasts one of the most successful information transfers to Cuba. Through the Transitions Project, Freedom House provided 40,000 Spanish language books, pamphlets and other materials to Cubans related to human rights, transition to democracy, and free market economics.<sup>41</sup>

Also, the Cuban American National Foundation (CANF) has provided a long-standing effort to transmit information to the Cuban people. CANF's Miami chapter has its own radio station, *La Voz de Fundación*, that reaches Cuba.<sup>42</sup> CANF was also a leader in the effort to establish the U.S. Information Agency's *Radio Martí* (1985) and *TV Martí* (1990), the official broadcasting operations of uncensored and unbiased news and programming for the Cuban people, according to CANF.<sup>43</sup>

### **iii. Sharing Information Outside of Cuba**

Several of the NGOs examined in this paper conduct extensive information-sharing activities *outside* of Cuba, often targeted at the expatriate Cuban communities in their countries, or at foreign governments. While several projects focus on aspects of the regime, politics, law and human rights abuses, other projects focus on cultural and historical awareness, while other projects inform the local Cuban expatriate community about political participation under foreign governments.

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<sup>41</sup> At <http://www.freedomhouse.org/programs/index.htm#cdp>.

<sup>42</sup> At <http://www.canf.org/principal-ingles.htm>.

<sup>43</sup> *Id.*

The Cuban American National Foundation (CANF) claims to be the largest Cuban organization in exile, with worldwide membership, offices in Miami and Washington, DC, and chapters in Chicago, Jacksonville, New Orleans, Los Angeles, New Jersey, Tampa, and Puerto Rico.<sup>44</sup> CANF seeks to educate the public on the plight of the Cuban people, dispel prejudice against Cubans in exile, and promote Cuban culture and artistic achievements. The Institute for Cuban and Cuban American Studies (ICCAS) is a center for the dissemination of Cuban history and culture, and publishes information about the rule of law and the independent judiciary in Cuba. The International Committee for Democracy in Cuba, a recently created organization in Prague, is currently developing a Cuban radio news program that will be broadcast through *Radio Exterior* in Spain, *Radio Prague*, and *Radio Netherlands*.<sup>45</sup> The Cuban Research Institute at Florida International University invites Cuban speakers and hosts international student and professor exchanges with Cuban intellectuals to explore the more academic issues related to the island. Finally, the Cuban American Bar Association focuses its efforts on the Cuban community in the United States, encouraging Cuban Americans to become informed, politically active members of U.S. society.

**b. Regime Change**

None of the fourteen NGOs openly advocate a violent overthrow of the Cuban government. However, a majority of the organizations advocate regime change through non-violent means in Cuba. Among the organizations examined, the following advocate a transition to democracy: the Cuban American National Foundation, the Center for a Free Cuba, the Directorio Democrático Cubano, the Free Cuba Foundation, Freedom House's Cuba Democracy

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<sup>44</sup> *Id.*

<sup>45</sup> *At* [www.cubanuestra.nu/web/article.asp?artID=1592](http://www.cubanuestra.nu/web/article.asp?artID=1592)

Project, the Institute for Cuban and Cuban American Studies, the People in Need Foundation, the International Committee for Democracy in Cuba, the Fundación Hispano Cubana, and the Grupo de Apoyo a la Democracia.

Most of the organizations seeking regime change advocate a “peaceful transition to democracy,” but others also specify a “pluralistic, market-based” economy.<sup>46</sup> Some NGOs seek to achieve such ends by supporting opposition movements and dissidents. Several organizations, the International Committee for Democracy in Cuba (ICDC) in particular, have developed action groups to facilitate a transition to democracy once the current regime ends. Experts within the ICDC have worked on democratic transition movements in Eastern Europe and Nicaragua, and are prepared to become involved in and assist Cuba’s transition.

The most incendiary public position on regime change is that espoused by the Free Cuba Foundation (FCF). The FCF’s mission statement says that “the opposition to Castro must be united in common cause against the unjust and totalitarian system in Cuba ... that Fidel Castro and his accomplices must be brought to justice.”<sup>47</sup> Usage of the word “accomplices” implies the FCF’s position that Sre. Castro has committed crimes against the Cuban people, and has overtones of criminal law prosecution and retribution. Notably, two prominent NGOs take a more measured approach to effecting regime change. The Spanish-based Fundación Hispano Cubana specifically states that the job of effecting political transition to democracy in Cuba is one for Cubans, not for outsiders.<sup>48</sup> The Florida-based Grupo de Apoyo a la Democracia says it has had a policy from its inception that it respects the decision of the Cuban people and will under no circumstances tell the Cubans what is best for their country.<sup>49</sup>

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<sup>46</sup> At <http://www.canfnet.org>.

<sup>47</sup> At <http://www.fiu.edu/~fcf/>.

<sup>48</sup> At <http://www.hispanocubana.org>.

<sup>49</sup> GAD Rules and Regulations, *available at* <http://www.gadcuba.org/english%20rules%20and%20regulations.htm>.

**c. Supporting Activists, Dissidents and their Families**

Seven of the fourteen NGOs studied have programs that specifically support activists, dissidents and the families of dissidents through person-to-person contact, training programs, “adopt-a-dissident” programs, and the provision of supplies to assist the opposition effort. Among these seven, the Freedom House Cuba Democracy Program, the Cuban American National Foundation, the Center for a Free Cuba, and the People in Need Foundation openly acknowledge that they facilitate contact with Cuban dissidents and their families in Cuba. Freedom House and the Center for a Free Cuba add that they provide training and training materials to activists in Cuba.

In addition, the Cuban American National Foundation, the Directorio Democrático Cubano, and the People in Need Foundation have “adopt-a-dissident” programs. In short, the programs encourage private individuals to sponsor an incarcerated prisoner or his or her family at a rate of \$50 per month. The money is channeled into Cuba through unofficial avenues and provides, for example, sustenance to the family of a prisoner of conscience. Several NGOs provide material support to the legal and advocacy causes within Cuba aimed at securing the release from custody of a political detainee.

Lastly, nearly all of the aforementioned organizations provide general material support to the opposition movement in Cuba. For example, the Center for a Free Cuba, , says that it provides books and videos on human rights, civil society, democracy and related issues, short wave radios, and office equipment.<sup>50</sup> Additionally, the Grupo de Apoyo a la Democracia (GAD) reports that it sends material support in the form of speakerphones, short wave radios, faxes, word processors, video cameras, tape recorders, photographic cameras, and informational

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<sup>50</sup> At <http://www.cubacenter.org>.

materials such as books, magazines, periodicals and videos.<sup>51</sup> GAD reports that in the last seven years, it has provided more than 150,000 pounds of supplies to the Cuban dissidence and NGO movement.<sup>52</sup>

**d. Providing Humanitarian Support**

Seven of the NGOs provide humanitarian support generally to the Cuban people, and four of the seven also provide support to the dissident movement. Several projects provide books and supplies to independent libraries, while others provide assistance in the form of professional and educational development. Some projects even provide relief in response to natural disasters, as well as to general economic depression.

Generally, humanitarian assistance takes the form of medical supplies and equipment, foodstuffs, eyeglasses, and supplies satisfying other fundamental physical needs. The Movimiento para la Paz, el Desarme y la Libertad (MPDL), based in Spain, takes a different approach. Outwardly a non-political organization that advances a pacifist social agenda based on principles of development and cooperation, the MPDL has several staff members in an office in Central Havana who conduct dwelling rehabilitation projects in Havana, and coordinate other projects outside of the city.<sup>53</sup> MPDL's activities are further catalogued in Appendix A.

**e. Advocacy Utilizing Legal Measures and Popular Campaigns**

Several organizations undertake to improve the condition of the Cuban people through advocacy and public awareness campaigns intended to pressure the Cuban government. The Free Cuba Foundation conducts advocacy projects through their website to pressure for the

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<sup>51</sup> At <http://www.gadcuba.org/english%20about%20gad.htm>.

<sup>52</sup> *Id.*

<sup>53</sup> At <http://www.mpdl.org>.



release of political prisoners and the improvement of prison conditions.<sup>54</sup> The People in Need Foundation and the International Committee for Democracy in Cuba partnered in nominating Oswaldo Payá Sardinás, a notable dissident and founder of Proyecto Varela, for the 2003 Nobel Peace Prize.<sup>55</sup> The nominating petition gathered support from dignitaries and diplomats around the world including Madeleine Albright, and brought much-needed attention to the human rights abuses in Cuba.<sup>56</sup>

Specific efforts by the Cuba Democracy Project at Freedom House target international human rights organs such as the United Nations Commission on Human Rights, the Commissioner's Personal Representative for Cuba, and the Inter-American Commission on Human Rights in order to keep them apprised of human rights abuses in Cuba and to mount support for censure by international enforcement bodies.<sup>57</sup> Finally, the Cuban American Bar Association has been involved in specific legal cases including assisting rafters detained at Guantanamo Bay in 1994, seeking the release of lawyer and political prisoner Juan Carlos Gonzalez Leiva in 2002, and dispatching a letter directly to Sre. Castro in August 2003 expressing concern over Sre. Castro's violations of customary international law and multilateral treaties during the March 2003 crackdown.<sup>58</sup>

#### **f. Mission Accomplished?**

The diverse activities that NGOs undertake relative to human rights in Cuba provide essential support to the dissident movement and the Cuban people at large. Without a doubt, these organizations have some level of impact and fulfill at least some of their respective goals.

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<sup>54</sup> At <http://www.fiu.edu/~fcf/>.

<sup>55</sup> At <http://www.pinf.cz/english/>.

<sup>56</sup> *Id.*

<sup>57</sup> At <http://www.freedomhouse.org>.

<sup>58</sup> At <http://www.cabaonline.com>.

The question remains, however, as to whether the NGOs are engaged in activities that appropriately respond to abuses by the Cuban government. The next section analyzes the effectiveness of the NGO activity just outlined, while the final section offers several recommendations for moving forward.

### **III. ANALYSIS—ASSESSING NGO IMPACT**

In order to evaluate the effectiveness of the organizations in this paper, it is helpful to consider them within the larger human rights context. Throughout the globe, the activities of human rights organizations fall into several broad categories, and many organizations engage in multiple categories and/or overlap with other organizations. The following list provides basic categories of human rights work but does not purport to be an exhaustive list covering all types of human rights activity: monitoring (e.g. prison or election monitoring), advocacy, (e.g. on behalf of an individual or a policy), education (e.g. teaching human rights treaties, standards and norms), training (e.g. training of trainers/activists so that local activists may sustain their own efforts without continued assistance from foreign counterparts), creating publications (e.g. annual or special reports by Amnesty, Directorio, Freedom House, Human Rights Watch), and providing material or technical support (e.g. providing fax machines, telephones, printing machines, computers, etc.).

This list provides a quick overview of human rights activities. In this context, one sees that human rights organizations conducting work related to Cuba are not unlike human rights organizations working to affect situations in other countries. This context also raises the question of how to determine the success and impact of the NGOs analyzed in this paper. Given the myriad goals and activities different organizations undertake, how is success measured in

human rights spheres? Is it advocating on behalf of someone detained and securing his/her release? Is it disseminating copies of and teaching the Universal Declaration of Human Rights? Is it training a Cuban activist how to monitor prison conditions? Or, is it just listening to the stories of local defenders, writing them down, and ensuring publication of those stories? In fact, success can be measured by answering any of the above questions depending on the activities, mandate and mission of the particular human rights organization analyzed.

**a. Impact of Current NGO Activity on Human Rights in Cuba**

Several broad themes arise in evaluating the impact of the NGOs analyzed in this paper. These themes reflect general conditions related to human rights in Cuba and the difficulties that arise in doing work in that field. The first and arguably most important theme is the precarious nature of human rights work related to the island. The Cuban government carefully monitors its citizenry through a comprehensive set of local networks and informants. Any groups and individuals who could be construed as opposing the regime are subject to potentially very intrusive scrutiny. Based on comments by several individuals interviewed, the government appears to have ‘infiltrated’ most dissident or opposition groups and intervenes according to its own unknown guidelines. As stated previously in this paper, U.S. and foreign-based NGOs correspond and collaborate with local dissidents and activists. Consequently, the impact of dissidents and activists hinges greatly upon how Fidel feels. It is, therefore, widely acknowledged among the NGOs that their impact on human rights in Cuba can or is severely limited by the Cuban government.

A second theme addresses the difficulty of actually gauging individual success and impact for NGOs. This is not necessarily specific to NGOs doing work on human rights in

Cuba. Rather, it is a more general issue quite frequently related to human rights work around the globe. Quantifiable statistics either may be difficult to ascertain by foreign-based NGOs or may not reflect the significant effort involved in a project. More to the point, the indicators for gathering and analyzing such statistics are varied and quite problematic. NGOs surveyed in this paper have undertaken a variety of projects and initiatives that are difficult to evaluate for success. For example, public awareness campaigns and efforts to secure the release of prisoners do not usually provide clear, visible results. An awareness campaign targeted towards a general population, such as in the United States or a European country, may provide a ripple effect, the success of which cannot be determined. Broad campaigns intended to convey information or raise awareness, in any setting, are not easily evaluated even by public opinion polls. The recent petition to have Oswaldo Paya receive the Nobel Peace Prize appears to be the leading example of such campaigns, garnering no fewer than four hundred signatures from current and former diplomats, current and former heads of state, and politicians from countries around the world.

Likewise, when a number of NGOs undertake focused efforts to secure the release of the same political prisoner and that individual is released after months or even years of negotiating with the Cuban government, it is difficult to determine which NGO[s] played decisive roles. During recent years, there have been a number of successful such efforts that ended in the release of prisoners. On the other hand, the NGOs may not have played any role in the release – the Cuban government may have released the individual for other reasons. Consequently, most organizations admit their indicators can be elusory and anecdotal.

A third theme relates to the mere existence of a dissident movement in Cuba. Certain individuals interviewed maintain that, without attention and assistance from the Cuban-American community in the United States and others in Europe, the plight of dissidents would be much

worse than it is. Any citizen could potentially be labeled a dissident by the government: librarians, professors, labor activists, and of course, human rights defenders. Those who are labeled dissidents or enemies of the people are immediately barred from holding jobs, prevented from movement throughout the country, and their children are often harassed at school. Without international humanitarian assistance from a variety of sources, including foreign-based NGOs, it seems many Cuban dissidents would be forced to leave the country for lack of daily sustenance. The mere fact that a dissident movement exists, therefore, may be considered a success, in part, for foreign-based NGOs. On the other hand, others emphatically state that a dissident movement would exist with or without assistance from foreign-based NGOs. These individuals point to historical examples where domestic dissident or resistance movements survived without significant support from abroad. Apart from debating the existence of the dissident and human rights movement in Cuba, it is apparent that foreign-based organizations provide needed humanitarian support to dissidents and their relatives. The extent of this support is not known but could be compiled.

A fourth theme relates to the level of sophistication and depth of the dissident movement. While informing the global community raises awareness of human rights violations on the island, the dissident movement and those reporting on it from abroad may sometimes be overly optimistic. Any potential threat of massive social movements has been minimized. Although hope is placed on certain initiatives, such as the Varela Project, most of these projects are quite limited. Most dissident and opposition organizations are well infiltrated by government agents, which is obvious from the March roundup. In a sense, these individuals argue that Paya exists because the Cuban government permits him to exist, and that while these groups help to shed

light on issues on island they pose no threat to the Cuban government, and so are allowed to exist.

After forty years of revolutionary talk, Cubans are not interested in political activism. Politics is a secondary issue, preceded by more immediate concerns such as providing for oneself and one's family. In a sense, most Cubans have neither much time nor energy for political activism or human rights. It also appears many Cubans are not willing to risk beating or jail by supporting or engaging in such activities. While dissidents and activists on the island demonstrate that some Cubans are willing to face such risks, it also appears that most Cubans will not openly oppose the government. Such statements apply to a percentage of the youth, which seems more interested in leaving Cuba than becoming activists, according to certain NGOs. Cuban youth are concerned with practical necessities, such as financial opportunities, rather than dissident initiatives. These statements, therefore, suggest difficulty in generating support for dissidents within Cuba both for Cuban dissidents and/or foreign-based NGOs.

In addition to these themes, empirical evidence cited by human rights NGOs indicates a distinct aggregate increase in dissident and/or human rights activity in Cuba from the 1980s to the present. There was less reported on or known about Cuban dissident and human rights organizations in the 1980s, which is in stark contrast to the present situation. For example, Directorio publishes *Steps to Freedom*, an annual survey of civic resistance throughout the island. If accurate, *Steps to Freedom* represents one of, if not the, most comprehensive compilations of human rights violations and positive advances in nonviolent civic resistance in Cuba. The survey states there has been an aggregate growth in civic resistance actions: 227 in 1999, 494 in 2000, 600 in 2001, and 959 in 2002.<sup>59</sup> Based on these numbers, the survey also

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<sup>59</sup> See generally Directorio, *Steps to Freedom*, available at [http://www.directorio.org/publications/steps\\_to\\_freedom.php](http://www.directorio.org/publications/steps_to_freedom.php).

evaluates civic resistance in Havana and in the provinces by aggregate and percentage that reveal growth in resistance in the provinces: 33% (Havana) to 67% (provinces) in 1999, 45% to 55% in 2000, 36% to 64% in 2001, and 25% to 75% in 2002.<sup>60</sup> Directorio also categorizes the civic resistance according to Gene Sharp's three categories of nonviolent civic action: protest and persuasion, non-cooperation, and intervention.<sup>61</sup> In sum, *Steps to Freedom* is a thoroughly comprehensive guide and analysis of civic resistance in Cuba that has the potential to inform activists and policymakers around the globe. Indeed, anyone who studies human rights in Cuba should obtain copies of existing *Steps to Freedom* at least for comparative reading.

The Varela Project is another indication of such growth. The Varela Project was a campaign demanding that a referendum be held in which Cubans could vote for fundamental reforms such as freedom of expression, the right to own private businesses, and electoral reform.<sup>62</sup> 11,020 signatures were gathered in the first round and more than 14,000 in the second round. The first round involved between 112-116 cooperative organizations, which jumped to 371 to during the second round. The same is true for Todas Unidos, which began as one organization and grew to include 106 organizations by 2003. An important point about the Varela Project is that it is not the first signature campaign in Cuba sponsored by dissident, human rights, and civil society groups. There was a signature campaign in 1991 regarding a particular immigration law. Again, it is not clear that the organizations in this paper are responsible for the increase, but they do support, assist and cooperate with local human rights organizations in the Varela Project, and such projects seem to be gaining popularity in Cuba.

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *World's Most Repressive Regimes, 2003, supra note 20, at 19; see also, Human Rights Watch World Report 2003, supra note 24.*

Although certain organizations interpret the reported aggregate increase as an indication of a swelling opposition movement, others contest that inference. Critics say that there has been, in fact, no spike in dissident activity, but rather an increase in reporting of existing dissident activities. Even if this statement were true, and the reported increase in dissident activity were attributable in full to an increase in reporting on pre-existing activities,<sup>63</sup> the fact that reporting itself had increased would be evidence of success in human rights activity. One component of human rights work is monitoring the local human rights situation, which includes discovering and documenting existing human rights activity that may be reported to the international community. This is, in part, what many of the organizations analyzed in this paper do. They gather information on Cuban organizations, maintain some contact with them, and convey information to different sources. For example, the Cuban American National Foundation has more accurate figures of human rights activists on the island. Likewise, Directorio's *Steps to Freedom* may simply be a year older, better informed and more aware than they were in the previous year. Even if this were true for both organizations, the statistics would indicate an improvement in the human rights reporting in which these organizations are engaged.

Critics (including the Cuban government) also argue the trumpeted “increase” is nothing more than dissident propaganda. This claim is potentially more damning towards NGOs in this paper than the previous criticism. Due to limitations of resources, the authors were not able to evaluate this claim in-depth, but substantial anecdotal research, as well as the aforementioned publications indicate at least some increase in dissident or human rights efforts in recent years. The extent to which U.S. and foreign-based NGOs have facilitated or are responsible for this

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<sup>63</sup> The authors, on the basis of their research, believe the true conclusion is probably some combination of these two propositions—that while some portion of the increased activity is probably attributable to increased reporting on existing activities, that there has also been a significant increase in aggregate dissident activity.



increase is difficult to gauge, but there must be general acknowledgment that these NGOs have contributed, in various ways, to this increase.

**b. Negative Impact of Current NGO Activity in Cuba**

There is concern that the activities of U.S. and foreign-based human rights organizations negatively impact the lives of dissidents and activists (and their families) on the island. More specifically, the question remains of whether foreign-based organizations jeopardize the safety of dissidents (and their families) on the island. This question raises one of the central tensions of this paper: whether foreign NGO activity, specifically contacting human rights activists on the island and reporting on their activities, does more harm than good by bringing activists to the attention of the Cuban government.<sup>64</sup> The harm could be viewed through a causal chain. First, there may be person-to-person contact with dissidents that could draw the attention of the Cuban government; second, there may be verbal or written communication between dissidents and foreign NGOs that could jeopardize the dissidents' safety; and third, the Cuban government may become more informed about dissident activity, in general, and specific activists through reports or publications by the foreign NGOs.

On the one hand, it appears that increased exposure to, and communication with, foreigners and foreign-based organizations raises awareness of the plight of dissidents. The assumption is that known dissidents (and their safety) are monitored through channels that are capable of transmitting urgent communications to the international press. The international press can then inform the international community, who will then respond to the situation in a manner that affords the dissident protection in one of several ways. This type of monitoring could also

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<sup>64</sup> 'Harm' is used for lack of a better word. The harm could be increased scrutiny and monitoring by government officials, or it could be physical danger. The implication is that contact with foreign-based human rights organizations will in some manner negatively impact the lives of Cuban dissidents and activists.

benefit lesser-known dissidents. Through associating or cooperating with international organizations, these lesser known dissidents become recognized, and theoretically, could eventually receive the same international support that known dissidents and activists receive.

On the other hand, contact with foreign organizations could add suspicion to an already suspicious environment for activists and human rights defenders. The suspicion permits greater scrutiny and, in fact, bolsters accusations against the dissidents. Indeed, in conversations with former President Carter during his visit to Cuba, dissidents requested that the U.S. government stop funding certain initiatives against the Cuban government because such efforts make dissidents more susceptible to claims that they are working for the U.S. government and, in particular, for the Central Intelligence Agency.<sup>65</sup> The recent March crackdown evinces this second view.

When the authors posed this question directly to one of the NGOs profiled, Grupo de Apoyo a la Democracia (GAD), the group's response was simply not to answer the question. When asked, "How do you respond to the critics who say that the assistance GAD sends can be detrimental to the safety of the Cuban people," GAD's official response was "That kind of question normally comes from those sympathetic to Castro. It is really odd that they never question Castro's assistance to almost every terrorist movement in the world... The Cuban government uses our assistance as an excuse for their repression against anyone who refuses to toe the line established by the regime."<sup>66</sup> Although this particular response seems to imply that NGO reporting has negatively impacted Cuban dissidents, the response also could be attributed to underdeveloped or ineffective public relations materials.

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<sup>65</sup> "Carter Trip to Cuba," as reported by the Carter Center.

<sup>66</sup> Grupo de Apoyo a la Democracia, *Frequently Asked Questions at* <http://www.gadcuba.org/english%20questons.htm>.

In any case, international human rights monitors seem to suggest that the relationships dissidents had to foreign-based NGOs formed a significant part of the suspicion that led to the March 2003 round up by the Cuban government. Amnesty International has produced the most comprehensive report in English on the crackdown.<sup>67</sup> The report contains the names of the seventy-five dissidents and basic background information on nearly every one of those individuals. The report states that Amnesty International gained access to fifty-one of the seventy-five criminal files against the dissidents.<sup>68</sup> Based on this information, it is clear that the Cuban government charged criminal offenses against a number of individuals based, at least in part, on contact with foreign-based NGOs. That is not to say that the charges are all true, but it does show that the mere existence or perceived existence of contacts between dissidents and foreign-based organizations has negatively impacted Cuban activists.

Of the fifty-one files reviewed in the Amnesty report, the following organizations were specifically cited at trial for their connection with Cuban activists:<sup>69</sup> Doctors Without Borders, Reporters Without Borders, USAID and agencies of the U.S. government (including specific links with James Carson and contact with the U.S. Interests Section of the Swiss Embassy in Havana), *Encuentros en La Red*, the Cuban American National Foundation, *Radio Jose Marti*, Florida International University, CubaNet, Agence France Presse, and even militant organizations based in the United States, such as Alpha 66 and Comandos F-4. The answer, therefore, to whether contact with foreign-based organizations endangers Cuban activists must be at least a qualified yes.

### **c. The Role of the International Diplomatic Community**

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<sup>67</sup> Amnesty International, *Essential Measures*, *supra* note 26.

<sup>68</sup> *Id.* at 27.

<sup>69</sup> *Id.* at 39-79.

The international diplomatic corpus provides further evidence of the Cuban government's poor record on human rights and, possibly, of the impact of foreign-based human rights organizations working on Cuban issues. Cuba theoretically falls under two broad international human rights regimes: the United Nations (UN) system and the Inter-American system. Both the UN and the Inter-American Commission on Human Rights, as linked to the Organization of American States (OAS), have continuously condemned Cuba for human rights violations.

It might seem appropriate to evaluate the effectiveness of international NGO activity in Cuba by asking if the incidence of these human rights violations has decreased as NGO activity has increased. But that question fails to consider the current international structure and international legal order; nongovernmental organizations are not party to the multilateral treaties created by the UN or the OAS. While NGOs typically undertake activities that are closely tied to the requirements set out in UN and Inter-American human rights treaties, it is ultimately states, not NGOs, that are party to the treaties. Thus, it is states and their respective governments that have the capacity and responsibility of influencing regimes and governments vis-à-vis human rights violations.

This means NGOs can monitor human rights standards, gather information, document violations, submit complaints to UN or Inter-American committees, publish press releases and disseminate information through journalists and news sources worldwide. NGOs cannot, however, enforce or provide remedies for human rights violations. Enforcement is explicitly reserved to states and their governments. Ultimately, states must take action or respond to human rights violations for resolution or enforcement, not NGOs.<sup>70</sup> The consequent failure (or

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<sup>70</sup> In the case of the UN system, the Optional Protocol of the ICCPR provides citizens and NGOs direct access to the Human Rights Committee. Likewise, the CAT, CEDR, CEDAW and CRC also provide committees that may be accessible to individuals and NGOs. The Inter-American Commission on Human Rights also provides NGOs direct access for complaints.

merely the decision) of the diplomatic community or of the various human rights systems to affect or improve the human rights situation in Cuba is not necessarily indicative of a failure by the NGOs working on such issues.<sup>71</sup>

For example, the UN has committees that were created through multilateral human rights treaties. Because the Cuban government has not signed the International Covenant on Civil and Political Rights (ICCPR) or the Optional Protocol to the ICCPR, the Human Rights Committee (HRC) would not hear complaints against the Cuban government. The HRC could theoretically receive complaints about the Cuban government, but the Cuban government would be under no obligation to respond to the complaints because it is not party to the treaty that formed the HRC. However, the Cuban government has signed the Convention Against Torture (CAT), the Convention to Eliminate All Forms of Racial Discrimination (CERD), as well as the Convention to Eliminate all forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC). These multilateral treaties create committees and obligations related to these committees for the states party to the treaties. In that vein, NGOs are a constant source of information for violations falling within the purview of the committees. The precise number of reported violations is difficult to determine because committees maintain confidentiality regarding the reports, but it is widely known that NGOs play an important role in communicating data to the committees.

The UN is also home to the Commission on Human Rights, an annual six-week event that many consider to be one of, if not the, most important forums for recounting human rights violations. The Commission permits NGOs with consultative status to participate in the event,

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<sup>71</sup> Although certain individuals might disagree, the international diplomatic and legal structure is still based on state sovereignty. Enforcement and remedies, therefore, for domestic violations of international human rights standards rest with states: e.g., judicial action in municipal courts, detention of violators in municipal prisons, monetary compensation to victims through municipal remedies.

thus providing human rights defenders and activists direct access to diplomats and ambassadors to the UN from every member state. Activists and human rights defenders have delivered public presentations on human rights issues in Cuba that diplomats and country delegations regularly attend. Indeed, human rights organizations provide the Commission with evidence of human rights violations both before and during the Commission, which could lead to a condemning resolution.

The UN Commission has voted nine of the last ten years to condemn Cuba for human rights violations. The 2003 resolution, however, did not contain specific language condemning the crackdown in March (such language was voted down) even though the resolution was widely reported in the international press and was adopted after the crackdown occurred.<sup>72</sup> Since 1991, the UN Commission has annually voted to assign a special rapporteur on human rights issues to Cuba, Christine Chanet, but the Cuban government has refused cooperation with the office.<sup>73</sup> Ms. Chanet recently appealed to Sre. Castro to pardon at least fifty of the seventy-five dissidents who were rounded up, but to date there does not appear to have been a response.<sup>74</sup> In fact, Cuba was also reelected to the UN Commission on Human Rights despite widespread awareness of the crackdown. These examples demonstrate political decisions or political failures on the part of states, not an ineffectiveness of NGOs. Indeed, NGOs merely document and report on human rights violations in Cuba, and have thus far been effective in doing so.

Activity within the Commission itself is also highly political. The near annual condemnations by the UN Commission have coincided with the Cuban government's almost comical efforts to prevent public discussion at the Commission of what occurs on the island.

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<sup>72</sup> Amnesty International, *Essential Measures*, *supra* note 26, at 19.

<sup>73</sup> *The Most Repressive Regimes in the World: A Special Report to the 56<sup>th</sup> Session of the United Nations Commission on Human Rights in Geneva*, 2000 22 (2000).

<sup>74</sup> Amnesty International, *Ongoing Repercussions of the Crackdown* (2003), at <http://web.amnesty.org/library/index/ENGAMR250352003>.

These efforts include attempting to intimidate Commission speakers by the government's mere presence inside or outside venues, attempting to videotape speakers in order to associate them with the CIA and therefore discredit them on the island, or harass relatives remaining on the island, attempting to remove members of the audience, and attempting to prevent speakers from speaking by raising speakers' or related NGOs' possible minor infractions at the Commission.<sup>75</sup> Observers could easily infer the validity of public claims against the Cuban government based on its frenzied antics at the Commission.

The OAS is equally ineffectual and political. It is true that the Special Rapporteur for Freedom of Expression, Eduardo Bertoni, publicly responded to reports of the crackdown.<sup>76</sup> He then issued a second statement about the crackdown with the UN Special Rapporteur on Freedom of Opinion and Expression.<sup>77</sup> The OAS, however, failed to pass a resolution condemning the Cuban government for violations during and after the March crackdown.<sup>78</sup> Additionally, one wonders how influential the OAS can be on Cuba when member states officially suspended Cuba's membership/voting rights in 1961. If Cuba has been suspended from the organization for more than forty years, it is difficult to imagine that the OAS would have influence or authority over the Cuban regime. The fact that the United States has not signed the American Convention on Human Rights casts further doubt on the authority of the Inter-American human rights system to influence the Cuban government.

Both the United States and the EU have demonstrated the capacity for indirect enforcement mechanisms of human rights violations against Cuba. The United States has

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<sup>75</sup> See generally *The Most Repressive Regimes in the World: A Special Report to the 56<sup>th</sup> Session of the United Nations Commission on Human Rights in Geneva*.

<sup>76</sup> "Special Rapporteur for Freedom of Expression expresses grave concern about judicial proceedings against journalists in Cuba," Press Release PREN 74/03 (Apr. 4, 2003), available at <http://www.cidh.oas.org/Relatoria/English/PressRel03/PRelease7403.htm>.

<sup>77</sup> "UN and OAS Special Rapporteurs on Freedom of Expression gravely concerned about situation in Cuba," Press Release PREN 77/03, May 3, 2003.

<sup>78</sup> Amnesty International, *Essential Measures*, *supra* note 26, at 22.

imposed a trade embargo against Cuba since the 1960s, although the origins of the embargo are not human rights violations but the nationalization of U.S.-owned property.<sup>79</sup> The 1996 Cuban Liberty and Democracy Solidarity Act (a.k.a., the Helms-Burton Act) provided for, *inter alia*, democracy-building efforts in Cuba. The Cuban Solidarity Act of 2001 built on the Helms-Burton Act by allocating \$100 million for four years to assist and support dissidents, opposition groups, political prisoners and other non-governmental groups.<sup>80</sup> The trickle down from the Helms-Burton Act led both to funding sources for certain organizations in this paper, as well as Law 80 and Law 88 of the Cuban Penal Code, which were adopted by the Cuban National Assembly in direct response to the punitive Helms-Burton Act. Following the March crackdown, the United States denounced the crackdown<sup>81</sup> and tightened visa restrictions for travel to Cuba.<sup>82</sup> The United States also included Cuba in its third annual *Trafficking in Persons Report*, which was published in June,<sup>83</sup> and the 2003 State Department Report will likely contain a strong condemnation of the March crackdown.

On the other hand, U.S. government initiatives towards Cuba since the March crackdown have hardly been heavy-handed. President Bush vowed to veto any legislation intended to end the embargo or other restrictions relative to Cuba unless a multi-party system was established, but the House of Representatives attached and approved a provision to an appropriations bill that

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<sup>79</sup> HERNANDO CALVO OSPINAO & KATLIJN DECLERCQ, *DISIDENTES O MERCENARIOS?* 12 (1998).

<sup>80</sup> *Human Rights Watch World Report 2002*, at <http://www.hrw.org/wr2k2/>.

<sup>81</sup> Such statements by the U.S. Government are common; *see*, Amnesty International, *Report 2003*, *supra* note 23, at 24; *see also*, Christopher Marquis, Marquis, Christopher, Powell, *denouncing crackdown, calls Cuban 'Aberration'*, N.Y. TIMES (Apr. 29, 2003), at A10.

<sup>82</sup> The U.S. Department of the Treasury enacted changes to 31 CFR § 515.565, eliminating specific license issuance to organizations that previously conducted non-academic "people-to-people" educational visit under subsection (b)(2). For details, *see* 68 Fed. Reg. 14141 *et seq.* (Mar. 24, 2003), *available at* [http://www.treas.gov/offices/eotffc/ofac/legal/regs/fr68\\_14141.pdf](http://www.treas.gov/offices/eotffc/ofac/legal/regs/fr68_14141.pdf).

<sup>83</sup> "Trafficking in Persons Report," released by the Office to Monitor and Combat Trafficking in Persons, United States Department of State, June 11, 2003.



would have virtually ended travel restrictions to Cuba.<sup>84</sup> Additionally, in spite of the ongoing the U.S. embargo, the United States recently sold agricultural goods to Cuba following Hurricane Michelle, the first such direct sale in decades.<sup>85</sup> Moreover, former President Jimmy Carter visited Cuba in May 2003. In a public speech televised to the Cuban people, he referred to the Varela Project, a topic that the Cuban government would prefer to deny or avoid. Former President Carter was the highest-ranking U.S. official to visit Cuba since 1959, which represents at least a partial diplomatic victory for Sre. Castro. Consequently, it is arguable that even U.S. reaction to the March crackdown has been heavy on moral condemnation yet light on action.

The EU adopted a 'common position' on foreign policy towards Cuba in 1996 and extended that position in 2001. This position prevents full economic cooperation between the EU and Cuba until satisfactory progress has been made on democracy and human rights. Although the EU has recently revisited the common position, it still remains a significant barrier to full diplomatic and economic relations.<sup>86</sup> In 2002, the EU awarded its Sakharov Award for human rights to Oswaldo Payá, a leading proponent behind the Varela Project. The Varela Project reportedly includes more than 300 dissident organizations, which have gathered 11,020 signatures (May 10, 2002) and more than 14,000 (October 4, 2003), demanding a referendum be held in which Cubans could vote for fundament reforms such as freedom of expression, the right to own private businesses, and electoral reform.<sup>87</sup> Indeed, the EU opened its first office in Cuba on March 12, 2003, just as the crackdown started. Despite substantial evidence of a previous

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<sup>84</sup> Amnesty International, *Report 2003*, *supra* note 23.

<sup>85</sup> Amnesty International, *Report 2002*, *supra* note 18.

<sup>86</sup> *Id.*

<sup>87</sup> *World's Most Repressive Regimes, 2003*, *supra* note 20, at 19; *see also*, *Human Rights Watch World Report 2003*, *supra* note 24.

poor human rights record, therefore, the EU was looking forward to improved relations with Cuba.<sup>88</sup>

Following the March crackdown, the EU issued a resolution condemning the action and the executions of three hijackers.<sup>89</sup> The EU subsequently stopped considering Cuba's application for admittance to the Cotonou Agreement and Cuba withdrew the application.<sup>90</sup> The Cotonou Agreement is designed to facilitate and build economic, social and cultural relations between the EU and other states in Africa, the Caribbean, and the Pacific Ocean.<sup>91</sup> On the other hand, EU member states have not seriously altered their relations with Cuba despite the common stance. The EU response has affected neither European tourism, nor commercial trade between Cuba and specific EU countries.

To reiterate what has been stated, the failure to respond through diplomacy or international law is not a failure of NGOs conducting work in, around, or on human rights in Cuba. That responsibility and failure is not and cannot be part of the NGOs' mandate because the current international legal order is built on respect for state sovereignty and responsibility. Indications of the effectiveness of foreign-based human rights organizations and activists come from the mere fact that human rights organizations report violations to the United States, the EU, the UN Commission and others. Raising awareness of and documenting human rights violations, providing material and technical support, and improving solidarity are all prerequisites for communicating human rights violations to activists and organizations cooperating outside Cuba. Whether the UN, the EU, the United States or the OAS condemn and take punitive measures against Cuba is a political matter and beyond the scope of an NGO mandate. Further, research

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<sup>88</sup> Agence Europe, Poil Nielson opens Commission delegation in Havana, Brussels, 2003.

<sup>89</sup> European Parliament resolution on the Thessaloniki European Council of 19-20 June 2003 (2003).

<sup>90</sup> Amnesty International, *Essential Measures*, *supra* note 26, at 22.

<sup>91</sup> The Cotonou Agreement, art. 1, June 21, 2000.

for this paper revealed that NGOs can – and do – lobby governments to undertake punitive measures against the Cuban government, but the adoption of such measures is a political matter discussed and debated by politicians, not the NGOs.

#### **IV. POLICY RECOMMENDATIONS AND CONCLUDING REMARKS**

A first recommendation is that policymakers in the United States, as well as in foreign countries should continue funding organizations that focus on human rights in Cuba. The abuses of the current regime are being documented on a daily basis through a broad, informal network of individuals and organizations. This documentation would not be possible without extensive funding for organizations mentioned in this paper, as well as numerous others not mentioned. More importantly, this documentation will have serious ramifications for the regime and the international human rights system in the future.

This article has largely focused on the tangible gains of NGOs: reporting, advocacy, and material support for dissidents and their relatives. However, there is another argument in favor of continued support. NGOs are one of the few avenues through which the Cuban people receive a message of hope from the outside world. After forty years under the current regime, the Cuban people are prone to the fatalism that results in political apathy. Indeed, impassioned activists like Oswaldo Payá are extremely rare under the Cuban regime. NGOs working on Cuba do more than simply bring supplies as basic as pens, pencils, paper, and books – materials that young people in other countries take for granted, but also support a developing civil society. Bringing the message of hope includes bringing alternative political theories to the island. NGOs like Freedom House have provided significant support to the independent library movement, a movement that now boasts over one hundred libraries (though several were dismantled during

the March crackdown). NGOs provide hope by sending tools that allow Cubans to explore the outside world through books and, occasionally, through computers, short-wave radios, and other communication tools.

In addition to continued funding of NGOs, policymakers should consider other approaches to improving the living conditions in Cuba without necessarily advocating regime change. Certain scholars posit that liberalizing Cuba's economy, including the evisceration of the U.S. Embargo and a transition towards market-based economics, would have the collateral effect of improving human rights. This hypothesis is being tested in East Asia, with potentially positive (China) and less promising (Vietnam) results. Opening the island to free market forces would theoretically import democratic concepts and individuals who have not previously been to Cuba. Some even posit that capitalism could ultimately dislodge the regime, but others retort the regime is simply too firmly entrenched for economic liberalization to loosen its control.<sup>92</sup> The possibility of political transformation and overall human rights improvement through economic liberalization offers an alternative approach to securing both objectives. The discussion, however, is well beyond the scope of this article but merits a scholarly piece of its own. Regardless of one's views, it should be noted that NGOs surveyed in this paper frequently cite free market forces and philosophy either in their objectives or through projects. On an exploratory level, therefore, some NGOs in this paper are already undertaking or testing such concepts, and policymakers should follow their lead.

Another aspect of NGO activity that policymakers should adopt is planning and networking for the broader, long-term issues related to transition. This is, in fact, the precise objective of several NGOs surveyed and is an aspect of nearly every organization researched.

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<sup>92</sup> *The Challenges of Cuba's Economy, an Interview with Dr. Antonio Romero*, Director of University of Havana's Center for Research on International Economy (CRIE), by Information Services Latin America, available at <http://isla.igc.org/Features/Cuba/cuba1.html>.

NGOs address economic, political, social and cultural issues related to the future transition. There is a certain type of long-term planning, however, that has not formally been declared. It could be undertaken, however, given existing tools and information.

This final broad recommendation includes a number of smaller recommendations. The overarching recommendation is for the establishment of an international tribunal, *before* the fall of Castro's regime, that can gather information, evaluate that information, and provide remedies for gross, systematic human rights violations suffered under the current regime. Such a mechanism would be a bold experiment until a regime change, but one with considerable foundation. Until a regime change occurs, this mechanism would serve two specific purposes: act as a centralized location for all existing and future data and evidence of human rights violations by specific Cuban officials, and begin the process of preparing to prosecute those Cuban officials.

After the current regime ends (whenever that may be), it is likely there will be an entity established to review abuses against the Cuban citizenry. Such entities were established by the international community at Nuremberg and Tokyo after genocide and war crimes were committed during World War II by the Germans and Japanese, as well as in the former Yugoslavia and Rwanda at the International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda, respectively. Other national entities were established following the end of recent brutal regimes: in South Africa following apartheid (Truth and Reconciliation Commission), Peru, Mexico, Argentina following the Pinochet regime, East Timor, and Cambodia following the Khmer Rouge. The same has recently happened in Iraq where the provisional government has established a tribunal to consider war crimes and crimes

against humanity by those under the Hussein regime, and Saddam Hussein himself will face either an international tribunal or the Iraqi tribunal.

The aforementioned tribunals represent efforts at both judicial recourse for previous abuses against civilians, as well as public discussion of the abuses and healing. Clearly, such tribunals or commissions transcend geographical, cultural, and political differences. In fact, the international community, as a whole (at least ninety-two countries), determined there should be a constant judicial body to address international legal culpability: the International Criminal Court (ICC) has been established to prevent unpunished criminal activity in a manner not granted to the Permanent Court of Justice or the International Court of Justice.<sup>93</sup>

The previously mentioned tribunals and commissions were established *after* the fall of a particular regime. However, the authors recommend that the Cuban Diaspora, along with the international community, construct an entire infrastructure for what will be a commission for the people of Cuba *before* the end of the current regime in Cuba. The commission would determine its rules of procedure, its scope of work, its member jurists/analysts, and its location. The commission would constitute an experiment: the Cuban Legal Experiment. The Cuban Legal Experiment would analyze the effects of the commission, if any, on individuals in the current regime while the regime is still in power.

Most proponents and opponents of international human rights standards agree that one of the greatest obstacles to human rights standards is enforcing them. By establishing a commission *before* the end of the current regime, Cubans and the Diaspora would designate a single location for existing documented reports, videotapes, audiocassettes, testimonials, human rights reports, etc. That is, the commission would provide a single location for gathering,

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<sup>93</sup> An exploration of the prospect for holding members of the current regime accountable for their crimes before the ICC is beyond the scope of the paper (in part because Cuba did not ratify the Rome Statute of the ICC) but presents a topic worthy of future exploration.

compiling, analyzing and preparing information of previous and ongoing human rights violations for future prosecution.<sup>94</sup> Moreover, after nearly forty years of rule, the current regime has either created or left a long trail of documentation that forms a virtual mountain of evidence against Cuban state officials and agents for murdering, torturing and abusing Cuban civilians. The identities of some of the government officials who perpetrated these acts are known. These names could be gathered and made public, so that the officials themselves would know they face judicial action once they are no longer protected by the current regime. This is the core of the Cuban Legal Experiment.

The Cuban government has been monitored for decades internally by dissidents and externally by many governmental and nongovernmental organizations. Just as the Cuban government held files on seventy-five dissidents and activists who were rounded up in March, the internal opposition and international community have documented the Cuban government's handling of those seventy-five cases. There will be repercussions for those who supported the March crackdown once transition begins. The effort will come from within Cuba, find support in the international community, and build on the documented evidence of massive and egregious human rights violations during the last several decades on the island. To think otherwise ignores gross human rights violations committed by the current regime, as well as recent trends in the international community. Once transition begins, there will exist necessary precursors for a Cuban tribunal or commission—for example, a displaced or transitioning regime, a portion of the domestic population that was repressed, detailed documentation of human rights violations by that regime, large numbers of individuals who lived through those violations to testify to the veracity of the claims, and, an international community that was overwhelmingly against that

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<sup>94</sup> The prosecution could be with or without legal ramifications. The actual format of the commission and the remedies offered would be determined by the Cuban people.

former regime. Given the facts, it would, therefore, be wise to now gather and compile the necessary data for future prosecutions.

In order to end the impunity with which the current Cuban government acts, the names of the Cuban officials who have most egregiously engaged in human rights violations could be compiled and made public by the commission through the international media and the Internet. This would also be an experiment; the international community would respect the sovereignty of the Cuban government, yet inform it, in advance, that specific Cuban government officials who are known to have engaged in human rights violations will be prosecuted in the future. The actual deterrent effect of such action is unknown. What is known at the moment, however, is that Cuban officials act with impunity. The names of Cuban dissidents are known throughout the world, but those who violate their rights are not known. It is time to make public the abusers of human rights in Cuba and serve notice to them that they will not escape justice. Let their names be known throughout the globe like the names of Milosevic, Tadic, as well as Hussein and his henchmen.

The most basic reason the Cuban Legal Experiment could work is because Sre. Castro is advanced in age. There is speculation that he might be near the end of his rule, but it is unlikely he will function as head of state for twenty to thirty additional years. And when the regime ends, transition will begin. When transition begins, major domestic and international forces will flood the island. One of those forces will be the evaluation of systematic, state-sponsored human rights violations. This paper suggests that the process might be sped up as a possible deterrent: make public the names of Cuban officials responsible for violating human rights, and begin gathering legal documentation for their prosecution either under international law or some future domestic organ in Cuba.



This commission would also help focus the efforts of human rights activists and defenders currently working on or in Cuba. A sense of uncertainty permeates every discussion on democracy and human rights in Cuba. No one is certain how long Sre. Castro will remain in power. No one is certain who will replace him. No one is certain if his successor will be Raul Castro, and if so, if he is more or less of an authoritarian figure than his older brother. However, it is certain that change will occur when the current regime ends – but no one knows when that will occur. Consequently, organizations surveyed for this paper admitted that they sometimes work day-to-day merely providing basic assistance and moral support to dissidents and relatives of imprisoned dissidents on the island. By creating a single location for gathering all reported human rights violations, the NGOs would be mobilized towards a focused objective.

Looking to the future in this way is not to suggest that the organizations lack objectives or initiative to achieve those objectives. Clearly, the organizations could benefit from greater resources to more creatively assist and work with dissidents on the island.<sup>95</sup> But, the nature and uncertainty surrounding the current regime have and will affect the organizations' ability to focus their efforts on specific objectives that will further democracy and human rights in Cuba. As long as the regime maintains power, the NGOs are planning for a day when the regime ends, but they will not be sure of what the future holds on that day for all the work they are currently doing. The construction of a commission established by the Cuban people, with assistance from the international community, would address the unpunished crimes the current regime is perpetrating against its people.

To that end, it is appropriate for NGOs to focus on gathering, compiling and completing specific files on specific instances of human rights violations by specific Cuban officials.

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<sup>95</sup> Price Waterhouse Cooper's audit of USAID's Cuba Program, *available at* [http://www.dec.org/pdf\\_docs/PDABW221.pdf](http://www.dec.org/pdf_docs/PDABW221.pdf).

Research from this paper has revealed that such information exists, but that it is loosely kept among many sources. Foreign and Cuban NGOs could, therefore, prepare for specific prosecutions of government officials by investigating and documenting human rights abuses according to existing, defined legal standards. These mini projects could provide a sense of optimism and hope for dissidents on the Island. Instead of simply opposing the government and trying to garner opposition to the regime, Cuban dissident would have a specific goal: they would indeed be planning for the day when they would hold those accountable to international human rights standards.

Critics of this idea note the establishment of a Cuban Legal Experiment would provide the Cuban government with additional excuses to crackdown on current dissident activities. That is, authorities would investigate those individuals who were involved or suspected of being involved in the establishment of the commission and punish them, their associates and their families. The Cuban government is so firmly ensconced after forty years in power that it is clear that neither an embargo, nor international condemnation, nor a future tribunal will alter the repressive manner of the regime.

Other critics argue that such an Experiment would be dismissed as a “mock trial” of sorts, not dissimilar to those conducted by frustrated NGOs. A mock trial would provide symbolic value, but effect little change. Additionally, the interests of the Diaspora in Miami might differ significantly from those of exiled Cubans in Spain or other parts of the world. Assuming that Cubans opposing the regime could find accord on how to create and run such a commission might overlook a significant hurdle in the process. Finally, regardless of planning for the commission, the manner in which the regime ends, and a new regime comes to power is unpredictable. Whether the change is peaceful or violent, democratic or totalitarian, largely

localized or involving international actors, is unknown. With so many variables in the equation, critics of the Cuban Legal Experiment would argue that it is a useless exercise.

Could the ICC, the Inter-American Commission, or the UN constitute the Cuban Legal Experiment? In a sense, are they not already such an experiment? The answer is both yes and no. Yes, these entities currently exist. No, they do not have appropriate authority to construct the commission proposed in this paper. Cuba has not ratified the ICC, was expelled by the OAS in 1961, and has not ratified the American Convention on Human Rights. Consequently, neither the ICC nor the Inter-American Commission has direct legal authority over Cuba based on a multilateral treaty. The UN does have international legal personality and legal authority recognized by Cuba, but the UN is a political organization that is not in the business of frequently violating member states' sovereignty. Cuba's reelection to the UN Commission on Human Rights nicely demonstrates this point. Even more important than the issues concerning international legal authority is that the Cuban Legal Experiment is envisioned as an instrument by, for, and of the Cuban people. So, while the international community certainly would assist in the development of the commission, it would be the Cuban people (initially, those mainly scattered from the island with select numbers from the island) who would build it.

Though the arguments against such a commission should not be lightly dismissed, the Cuban Legal Experiment should be attempted. It is undeniable the regime would further crack down on dissidents, citing the Experiment as a threat to the Cuban State. But, the Cuban regime is already well-equipped to crack down against dissidents. International condemnation notwithstanding, the Cuban government will repress dissidents with or without the existence of the Experiment. Further, although different factions of the Diaspora might have difficulty agreeing on the method and function of the Cuban Legal Experiment, their common flight from

and disdain for the Cuban government could allow conflicting factions to find sufficient common ground to launch the Experiment. Decisions regarding controversial provisions might be delayed in order to establish the basic framework.

Additionally, this sort of effort would not be in vain. The Cuban people have little to lose at this time, and less radical experiments have done little or nothing to effect change or guarantee future accountability. At the very least, the notion of a Cuban Legal Experiment will spark discussion among the Cuban Diaspora and foreign-based NGOs about more effective and focused work in human rights spheres on the island. This work should be more targeted towards the specific goals of centralizing information, gathering information on specific violators of human rights, and beginning the process of preparing for public action against these individuals. There are a number of precedents from which to draft a charter for such an institution.

By unifying the actors of various NGOs and international bodies under one Cuban Legal Experiment, enough momentum against the regime could be generated to cause concern among members of the regime. More importantly, such momentum could bring inspiration to the Cuban people through tangible hope. With hope, the Cuban people might regain a passion to organize and determine their own fate; without it, stamping out human rights violations in Cuba is a waiting game: when will he pass?