

September 14th, 2021

Mr. Josep Borrell
High Representative of the European Union
for Foreign Affairs and Security Policy

Mr. Eamon Gilmore
European Union Special Representative
for Human Rights

CC: Mrs. María Arena
Chair of the Sub-Committee on Human Rights
European Parliament

Dear Mr. Borrell & Mr. Gilmore:

The signatory organizations of this petition belong to the “Coalition for Freedom of Association”, whose goal is to achieve democratic solidarity amongst colleagues of civil society, by advocating in a coordinated fashion the recognition of the right of freedom of association in countries where this right faces severe restrictions, thus uniting the voices of its members to amplify the scope of the request.

On this occasion, we respectfully write to you concerning the Political Dialogue and Cooperation Agreement between the European Union and Cuba (hereinafter referred to as the “Agreement”). We express our deep concern about the exclusion of independent civil society in Cuba from activities and actions contemplated in this Agreement, and we kindly request the European Union (hereinafter the “EU”) to demand and foster the official participation of the Cuban independent civil society in the activities pertaining to the different topics covered by the Agreement. This request, as we will explain later on, is consistent with the EU’s own guidelines and policies regarding relations with civil society around the world.

On a note addressed to you on April 12th, 2021 (Annex I), some of the signatory organizations expressed a concern and complaint about the fact that on a Seminar on Civil Society, held on March 19th, 2021, within the framework of the Agreement, no invitations were sent to independent civil society organizations (hereinafter “CSOs”) from Cuba. Only organizations approved by the Cuban government attended the Seminar. We expect that this exclusion will not take place in the future and that the EU will proactively facilitate their participation.

Bearing in mind the long-standing authoritarian situation in the country, and in light of the social protests that took place last July 11th –which were met by a series of repressive and persecutory measures by the Cuban regime, such as arbitrary detentions and enforced disappearances for a short period of time – against citizens and members of independent CSOs, we believe that including these organizations in the activities and dialogues organized within the framework of the Agreement becomes essential. We are of the opinion that the EU should foster and demand a plural participatory framework reflecting the wide spectrum of independent CSOs, especially on topics related to freedom of association, meeting and peaceful protests, freedom of expression, press freedom, and cultural rights such as artistic freedom, the right to participate in political life, and the respect for civil and political rights in general.

I) The Narrow and Repressive Legal and Political “ENVIRONMENT” in Cuba

In its COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, entitled: “*The roots of democracy and sustainable development: Europe’s engagement with Civil Society in external relations*” (hereinafter the “Communication”) of September 12th, 2012, the European Commission addresses the principles and policies that the EU should respect and apply in its foreign policy concerning its relations and support of CSOs.

This communication, which is of paramount importance, and which we value because of the commitment it expresses with the CSOs of the world, affirms in its point 3 (“PROMOTING AN ENABLING ENVIRONMENT”) that: “*The ability of CSOs to participate in different domains of public life depends on a set of preconditions commonly referred to as the «CSO enabling environment», for which different actors carry responsibility.*”

On title III of this note, we refer once again, and in depth, to this Communication. Nonetheless, in its sub-sections I.a and I.b, which we will cite later, three documents show that the political and legal “environment” for CSOs in Cuba is both narrow and repressive.

I.a) CUBALEX AND ROBERT F. KENNEDY HUMAN RIGHTS' REPORT PRESENTED AS PART OF THE UNIVERSAL PERIODIC REVIEW (UPR)

Concerning the environment in which independent CSOs work, we would like to call your attention to the “Report on Freedom of Association in Cuba” (Annex II) of Cubalex y the Robert F. Kennedy Human Rights Foundation, dated May 3rd, 2017, and presented to the UN Human Rights Council as part of the Third Cycle of the Universal Periodic Review on Cuba.

The report highlights the following:

“The Cuban legislative framework for associations’ application does not abide by the international standards and best practices vis-à-vis the right to freedom of association... It explicitly forbids registration of certain groups of civil society, such as religious and political groups and trade unions. In addition, the registration process requires previous authorization by the government. Authorities’ approval is a condition for granting legal status to an organization. The application is cumbersome and slow. According to national legislation, in order to legalize an organization, the founders should require the Registry of Associations of the Ministry of Justice a certificate proving that no other Association in the country bears the same name or shares the same goals. The coincidence in name and objectives may lead to the denial to form an association and be granted legal identity.”

“Even though organizations are required to be operational before applying for registration, domestic legislation does not protect non-registered organizations. The Law requires that an association have headquarters, resources and a draft statute, which implies that its founding members should meet and look for material and financial resources in the name of the organization that they are trying to legalize. Nonetheless, operating without having a legal registry is considered a crime of illicit association against public order, which prohibits non-registered organizations from operating. Punishment for this crime can go from deprivation of freedom for one to up to three months, or a fine up to CUP 5000 for its members or persons affiliated. In the same line, its advocates or directors should have to serve from three to up to twelve months of imprisonment, or a fine going between CUP 100 to CUP 15.000.”

“In practice, only organizations functional to the government obtain legal entity. The government controls which organizations should act in the public sphere, preventing thus independent and autonomous CSOs from looming.”

I.b) The Indexes concerning Civic Space from CIVICUS and the Right of Association and Organization from FREEDOM HOUSE.

Moreover, and in order to describe the prevailing “environment” in Cuba, we believe it is relevant to highlight the ratings given to this country by prestigious indexes that global organizations compile in order to oversee and qualify countries on these matters.

-The “CIVICUS MONITOR”

CIVICUS has a “MONITOR” that rates the Civic Space in different countries. Its ratings range from “Open,” “Narrowed,” “Obstructed,” “Repressed,” to “Closed.” Cuba has been given the lowest rating.¹

CIVICUS describes countries with a CLOSED rating in the following manner: *“There is complete closure - in law and in practice - of civic space. An atmosphere of fear and violence prevails, where state and powerful non-state actors are routinely allowed to imprison, seriously injure and kill people with impunity for attempting to exercise their rights to associate, peacefully assemble and express themselves. Any criticism of the ruling authorities is severely punished and there is virtually no media freedom. The internet is heavily censored, many websites are blocked and online criticism of power holders is subject to severe penalties.”*²

It is worth highlighting that Cuba is the only country in Latin America, and one of the 23 countries in the whole world to have its Civic Space qualified as Closed.

- “Freedom in the World” Report from Freedom House:

Since 1973, the Freedom House organization publishes a global annual report on political rights and civil liberties. This report is a comparative assessment of civil liberties and global political rights standards. The report serves as a reference for decision makers, the media, international corporations, civic activists and human rights advocates.

The global rating granted to Cuba in its last report, published in March 2021 is 13/100 (“Not Free”). This signals a drop of 1 point in comparison to the report of 2020. With 13 points of rating, Cuba ranked 187 in the global ranking composed of 195 countries and 15 territories which are objects of study for Freedom House’s report. It is the most poorly rated country in the western hemisphere. Regarding “Civil Liberties,” its rating is 12/60, this signals a drop of 1 point in comparison to the report of 2020; concerning Rights of Association and Organization, Cuba received 0/12, and specifically within this item, the subitem: “freedom for NGOs, especially for those working on human rights and governance,” the rating was also 0/12.

¹ <https://monitor.civicus.org/country/cuba/>

² <https://monitor.civicus.org/Ratings/#repressed>

In other words, when it comes to freedom of Association, Cuba's rating could not be worse. When this subitem is mentioned in the report, it explains the following:

“Citing the 1985 Law on Associations, the government refuses to register any new organization that is not state supervised. Nearly all politically motivated short-term detentions in recent years have targeted members of independent associations, think tanks, human rights groups, political parties, or trade unions. A number of independent civil society organizations suffered repression during 2020, with some activists detained on arbitrary charges, imprisoned, prevented from traveling abroad, or forced into exile. In addition to the MSI, the dissident groups most commonly persecuted by the government include the Ladies in White, the Patriotic Union of Cuba (UNPACU), the Christian Liberation Movement (MCL), the United Anti-Totalitarian Forum (FAU), and the Cuban Association of Electoral Observers (ACOE).”³

Considering the aforementioned and citing only a few sources (there are many more which reaffirm the same), we can assert that only the organizations totally aligned to the regime of the Communist Party are the ones which enjoy legal status and Cuba, whereas independent organizations cannot obtain regular legal status and have to remain illegal, victims of persecution, imprisonment and censorship. Cuba is one of the countries whose “environment” (using the terms of the Communication we have already cited and to which we will refer again later) for the development of CSOs is the most closed and repressive.

II) THE OPINION OF CUBAN CIVIL SOCIETY ON THE AGREEMENT ACCORDING TO TWO REPORTS FROM CIVIL RIGHTS DEFENDERS

To assess the expectations and development of the Agreement, and due to the fact that Cuban civil society was excluded from the negotiation and implementation process, the Civil Rights Defenders Organization launched two surveys in which members of the independent civil society of Cuba participated.

II.1) In July 2019, Civil Rights Defenders invited the Cuban human rights defenders and CSOs to contribute with texts on how the EU should work concerning Cuba. These texts contain a series of constructive suggestions such as how the EU could promote the democratization and respect for human rights in Cuba; and what role could civil society have in the dialogue covered by the Agreement. These texts are available in the report attached (Annex III).⁴

³ <https://freedomhouse.org/country/cuba/freedom-world/2021>

⁴ <https://crd.org/2020/01/26/letters-from-cuba-for-the-inclusion-of-independent-civil-society-in-the-pdca/>

II.2) In September 2020, Civil Rights Defenders asked 110 Cuban human rights advocates, 70 of whom still live in Cuba and 40 living abroad, on how the Agreement has affected the situation of human rights in the country. All 70 human rights advocates from Cuba claimed that the situation of human rights had deteriorated since the signature of the Agreement in 2016. They also suggested that the Cuban government had no intention of abiding by the human rights standards contained in the Agreement. Furthermore, 68 of the 70 respondents from Cuba would like to start a dialogue with the delegation of the EU in Havana; 108 out of the 110 people surveyed pointed out that the Cuban government was not observing the key article of the Agreement concerning human rights. All the people surveyed found that Cuba was not abiding by the Agreement, and that the EU should take action on the matter.

We transcribe below some testimonies included in the report:

“If the EU intends to remain credible as a counterpart in international agreements, it needs to make sure that Cuba lives up to its commitments. And if Cuba continues to breach core parts of the Agreement, there are mechanisms to suspend it,” said Erik Jennische, Director of the Latin American Department at Civil Rights Defenders.

“The human rights situation in the island has worsened, with an increasing number of arbitrary detentions carried out by the regime to prevent peaceful demonstrations or the exercise of journalism,” said Vladimir Turró Páez, one of the respondents.

“The government continues to adopt laws and practices that restrict fundamental rights; there are no mechanisms for the protection and defense of these rights,” said Laritza Diversent, another respondent.

The aforementioned report is attached (Annex IV).⁵

III) **Contradiction in the behavior of the European Union vis-à-vis its “COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS. The roots of democracy and sustainable development: Europe’s engagement with Civil Society in external relations” from September 12th, 2012**

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<https://crd.org/2020/11/13/new-report-cuban-human-rights-defenders-call-on-the-eu-to-act-to-stop-the-deteriorating-human-rights-situation/>

We regret to acknowledge that the decision of the EU to exclude independent civil society organizations from the dialogue and activities pertaining to the Agreement, radically contradicts the letter and spirit of the aforementioned communication on the engagement of the EU with civil society in its external relations.

That wise and highly engaging document expresses, amongst other relevant concepts, that: *“The ability of CSOs to participate in different domains of public life depends on a set of preconditions commonly referred to as the «CSO enabling environment», for which different actors carry responsibility.”* Also, *“To operate, CSOs need a functioning democratic legal and judicial system – giving them the de jure and de facto right to associate and secure funding, coupled with freedom of expression, access to information and participation in public life.”*

In addition, and this is something that specifically applies to Cuba, the communication affirms that: *“The primary responsibility to ensure these basic conditions lies with the state. Yet many countries lack favourable legal and regulatory frameworks to guarantee CSOs the right to operate independently and free from unwarranted interference. In some countries governments fail to recognise the role of CSOs. As a result, CSOs often face restrictions regarding the legal and policy frameworks within which they work, attempts to discredit or criminalise them, constraints on access to funds, intimidation and even physical harassment, detention and violent attacks.”*

Furthermore, the document highlights: *“In this context, the international community, the EU included, has a duty to advocate for a space to operate for both CSOs and individuals. The EU should lead by example, creating peer pressure through diplomacy and political dialogue with governments and by publicly raising human rights concerns.”*

Finally concerning the EU's engagement and position, the aforementioned communication affirms that: *“The EU will continue to take action and measures in countries where the government fails to recognise civil society with consequences of human rights violations. When countries loosen their commitment to human rights and fundamental values, the EU can suspend cooperation with national authorities and strengthen its support to local populations through CSOs.”*

It is precisely these principles and guidelines in support of civil society which are neither respected nor applied in the implementation of the Agreement. It is highly contradictory that the work done within the framework of an Agreement that contemplates freedom of association and respect for human rights, ignores those very same principles. The fact that it is known how Cuba

applies extreme restrictions and persecutes civil society and its members, be it from a legal and also from a factual perspective, makes the situation even worse.

We have already stated that independent CSOs in Cuba are denied registry and legal identity, they are also criminalized. These organizations which are engaged in different activities and topics – ranging from the defense of human rights, artistic rights, cultural rights, political rights, legal work, racial equality and gender equality advocacy, amongst others – are the NGOs which most need and deserve participation in and recognition from the international community.

The exclusion of independent CSOs from the Agreement's implementation has also been addressed by the European Parliament's Resolution from June 10th, 2021, pertaining to human rights and the political situation in Cuba.

Amidst other very serious cases of human rights violations mentioned in the Resolution, point nine reminds the European External Action Service (EEAS) *“that the participation of civil society in the political dialogue and the Agreement's cooperation projects is an essential part of the PDCA and that excluding civil society from cooperation funds and/or participation in the agreement while, on the contrary, allowing participation and access to cooperation funds exclusively for companies in which the state participates or which it controls, as has been the case since the signing of the agreement, should be remedied immediately.”*⁶

⁶ https://www.europarl.europa.eu/doceo/document/TA-9-2021-0292_EN.html

For all the foregoing reasons, we are sadly surprised that, while it upholds these principles and engagement in favor of the freedom of association present in the Communication and other regulations, the EU excludes independent civil society from its activities, and in doing so, it validates the condition of illegality that the Cuban regime imposes on these organizations.

IV. Participation of the Independent Civil Society as foreseen in the Agreement

We believe that the letter and spirit of the Agreement clearly foresees the participation of independent Cuban CSOs in the activities and exchanges of the topics of their work.

The Agreement, both in its recital as in the operational parts, makes reference to the reaffirmation and the need to strengthen the respect for Human Rights, individual freedoms, international legal instruments and respect of the principles recognized by democracy, good governance and the Rule of Law as constitutive to an “*essential element of this Agreement,*” (article 1.5). Furthermore, articles 22 and 24 include these topics in detail as elements for cooperation.

“The need to promote the objectives of this Agreement through dialogue and cooperation involving all relevant stakeholders, including, where appropriate, regional and local government, civil society and the private sector,” is specifically mentioned in the recitals.

Furthermore, Article 19 establishes the actors of cooperation, and it was agreed on point e) that the Agreement should include organizations of: “*civil society, including scientific, technical, cultural, artistic, sports, friendship and solidarity associations, social organisations, trade unions and cooperatives.*” Civil society participation is also mentioned on Article 36 in relation to academia, research, the media and, on article 42, vis-à-vis cultural heritage and other cultural matters.

It is therefore clear – not only by virtue of the above-mentioned principles that the EU is bound to respect, but also to the very provisions of the Agreement – that Cuban independent civil society participation must be ensured. It is highly contradictory that an Agreement whose letter and spirit affirms the respect for human rights, democracy and rule of law, and in which participation of the civil society – which by definition should be totally independent from the State – is specifically mentioned, intend to exclude a diversity of opinions that the government criminalizes due to the inherent nature of its political regime.

V. Final comments

We need to highlight the fact that the EU frequently invites CSOs to dialogue on diverse topics, mainly the respect for human rights. In fact, some of the signatory organizations participate in these dialogues in our respective countries.

It is also publicly known that Cuban embassies in the world have open and public relations with organizations, political parties, and individuals, and such is also the case of EU member countries. That is why, we fail to understand why the EU does not exercise its legitimate right to act likewise with Cuban civil society, even more so if this is foreseen by the Agreement.

We submit that the mere visibility and publicity of their participation would contribute to their legitimacy, something that the Cuban regime will not grant. On the contrary, it persecutes and represses them.

The EU should act effectively and concretely by recognizing the importance of listening to the demands of Cuban independent civil society. This would enable the EU to exert a real international democratic solidarity and to have better knowledge of what the situation in Cuba really is; thus, fulfilling the goals of the Agreement. **Excluding Cuban independent civil society would make the EU an accomplice in this farce. The Cuban dictatorship would use the EU for its own legitimization, something the latter should not provide.**

VI. Request

In view of the foregoing, we concretely request:

- 1) In the framework of the Agreement, to formally include independent civil society in a wider and more inclusive manner, granting it access to programs funded within the framework of international cooperation and focusing on de facto associations, since Cuba has neither the political nor the legal framework for their free registration. These are the organizations the Cuban government tries to systematically silence so, needless to say, it will not facilitate its participation in the dialogues and activities. That is the very reason why the EU should require their inclusion as a *sine qua non* condition for the comprehensive respect of the agreed terms.
- 2) Since the government is drafting a law of associations, the EU, within the framework of the Agreement, should recommend that this law respects international human rights standards.
- 3) Regularly invite Cuban independent journalists to press conferences in order to inform on the progress of the Agreement implementation.

- 4) To keep a registry of independent CSOs in Cuba formally acknowledged by the EU, regardless of their legal status in Cuba.
- 5) That the EU officially receives the reports on human rights violations published by Cuban independent organizations.

In case the Cuban government refuses to accept the participation of independent CSOs, we request the EU to make prevail its principles by organizing official meetings with the said organizations in the same way many EU countries already do, or otherwise, activate the necessary mechanisms to revoke the Agreement.

We remain available for any clarification you may need, or to facilitate the participation of our Cuban colleagues in a wider, more plural and inclusive manner.

We salute you with our highest consideration.

Coalition for Freedom of Association

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