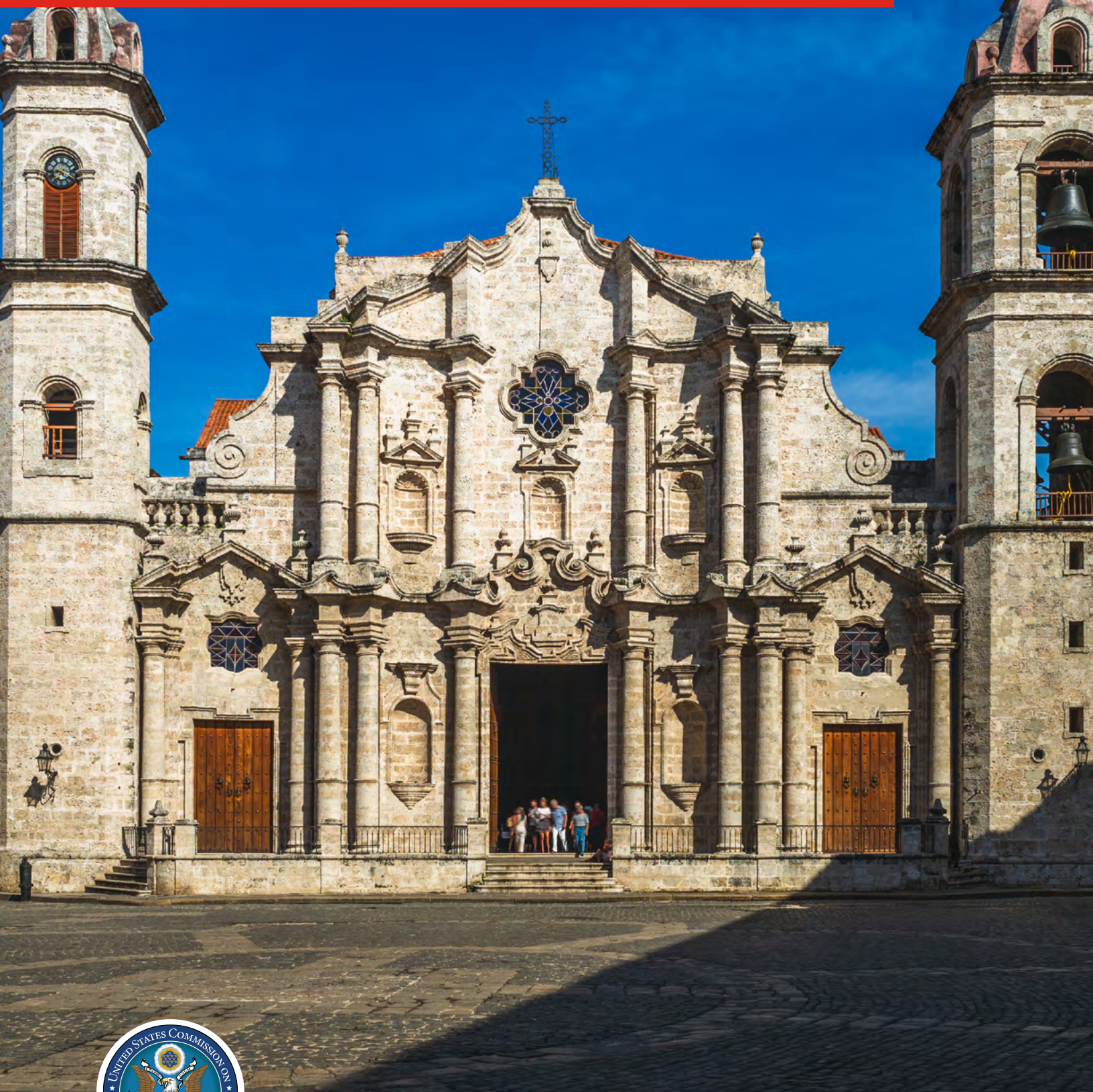


Constitutional Reform and Religious Freedom in Cuba



UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

USCIRF'S MISSION

To advance international freedom of religion or belief, by independently assessing and unflinchingly confronting threats to this fundamental right.

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UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

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ABOUT THE UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

WHO WE ARE

The U.S. Commission on International Religious Freedom (USCIRF) is an independent, bipartisan U.S. federal government commission created by the 1998 International Religious Freedom Act (IRFA). USCIRF uses international standards to monitor violations of religious freedom or belief abroad and makes policy recommendations to the President, the Secretary of State, and Congress.

WHAT RELIGIOUS FREEDOM IS

Inherent in religious freedom is the right to believe or not believe as one's conscience leads, and to live out one's beliefs openly, peacefully, and without fear. Freedom of religion or belief is an expansive right that includes the freedoms of thought, conscience, expression, association, and assembly. Religious freedom is a core human right that international law and treaty recognize; a necessary component of U.S. foreign policy and America's commitment to defending democracy and freedom globally; and a vital element of national security, critical to ensuring a more peaceful, prosperous, and stable world.

EXECUTIVE SUMMARY

This report sets out to improve understanding of Cuba's constitutional and legal protections for freedom of religion or belief (FoRB), both in law and practice. The FoRB and complementary rights analysis focused on Cuba's new constitution and subsequent changes to the legal framework. The research used a FoRB lens to examine 2,483 laws, decrees, and other legal norms adopted by the Cuban government after the new constitution was approved in April 2019. The research also assessed Cuba's performance under 36 human rights indicators to determine constitutional and legal compliance with international human rights law standards.

To better understand the impacts of FoRB repression in Cuba, the research included a focus group discussion and remote on-island interviews with clergy and lay leaders from multiple religions. Those exchanges led to the development of questions for an e-survey that received 56 responses from a diverse group of faith leaders.¹ A summary report on 2021 FoRB violations, which covered some of the severe impacts on the faith community following the July 11 protests across Cuba, is also provided.

This report presents the findings from the research and analysis. The report includes specific survey results and faith leader comments that validate many of the findings:

- **Cuba's constitution and laws fail to meet FoRB standards based on international law.** Of the 36 FoRB indicators, Cuba fails to meet 34, and partially meets only two.
- **Cuba's new constitution, approved in April 2019, dilutes FoRB guarantees compared with the previous constitution.** While the new constitution retains much of the language present in the 1976 constitution, it removes and therefore excludes the ability of religious institutions to be regulated by law. In a society where FoRB rights are recognized and respected, regulation of religion would not be required. This is not the case in Cuba. The new constitution reduces the possibility of legal reforms to enable FoRB rights. This would also likely extend to a long-anticipated Law of Beliefs (*Ley de Cultos*) pending since the 1976 constitution. Elements of the faith community have believed that such a law would help limit arbitrary actions against it by the Communist Party. However, interviewed faith leaders raised doubts, noting that the government would likely use such a process to formalize or even strengthen FoRB repression.

- **Constitutionally established rights are not enforceable.** The absence of a court of constitutional guarantees, the absence of an appeal procedure for the judicial review of constitutional rights, and a Criminal Procedure Law that does not invoke constitutional rights, nor define how to enforce them, leave the Cuban constitution with no role in the criminal and civil processes. The constitution has no practical validity whatsoever over legislation that restricts rights and has no executive or hierarchical capacity vis-à-vis lower-level laws that restrict the same rights it enacts.
- **The constitution fails to meet international standards, its rights are not enforceable, it fails to be a supreme law, and it yields to laws that can conflict with constitutionally established rights.** The removal of the sovereignty of the people, the explicit subordination to lower-level laws in its text, the impossibility of reforming unconstitutional laws due to the absence of a court of constitutional guarantees or a process for protection of these rights, and the definition of the Communist Party as the "superior" power of the State, without regulation in the constitution, makes it incompatible with the internationally accepted concept of a constitution.
- **Rights complementary to FoRB cannot be defended.** There are no legal mechanisms or legislation to protect against discrimination, hostility, or violence on religious grounds.
- **Cuba is not governed through its constitution.** Many codes and laws, but more clearly the constitution, are a showcase for international consumption to allow the Government of Cuba (GOC) to boast of its socialist system and guarantees of human rights to international organizations like the UN. It is the GOC strategy to govern at will under a façade of being official. For Cuban civil society, the letter of the constitution approved by the National Assembly in 2019 is not respected. In fact, the team's legal analysis shows that there is a long history of the application of inferior and often opaque laws, in addition to the application of de facto administrative actions not supported by any legislation but ordered by the Security of the State and the Communist Party. These are carried out in blatant violation of many principles in the previous and current constitution.

¹ E-survey questions on file at USCIRF

- The Communist Party directly governs religious freedom in Cuba.** Because there is no executive authority over the rights granted by the constitution and no legislation that sets the legal framework for religious rights, and the fact that it defines itself as a supra-Constitutional entity, the Communist Party has assumed full capacity to restrict religious freedom and worship—as it chooses and without legal opposition. The Communist Party has an entity in charge of religious rights, the Office of Religious Affairs (ORA), whose authority emanates from and depends on the Central Committee of the Communist Party. Both the ORA and the Central Committee are obscure and work in the absence of legislation.
- Reform of the Law on Associations is unlikely in the near term.** It is tentatively planned, but there is currently no draft despite a National Assembly timetable that shows a December 2022 target date. The research team believes that a new law is not a priority and will continue to be delayed. The team examined the current Law on Associations and found it is legally impossible to register any association that is independent of the State. As well, the law excludes registration of religious organizations. The law delegates to the Ministry of Justice the registration of any association. Religious organizations can be denied because they lack legal standing and there is no legal framework limiting dissolution. Interviewed faith leaders believe a new law may be used to further regulate and limit FoRB rights. The lack of legal standing of faith organizations is the central issue.
- Virtually all independent faith leaders say they are actively repressed, including 52 of the 56 surveyed.** Twenty-one said that they suffer acts of repression monthly or even weekly that include threats, violence, detentions, and acts of repudiation. Nine of the respondents had been forced to migrate. The interviewed faith leaders described in detail how the State orchestrates campaigns to discredit religious leaders and adherents.
- ORA coordinates State repression of FoRB rights.** Fifty-five (98%) out of 56 faith leaders believe that ORA arbitrarily controls and limits the exercise of FoRB without regard for constitutional guarantees. The faith leaders noted that ORA's power emanates from the Central Committee of the Communist Party. ORA utilizes State Security and other GOC entities to conduct discreditation campaigns, to investigate and falsely prosecute faith members, to restrict construction or refurbishment of church buildings, to sow distrust between different faiths, and to regulate and repress enjoyment of FoRB rights.
- State-created and controlled proxy organizations supplant faith leadership and discourage interfaith unity.** Most faith leaders surveyed agree that these proxy organizations pretend to be religious to dominate the representative space of real religious organizations. This facade is presented to Cubans and international audiences as evidence of religious representatives in harmony with the government. These organizations include the Cuban Council of Churches (CCC), the Yoruba Cultural Association, the Islamic League of Cuba, and Pastors for Peace. Many faith leaders believe these groups are run by state officials posing as faith leaders. Truly independent umbrella faith organizations are actively repressed.
- FoRB repression is tailored to each faith group.** This includes CCC members but is much more profound for the independent churches and other faith organizations. The Catholic church is viewed as having more operational independence, given the church's historic role and the power of the Vatican. But Catholics have faced tremendous repression since the revolution and continue to do so. Catholic bishops are targeted and forced to ensure priests comply. Independent Protestant and Evangelical Protestant pastors are persecuted and forced to migrate, and their churches are denied legal personality and registration. Jehovah's Witnesses maintain an apolitical stance that lowers their visibility and lessens the need for GOC repression. Both Yorubas and Muslims are heavily repressed, and growth in their religious communities is actively discouraged by the government.
- The GOC uses comprehensive tactics and motives to repress FoRB.** Tactics include harassment, threats, and physical attacks on faith leaders and parishioners; confiscation of property; frequent police summons; defamation and accusations of illegal or immoral behavior; denial of rights of employment or education, including for family members; acts of repudiation; the use of "public opinion agents" to sow rumors; creation of enmity and division between faith groups; restrictions on free movement; and fabrication of alleged crimes followed by fines and detention. The authorities also use COVID-19 and currency unification as pretexts to limit FoRB rights and persecute faith groups.

- **Faith community operations and social services are impeded.** Fifty-two (93%) of faith leaders agree that the GOC prevents the social actions of churches. Faith community social and humanitarian service operations must comply with ORA's self-serving instructions. Donations are at times appropriated by ORA and redirected to recipients favored by the State. Faith organizations must pay higher utility rates. Faith groups are not allowed to operate schools, nursing homes, day-care centers for children, or hospitals. The State sometimes freezes pastors' social services bank accounts.
- **State education is based on atheist ideology.** Despite the constitutional declaration that Cuba is a secular state and that "education is secular and based on the contributions of science," the reality is that education promotes atheism, while excluding the teaching of religions, their history, or their nature. All 56 respondents said they believe education is based on an atheist ideology, and 55 (98%) agree that education is still steeped in the teachings of Marx and Lenin and does not include studies of religion or religious history. Thirty-three (59%) agreed that students with religious beliefs are not allowed to dress according to their traditions (such as using veils or wearing a Jewish *kippah*)—such incidents have been documented by international observers.

INTRODUCTION

This project involved a set of integrated research tasks to enhance the understanding of Cuba’s constitutional and legal protections for freedom of religion or belief (FoRB) in law and practice. In 2019, Cuba adopted a new constitution that changed the country’s religious freedom protections. To codify these constitutional changes, the government set a timetable to review and amend corresponding legislation, including the Law of Associations in 2022. Despite constitutional protections for religious freedom that exist on paper, independent religious communities in Cuba continue to experience violations of FoRB.² The research focuses on the impact of the constitutional reform process on FoRB and related rights and the application of Cuba’s constitution and laws in protecting or restricting those rights.³

This report outlines the research findings for U.S. Government stakeholders based on the review of three areas:

1. Analysis of recent constitutional changes in Cuba concerning religious freedom and other related rights, including the amendments to corresponding laws, to assess their impact and their compliance with international human rights standards.
2. In anticipation of the upcoming review of the Law of Associations, possible recommendations for how to amend this and other laws that have yet to be reformed to conform with Cuba’s constitutional protections and international human rights standards related to religious freedom.
3. Analysis of the application of relevant constitutional provisions in Cuba, including of ongoing violations of FoRB and the ways in which they violate Cuba’s constitutional provisions, and gaps in Cuba’s constitutional protections that fail to adequately provide protections for Cubans to freely practice their faith.

² For this report, the term “freedom of religion or belief (FoRB)” is used, consistent with the practice of the United Nations (UN), including the Office of the UN Special Rapporteur for FoRB.

³ All references to Cuba’s constitution in this report apply to the country’s most recent constitution, which went into effect in April 2019. Any reference to Cuba’s prior constitution refers to the 1976 constitution.

RESEARCH METHODOLOGY

The research methodology involved the following research steps:

International Standards Analytical Criteria: Several complementary rights that facilitate FoRB were identified: 1) the freedom of expression, 2) the freedom of association and assembly; 3) the right to non-discrimination, 4) the right to privacy, and 5) the freedom of movement (applicable in Cuba because religious leaders and adherents travel to carry out their activities). A set of primary (legal instruments) and “soft tool” laws were also applied during the analysis.

Constitutional and Related Legal Framework Review: The legal team used the Cuba Gazette to examine the new constitution (approved April 10, 2019) as well as the previous (1976) constitution and related laws to determine legal framework changes impacting FoRB and complementary rights. The team also utilized its previous but broader rights-based review and two earlier constitutional and legal framework analyses. The team also examined the citizen review process for the new constitution to determine which FoRB-related recommendations were made, which were adopted, and which were rejected.

Law of Association Review: Because the research indicated that a new Law of Associations is unlikely to be drafted any time soon, the analysis focused instead on how current laws and regulations affect independent faith organization registration and how any proposed legislation might alter those processes.⁴

Analysis of Database of Post-Constitutional Legal Norms: The research entailed a post-constitutional legal norms review, using potential FoRB impacts as the analytical criteria, for the period beginning with the approval of the new constitution, April 10, 2019, through September 30, 2021. The study shows that the following 2,483 legal norms have been adopted: 1,730 Resolutions, 300 Agreements of the Council of State, 101 Presidential Decrees, 62 Agreements of the National Assembly, 107 Resolutions of the Council of Ministers, 75 Decree-Laws, 71 Decrees of the Council of Ministers, 18 laws, and 19 other organisms’ norms.

FoRB Indicators Analysis of Constitution and Legal

Framework: The team employed a framework of 36 human rights indicators to assist in its assessment of the ways in which Cuba’s constitution and other elements of the country’s legal framework may meet or undermine its international obligation to respect, protect, promote, and fulfill the right to freedom of thought, conscience, and religion or belief. These indicators are premised on the United Nations (UN) Special Rapporteur’s (UNSR) proposed framework of indicators for evaluating State progress in implementing its FoRB related obligations under hard and soft international law. This includes States’ obligations articulated by Article 18 of the Universal Declaration on Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR), the 1981 UN Declaration of the Elimination of all forms of Intolerance and of Discrimination Based on Religion or Belief, and Human Rights Committee General Comment 22.

Faith Leader E-Survey: The structure of the e-survey was informed by a focus group discussion with Cuban faith leaders and remote interviews of on-island faith leaders. From these interactions, the team distilled a set of 106 questions for independent, multi-faith clergy and lay leaders in the e-survey carried out during January 2022. The questions were in the form of statements that allowed rapid responses of “agree” or “don’t agree.” The team used a secure survey platform to ensure confidentiality. Fifty-six completed e-surveys were received, exceeding a target of 50. The survey gauged the faith leaders’ perspectives on their personal experiences and perspectives on trends and tactics of repression, the constitution, laws, and other topics related to FoRB rights and enjoyment. The surveyed clergy and lay leaders included a mix of Catholics, mainstream Protestant and Evangelical Protestants, Yorubas, and Muslims. Some were senior faith leaders.

Recent Violations Analysis: The research team undertook a review of 2020 violations data, notably as documented and verified by Christian Solidarity Worldwide (CSW), but also by the Observatory for Religious Freedom in Latin America (OLIRE), and Human Rights Watch. The team then examined these organizations’ 2021 reports, which included the post-July 11 crackdown on nationwide protests and detention of members of the faith community.

⁴ “Independent” faith groups, for purposes of this report, are those not registered by or under direct operational control of the government.

RESEARCH FINDINGS

Despite a history of State challenges to religion, most Cubans continue to practice their faith openly or in the shadows. Following the 1959 revolution, Cuba declared itself an atheist state under the constitution and prohibited church services. However, Fidel Castro understood at the time of the revolution that almost all Cubans professed faith and in recent decades saw an increasing number of Cubans identify with a specific religion (today that latter figure is over 70 percent).⁵ In 1992, the GOC relaxed religious restrictions under a new constitution, declaring Cuba a “secular state.” The largest group today continues to be Catholic, believed to be 40–50 percent of Cubans.

Despite GOC repression, Cuba has become more religiously diverse. About 5 percent of Cubans are believed to be mainline Protestants. The fastest growing denominations are Evangelical Protestants, estimated in 2018 to be 10–15 percent of the population, with the majority being Pentecostal. It is believed that about 12 percent of the population practices Santería or other Afro-Caribbean faiths, but there are also about 1,200 Jews, 3,000–4,000 Muslims, and about 6,200 Buddhists. Other small religious groups include Greek Orthodox, Russian Orthodox, and Baha’i. In 1992, the constitution was amended to declare Cuba a secular state in which Cubans were, ostensibly, free to practice their own religion and beliefs. But in practice in Communist Cuba, religion is controlled, regulated, and repressed, and those who worship can find themselves marginalized and disenfranchised from state benefits.

Against this backdrop, the research team investigated the impacts of Cuba’s new constitution and subsequent laws and decrees on FoRB and complementary rights on the majority of Cubans who make up the island’s religious community.

CONSTITUTIONAL FoRB GUARANTEES ARE NOT PROTECTED BY LAWS

FoRB and Complementary Rights: For purposes of this analysis that focuses on FoRB in Cuba, the team considered a set of complementary rights essential to the exercise of FoRB. These include freedom of expression, freedom of assembly, freedom of association, the right to privacy, the right to non-discrimination, and the right to freedom of movement. Further, the analysis is based on the framework of structural indicators developed by the UNSR’s office, as it is broader in some cases than the analysis of these specific given rights. To the greatest extent possible, the focus of the analysis is on how the given right’s shortcomings or violations are affecting rights of FoRB.⁶

The team came to the following conclusions based on the constitutional research and the FoRB international human rights law (IHRL) indicators analysis:

Cuba fails to meet international FoRB standards. The analysis of Cuba’s constitution and laws under 36 indicators based on FoRB rights reflected in IHRL standards found that Cuba fails to meet 34 IHRL standards indicators and partially meets two indicators. It fails to fully comply with any of the IHRL standards indicators. Cuba’s constitution and legal framework, therefore, fall far short of IHRL standards for the protection of FoRB. The research team believes that this IHRL indicator-based analysis brings a verifiable and transparent level of objectivity to FoRB compliance examination. The GOC has skillfully fended off criticism in the UNHRC and other international fora by simply denying allegations of FoRB violations. The indicators provide rules-based criteria for examining specific behaviors, weaknesses in the constitution or laws, and arbitrary treatment and discrimination of faith communities.

One faith leader commented, “Although the constitution (Article 15) provides for FoRB rights and the State says there is a channel for complaints, it is not enforced or fulfilled. Such rights and amenities are a façade for international consumption. It is completely arbitrary. Bureaucratic tactics are used to impede these rights.”

⁵ *July 11 and Faith Community Leadership in Cuba*, Outreach Aid to the Americas (OAA), January 2022.

⁶ The analysis is also supported by a 2018 OAA study carried out by a Cuban legal expert who examined the constitution and legal framework in the context of GOC tactics to repress FoRB.

RESULTS OF FORB IHRL INDICATOR REVIEW

The team assessment found that Cuba failed to meet 33 indicators and partially met two indicators. Cuba failed to fully comply with any IHRL standards.

On the Freedom to Have, Adopt, Change or Hold a Religion or Belief

Assessment: The following indicators were assessed “*Fails to Meet IHRL Standards*”:

1. Legal framework that respects and protects, or limits, the right of persons to have, adopt, change, or hold a religion or belief of their choice
2. Existence or limitation of legal guarantees for the protection of the right to privacy
3. Existence or limitation of legal guarantees for the protection of the right to freedom of expression
4. Existence or limitation of legal protection to guarantee the ability of parents or legal guardians to facilitate the religious and moral education of their children in accordance with their own opinions and convictions
5. Legal norms allowing or limiting the inclusion and diversity of religious education provided in state schools
6. Legal standards allowing or limiting neutral and objective instruction in subjects such as the general history of religions, beliefs, and ethics in public schools
7. Rules allowing for exemptions or non-discriminatory alternatives that accommodate the wishes of parents and legal guardians when public education includes the teaching of a particular religion or belief
8. Existence or limitation of laws to combat discrimination, hostility, or violence in the name of religion or belief, or incitement to such acts

Related Rights for the Manifestation of Religion or Belief

Assessment: The following indicators were assessed as “*Fails to Meet IHRL Standards*”:

9. Legal framework guaranteeing or limiting equal enjoyment of the rights to freedom of expression
10. Legal framework guaranteeing or limiting equal enjoyment of the rights to freedom of peaceful assembly
11. Legal framework for obtaining permits for public meetings
12. Legal framework guaranteeing or limiting equal enjoyment of the rights to freedom of association
13. Legal framework for non-discriminatory access to establish a legal entity to enable a religious or belief group to act collectively, as well as the recognition and legal personality of religious or belief communities
14. Existence and number of registered and/or active non-governmental organizations (NGO) per 100,000 inhabitants included
15. The existence of faith-based organizations (FBO) that inclusively represent existing religious or belief communities, including religious minority communities, which report that they are able to operate without government interference
16. Legal framework guaranteeing or limiting equality and enjoyment of privacy rights
17. Legal framework recognizing that permission from the state is not a precondition for the exercise of freedom of religion or belief, alone or in community with others, in public or in private
18. Legal framework that protects and respects, or limits, the freedom of individuals and communities to perform ritual and ceremonial acts

19. Legal framework that protects and respects, or limits, the freedom of individuals and communities to build and maintain open-access places of worship
 20. Legal framework that protects and respects, or limits, the freedom of individuals and communities to use ritual formulae and objects and to display symbols
 21. Legal framework for obtaining zoning and building permits for places of worship
 22. Legal framework respecting, or limiting, the protection of persons exercising conscientious objection to military service
 23. Legal framework respecting, or limiting, individuals to establish and maintain charitable or humanitarian institutions
- Assessment:** The following indicators were assessed as “*Partially Meets IHRL Standards*”:
24. Legal framework respecting, or limiting, the expression of religion or belief in work and educational settings
 25. Legal framework establishing the right of Afro-Cuban peoples to manifest, practice, develop, and teach their spiritual and religious traditions, customs, and ceremonies

Related Rights for Non-Discrimination

Assessment: The following indicators were assessed “*Fails to Meet IHRL Standards*”:

26. A legal framework that guarantees the equal enjoyment of human rights by all persons within its territory and those subject to its jurisdiction, without discrimination on grounds of sex, race, language, ethnicity, religion or belief, political or other opinion, national or social origin, property, birth or other status
27. Legal framework providing for the use of harsher penalties for criminal conduct when such conduct is motivated by the victim’s identity or perceived affiliation with a specific religion or belief
28. Legislation granting the right to timely, adequate, and effective remedies for victims of discrimination
29. Existence of an independent and impartial judiciary
30. Existence of a national human rights institution that complies with the Paris Principles
31. Existence of a positive legal framework (affirmative action) that ensures the effective participation of members of minority communities in cultural, religious, social, and public life
32. Existence of a legal framework for the criminal prohibition of gender-based violence, including rape, domestic violence, trafficking, child and forced marriages, harmful traditional practices, and forced conversion therapy

Materialization of the Rights of Religion or Belief: The Rule of Law

Assessment: The following indicators were assessed “*Fails to Meet IHRL Standards*”

33. Legal framework prohibiting advocacy of nationalist, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence
34. Legislative guarantees of access to an effective remedy for all persons and communities whose rights or freedoms have been violated
35. Transparent, impartial, and equitable legal framework on mechanisms for enforcing clear and narrowly defined legal limits on the manifestation of freedom of religion or belief
36. Existence of a legal framework, policies, and processes for the participation of FBOs and NGOs in the drafting, discussion, implementation, and review of legislation related to freedom of religion, belief and related rights

FoRB guarantees in the 1976 constitution are diluted in the 2019 constitution. Cuba's new constitution, approved following a referendum in February 2019, does establish some basic FoRB guarantees. It sets out that "the State recognizes, respects, and guarantees religious liberty" and "distinct beliefs and religions enjoy equal consideration." The constitution prohibits discrimination based on religious beliefs, declaring the country is a secular state. The constitution also provides for the separation of religious institutions and the state, and "recognizes, respects, and guarantees people's freedom of thought, conscience, and expression." It qualifies that exception by stating that, "conscientious objection may not be invoked with the intention of evading compliance with the law or impeding another from the exercise of their rights." It also provides for Cuban's "right to profess or not profess their religious beliefs, to change them, and to practice the religion of their choice..." but only "with the required respect for other beliefs and in accordance with the law."

Unfortunately, the 2019 constitution took a step backwards on FoRB rights compared to the prior constitution. The 2019 constitution (Articles 15, 42, and 57) retained much of the language present in the 1976 constitution (Articles 8, 42, 43, and 55). However, the new constitution did remove the ability for religious institutions to be regulated by law by removing the previous language "the law regulates the relations of the State with religious institutions." That law defines the protection of the practices of religion, in line with the presumed rights declared in Articles 15, 42, and 57 of the constitution, opposed to the de-facto arbitrary restrictions that currently are enacted without any impediment. But its elimination effectively takes away the possibility of any future legal reforms including a Law on Beliefs, long anticipated by some in the faith community. (As noted in this report, others feel that such a law would be a chance for the regime to formalize or enact legal tactics of repression.)⁷

The constitution subordinates complementary rights to the law. In its definition of rights, the constitution introduces limitations, including restrictions by existing laws. The complementary rights related to FoRB, supposedly extended under the 2019 constitution, are nevertheless expressly subordinated (Articles 52, 54, 56, and 57) to the legislation in force ("in accordance with the law" or in "compliance with the precepts established in the law"). The Cuban law, in turn, is highly restrictive of the rights related to religious freedom. In other cases, related rights and freedoms are defined in the constitution as valid "except by express order of the competent authority" (Articles 49 and 50) giving the

authority full powers to violate them without expressing any limitation or procedure to prevent it. Education, for example, is defined as a state policy and is compulsory, and the constitution does not contemplate educational freedom and the role of parents and any religious context. As a result of all these factors, there has been no progress whatsoever in these related rights. Significantly, numerous new laws passed after the 2019 constitution was enacted severely restrict the rights related to FoRB. They have been enacted without any constitutional scrutiny despite clear inconsistencies with the constitution.

The constitution is not the highest legal norm in Cuba.

The constitution is not declared to be the supreme law of the land, but rather is rendered equal and, at times, subordinate to legislative whims. Moreover, the constitution does not mention or articulate necessary adaptation of existing legal norms to its requirements, nor does it declare itself as superior to Cuban legal norms. In fact, it places itself at the same level as laws already in force, the same ones that were mentioned in the previous paragraph particularly those limiting allegedly new rights that the constitution seems to contemplate, such as in Article 45: "The exercise of the rights of individuals is limited only by the rights of others, collective security, general welfare, respect for public order, the constitution and the laws."



E-SURVEY: The analysis about the shortcomings in the new constitution is straightforward. It is a fact that the prior constitution's guarantees were diluted in the new constitution. When asked if rights to religious freedom are broader in the current constitution than the previous one only two (4%) respondents out of 56, marked it as valid. All respondents were also asked if the rights to religious freedom are less extensive in the current constitution than the previous one. Only 22 (39%) agreed. The other 32 (57%) do not agree with the two previous groups, so we can conclude they believe the rights to religious freedom are equal in the current constitution compared to those in the last one or that they do not know. The analysis is clear that the new constitution has diluted the FoRB guarantees, and as such, there is an assumed "knowledge gap" within the faith leader community about the new and old constitutions.

Cuba's constitution does not function as the supreme body of law. Rather, constitutional provisions that define the role,

⁷ In 2008, Cuba did sign the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), both of which afford protections to FoRB. Over a decade later, however, Cuba has yet to make any move to ratify either.

powers, and structures of governing institutions and codify protections for human rights, and legislation adopted by the country's National Assembly are rendered subservient to the statutes, policies, regulations, decrees, and even decisions that are issued by non-elected officials. This is especially the case wherever constitutional caveats such as “*in conformity with the law*” or with the “*express order of a competent authority*” establish arbitrary derogations from constitutional protections.

Renowned constitutional expert Dieter Grimm raises doubts about Socialist constitutions such as Cuba's.⁸ “Is it justified to regard [Socialist] constitutions as a type of constitutionalism? If the measure is the achievement of constitutionalism, all essential characteristics of constitutions are missing. Socialist constitutions are the anti-type.” Grimm defines those essential characteristics as: “1) the constitution is a set of legal norms, not a philosophical construct. The norms emanate from a political decision rather than having their source in a pre-established truth; 2) the purpose of these norms is to regulate the establishment and the exercise of public power as opposed to a mere modification of a pre-existing public power. Regulation implies limitation; 3) the regulation is comprehensive in that no pre- or extra-constitutional bearers of public power and no pre- or extra-constitutional means to exercise this power are recognized. 4) constitutional law is higher law, enjoying primacy over all other laws and legal acts.”

Cuba is not governed through its constitution. Many codes and laws, but more clearly the constitution, are a showcase for international consumption to allow the GOC to boast of its socialist system and guarantees of human rights to international organizations like the UN.⁹ It is the GOC strategy to govern at will under a façade of being official. For Cuban civil society, the letter of the constitution approved by the National Assembly in 2019 is not respected. In fact, the team's legal analysis shows that there is a long history of the application of inferior and often opaque laws, in addition to the application of de facto administrative actions not supported by any legislation but ordered by the State Security and the Communist Party. These are carried out in blatant violation of many principles in the previous and current constitution.

The constitution is unenforceable. There is no mechanism (i.e., a Supreme Court) mandated to review or invalidate legislation or executive actions which the court may consider as conflicting with the constitution. Moreover, the constitution does not provide for an appellate process. Although Article 99 of the constitution establishes the

possibility of such constitutional appeal procedures being implemented, legislation that would operationalize this provision has been planned but never put in place. The absence of such judicial review, especially for legislative or executive acts which may violate constitutional or international guarantees for human rights, renders constitutional protections for FoRB and related rights essentially unenforceable.

The government delegates legislative powers to ministries, the Governing Council of the Supreme Court, institutes, central boards, and other state agencies. These institutions do not require approval of the National Assembly to make or enforce law or policy. And very often these acts violate constitutional and international human rights law (IHRL)-standards provisions for human rights, including FoRB rights. The legal decisions that emerge from these entities are sometimes made public, but in other instances, they are allowed to “seep” into public awareness or are managed as state secrets.

Consequently, the rule of law, whereby statutes that are enacted and enforced by the government invariably conform to the constitution, does not exist in Cuba. By contrast, officials wield power capriciously, and the country is governed by the unbridled will of individuals with no regard for any system of rule of law.

Complementary rights are repressed and cannot be defended. The interviewed faith leaders indicated that FoRB complementary rights are tightly limited:

“ORA controls the entry of religious people into the country or denies exit from the country to anyone. On many occasions, it denies the religious entry visa.”

“A prominent Outreach Aid to the Americas (OAA) on-island partner has a list of hundreds of cases of those who are not allowed to travel outside the country, including a large number of the religious. Protestant leaders report they cannot travel with a tourist passport and must obtain an official passport covered under Migration Law 1312, Article 1, which defines that passport as one for official business. Other church leaders (such as CCC and Pastors for Peace) closely associated with the government also travel with that passport controlled by ORA.”

“The list of “*regulados*” (regulated individuals) not allowed to travel does not include Catholic priests because they are not allowed to share this information. But as well, the bishops must comply with the State in controlling their travel—it's a different control mechanism.”

⁸ Dieter Grimm, “Types of Constitutions,” *The Oxford Handbook of Comparative Constitutional Law*, 2012.

⁹ “Behind the Charade: Unmasking the Government Strategy to Regulate and Repress Religious Freedom in Cuba.” OAA, 2018. This OAA research was supported by a Cuban legal expert who examined the 1976 constitution, legal framework, and the tactics employed by the GOC to repress FoRB rights.



E-SURVEY: Fifty-three (95%) agree with the statement that in religious pastoral practice, freedom of expression is partially or totally repressed in Cuba. Forty-seven (84%) agree that freedom of assembly is impeded, 46 (82%) agree that freedom of manifestation (such as processions) is repressed or limited, and an equal number agree that the right to privacy in communications is repressed or limited. Overall, 54 (96%) believe that in daily pastoral practice, basic freedoms are restricted. Thirty-nine (70%) believe their freedom of movement, in-country or abroad, is limited at the discretion of the State, and 41 (73%) believe that it is ORA that regulates foreign travel. Forty-two (75%) believe ORA controls religious visas to those coming to Cuba. Fifty-three (95%) agree that in pastoral practice, freedom of movement is restricted.

The constitution declares itself to be irrevocable (Article 4) and limits any modification to it (Article 229). This presents a barrier to any possible reform and removes the people from sovereignty over a constitution that falls far short of being a Magna Carta for the Cuban people.



E-SURVEY: Forty-five (80%) of the respondents agreed that the law does not provide mechanisms for defense against religious discrimination. Almost all of these agreed that there is a lack of legal mechanisms or legislation to protect against discrimination, hostility, or violence on religious grounds.

The constitution proclaims that “the Communist Party is the highest leading political force of society and the State” (Article 5). However, it does not in any way reference any Communist Party constitution or other information about the party’s nature, leaving sovereignty and control of power in Cuba outside the scope of the constitution, in contradiction with the fundamentals of a constitution. This leaves the effectiveness of the constitution and the guiding nature of the institutions defined therein ineffective and incomplete. A further concerning fact is that the Communist Party’s rules of operation are hidden from the public and that it operates without any transparency whatsoever.

POST-CONSTITUTIONAL LEGAL REFORMS LACK FORB RIGHTS PROTECTIONS, UNDERMINE FREEDOMS

Since the approval of the new constitution on April 10, 2019, and through the period ending September 30, 2021, the study shows that the following 2,483 legal norms have been adopted: 1,730 Resolutions, 300 Agreements of the Council of State, 101 Presidential Decrees, 62 Agreements of the National Assembly, 107 Resolutions of the Council of Ministers, 75 Decree-Laws, 71 Decrees of the Council of Ministers, 18 laws, and 19 other organisms’ norms.

After studying each of the 2,483 legal norms, it was determined that none of them includes the necessary reforms of laws and regulations to enable possible advances in the definition of any fundamental right that the constitution included in the area of freedoms and that the current laws prohibit.

After the promulgation of the new constitution, on the contrary, a multitude of repressive laws have been enacted in contravention to the constitution itself, such as:

- Decree Law 370, which criminalizes the exercise of freedom of expression, information, communication, and independent press on the internet; Decree Law 389 of 2019 of the Council of State, which allows counterintelligence and obscure investigation methods, such as electronic surveillance without authorization or judicial process, typical of the fight against terrorism but without restrictions on use by the population or religious leaders;
- Resolution 80 of 2019 of the Ministry of Communications, which allows the restriction of selective bandwidth according to “national security” interests, which legalizes the denial of internet access to selected dissidents, opponents, and religious leaders;
- Decree Law 373 of 2019 of the Council of State creates a broad legal category “audio-visual and film creator,” which is mandatory for developers of any such content who must be admitted by the “Admission Committee.” This requirement arbitrarily penalizes and persecutes audio-visual creators who are not “admitted”;

- Decree Law 13 of 2020 of the Council of State and Presidential Decree 208 of 2021 of the President of the Republic, which institutionalizes the “System of Control and Information of Cadres,” to increase vigilance and control over the ideological conduct and political loyalty of the large staff of professionals, administrative, and technical personnel at any level within the nation, prioritizing alignment with “the policy outlined by the Communist Party of Cuba and the principles framed in the concept of Revolution”;
- Decree Law 35/2021 “On Telecommunications, Information and Communication Technologies and the Use of the Radioelectric Spectrum,” which reinforces mechanisms to control expression on the internet and social media. It places restrictions on internet service providers, allowing them to monitor and suspend services of users who share “harmful” content. This regulation has been the subject of a legal opinion by the UN.¹⁰ These same tactics are also supported by Decree 42/2021 “General Regulations on Telecommunications and Information and Communication Technologies” and Resolution 105/2021 “Regulations on the National Action Model for the Response to Cybersecurity Incidents,” which radically and across-the-board restrict freedom of expression.¹¹
- In February 2022, the government published a draft for a new penal code which contains a clause stating that “Whoever, abusing the freedom of worship guaranteed by the constitution, puts religious belief in opposition to education, or the responsibility to work, the defense of the Homeland with weapons, the reverence of its symbols or any others established by the constitution will be punished with deprivation of liberty for six months to one year or a 3000 peso fine or both.” Religious leaders have raised their concerns about the clause and the implications of the government punishing the religious community when at odds with State policies.¹²

REFORM OF THE LAW ON ASSOCIATIONS IS NEEDED, BUT FAITH LEADERS DISTRUST THE GOC

Although the reform of the Law on Associations was included in the Legislative Schedule of the Republic of Cuba approved in 2019 and scheduled for July 2022, in a new session of the National Assembly in 2020 the reform was postponed to December 2022. There is currently no draft or plans for any draft whatsoever.

However, the current Law on Associations was studied in detail, as reflected in the indicator analysis. The most relevant conclusion to be drawn from the current Law on Associations is that in Cuba it is impossible, by law, to register any association that is independent of the State. This dependence stems from the obligation to comply with Article 13 of the law, which deals with dependence on the State, and is endorsed by Article 8, which deals with the causes for denial of registration.

As well, the Law on Associations does not legally affect the registration of religious organizations, as indicated in Article 2: “The mass and social organizations referred to in Article 7 of the constitution [*this refers to the 1976 Constitution, which was in force when this law was passed*], ecclesiastical or religious associations, agricultural production cooperatives, credit and service cooperatives, and others authorized by law are not included in the provisions of this law.” Likewise, in its “Transitory” Provision Fifteen, it provides that the Registry of Associations of the Ministry of Justice be charged with “legal matters related to ecclesiastical or religious institutions and those based on the religious creed of their members or directly related to the aforementioned institutions.”

This declared absence of legislation in the religious sphere, and a complete lack of political will, has resulted in not a single independent religious group being registered since 1959. To make matters worse, several important groups, such as the Jehovah’s Witnesses and the Berean Baptist Church, among others, were banned in 1976 and are heavily persecuted. Only a few exceptions were made in the registry and only for churches or congregations close to the Communist Party that have been allowed to register since 1959, such as the Fraternity of Baptist churches (Raul Suarez, pro-regime, in the Council of Churches); the Sovereign Grace Pentecostal Church (close to the regime, in the Council of Churches); the Metropolitan Church (supported by Mariela Castro); and the Russian Orthodox Church, which has no followers in Cuba and whose purpose is purely diplomatic and propagandistic in support of Russia.

Multiple possibilities for arbitrary outlawing of an association also exist in the Law on Associations. Article 79 of the Regulations of Law 54 on Associations defines the grounds for dissolution as follows: “An association may be dissolved for any of the following reasons: a) for having failed to comply with any of the requirements that determined its constitution, b) when its activities become detrimental to the social interest, c) for having violated the laws in force, these

¹⁰ La ONU Comunica al Gobierno Cubano que se Abstenga de Adoptar y Aplicar Leyes Restrictivas de los Derechos a la Libre Expresión, Reunión, Asociación y Acceso a Internet [UN Urges the Cuban Government to Refrain from Adopting and Enforcing Laws Restricting the Rights to Free Expression, Assembly, Association and Internet Access], PD, November 9, 2021.

¹¹ UNHCHR’s Legal Opinion on Decree 35 and related regulations: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26674>

¹² “General Briefing – Cuba,” CSW, March 22, 2022.

regulations or their complementary provisions, d) as a result of an administrative sanction of an institutional nature, e) by reasoned request to the Ministry of Justice, from the organ of relations.”

The Ministry of Justice is therefore fully empowered to outlaw any association. It can do so more easily in the case of religious organizations where there is no legal framework limiting dissolution. An appeal to the Minister of Justice may be lodged against a decision by the Ministry of Justice, and as a next step, a claim may be lodged in the courts after the first step has been exhausted. In any case, every step takes place within the scope controlled by the Ministry of Justice itself. Religious groups wishing to operate therefore have no capacity to register, and registered ones can be arbitrarily outlawed, as in the case of the Berean Baptist Church, deregistered in 1976, as well as the Jehovah’s Witnesses, which is allowed to operate, but whose activities may be subject to criminal prosecution, which, together with their strong apolitical mandate, allows them to survive despite their deregistration. To operate, new initiatives are obligated to enter into alliances with religious organizations registered before 1959 in order to have a legal umbrella of basic legitimacy.

It should also be noted that religious organizations in Cuba do not have their own legal identity, and their operations and relations, obtaining bank accounts, and other functions can only be carried out with the authorization of the Ministry of Justice with the consent of ORA. Since they have no legal identity, they cannot issue powers of attorney. Thus, for example, when a diocese needs to open a bank account, in order to obtain approval, the bishop must sign a customized letter attesting to the identity of the involved priest and a justification. It is then that the authorities consider whether to grant the request.

An outstanding resource on the question of legal personality and registration of faith entities is the Organization for Security Cooperation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR) document *Guidelines on the Legal Personality of Religious or Belief Communities*. As it describes, “In particular, the use of mandatory registration systems, as well as significant practical and legal obstacles to acquiring legal personality continues to negatively affect the rights of a wide range of religious or belief communities. The purpose of these Guidelines is to ensure that those involved in drafting and applying legislation in the area of the freedom of religion or belief, including civil society representatives, have at their disposal a benchmark document containing minimum international standards in the area of recognition of religious or belief communities.”



E-SURVEY: Forty-six (82%) of the respondents believe that it is not feasible to register an independent Cuban religious association. When asked if they knew of any faith organizations that were registered since the 1959 revolution, nine (16%) identified a total of six organizations that had been registered. However, upon review of the list, a knowledgeable faith leader identified three as being reported in error, and the other three were all entities aligned closely with the government. As such, they are not independent. The responses indicate a clear knowledge gap among some faith leaders. If those nine responses are disregarded, all but one faith leader agreed with the fact that it is not feasible to register an independent Cuban religious organization.

VIRTUALLY ALL INDEPENDENT FAITH LEADERS ARE ACTIVELY REPRESSED

The faith leaders provided many details about the strategy, tactics, frequency, and impacts of State repression.



E-SURVEY: Fifty-two (93%) of the faith leaders—clergy and laity—responded that they were victims of State repression. Nine (16%) said they had been forced to migrate due to government repression. Twenty-one (37%) say they suffer repressive acts either monthly or even weekly. Forty-seven (84%) say they are threatened, 39 (70%) say they have received a summons, 30 (54%) have suffered acts of repudiation, 26 (46%) say they have been detained, and 13 (23%) say they have been victims of violence. Fifty-two (93%) say they are aware of cases of faith leaders who suffer FoRB repression. Forty-eight (86%) say they know of faith leaders who have been forced to migrate due to FoRB repression, and a similar number are aware of faith leaders who are surveilled for the same reasons. When considering why all faith leaders did not respond positively to the last two questions, the team concluded that these were likely interpreted as requiring first-hand direct awareness instead of mere awareness, as the questions used the Spanish verb “conocer,” which can have dual meanings of “to know of” or “to experience.”

ORA COORDINATES STATE REPRESSION OF FoRB RIGHTS

The faith leaders were almost unanimous regarding ORA's role in repressing the FoRB rights of faith leaders, adherents, and organizations:

"Its powers are very broad, almost unlimited with regard to religious organizations and any issue related to religious practice. Its power emanates from the Central Committee of the Communist Party, the highest organ of power in Cuba, as indicated in the constitution itself. ORA's instructions, approvals or denials, are never given in writing, but its executive and commanding power over religious freedom is total."

The Government's Methodology of Repression

One of the interviewed faith leaders described the government's methodology of repression:

- First, influential faith leaders and adherents are identified. Then their reputations are destroyed by "opinion agents" who sow rumors about them.
- ORA then restricts their rights, including travel, and restricts activities of any associated church, sometimes forcing the congregations' leaders to recommend the faith leaders to leave their congregation, which in many cases happens.
- ORA then warns other faith organizations not to accept the persecuted individual or suffer consequences.
- In parallel, ORA also enlists its "public opinion agents" and State Security agents to target congregation members through rumors and counter-image campaigns that instill fear in the broader community for having potential contacts with the targeted individuals.
- The agents also threaten family members of the targeted persons.
- If objectional behavior persists, the final step is fabrication of charges and criminal prosecution, leading to imprisonment or forced migration.

"It has full powers and absolute authority to use any state institution or body to control religion and the faith community. Religious works, reforms, processions, Yoruba rites, burials, donations, imports, travel, and visits were all cited as being controlled by ORA."

"ORA and the State use various tools for repression, including the police, courts, inspectors, and even housing and building planning offices. They criminalize the actions of the church, forcing them to live on the margins."

"ORA and its repressive machinery including the Ministry of Justice (with its registry of associations) determine who must be registered and who does not need to be registered. This is used against all religious groups."

"By order of ORA, State Security also carries out investigations, initiates criminal proceedings, and carries out intelligence work. They have attributed crimes of pederasty (sowing the rumor) to drive out parishioners from the congregation. The effectiveness of the pressure is easy to prove, as with Pastor Lorenzo Fajardo Rosales."

"ORA actively sought the excommunication of Mario Félix Leonart, as with others, including two pastors who have already been expelled, Pastor Manuel Rigal and Pastor Manuel Rosales."^{13 14}



E-SURVEY: Fifty-five (98%) of the respondents

believe that ORA arbitrarily controls and limits the exercise of FoRB without regard to constitutional guarantees. The survey contains 33 other questions about ORA and its role in regulating and repressing FoRB rights. Almost all the affirmative responses fell within the range of 26–40 (46–71%). The faith leaders see ORA as the entity that regulates and impedes improvements or extension of church buildings (45 = 80%), construction of those buildings (46 = 82%), access to land for the buildings (42 = 75%), or the use of those buildings (39 = 70%). A total of 48 (86%) believe that ORA plays a role in arbitrarily blocking or preventing church buildings. A smaller number, 40 (71%), agree that the State, through ORA, confiscates church buildings.

ORA's role in regulating religion and FoRB rights is well-documented by international observers. It is not immediately clear why every faith leader does not recognize certain aspects of ORA's repressive behavior, but it is possibly attributable to the heterogeneity of the sample, the lack of reliable information flow in Cuba, and the diversity of the lived experiences, as these depend on ORA's ability to control "integration" or "discomfort" felt by each faith leader. For example, only about half agreed that ORA pressures senior and other faith leaders

¹³ "Persecución religiosa en Cuba agravada tras acuerdo con Obama," [Religious persecution in Cuba exacerbated by agreement with Obama] *Panam Post*, March 9, 2018.

¹⁴ "Piden 10 años de condena para pastor que participó en protestas en Santiago de Cuba," [10 year sentence asked for pastor who participated in protests in Santiago de Cuba] ADN Cuba, October 23, 2021.

who disagree with government policies, and about one third do not recognize that ORA works closely with State Security in repressing FoRB rights. This suggests a knowledge gap, as such, consistent with ORA's rough treatment of the faith community that is, not surprisingly, being felt harder by unregistered and other unfavored churches.

STATE PROXIES SUPPLANT FAITH LEADERSHIP, DISCOURAGE INTERFAITH UNITY

Faith leaders commented about State-created umbrella faith organizations (see also the following sections regarding the Yoruba Cultural Association and Islamic League of Cuba):

"The State and ORA create state organizations that pretend to be religious in order to occupy the representative space of real religious organizations. These State-run organizations present to the Cuban population and international audiences as religious representatives in harmony with the government. These include: the Cuban Council of Churches, the Yoruba Cultural Association, and the Islamic League of Cuba. Another state proxy organization is Pastors for Peace. These are state officials—none of which are pastors—with unlimited exit permits who make distorted international FoRB representations."

"The Executive Secretary of the Council of Churches, Joel Ortega Dopico, before becoming a "pastor" held a position of military rank in State Security."

"The Pastors for Peace project is another development of the Communist Party of Cuba in order for the regime to gain the apparent backing of the church, despite the fact that none of them are real pastors. These Pastors for Peace have unlimited exit permits and travel frequently to make international representations related to religious freedom, giving the world a completely distorted picture of the reality in Cuba."

"Collaboration between faith groups has improved over time. However, multi-church meetings have been broken up by the State. New alliances are good and should be encouraged, as well as multi-faith strategies and networks."



E-SURVEY: Most faith leaders (50 = 89%)

recognize the CCC as an overwhelmingly official organization that also supplants the voice of the true church (46 = 82%). A significant number (38 = 68%) believe that the CCC carries out an intelligence role for State Security, and 31 (55%) believe that CCC leaders are not faith leaders but are Communist Party or State Security members, or work on behalf of State Security (35 = 63%).

REPRESSION IS DIRECTED AT ALL INDEPENDENT FAITHS BUT IS TAILORED TO EACH

FoRB repression is experienced by every faith group, including CCC members that have relatively more operational license. But the impacts are much more profound for independent churches and other faith organizations.

Catholics Are Controlled and Have Suffered for Decades.

Faith leaders commented about the unique status of the Catholic church in Cuba:

"The least repressed faith is the Catholic Church, because of its historical footing, its international presence and defense. This provides a buffer from extreme GOC repression. But the Catholic Church has suffered tremendously in the past, and does suffer now, as a result of official campaigns of fear. Older Catholic leaders who have witnessed over 60 years of religious repression have lost hope, but new church leaders are more libertarian and hopeful."

"Catholic bishops are subjected to blackmail regarding any moral circumstances that conflict with their ministry. One of the objectives of State Security is to find out and film any moral deviance of the bishops to use for control purposes."

"Two particular high-level victims of ORA, for different reasons and using different mechanisms, have been the Papal Nuncio Bruno Musari and Cardinal Ortega."

"With senior church leaders, including in the Vatican, the regime goes to extremes of care but also temptation. The aim is twofold: create moral debt and create opportunities for blackmail."

"The State creates a system of rewards and punishments for bishops: rewards for their actions and punishments due to actions of priests they want to control. As such, bishops place tremendous pressure on priests to comply with State ideology."

"The Dominican Order has been able to slowly expand education at a center, but the government does not recognize those degrees and training."

Protestant Repression Varies According to Status of the Church. The faith leaders provided their perspectives repression of Protestants:

"Protestant repression is more obvious. There are two layers: one when the pastor is with a congregation with legal status and importance. Here the State controls the pastor and their activism through blackmail and threats to the congregation president. The second one is when the State successfully expels the pastor, and when the pastor is subjected to unlimited repression and loses all congregational protection. As with Pastor Rigal and his wife, this often ends up with imprisonment or expatriation."

“Alain Toledano Valiente is an example of a persecuted pastor.¹⁵ In his case, he had to leave the Assemblies of God Council and move to another one that would give him cover. He was informed by the council president that Caridad Diego had threatened them, saying that if Alain stayed on the council, then it would have implications for other pastors.”

“Cuba has not allowed the registration of new ministries since 1959. Not a single independent Cuban religious organization has been registered since then. A possible exception was a Russian Church that was registered, though it was not based in Cuba, the Russian Orthodox Church, which has no tradition or settlement on the island and, in any case, had to agree to respect the system of censorship and repression.”¹⁶

“Due to targeted ORA repression, there is very poor communication between the pre-1959 registered churches (some of which are CCC members) and the independent ministries. This leaves independent ministries isolated and unsupported.”

Jehovah’s Witnesses (JW) are Apolitical Survivors. The faith leaders provided these perspectives on the JW church:

“Jehovah’s Witnesses (JW) in Cuba define themselves as apolitical and are forbidden to intervene in political matters. Despite being banned in the 1970s, ORA has found that JW’s apolitical policy gives the church certain advantages over other religions. However, the church is still not legally registered.”

“The State is turning a blind eye to the JW right now. Their apolitical vision suits them. JW operates throughout the island and has a growing following. But they can’t put any signs on the street because they don’t legally exist. They meet in the fields. The totalitarian state knows that they are because they have infiltrators who are taking notes.”



E-SURVEY: Not surprisingly, the team was unable to interview JW members or obtain their participation in the e-survey.

Yorubas Must Operate under the Thumb of Government.

The interviews provided a wealth of information about the Yoruba faith experience in Cuba:

“The Yoruba religion is highly repressed. It is classified as “consensual,” but it is illegal because it has never been permitted or registered. The Ifa priest, or Babalawo, must practice their faith surreptitiously, meaning they can be blackmailed when the regime pleases.”

“The government has created the Yoruba Cultural Association (YCA), that through the word ‘cultural’, delegitimizes the Yoruba religion by putting it in the category of culture, and not religion. The YCA does not behave as a religious organization to any degree, nor does it engage in religious activities.”

“The YCA is composed of State Security agents. Roberto Padrón Silva, son of the former YCA President, has been appointed as the successor, showing the kind of organization it is.”

“When a Babalawo needs a permission from the government, they must make a request through the YCA, which did not express itself in any way, for example, with the events of July 11.”

“Yorubas are not given permission to have a temple, nor do they have legal personality.”

“Whoever becomes a member of the Yoruba Cultural Association, certain favors are done for them, but at the same time they are controlled in all their activities, and the capacity for freedom of expression is considerably reduced.”

“When a Babalawo joins the YCA, every time they perform a ritual, they can obtain approval but must report the ritual and pay the authorities a percentage of the profits (normally these are tourist “shows”). They must inform the authorities of the name, surname, and contact of the people who are going to participate, whether they are tourists or Cubans. This indicates a high level of State control.”

“Loreto Hernández García and his wife Donaida Pérez Paseiro, of the Association of Free Yorubas of Cuba (a persecuted independent Yoruba organization), are currently in prison for their human and religious rights activism.”

¹⁵ “El régimen insiste en acorralar al pastor opositor Alain Toledano y su iglesia Emanuel,” [The regime insists on corralling opposition Pastor Alain Toledano and his Emmanuel Church] Radio Martí, November 5, 2021.

¹⁶ A knowledgeable faith leader reviewed a list of six faith organizations reported by other faith leaders as having been registered since 1959. He said that three of them were reported in error and the other three were closely tied to the GOC and therefore were not independent.



E-SURVEY: Three Yoruba leaders responded to the survey. All agree that the YCA was created by the government to supplant true Yoruba faith voices and that the YCA works for the Communist Party and/or State Security. Two agree that the YCA works on behalf of State Security. One agrees that the YCA leadership are not truly faith leaders but are Communist Party or State Security members.

Muslims Are One of the Most Oppressed Religions. Faith leaders, including one Muslim imam, provided details about the extent of Islamic repression and persecution:

“Muslims in Cuba are particularly repressed. Muslims are completely delegitimized, and their religious practice is restricted. Repression of Muslims has intensified in the last three years.”

“Repression of the Muslim religion has a special character. The State created a registered institution, the Islamic League of Cuba, but with fake Muslims who are agents of State Security. They appropriated the work of Imam Hassan Abdul Gafur (Ernesto Silveira Cabrera) in the 1990s, when he was highly respected for his struggle for Islam. After years of applying for the registration of the Islamic League and being repressed, the government decided to register it in 2007 through association with the CCC, under its legal personality, with a series of conditions, and a board of directors that would not be controlled by Imam Hassan, but by the regime. Imam Hassan refused to participate. For five years, the Arab world was told that Hassan had created the Islamic League and that he was its vice-president, while Imam Hassan complained to the authorities and asking his name be removed from the organization.”

“In this way, a group of State Security agents took control of Islam in Cuba, seeking legitimacy as described. Thus, the Islamic League operates as an organism of State Security that monopolizes all events and attention on Islam in Cuba, hiding the real repression to which Muslims and their independent organizations are subjected.”

“Although the Islamic League is a state-established organization, its adherents are still severely restricted from practicing Islam. The League blocks real projects of the Islam faith.”

“There is an Independent Islamic Association, but it is illegal and persecuted. Muslims may not receive donations, books and other goods. They cannot receive containers of aid. On one occasion they were told that they could not do so without legal personality. On that occasion they agreed to ask for the container to be released by the Islamic League, but the government would not let the container leave the port.”

“Muslims are not granted legal personality, cannot build mosques and are not given permission to meet. Independent Muslims must pray in private homes or must hide to pray. The State harasses Muslim worshippers that pray in other organizations. Independent religious Muslims are denied employment and are isolated. Muslims are not allowed to bury their dead under their own rite or in their own cemetery. The Cuban Muslim is not allowed to go to Mecca due to travel restrictions for all Cubans and is specifically forbidden to do so in a high number of cases.”

“Muslims are watched. None are respected for wearing a veil or any symbol or attire identifying Islam in schools and universities. In state jobs, women are dismissed for wearing the veil. Children who confront moral principles against Islamic philosophies are bullied and mistreated by teachers.”

“ORA closes faith centers whenever they want. When Obama visited Havana, the Old Havana Mosque was closed by order of ORA. There is only one other mosque in Cuba, in Cruces, Cienfuegos. No others are permitted for communal worship of Islam.”

“The government does not allow scholars from other parts of the world to visit Cuba to prevent strong imams in the Islamic world from knowing the reality of what is happening in Cuba with Islam. For Imams who have entered the country, their itinerary is controlled by State Security.”

“Muslims are prevented from doing projects and events. To reduce their ability to hold events, they threaten lay people who help Muslims.”

“Many Islamic countries do not know what is happening to Islam in Cuba and the repression it suffers. It is very important to be able to transmit the reality of Islam in Cuba to Islamic countries. This could pressure the government from those with a high level of trade with Cuba, especially related to its medical missions. Arab diplomats who meet with independent Muslims and defend their rights are harassed and their diplomatic stay in Cuba is made difficult. Muslim investment projects and aid to religious society are blocked from entering Cuba.”

“Cuba reports only some Muslims, underreporting the real numbers. When a Muslim community starts to grow, they are stopped, separated, and harassed to stifle community growth.”

“Muslims have created an internet magazine called ‘The Voice of Islam.’ For this they persecute the editors, go to their houses, and threaten them with fines and criminal prosecution. Otherwise, ORA forbids them to have a magazine, not even an internal one. The Islamic League of Cuba does not have one either.”



E-SURVEY: The one Muslim leader who responded agreed with all the statements about the Islamic League being created by the State to supplant true Islamic faith voices, that its leadership works on behalf of the Communist Party and/or State Security, and that its leaders are likely members of the Communist Party and/or State Security. In this case the agreement with the interview is due to the fact that the only Muslim who responded to the survey was the one who made the personal interview mentioned before.

THE GOC USES SHIFTING TACTICS AND JUSTIFICATIONS MOTIVES FOR REPRESSION, INCLUDING COVID

The faith leaders experience a range of ever shifting and arbitrary legal and bureaucratic measures aimed at repressing their rights:

“Tactics of repression include: harassment and attacks on faith leaders and parishioners; use of messages as threats; use of “sellos fiscales” (tax stamps) to confiscate property (buildings and the contents) according to State maintained inventories; regular police summons; defamation and accusations of illegal or immoral behavior (often done through social media using fake accounts); denial of rights of employment or education, including for family members; acts of repudiation; acts of dividing leaders and creating enmity between faith groups; restrictions of free movement; and fabrication of alleged crimes to be followed by fines and detention.”

“The state uses electric utilities to arbitrarily impose fines and rate hikes, and even to jail people. One pastor was jailed because he went to the electric company to complain. The use of fines has been a constant instrument of repression. It has been particularly hard on missionary groups that have little funding for operations.”

“The current process of currency unification has adversely affected many churches significantly, including all the entities of the Catholic Church. For example, they have deprived the Catholic Church of the right to withdraw hard cash from its accounts.”

“The COVID pandemic has been used to increase FoRB repression by limiting mobility and the numbers who can congregate and reducing spaces for activities such as processions and sports—measures aimed particularly at faith groups. During the pandemic, the leaders have seen an increase in ORA confrontational tactics.”

“One of the regime’s greatest fears is popularity of church leaders, making up for shortcomings of the State. When Father Alberto Reyes, who at the time was not in opposition to the regime, went on television commenting on the visit of Pope Francis, the public liked it so much that the authorities received thousands of congratulations, asking to see more of him on television. Since then, they have vetoed his presence in any media. The regime soon began a campaign of rumors and discreditation, so that his fame could not grow to any degree on the island.”

“State ‘Public Opinion Agents’ operate by testing sympathy or antipathy for certain things. They stand in food queues and say out loud how expensive chicken is, for example. They see and take note of people’s reactions, and if there is a particularly dissenting voice, they also take a more specific note of that person. They also run rumor campaigns. They publish advertisements for, for example, the sale of sex toys in the name of the priest they are campaigning about, as has been the case with Father Rolando. The Public Opinion Agents have three objectives: opinion polls, creating and moving opinions, and detecting dissidents.”

“Havana has less overt repression, like destruction of churches, due to diplomatic presence.”

FAITH COMMUNITY OPERATIONS AND SOCIAL SERVICES ARE IMPEDED

Churches and other faith groups can only carry out social and humanitarian service operations if they comply with ORA’s self-serving instructions.

“Faith leaders report many problems with donated aid, which is denied or confiscated. The regime manipulates off-shore donations coercively and repressively, in addition to confiscations. Caridad Diego, head of the ORA, is known to say, “You can, if you behave, and also if you give some of the donations to certain entities.” The state keeps 50% or more of donations. This has happened with cars, ambulances, containers, and other donations.”

“Faith groups are not allowed to operate schools, nursing homes, day-care centers for children, or hospitals. All these activities are functions that belong exclusively to the State.”

“Some pastors’ bank accounts are frozen, and unregistered churches do not have the right to have a bank account. The regime freezes bank accounts at its discretion. For example, ORA froze the bank account of a denomination that was building a seminary. Registered churches can have only one bank account per denomination. This way they centralize the structure. All the money goes to just one account and this allows them to show favoritism to some.”

“The food and meat that the Catholic Church buys abroad by parcels is allowed to reach them and be distributed, but not in containers. Medicines cannot be received institutionally, not even through Caritas. But they do receive them through private shipments in tourists’ suitcases, for example. When they hand out the medicines, pharmacies have gone so far as to ask where they came from and have on occasion been ordered not to give prescriptions to those who have received the medicines.”

“There is a big problem with food. They cannot buy in bulk, but in retail shops, waiting in queues at and individual final sale price. This happens because the government does not support soup kitchens and does not provide any facilities for soup kitchens. The Church is forced to buy on the black market, which puts both the Church and the sellers at legal risk.”

“During COVID, for example, they closed all the church canteens under the pretext of the pandemic, but they did not close the government canteens. The pandemic and increased targeting of the faith community with high utilities rates and fines has been particularly hard on missionary operations, considering they have less funding to work with.”

“The prices of electricity supplies, for example, are paid by the church at high industry prices. The same happens with gas, telephone, and water rates.”

“The vehicles that the church uses or buys must have official state number plates, like those of state bodies. They are forced into state procedures when they do not give legal recognition to parishes, whose priests drive around in cars with official number plates.”



E-SURVEY: The faith leaders recognize impediments that the government places in front of faith organization operations. Forty-one (73%) of the respondents said that local parishes or churches are not granted legal personality, and even if granted legal personality, they are charged for electric and other utility services at company rates (36 = 64%) or are simply denied basic services (31 = 55%). Similarly, 43 (77%) of the respondents agreed that the State puts obstacles and excessive utility prices on churches, while 40 (71%) respondents agreed that senior faith leaders and clerics must carry an official badge.

On faith community provision of humanitarian services, 39–46 (70–82%) of the respondents agreed the State impedes that role, including by blocking access to wholesale markets to buy foods for soup kitchens (46 = 82%), ignoring administrative requests for social operations (39 = 70%), failing to officially recognize soup kitchens (43 = 77%), and placing limitations on containers of goods for social actions (44 = 79%). The faith leaders also report instances when the State demands a portion of imported goods for social activities (25 = 45%) or demands to receive the goods (38 = 68%). The research team believes that most, but not all, faith leaders are engaged in social programs and may not have visibility on some of these issues.

Interestingly, there is more unanimity on the role of ORA in preventing the social actions of the churches (52 = 93%). Among the faith leaders responding to the e-survey, 37–46 (66–82%) see ORA as the State entity that regulates receipt of donations and access to donations of medicines and prevents pastoral care to prisoners. Fifty (89%) respondents believe that ORA prevents the presence of churches in the media.

STATE EDUCATION IS BASED ON ATHEIST IDEOLOGY

The faith leaders were outspoken about the domination of the Communist, atheist-oriented State in education:



E-SURVEY: All 56 respondents said they believe education is based on an atheist ideology. Fifty-five (98%) recognize that education is still steeped in the teachings of Marx and Lenin and does not include studies of religion or religious history. Fifty-two (93%) agreed that all students are required to say each day, “Pioneers for Communism, forever with Che.” Thirty-three (59%) respondents agreed that students with religious beliefs are not allowed to dress according to their traditions (such as wearing veils or a Jewish kippah). Forty-five (80%) respondents agreed that ORA does not allow the creation of recognized schools.

THE DYNAMICS OF STATE FoRB REPRESSION IN 2021

The year 2021 will be remembered not only for Cuban citizens' cries for freedom, reform, and respect for human rights, but also for the government's harsh crackdown on nationwide protests. Following the San Isidro Movement and artists "*Patria y Vida*" civil society protests in late 2020, on July 11 (J11), spontaneous yet peaceful protests took place in over 35 cities across the nation. Tens of thousands of frustrated Cubans carried placards calling for freedom and reform, and some even waved American flags. The government, caught off-guard, soon called for its pro-government supporters to "defend the revolution"—code words for police, military, and shadowy paramilitary forces to aggressively attack and detain the protestors. Hundreds were detained, including faith leaders and multi-faith adherents that the GOC fears as the most viable and independent members of a barely functioning civil society. Emboldened, networks of citizens planned a follow-up day of protests for November 15 (N15). However, in the period leading up to that day, CSW received over 30 reports of religious leaders and FoRB defenders across Cuba who were targeted by the government.¹⁷ The authoritarian actions effectively undermined the November 15 turnout, though many brave religious leaders and their followers did protest on the streets that day. The research found that, in March 2022, 869 persons remained imprisoned as a result of J11 or N15 anti-government protests.¹⁸

Not surprisingly, CSW documented 272 cases in 2021 involving 498 violations of FoRB, up from 203 cases in 2020 and 260 in 2019. Of the 142 cases where a law was cited, the most common (134 cases) was the Criminal Procedure Law. The most frequently reported FoRB violation was prevention from attending religious services, reported in 115 cases, affecting the Ladies in White in particular. There were 107 violations involving harassment, 101 threats, and 79 violations involving arbitrary detention, all linked to FoRB. For the first time since it began its World Watch List ranking system of countries with the greatest FoRB repression, Open Doors International in 2021 added Cuba to its top

50 offenders, in 37th place.¹⁹ This reflects the sharp attack on FoRB rights during the year.

Human Rights Watch published a letter to the UNHRC signed by several human rights advocacy organizations, including Prisoner Defenders (PD).²⁰ It noted that "many of the people detained during the July 11 demonstrations were held incommunicado for days or even weeks, subjected to unwarranted violence during arrests, and, in some cases, ill-treated during detention. Some were forced to squat naked, deprived of sleep, brutally beaten, and held in cells without natural light where they say they lost track of time. Others were threatened with reprisals against them or their families for protesting." The letter added that "in the weeks after the demonstration, dozens of protesters were sentenced through the 'summary' criminal procedures established under Cuban law for offenses carrying a sentence of up to one-year in prison. Protesters were tried jointly, often without legal representation, in largely closed hearings, in which prosecutors frequently accused them of committing vaguely defined crimes, such as "public disorder," based solely on witness statements by police officers.... Since November, Cuban authorities have conducted so-called "ordinary" trials against protesters, sentencing dozens to up to 30 years in prison. Many have been prosecuted for 'sedition' and convicted and sentenced to harsh prison terms for allegedly participating in incidents, such as throwing rocks during the protests."

While the pattern of FoRB repression in 2021 is concerning, there have been positive signs of increased faith community proactive engagement—supported by OAA and CSW—that began in 2018 with the constitutional consultative process. Up until that time, independent faith leaders operated very much "below the radar." That new willingness to engage increased again in 2021, with religious leaders speaking out publicly about human rights violations. The Catholic Bishops Conference and largest Protestant denominations published multiple statements condemning government aggressive repression and calling for peaceful, open expression, including through street marches, and the release

¹⁷ The CSW references in this section are all derived from its 2021 Cuba report entitled *Homeland, Faith, Life: a call for freedom in Cuba*, published March 21, 2022.

¹⁸ "1.167 Prisioneros Políticos en Cuba en 12 meses," [1.167 Political Prisoners in Cuba in 12 Months] PD, March 7, 2022.

¹⁹ "World Watch List 2022," Open Doors International. In its unique ranking system, Open Doors considers both State and non-State influences on religious freedom. As such, some countries with human rights-protective constitutions and legal structures do not perform well due to the actions of non-State actors against elements of the faith community.

²⁰ "Joint Letter to the UN High Commissioner for Human Rights on the Human Rights Situation in Cuba," Human Rights Watch, March 7, 2022.

of those detained for participating in protests. This level of outspokenness, under conditions of enhanced government hostility and violent repression, is certainly a positive development and indicator of transition and reform in Cuba.

CSW categorizes breaks out the 2021 patterns of government FoRB repression tactics as follows:

Harassment of religious leaders: The most common tactic was harassment, typically of faith leaders. This included anonymous phone calls, warnings from police and State Security, death threats, repeated summons to appear at police or State Security units, or fines. (In its report, CSW provides significant analysis of the ongoing harassment and detentions of Pastor Alain Toledano Valiente, one of the most persecuted faith leaders in today's Cuba.)

Economic pressure: Faith organizations were targets of high utility rates and tariffs. While most non-state entities receive some sort of subsidy to offset the higher costs, religious associations were the only group not to receive that benefit. Faith leaders say the exorbitant increases are “asphyxiating” their operations, including humanitarian services, likely by design of the government.

General discrimination: Faith leaders, adherents, and family members were discriminated against in access to education and employment. They were passed over for promotion, excluded from meetings and activities, and demoted or transferred to undesirable locations.

Antisemitism: Cuba's small Jewish community of about 1,200 members is tightly controlled by the government. In 2021, CSW received reports of an attack on a Jew by a Communist Party member who shouted that “Jews are worth nothing in Cuban society” and that they must be eradicated. Another Jew was attacked by a Communist activist at their place of employment.

Pandemic-related discrimination: As mentioned elsewhere in this report, the COVID pandemic was a pretext for FoRB repression. Prevention measures were used to place unreasonable and arbitrary limits on freedom of assembly, notably targeting religious leaders or groups that had difficult relationships with the State. Police interrupted religious services to arbitrarily detain church leaders for breaching mask mandates. The government denied religious leaders access to visit individuals in their community and administer last rites or provide spiritual support.

Confiscation of goods and property: Chronic shortages of all kinds of goods, exacerbated by byzantine regulations, forces almost all Cubans to depend on the black market. Individuals were thus vulnerable to government charges of illegal activity, a tactic used to pressure or punish those viewed as unsupportive of the government.

Travel restrictions: Due to pandemic travel restrictions, only two new cases were documented of religious leaders and FoRB activists being prevented from traveling abroad in 2021, in contrast to five in 2020. However, in 2020, the GOC extended the status of all Cubans to be “*regulados*” (regulated individuals) due to COVID precautions. Thus, the movements of all Cuban citizens were significantly restricted, including any FoRB or human rights activists, by default.

Use of informants: The GOC reportedly used informants to infiltrate and report on religious organizations. Undercover agents were encouraged to disrupt and cause division within religious groups.

Targeting of civil society activists: The State targeted individuals who are publicly critical of the government and its policies through summonses signed by local law enforcement authorities. However, the order typically originates from the State Security Counterintelligence team. Interrogations are commonly conducted with a State Security agent present.

CONCLUSION

Cuba's new constitution, approved in April 2019, fails to meet FoRB standards based on international law despite including some other human rights guarantees. As opposed to the 1976 constitution, the new constitution dilutes FoRB guarantees which existed in the old constitution. Additionally, the constitution is not the highest legal norm in Cuba. Rather, it is rendered equal and, at times, subordinate to legislative whims. There is a long history of the application of inferior and often opaque laws, in addition to the application of de facto administrative actions not supported by any legislation but ordered by the State Security and the Communist Party. These are carried out in blatant violation of many principles in the previous and current constitution. As a result, religious institutions and individuals are repressed, fostering deep distrust of the government by faith leaders and laypeople.

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Kirk Dahlgren has 40 years of international development experience. He retired as a USAID Senior Foreign Service Officer in 2014 after assignments in Latin America, the Caribbean, Africa, the South Pacific, and as a Senior Development Advisor at U.S. Southern Command. Since 2015 he has worked as an independent consultant in international cooperation assistance, South-South cooperation, organizational management, strategic development, performance management, civil-military coordination, humanitarian response, mentoring of new professionals, and in key technical sectors supportive of international development.

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Javier Larrondo is the founder and president of Prisoners Defenders, with more than 12 years of human rights activism. Larrondo is a Cuban-Spanish entrepreneur, investor and philanthropist; he was the CEO of Digital Assets Deployment, a venture capital fund specialized in digital businesses, until 2015. At the age of 22, as a composer and promoter, he created the project “Cuba Canta Libertad,” whose song “El Buen Cubano” he sang with Celia Cruz. In 2010 and 2011 he collaborated closely with Oswaldo Payá, and helped found UNPACU with José Daniel Ferrer. He studied Forestry Engineering and Telecommunications Engineering, both at the Polytechnic University of Madrid, speaks English and French, and has a degree in Administrative and Financial Management of International Trade.

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