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CUBA

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Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Cuba must respect the right to freedom of religion and belief within its borders and jurisdiction, and alter its policies and practices which currently restrict these freedoms. It also explains the problems latent in Cuba’s attitude toward the sanctity of life and marriage and the family.

(a) Religious Freedom

3. The prevailing religion of Cuba is Roman Catholicism, although a large portion of the population identifies as atheist or non-religious, largely due to the country’s communist polity and the general hostility to religion shown by far-left regimes. Nevertheless, restrictions on religious freedom have not been as oppressive as many other communist nations in the twentieth century, leading to the relatively high proportion of believers in the country (although church attendance rates are reportedly very low).
4. Small portions of the population belong to Protestant churches, the Russian and Greek Orthodox churches, and other religions, such as Islam, Judaism, Buddhism, and traditional African beliefs. Syncretism with Afro-American pagan beliefs is also commonly found within the mainstream religious affiliations.
5. For most of the time that the communist regime has been in power, religion has been tolerated, but believers were effectively shut out of having any influential role within politics and government until the fall of the Soviet Union. The Marxist-Leninist polity was removed from the constitution in 1992 and a provision was added forbidding discrimination based on religion.¹
6. Raúl Castro in 2015 referred to the opening up of Communist Party (the only legal political organisation in the country) membership to religious believers as a positive step, saying ahead of Pope Francis’ visit to the country that he was personally considering returning to Catholicism.²
7. The Russian Orthodox Church was also able to establish its first temple in the country in 2008, with the consecration of the Cathedral of the Theotokos of Kazan

¹ Oliva, Enrique Lopez, *The Christian Century*, “Religious reawakening: stirring in Cuba,” 19th October 1994, available at: <http://www.questia.com/magazine/1G1-15861163/religious-reawakening-stirrings-in-cuba>.

² Jim Yardley, *The New York Times*, “Raúl Castro meets with Pope Francis at Vatican,” 10th May 2015, available at: <https://www.nytimes.com/2015/05/11/world/europe/raul-castro-meets-with-pope-francis-at-vatican.html>.

being attended by Castro in celebration of improved ties between Russia and Cuba since the fall of the Soviet Union had caused them to cool.³

8. Regardless of any positive developments in recent decades, however, serious issues remain. Religious institutions, houses of worship, and individuals are subject to monitoring by the nominally non-governmental Office of Religious Affairs (ORA), which effectively functions as an arm of the Central Committee of the Cuban Communist Party.⁴
9. Religious groups are required by law to seek registered status, which requires the submission of extensive information. Even after gaining registration, however, further permission needs to be requested for other activities. State security agents are known to routinely infiltrate religious groups for the purposes of monitoring them and feeding sermon content and details about members, and even construction, renovation, repairs, and expansions require express written permission from the ORA. Failure to comply may lead to heavy fines, forced closures, and even demolition of property.⁵
10. The OSCE has provided guidelines about the registration and legal personality of religious associations, and has made clear that international human rights law affords protection to religious or belief communities regardless of whether or not they enjoy legal personality. Criminal sanctions for “failure” to register are contrary to international human rights law and religious freedom, and such registration must be made available on a voluntary basis as opposed to a mandatory one.⁶
11. Reports indicate that figures involved in human rights work beyond that sanctioned by the state are often threatened, harassed, and detained, and the government attempts to separate them from the faith groups in which they are involved, with religious leaders who accommodate them becoming targets of the regime. Converts to Christianity have testified about discrimination in the workplace, and young people in such circumstances have reported severely increased difficulty in securing positions in universities.⁷
12. Open Doors USA has reported that religious groups have complained about the infiltration of their communities by state security agents, as well as surveillance in general. This is especially the case for unregistered house churches which report

³ BBC News, “Cuba opens first Russian church,” 20th October 2008, available at: <http://news.bbc.co.uk/1/hi/world/americas/7679319.stm>.

⁴ Christian Solidarity Worldwide, “Cuba,” last accessed 5th October 2017, available at: http://www.csw.org.uk/our_work_profile_cuba.htm.

⁵ Ibid.

⁶ OSCE/ODIHR, “Guidelines on the Legal Personality of Religious or Belief Communities,” 4th February 2015, available at: <http://www.osce.org/odihr/139046?download=true>.

⁷ Christian Solidarity Worldwide, “Cuba,” last accessed 5th October 2017, available at: http://www.csw.org.uk/our_work_profile_cuba.htm.

experiencing harassment from the authorities as result of having no legal status, as well as receiving pressure to stop evangelisation efforts.⁸

13. Some Cuban ministers have been compelled to seek asylum outside of the country, including Reverend Carlos Lamelas, who arrived in the United States in July 2011 after applying for political asylum in 2010. He had previously been imprisoned by the regime of Fidel Castro in 2006 on charges of so-called “human trafficking” (i.e. helping Cuban refugees escape the country without permission), though first-hand sources report that he had been targeted mainly due to his criticism of the government regarding religious freedom.⁹
14. Following his abrupt release four months after his arrest, he was convicted of supposedly falsifying documents in December 2006, and was unable to find gainful employment following this. His asylum application was precipitated by fears that being suddenly arrested and imprisoned again was inevitable, and that next time it could be for much longer.¹⁰

(b) Marriage and Family

15. Article 36 of the Constitution of Cuba provides that “marriage is the voluntarily established union between a man and a woman, who are legally fit to marry, in order to live together.” This is statutorily reaffirmed with the same wording in Article 2 of the Family Code.
16. These provisions are fully consistent with international human rights law, including Article 23(2) of the International Covenant on Civil and Political Rights (ICCPR), which states that “the right of men and women of marriageable age to marry and to found a family shall be recognized.” This right is specifically afforded to men and women in distinction to other rights and freedoms under the covenants in which the terms “everyone” and “no one” are employed without regard to sex.
17. In 2009, however, it was announced that legislation would be brought forward to legislate for the legalisation of state-recognized civil unions, which would grant same-sex couples all of the rights of married couples in all but name.¹¹ Mariela Castro, a Cuban activist and daughter of President Raúl Castro, stated in 2012 that “Cuban society is ready for same-sex marriages” and that she had her father’s support for the proposal.¹² The proposal has nevertheless not materialized up to

⁸ Open Doors USA, “Cuban Christians dare to dream,” 22nd November 2011, available at: <https://www.opendoorsusa.org/take-action/pray/cuban-christians-dare-to-dream>.

⁹ Open Doors USA, “Cuban pastor and family seeking asylum, arrive in U.S. after suffering under regime,” 13th July 2011, available at: <https://www.opendoorsusa.org/take-action/pray/cuban-pastor-and-family-seeking-asylum>.

¹⁰ Ibid.

¹¹ Reihana Mohideen, *Venezuela Analysis*, “Socialist Feminist Revival,” 9th August 2009, available at: <https://venezuelanalysis.com/analysis/4704>.

¹² Associated Press, “Raul Castro’s daughter: Cuba eyes same-sex unions,” 17th January 2012, available at: http://archive.boston.com/news/world/latinamerica/articles/2012/01/17/raul_castros_daughter_cuba_eyes_same_sex_unions/; Havana Times, “Mariela Castro: Cuba ‘Ready’ for Gay Unions,” 11th December 2012, available at: <http://www.havanatimes.org/?p=83437>.

this point in time, with Mariela Castro stating in 2014 that a further building of consensus was required.¹³

18. Although very often borne out of genuine concern for the welfare of same-sex couples, efforts to either redefine marriage entirely or else legislate for quasi-marital unions are misguided, and are based on a fundamental misunderstanding of the State's legitimate public policy purpose for being involved in personal relationships in the first place.
19. Firstly, despite the claims of some organisations and activists, there is no right to same-sex marriage under international human rights law. As already stated, Article 23(2) of the ICCPR specifically recognizes the right to marry and found a family on the part of "men and women of marriageable age," and the Human Rights Committee in its 1999 communication of *Joslin v. New Zealand* affirmed that this only obligates States to recognize marriage between a man and a woman.¹⁴
20. Moreover, Article 23(1) of the ICCPR juxtaposes this right to marry under subsection (2) with the duty and obligation on society and the State to protect the family "as the natural and fundamental group unit of society." The right to marry and to found a family is therefore inextricably bound up with this duty, which makes clear why marriage and family find themselves occupying a special position within international human rights law.
21. It is a biological reality that the sexual unions of men and women uniquely tend to produce children, and in doing so produce natural familial bonds. The institution of marriage exists within positive law and the legal framework of the State to bind men and women together in law, in order for them to jointly be mother and father to any children that may come about as a result of their unions, and the norms of exclusivity and permanence exist to give effect to this.
22. While unavoidable circumstances in individual cases may make it impossible for a child to be raised by both of his or her biological parents, as a general rule it is best to maximize the number of instances in which children are primarily connected to the two people who made them.
23. The State's involvement in personal and romantic relationships is not something which it undertakes simply for its own sake, but rather so that the natural family can be enshrined as an ideal and given appropriate support and protection for its important role within civilisation. Where the establishment of natural family units is an impossibility in principle, the State has no legitimate reason to involve itself.
24. Redefining marriage as the union of two people without regard to sex, or instituting same-sex civil unions (which have proved more often than not to be a reliable

¹³ Daniel Trotta, *Reuters*, "Cubans celebrate gay rights, but marriage remains distant," 10th May 2014, available at: <https://www.reuters.com/article/us-cuba-gay/cubans-celebrate-gay-rights-but-marriage-remains-distant-idUSKBN0DQ0J720140510>.

¹⁴ United Nations Human Rights Committee, "Ms. Juliet Joslin et al. v. New Zealand, Communication No. 902/1999, U.N. Doc. A/57/40 at 214 (2002)," 17th July 2002, available at: <http://hrlibrary.umn.edu/undocs/902-1999.html>.

precursor to “same-sex marriage”) undermines the fundamental purpose of the State recognising and enshrining marital unions within its law, and means that there is no institution in place which safeguards a child’s primary right to know and be cared for by their parents, in accordance with Article 7(1) of the Convention on the Rights of the Child.

(c) Recommendations

25. In light of the aforementioned, ADF International suggests the following recommendations be made to Cuba:

- a. Remove burdensome and oppressive registration requirements and rescind intrusive governmental practices, including monitoring and raiding, which infringe upon the right to freedom of religion or belief;
- b. Remove criminal prohibitions on religious or belief communities operating on an unregistered basis, as international human rights law does not allow the enforcement of any such alleged obligation;
- c. Immediately cease all targeting of religious figures who have engaged in criticism of the regime or the authorities, and refrain from fabricating or exaggerating charges in an attempt to silence dissidents;
- d. Cease all restrictions on the right to freedom of opinion and expression, and ensure that the right to manifest one’s religion in private or in public is fully protected and realized;
- e. Recognize that the human right to marry and found a family under international law applies only to men and women of marriageable age; and
- f. Refrain from introducing same-sex civil unions or “same-sex marriage” into Cuban law, in order that the natural family can continue to be recognized, supported, and protected by society and the State as the fundamental group unit of society.



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