

## **CHAPTER 3**

# **Establishing Democratic Institutions, Respect For Human Rights, Rule Of Law, and National Justice And Reconciliation**



## **I. EXECUTIVE SUMMARY**

The United States is committed to assist a post-Castro transition government in the promotion and consolidation of representative democratic processes and institutions that will respect the human rights and personal freedoms of all Cuban citizens.

Only when the Castro regime's authoritarian institutions and practices are abandoned, its instruments of repression dismantled, and a popularly based democratic process initiated, will Cubans be able to begin governing themselves through the exercise of their own free will. Such a liberation from Fidel Castro's brutal communist dictatorship will inspire a new political order based on national reconciliation, the rule of law, personal choice, and equal justice and opportunity for all.

Leaders of a transition government will surely move urgently to address a number of immediate priorities. Political prisoners will be freed because they have been cruelly incarcerated only for exercising their rights of free speech. The large segment of the population that has been subjugated and silenced by government intimidation and violence will fear no more. The many forms of violence that have characterized the Castro regime's behavior at home and abroad will be abandoned. The Cuban people will have reason once again to be proud as they take collective responsibility for restoring their country to a respected, peaceful, and constructive role in the international community.

Other immediate priorities a transition government will face include: professionalizing military and civilian police and security services; considering whether to end obligatory military service; voiding a number of constitutional provisions that are inimical to democracy; revising criminal codes and sentencing guidelines; deciding what laws and regulations should be rescinded; rebuilding an honest and impartial judiciary; initiating a national debate about the provisions of a new constitution and procedures for drafting and ratifying it; opening prisons to outside inspection; guaranteeing human rights and freedom of speech; and ending all forms of discrimination.

Among the most daunting and immediate challenges a transition government will face are those that will pit popular demands for prosecutions of former Castro regime officials against the imperative of establishing a government firmly founded on the rule of law and due

process. On balance, the prospects for a rapid and peaceful transition to democracy could depend more on this key variable than any other.

There may be calls for truth commissions, which have been used in several countries when new democratically elected governments decided it was best to provide a forum to review allegations of criminal behavior by officials of the former dictatorships. In some of these cases, the commissions did not have much authority to impose punishment, but nonetheless provided a cathartic and peaceful outlet for victims of oppression.

Middle- and longer-term priorities will include building all of the institutions, processes, relationships, and values that will nourish democratic governance. The U. S. Government will be prepared to work with the Cuban people and their chosen representatives, should they ask, to lend assistance in drafting laws and regulations, preparing a new constitution, and establishing a system of checks and balances and the spectrum of national and local level democratic institutions (executive, legislative, and judicial) responsive to the public will.

U.S. public and private assistance could also help in the critical longer-term task of promoting the culture of the rule of law in which citizens believe in their new system, accept its legal and constitutional principles and understand their obligations in that context, and involve themselves in an emerging civil society. In building professional, apolitical law enforcement institutions, international assistance could be beneficial.

As the transition to a multi-party democracy progresses, Cubans will be able for the first time in decades to enjoy the freedoms that prevail in all of the other countries of the Western Hemisphere. The experiences of some of those neighbors — and of the former communist countries — that have progressed from dictatorship to democracy could influence the choices Cubans will make in constructing their own free society. A liberated Cuba should be welcomed back as a full participant in the inter-American system.

The assistance and encouragement of democracies in the region and elsewhere could prove to be crucial in helping to assure that the transition to constitutional democracy is rapid and peaceful. At the request of a free Cuban government, the U.S. Government would also be prepared to assist as Cubans form diverse and representative political parties, interest groups,

labor unions, and other free political institutions, as well as civic, professional, and commercial associations. A national legislature, and regional and local governments as the Cuban people desire; independent courts, and other legal and judicial infrastructure; as well as new and accountable executive branch agencies can expect American counsel and assistance. Eliminating and preventing official corruption will be a continuing priority.

Achieving these goals will not be easy. Already acute economic problems — rationing, shortages of virtually all consumer goods, unemployment, and poverty — could grow considerably worse by the time of the transition. Furthermore, popular expectations for political and economic change will intensify as the old regime disappears. If severe economic hardships are not quickly redressed, a transition government might have to deal with increasingly urgent demands from a newly empowered populace.

A peaceful transition to democracy will therefore require the presence of effective, professional Cuban security institutions that are committed fully to supporting the democratic transition. As an immediate priority, and assuming the new Cuban government desires it, the United States would be prepared to assist a free Cuba develop a truly professional civilian police force. Military modernization will also be important. Reliable military forces could help transition authorities prevent massive sea borne migration and deliver humanitarian assistance.

## **II. U.S. ASSISTANCE TO A TRANSITION GOVERNMENT**

After enduring more than four decades of often brutal dictatorship, the Cuban people overwhelmingly aspire to a future of freedom and representative democracy, of human rights and due process, and of justice and national reconciliation. In desiring to empower themselves under the rule of law, they will no doubt emulate the peoples of other once subjugated nations who have transformed their societies into free and open ones.

The United States is committed to assisting a post-Castro transition government in the promotion and consolidation of representative democratic processes and institutions that will respect the human rights and personal freedoms of all Cuban citizens. Similarly, it will be prepared to work with

independent civil and political groups on the island to help foster the legitimacy and effective functioning of a transition government.

The U.S. Agency for International Development (USAID), in close collaboration with the Department of State and the U.S. Interests Section in Havana, has for some time endeavored to empower the Cuban people by promoting the flow of accurate information on democracy, human rights, and free enterprise to, from, and within Cuba. Grant funding is provided to a wide range of U.S. universities and NGOs enabling them to:

- Build solidarity with Cuba's human rights activists by providing them information and (non-financial) material support;
- Give voice to Cuba's independent journalists by publishing their reports worldwide over the Internet and by disseminating them inside Cuba in hard-copy newsletters;
- Help develop independent Cuban libraries and other non-governmental organizations (NGOs) by providing them books, training materials, and (non-financial) material assistance;
- Defend the rights of Cuban workers by providing information and (non-financial) material support to Cuba's struggling independent labor union movement;
- Engage in direct outreach to the Cuban people by providing them information in hard copy and by electronic means; and
- Plan for a transition by engaging the Cuban people in a dialogue concerning all of the issues a transition government will face.

During the transition, the USAID Cuba program could be expanded to provide training, technical assistance, and other support for Cuba's emerging civil society and to support the informational needs for all the Cuban people. This could include providing computers, Internet access, books, and other informational materials to Cuba's schools and public libraries, as well as ensuring that most Cuban households have working radios capable of receiving national and international broadcasts. The United States could help transition authorities subsidize the sale of television sets capable of

receiving TV Martí, as well as other international media and Cuban transmissions.

In such a new setting, the Cuban people should have access to information, training, and assistance from the United States and other countries that had not theretofore been available to them. Once a democratically elected government is in office, and possibly before, the United States will be prepared to offer financing, technical assistance, training, and other support to help in the establishment of the full range of institutions a true democracy requires. Notably, these include an independent judiciary, an elected national legislature, whatever regional and local governments the Cuban electorate deems appropriate, a competent and accountable executive branch of government, and law enforcement and security services that respect human rights and operate under the rule of law.

In coordination with willing bilateral and multi-lateral donors, and with U.S. and foreign private sector involvement, the U.S. Government could provide funding, technical assistance, training, and exchange programs to help satisfy many of the immediate and longer-term needs of the Cuban people as they consolidate democratic rule.

In the short term, following the demise of the Castro dictatorship, the challenges a transition government is likely to face in fulfilling the democratic and free market aspirations of the Cuban people will be daunting. Most of the resources, institutions, and capabilities for establishing democratic rule will be lacking because they have been banned during the last 45 years.

For these reasons, and because the development of a democratic and prosperous Cuba is a critical goal for the United States, the American people and their government stand ready to work with the international community to assist a post-Castro transition government.

Empowering the Cuban people is central to that effort. Their liberation from the repression and brutality of Fidel Castro's dictatorship will come as their human rights and due process are respected, the free flow of information is made possible, transparent multi-party elections held, and a new constitution freely debated and adopted.

The U.S. Government is committed to supporting the Cuban people throughout this process, and as they develop the many groups and institutions of a new and independent civil society. Independent NGOs, self-help groups, trade unions, political parties, as well as commercial, professional, and other civic associations could be candidates for public and private U.S. assistance. A free press and privately owned and directed media, mainstays in all democracies, will provide independent sources of information, opinion, and analysis.

Churches and other religious organizations can play an important role in the transition. Their ability to provide independent social services and human rights monitoring could be important as independent civil society expands and becomes more involved in Cuba's political life.

Coordinated international assistance, including from the Organization of American States (OAS), international financial institutions (IFIs), and the United Nations (UN) can help stabilize a transition government and promote the peaceful establishment of an elected, constitutionally legitimized successor. In this regard, the U. S. Government should be prepared to work with other donors to help establish an effective Cuban government donor coordination unit.

The coordination of private sector assistance — whether from the United States or elsewhere — will provide an additional challenge for transition leaders. They may therefore decide to employ an NGO umbrella organization to help coordinate the flow. The U.S. Government, if asked, should be prepared to assist a Cuban transition government with the development of donor coordination mechanisms.

A transition government and its democratically elected successor will succeed to the extent that they operate in an accountable and wholly transparent manner, fully disclosing their day-to-day operations and providing the Cuban people with a constant flow of accurate information on all aspects of reform and reconstruction. The U.S. Government should be prepared to offer to assist the creation of a professional public information office within a transition government.

As important as government actions will be during the transition, Cuba's new private sector will provide the capital, entrepreneurial skills, and creativity needed to accelerate democratic and free market change.

Protection of private individual and corporate property rights, including the rights of intellectual property, will provide the basis for private sector development and Cuba's return to the rule of law. The U.S. Government can offer technical assistance and training to help Cuban leaders eliminate the maze of legal and cultural impediments to private sector development imposed by the Castro regime. (See Chapter 4 for further discussion.)

Educational, cultural, youth, and professional exchange programs will be important vehicles for promoting the development of civil society, NGOs, and good governance practices, and can link Cuban schools, teachers, and professionals with their U.S. counterparts. Exchange programs are by nature structured to "share" experiences and expertise. They will offer opportunities for initial overtures and continuing engagement with the people of Cuba.

Since 1997, U.S. universities and NGOs, some with USAID grant funding and others through private initiative, have promoted such change. Training, technical assistance, and informational materials have been provided to a wide range of independent Cuban organizations. Human rights activists, journalists, librarians, doctors, churches, and other groups independent of the Castro regime have begun to build a nascent civil society on the island. With further assistance in the future, they will help to play a key role in charting Cuba's democratic future.

### **III. HUMAN RIGHTS**

Some of the most urgent priorities for a transition government will be in the areas of human rights and equal opportunity. Only when the Castro regime's authoritarian institutions and practices are abandoned, its instruments of repression dismantled, and a popularly based democratic process initiated will Cubans be able to begin governing themselves through the exercise of their own free will.

Unthinking fealty to a single, inflexible, and dogmatic leader and his obsequious political apparatus will no longer be the essential requirement of Cuban citizenship. Liberation from Fidel Castro's brutal dictatorship will likely inspire a new political and social order based on national reconciliation and the protection of human rights and fundamental freedoms. These include freedoms of speech, assembly, and association, the right to

privacy, assurances of the sanctity of private property, and equal opportunity and justice for all.

Human rights violations in Castro's Cuba have been so pervasive and protracted, and so frequently the object of international censure, that redressing them will surely be among the highest and most urgent priorities of a transition government.

### **A. Political Prisoners**

Prisoners of conscience and other political prisoners will undoubtedly be freed as one of the highest immediate priorities of a transition government. According to the estimates of international human rights monitoring organizations, there are more than 300 political prisoners now in Cuban jails. All were incarcerated after summary trials closed to independent observers and without recourse to any real defense or appeals. Nearly all, moreover, did nothing more than to express peacefully their personal opinions in provoking the wrath of Castro's regime.

The most recent group of 75 prisoners of conscience — human rights and pro-democracy activists rounded up in the spring of 2003 and summarily sentenced to long prison terms — did not advocate or resort to violence against the regime, conspire, demonstrate, or call for its overthrow. Some were leaders of the Varela Project, an effort originally conducted entirely within current Cuban law to promote democratic change. Others are founders of the independent library movement, independent journalists, and aspiring independent labor organizers. They are serving prison terms ranging up to 28 years, most under harsh conditions.

Eyewitness accounts document the degrading and inhumane conditions these and the other political prisoners endure: lack of basic sanitation, rodent and insect infestation, beatings, infrequent access to light and exercise, lack of potable water, denial of medical care, extreme temperatures, and often solitary confinement. A number of the incarcerated suffer from serious medical conditions and are serving out their sentences at locations far from their families.

Once they are freed, these stalwart victims of the dictatorship might benefit from direct and indirect U.S. assistance intended to help reintegrate them into society and, in the cases of the infirm, to recover from untreated

medical problems. A large number of former political prisoners also could benefit from such help. Condemned by the regime to live on the margins of society, typically under constant surveillance and intimidation, most are denied employment, benefits, and decent living standards. Generally, former political prisoners must subsist on the generosity of family and foreign benefactors.

The U.S. Government is committed to expanding current programs that indirectly provide humanitarian assistance to political prisoners, former political prisoners, and their families. Additional future assistance could include vocational and technical training, technical assistance, income support, and counseling to help them develop new skills and to compensate for the injustices they and their families have suffered. The U.S. Department of Labor (DOL) has experience implementing job-training and employment programs in neighboring countries, and has worked to address the needs of dislocated and traumatized groups in other transitions. DOL could play a role in helping former political prisoners adjust to new lives in a free society.

## **B. Prison Conditions**

Conditions in Cuban prisons have only been subject to outside accounting through the testimonies of those who survived their sentences and managed to leave the island. No thorough, competent, and independent monitoring of Cuban prisons has been allowed. The Castro government has refused to allow the personal representative of the High Commissioner on Human Rights to visit the country, in direct defiance of several resolutions passed by the United Nations Commission on Human Rights (UNCHR). That said, convincing, first-hand testimony over these many years indicates that conditions are deplorable, sentencing often arbitrary, and criminal prosecution frequently influenced by political factors. Human Rights Watch has reported, for example, that political prisoners have been forced to work in exploitative conditions producing items such as mattresses, clothing, and furniture, which are later sold by the regime.

A transition government could promote transparency and legitimacy in Cuba's opaque penal system by assigning a high immediate priority to opening all prisons to international inspection. The United States would be willing to work with the UN, the OAS, and other nations or organizations to help finance and facilitate such an effort.

### **C. Other Human Rights Abuses**

Many other types of human rights abuses and discrimination have characterized the Castro's regime's treatment of its own people. Child prostitution is still fairly common, particularly in high-tourist areas.

Similarly, the regime's treatment of the seriously mentally ill may be another area of egregious human rights violations. The Castro regime demonstrated its savage disregard of proper standards for the treatment of the mentally ill when, during the Mariel boatlift of émigrés to the United States in 1980, thousands of patients were evacuated from mental institutions and packed onto boats going to Miami.

Separated from families and treatment, for the most part involuntarily forced into exile, and sent without medical or treatment records, these most vulnerable of Cuba's citizens were simply declared surplus by the regime. It is inconceivable too that the decision to do so could have been made by anyone other than Fidel Castro himself. On balance, there are perhaps no more deplorable examples in the modern experience of civilized nations than Castro's brutal treatment of so many of Cuba's seriously mentally ill in 1980.

Given the abominable human rights record of the Castro regime, leaders of a transition government will surely place a high and immediate priority on redressing these abuses in a variety of ways. For example, they will probably want to enact strong anti-discrimination and other laws guaranteeing individual rights, create well-staffed mechanisms to enforce them, and be amenable to public and private international assistance.

### **D. A Cuban Human Rights Commission**

As in other countries that have made successful transitions from dictatorial rule, Cubans may want to establish a local Human Rights Commission. With U.S. Government and other international support, such a body could begin functioning early in the transition at the national, regional, and perhaps local levels to enforce anti-discrimination principles, help inspire legislation, provide guidance to businesses, unions, and employees concerning their rights and responsibilities, and generally to promote the fair and equitable treatment of all citizens. To maximize their impact, these

efforts could also focus on education and outreach strategies to prevent discrimination from occurring in the first place.

In cooperation with a transition government, as well as international entities and private monitoring organizations, the U.S. Government could provide grant funding to NGOs to place human rights monitors at locations across the island with responsibility to review the treatment of any citizens who credibly allege official mistreatment. This would provide an initial level of protection to emerging Cuban democratic and human rights organizations and provide international observers information about evolving human rights matters.

### **E. International Support for Human Rights**

International human rights organizations can assist Cuba's transition to democracy. In particular, the Inter-American Commission on Human Rights (IACHR), an organ of the OAS, could provide many kinds of support based on its experiences in other countries in the Western hemisphere.

The IACHR has the principal function of promoting the observance and the defense of human rights. In carrying out its mandate, it receives, analyzes, and investigates individual petitions that allege human rights violations, observes the human rights situation in member countries, and publishes reports. It organizes visits to countries to analyze human rights situations and investigates credible allegations of abuse.

In 1948, the Cuban government participated in an inter-American conference that established the inter-American human rights system with the signing of the American Declaration of the Rights and Duties of Man. Adopted before the UN Universal Declaration of Human Rights, it was the first international human rights instrument of its kind. In 1959, Cuba also approved the creation of the IACHR.

In January 1962, the OAS voted to suspend the Castro government from participation in the inter-American system, although Cuba technically remains an inactive member. In the course of its Fourth Session in April 1962, the IACHR decided to continue its activities and communications with respect to the human rights situation in Cuba. The decision was based in large part on a determination that it was the government and not the State of

Cuba that was excluded from the OAS and, therefore, violations against Cuban citizens could be investigated.

The IACHR has given special attention to the human rights situation in Cuba by producing seven special reports on human rights conditions. The reports have taken into account individual complaints formulated against the current regime as well as the testimony of numerous witnesses.

During a transition in Cuba, the U.S. Government would be prepared to work with Cuban authorities to help sort, prioritize, and provide information to the IACHR, relating to the human rights situation. A transition government would be encouraged to invite the IACHR to visit Cuba in order to establish a credible baseline on the human rights situation in the immediate aftermath of the Castro regime. The IACHR could publish a special report on the situation, as it has done in other countries.

The IACHR also has the ability to publish studies on related subjects, such as measures to be taken to ensure greater independence of the judiciary, the human rights situation of minors and women, and the human rights of specific segments of a population that may suffer discrimination. The U.S. Government would support and encourage the IACHR to study existing institutions in Cuba that may survive the demise of the Castro regime. The purpose would be to evaluate whether their structures, as opposed to the way they function, are lacking human rights safeguards.

Any person, group, or non-governmental organization may present a petition to the IACHR alleging violations of the rights protected in the American Convention and/or the American Declaration. In this respect, the IACHR has been playing an important role gathering information and identifying human rights violations since the current regime came into power. However, the work of the IACHR in a post-Castro Cuba would be essential to efforts to foster rule of law, justice, and the resulting national reconciliation.

While there are various officially “illegal” NGOs in Cuba that promote the protection of human rights, in a transition scenario these groups could become more broad-based opposition parties or civic associations. There will be a shortage of broad-based organized human rights institutions. In this environment, the independence of the IACHR, and its legal

foundation and jurisdiction, provide it with the necessary legitimacy to become an important instrument for the protection of human rights.

## **F. Guaranteeing Free Speech**

From its first years in power, the Castro regime has exercised a monopoly over all Cuban media and forms of expression. Except for the United States-sponsored Radio and TV Martí, other foreign broadcasts that reach Cuban listeners, and small circulation Catholic Church publications, Cubans have almost no choice but to read and listen to regime propaganda via the official media.

The government controls newsprint, paper, and other communications materials as well as all broadcast capabilities on the island, and has limited the availability of the Internet to well-controlled tourist resorts, joint venture locations, and government offices. Few Cubans, and scarcely any who are unauthorized by the regime, have unfettered access to cyberspace and the boundless independent information available there.

Independent journalists on the island have almost no ability themselves to publish or circulate their writings within Cuba. Generally, their writings are telephoned or otherwise dispatched abroad where they are disseminated to foreign audiences followed by some distribution on the island. Unlike in the former Soviet Union and other communist countries, moreover, little independent underground literature circulates clandestinely. Security forces and their networks of informers have managed to prevent the circulation of any significant independent media. Similarly, the independent libraries have also been violently repressed by the regime. Books have been seized and burned.

As an urgent priority once a transition government is established, and with the consent of the Cuban government, the U.S. Government would be prepared to provide advice and assistance to Cubans who crave the establishment of independent and uncensored media of all types. Technical assistance could be provided to help draft laws and executive orders that restore and protect this fundamental right. Training of Cubans on the island and at American media facilities in cooperation with the private sector would help in the development of independent and professional media capabilities.

The restoration of freedom of the press, the end of the regime's jamming of international broadcasts, and the willingness of a transition government to operate in an open, transparent manner will facilitate civic education and public outreach. In addition, the U.S. Government can offer assistance to increase the flow of accurate information on democracy, human rights, free enterprise, and international developments to all interested Cubans.

Once Cuban government jamming is terminated, Radio and TV Martí and other international media could reach interested audiences throughout Cuba. USAID could continue to provide or subsidize the provision of portable radios, rechargeable batteries, and re-chargers to the Cuban population. Portable computers, software, and other technical assistance from public and private sources abroad would also contribute powerfully to the rapid development of new communications media.

Despite the opposition of the current regime, USAID grantees now sending thousands of newsletters each month by e-mail to Cuban households across the island. The number receiving such materials could be greatly expanded. In addition, USAID and the U.S. Interests Section in Havana provide thousands of books, videos, and other informational materials to Cuba's independent libraries, and other independent organizations. This effort should increase during the transition, and Cuban government libraries should receive substantial USAID and other assistance for administration as well as in the form of reading and audiovisual materials.

The U.S. Government can work with international organizations and others to help a Cuban transition government employ mass media campaigns, including televised town hall meetings; develop national and regional training-of-trainers workshops; and introduce model programs concerning democracy, human rights, and free enterprise.

## **G. Ensuring Equal Opportunity**

In contrast to the regime's persistent propaganda over the years, racial and other forms of discrimination have been serious problems in Castro's Cuba. Furthermore, racially identifiable disparities in income, influence, access, and social position have been getting worse since the holding of dollars was legalized in 1993. On a number of occasions over the years, the Castro regime brutally persecuted male homosexuals, and it is unlikely that

all such official abuses have terminated. Afro-Cubans suffer discrimination most conspicuously in the tourism industry, where lighter-skinned Cubans are favored in government hiring. Since the beginning of Castro's rule, they have also been under-represented in senior government and Communist Party posts.

Other forms of discrimination occur to varying degrees on the basis of gender, religion, ethnicity, and disability, in addition, of course, to political beliefs and economic preference. Nonetheless, the Castro regime insists on the myth that it has created a society based on equal opportunity.

This history of secrecy about discrimination issues could hinder the transition to an economy based on principles of equal opportunity and justice because problems that are not recognized cannot easily be solved. To address this, a transition government could begin the process of developing a culture and practice of equal employment opportunity by initiating an open, truthful dialogue on racial and gender bias issues in Cuba. Such an initiative would help to identify existing barriers to equal opportunity in the labor market and facilitate public discourse on how a free market economy in a democratic society can best address those barriers.

The U.S. Government would be prepared, if asked, to provide support and guidance in whatever decisions a transition government may make to address racial and other social inequality on the island. Specifically, USAID could help develop equal opportunity principles, human rights offices, and enforcement and compliance mechanisms to address racial prejudices and exclusionary practices. In addition, the U.S. Equal Employment Opportunity Commission (EEOC) would be prepared to work with future Cuban leaders by sharing whatever in its extensive experience might be relevant to Cuba's unique situation.

A transition government might choose, for example, to articulate a set of basic principles that will guide its efforts in all areas, including employment, education, housing, and government services. Establishing a framework to ensure civil rights and equal opportunity for all Cubans will be an important component of a successful transition to a free market economy. The effort could begin with an open examination and discussion of racism and other forms of discrimination and inequality.

Assuming both governments agree, the U.S. EEOC would be able to assist Cuba develop equal opportunity protections and create effective compliance mechanisms by providing Spanish-language publications setting forth the principles of equal opportunity and the argument for a pluralistic, merit-based system. It could also train Cuban leaders — in government, schools, and business — to help establish a commitment to the principles of equal opportunity.

In addition, the EEOC could offer exchanges so that Cuban government officials could observe and learn how it and other civil rights agencies work in the United States to prevent discrimination and enforce anti-discrimination statutes. It could also provide assistance for the development of strategies to address the issue of protecting the rights of disabled individuals and for preventing discrimination in education, public accommodations, transportation, and employment.

As a transition government moves toward a free market economy, it will face the challenge of articulating and enforcing principles of equal opportunity in the marketplace. It may also need to conduct a public dialogue to allay any concerns that the transition to a free market society will lead to increased discrimination in the workplace. Cubans can engage in open dialogue to convey the message that the most successful and profitable companies in a free market society are those that utilize inclusive hiring and promotion policies to draw talent and ideas from all segments of the population. Such a dialogue can help demonstrate that diversity and equal opportunity are fundamental business concepts in free market economies.

## **RECOMMENDATIONS:**

- *If requested by a transition government, the U.S. Government should be prepared to provide technical assistance and capacity building for:*
  - *A volunteer legal liaison program to make available legal expertise and technical assistance for Cuba as it modifies and restructures its laws and legal systems;*
  - *Partnerships with U.S. Government agencies, private sector firms, and individuals to share best practices for ensuring diversity, equal opportunity, and competitiveness;*

- *Training programs for government leaders, educators, and the emerging private sector to ensure that equal opportunity and diversity become integral business concepts that are recognized as tools to provide a competitive advantage in the increasingly global economy;*
- *Compliance and law enforcement mechanisms within government institutions that will expedite implementation of equal opportunity principles; and*
- *Training programs for people with disabilities.*

#### **IV. NATIONAL JUSTICE AND RECONCILIATION**

Among the most daunting challenges a transition government will immediately face are those that will pit popular demands for prosecutions of former Castro regime officials against the imperative of establishing a government firmly founded on the rule of law and due process. On balance, the prospects for a rapid and peaceful transition to democracy could depend more on this key variable than any other.

Some of those seeking justice — or vengeance — will want the new authorities to prosecute their alleged tormentors and to enact laws that will permit legal action for a wide range of offenses dating back perhaps through the entire 45 years of Castro’s rule. There may be pressure to create one or more “truth commissions” to investigate and illuminate excesses of the former regime and to identify worst offenders who ought to be punished.

##### **A. Truth Commission**

Establishing an equitable process for undertaking such reviews with appropriate checks and balances including the right to counsel, adequate rules for the use of evidence, consideration of statutes of limitations, and provisions for appeals will be exceedingly difficult, especially in the short term. The challenge for the transition authorities will be greatly compounded by the need to reconstruct Cuba’s legal and judicial systems and by the potential enormity and complexity of the charges that could be brought.

Officials of Castro’s government and its security services, perhaps many members of the Committees for the Defense of the Revolution, regime

militants who inflicted violence on peaceful dissidents, and other pro-regime zealots will be the objects of citizens seeking justice for crimes allegedly committed against them. The list of accused could be long, even if a transition government decided to allow criminal trials only in the most extreme cases and to apply a statute of limitations to some crimes. And prominent senior officials of the Communist Party, the government, the mass organizations, and especially the police and security services may very well be accused of egregious violations.

But however difficult and potentially destabilizing investigations of past abuses could be for a transition government, the failure of new leaders to move quickly to establish a set of at least provisional standards for dealing with such matters could also undermine popular support for democratic change. In the worst of cases, lacking any access to official recourse, some individuals pressing allegations of victimization might be tempted to take matters into their own hands, and thus undermine law and order and perhaps the transition itself. Post-Castro Cuban leaders may, therefore, be hard pressed in the short-term to chart a peaceful and humanitarian course between these opposing pressures.

The decisions new leaders make will likely enjoy legitimacy only to the extent that they faithfully reflect Cuba's unique needs, culture, history, and the morals and values of society. It will be of critical importance, therefore, that transition leaders effectively communicate decisions in these matters to the populace and endeavor to gain substantial popular feedback and support for the stands they take. The experiences of a number of Latin American and former communist countries that in recent years have dealt with similar issues will be instructive. Generally, leaders of new democracies emerging from the ashes of dictatorships have been reluctant to prosecute officials of the old regimes, except in truly extreme instances.

Truth commissions have been used in several countries when new democratically elected governments decided it was best to provide a forum to review allegations of criminal behavior by officials of the former dictatorships. In some of these cases, the commissions did not have much authority to impose punishment, but nonetheless provided a cathartic and peaceful outlet for victims of oppression.

- In Argentina, a truth commission confirmed the “disappearances” of nearly 9,000 people as well as the existence of 340 secret detention and

torture centers. Civil courts identified and prosecuted some former military junta members and other officials responsible for the most flagrant abuses.

- In Chile, a truth commission investigated and assigned blame for 3,000 cases of political violence that had resulted in deaths or disappearances. The Supreme Court terminated prosecution of former dictator Augusto Pinochet on the grounds that he suffered from “moderate dementia.” But criminal investigations of other military officers and secret police are still underway many years after the transition to democracy.
- In Uruguay, several truth commissions began to investigate human rights abuses committed during a previous military regime, but the Congress decreed an unconditional amnesty.
- A South African “truth and reconciliation” commission investigated only cases of extreme violence and amnestied all those accused of crimes as long as they accepted blame and were willing to reveal what they knew about the abuses they were charged with.
- In El Salvador, a United Nations commission registered more than 22,000 grievances, most having to do with extrajudicial deaths, disappearances, and torture. It assigned responsibility to individual military officers and commanders of the guerrilla forces. The government then declared a general amnesty.
- In Guatemala, two truth commissions identified many of those responsible for violations of human rights. The government and the former guerrilla opposition agreed to an amnesty that did not apply to those guilty of genocide, disappearances, torture, and other crimes for which there is no statute of limitation. To date, there have been no successful prosecutions.

## **B. Preserving the Old Regime’s Records**

A possibly essential tool a transition government and the Cuban people could rely on as they consider the merits and demerits of these issues will be the records and archives of the old regime. In particular, the files of the Ministry of Interior’s police, intelligence, and other security services, especially the General Directorate for State Security (DGSE), as well as

certain army (Revolutionary Armed Forces, or FAR) counterintelligence units — if they are not in fact destroyed by the time of a transition — could be invaluable.

Procedures enacted to examine such once secret records have varied in former communist countries. In Romania, the secret police records of the communist regime will remain sealed for 40 years. In Germany, however, where legislation was passed creating a new government agency with responsibility for storing and managing the records of the former East Germany's secret police, the Stasi, citizens can apply to review files. The constitutional court ruled that citizens had the right to know who had been collecting information about them and for what purposes. To protect personal rights and to reconcile them with the public interest, parliament passed a law in 1991 allowing individuals access to Stasi records. Government agencies are able to refer to the records to check the backgrounds of employees, and in some cases former Stasi officers have been denied their pension rights. But the information has not always been reliable and in some cases false.

### **C. Renunciation of Official Violence**

As a high immediate priority, leaders of a transition government will surely abandon all of the forms of violence that the Castro regime has practiced and condoned since its inception in 1959. The large segment of the population that has been subjugated and silenced will fear no more. Officially orchestrated “acts of repudiation” and the intimidation and brutality commonly directed against human rights activists, dissidents, and regime critics should end as the dictatorship does.

The many forms of violence — explicit and implicit — in the Castro regime's incessant demands that the populace militantly join in its “revolutionary” causes at home and abroad will be discarded. And finally, Fidel Castro's lifelong commitment to the use of lethal violence to advance his domestic political and international interests is certain to be abandoned by the leaders of a transition government.

The arbitrary use of the death penalty — for example, as it was applied summarily in 2003 against three young Afro-Cuban men who had hijacked a vessel while committing no lethal offense — will end with Castro's regime. Transition authorities will no doubt terminate the

imposition of the death penalty for political purposes, which has been characteristic of the so-called “revolutionary” justice since Castro came to power. Instead, in a democratic environment sentences, even for the most heinous crimes, will result from transparent legal and judicial processes and be subject to institutionalized appeals procedures, the rule of law, and humanitarian considerations.

The lengthy sentences and harsh conditions both common and political prisoners have endured under the Castro regime’s criminal codes are certain to be thoroughly revised by a popularly based transition government. Draconian laws — such as the one against “dangerousness” — used for political intimidation of dissidents will likely be deleted from the books. Other punitive laws branding those who criticize Castro or his regime as “counterrevolutionaries,” and making them subject to criminal prosecution will also give way. Legal restrictions on foreign travel no doubt will be lifted. And many other laws intended only to preserve the hegemony of Fidel Castro and his political apparatus will expire.

#### **D. International Fugitives from Justice**

Perpetrators of violence, whether officials and supporters of the old regime or foreign nationals who have been given sanctuary in Cuba should be subject to democratic due process. Lacking an effective extradition relationship with the Castro regime, and given the regime’s willingness to shelter violent criminals if a “political” justification for their crimes can be alleged, dozens of fugitives from U.S. justice, including at least four convicted of killing American law enforcement officials, are currently in Cuba with the full support of the regime, and therefore beyond the reach of U.S. legal authorities. The U.S. Government will seek the assistance of a transition government in pursuing these cases and will want to ensure that our nations have a functioning and effective extradition relationship to prevent U.S. criminals from sheltering in Cuba.

#### **V. DEMOCRATIC INSTITUTIONS**

After four and a half decades of Fidel Castro’s personal dictatorship, and starved by that dictatorship of true information about the world and competing political systems, the truth is that, at least initially, Cubans may not be ideally positioned to govern themselves in a representative process with efficiency, transparency, professionalism, concern for basic human

rights, and under the rule of law. Both democratic leadership and citizenship require free association, discussion, debate, and an environment free from intimidation or repression. That being said, the fundamental intelligence and fairness of the Cuban people would be their most important asset as they move quickly to establish an effective and representative democracy.

The U. S. Government would be prepared to work with the Cuban people and their chosen representatives, should they so choose, to provide assistance as Cubans draft a new constitution and create a system of checks and balances, as well as the spectrum of provincial and municipal level democratic institutions (executive, legislative, and judicial) responsive to the public will. U.S. public and private assistance could also help in the critical longer-term task of promoting a rule of law culture in which citizens believe in their new system, accept its legal and constitutional principles and obligations, and involve themselves in an emerging civil society.

#### **RECOMMENDATIONS:**

- *If requested by a transition government, the U.S. Government should be prepared to provide technical assistance and capacity building to:*
  - *Reform executive branch management, budgeting, payment, financial controls, auditing, and accountability systems;*
  - *Develop mechanisms and principles for fighting and prosecuting corruption;*
  - *Strengthen legislative institutions, processes, and procedures;*
  - *Encourage decentralized power sharing through the development of provincial and municipal governments;*
  - *Introduce exchange programs to inform Cuban leaders and administrators about democratic policy and decision-making and transparent governance;*
  - *Revise labor laws and reform the structure and functioning of the Labor Ministry to help establish a free labor market; and*

- *Inform Cuban citizens about their new constitution and the role, function, and powers of democratic forms of government.*

### **A. Strengthening Legislative Institutions**

Since it was created, the puppet National Assembly of People's Power has been subordinated to the will of Fidel Castro and the communist party. The 609 members of the unicameral assembly, carefully selected by Castro and his so-called "mass organizations," and who do not even face an opponent in what are termed "elections," meet for only six weeks a year, and have functioned entirely as a rubber stamp for the regime. A case in point is the failure to discuss the Varela project petition organized under its existing rules.

Once Cuba holds free and fair elections for a new legislature, a constituent assembly, or establishes legitimate legislative representation, the United States could encourage and support assistance through the OAS to overcome the historic lack of confidence in the legislative branch of government, help establish its authorities within a system of checks and balances, and modernize the way it functions.

To this end, the OAS could provide support for the generation, exchange, and dissemination of new skills and information on the role, problems, and practices of legislatures and their modernization.

### **B. Independent Political Parties and Interest Groups**

Virtually since its inception, the Castro government has banned independent political parties while persecuting and incarcerating those who attempted to develop them. The regime has consistently been successful in suppressing nearly all forms of independent civil society typically by employing brutal and repressive means. It has only been in recent years, with the emergence of a nascent independent civil society centered on free library, labor, and journalism groups, as well as the Varela Project, that the Cuban people have found emerging democratic alternatives.

The USAID Cuba Program, in cooperation with the U.S. Interests Section in Havana and U.S. NGOs, has provided Cuban citizens with more than two million books, newsletters, videos, and other informational materials elaborating on political freedom, democracy, and human rights.

With the cooperation of a transition government, USAID grantees could greatly expand those efforts, reaching a much larger percentage of the Cuban populace while directly assisting those eager to form and develop independent political parties and interest groups. USAID grantees could work in coordination with the U.S. Department of Education (Civitas Program), the U.S. Department of State (Bureau of Educational and Cultural Affairs), European and Latin American political party institutes, the International Republican Institute (IRI), the National Democratic Institute (NDI), the International Foundation for Election Systems (IFES), and other entities.

### **RECOMMENDATIONS:**

- *If requested by a transition government, the U.S. Government should be prepared to provide technical assistance and capacity building to:*
  - *Conduct programs at the national and provincial levels and hold town hall and local meetings for citizen involvement in the formation of political parties;*
  - *Promote democratization of political party structures and processes and introduce concepts and mechanisms for citizen oversight of parties as well as of local government;*
  - *Disseminate concepts and best practices through television and radio broadcasts, videotaped training materials, and town hall meetings;*
  - *Hold a national conference to develop specific recommendations for democratic reforms, including political party formation;*
  - *Inform the Cuban people about the roles, functions, and responsibilities of political parties in a democracy;*
  - *Support media public awareness campaigns;*
  - *Provide training for civil servants, journalists, educators, and others, and in-school programs for high school and university students;*

- *Work with the OAS to support electoral observation missions to help Cuban transition government authorities bring accountability to their electoral process.*

USAID, in coordination with the Department of State's Public Diplomacy experts, could work with UN specialized agencies and others to help introduce model programs providing civic education and information about democracy, human rights, and free enterprise. A transition government and its supporters would be able to employ independent Cuban mass media in this educational effort, including televised town hall meetings across the island. Radio and TV Martí and other international radio and television broadcasters would be able to help carry out a wide range of informational and educational programs. USAID and others could help develop national and regional training-of-trainers workshops for Cubans through personalized information sharing.

### **C. Free and Fair Elections**

Assuming the transitional government and Cuban people agree, the U.S. Government could offer assistance to a transition government for the planning of free and fair multi-party elections. Assistance would draw on the recommendations of the *Transitional Election Planning Manual for Cuba* developed under USAID funding in 1998 to the International Foundation for Election Systems (IFES), a U.S. non-governmental, non-profit, and non-partisan organization.

### **RECOMMENDATIONS:**

- *If requested by a transition government, the U.S. Government should be prepared to provide technical assistance and capacity building to:*
  - *Ensure elections are democratic and competitive;*
  - *Observe international laws governing state practice, and paying special attention to voting and election rights and procedures, the rights and responsibilities of candidates, parties and their campaign organizations, as well as the rights and responsibilities of citizens;*

- *Establish procedures for voter registration that are effective, impartial, and non-discriminatory, and ensure that voting is equally accessible for all those qualified;*
- *Ensure that the right to be a candidate is open to all adult citizens, as should be the right to form or join a political group in order to compete in an election;*
- *Guarantee freedom of speech and information and the right to disseminate, seek and receive information needed for making informed choices;*
- *Guarantee the right to freedom of movement throughout the campaign period and to campaign on an equal basis with other political parties;*
- *Ensure the right of equal access to the mass media and access for all parties and candidates;*
- *Provide adequate security and protection for candidates, ensuring they have equal protection of the law and access to remedies for violations of political or electoral rights;*
- *Establish clear criteria on voter and candidate age, citizenship and residence requirements; allow the greatest possible freedom to political parties, consistent with minimum standards of public safety and welfare; and create the conditions whereby all candidates for public office enjoy a level electoral playing field;*
- *Create an unbiased and impartial mechanism for the management of elections and maintain its autonomy;*
- *Train election officials in voter registration, maintenance of voting lists and balloting procedures, personnel training, and proactive measures against fraud and abuse;*
- *Encourage candidates and parties to abide by a code of conduct to govern their actions, and those of the media, during the election campaign;*

- *Protect the freedoms of movement, assembly, association, and expression, especially during political rallies and meetings; and*
- *Permit all candidates and parties to communicate their views to the electorate without interference.*

Because of important deficiencies in the current communist-dominated voter registration process, Cuban transition authorities may find it necessary to compile an entirely new voter list, based on either a house-to-house enumeration or through voluntary self-enrollment as is done in the United States and other countries. If requested, USAID could provide technical and financial support for either approach.

USAID could also help train Cuban electoral commission personnel in democratic procedures related to the supervision of balloting, vote tabulation, handling documents, and verification and announcement of results on election day. Additional assistance could be provided to ensure a comprehensive, national voter information program including times, dates, and places of voter registration; posting of voter registration lists; locating voting precincts; and voting procedures.

#### **D. International Support for Elections**

The OAS could also help provide legitimacy to the electoral process. Once Cuba's suspension from OAS activities is lifted, the United States, in cooperation with and at the request of a transition government, would be prepared to support the assistance of the OAS Unit for Promotion of Democracy (UPD) to encourage the rule of law in Cuba.

#### **RECOMMENDATIONS:**

- *If requested by a transition government, the U.S. Government should be prepared to provide technical assistance and capacity building to:*
  - *Offer advice and assistance to help develop and strengthen a democratic electoral system including drafting and other reforms to election law;*
  - *Provide help in redrafting, reforming, or amending, as appropriate, Cuba's electoral code and related legislation;*

- *Sponsor studies, seminars, and research on the strengthening of electoral laws and provide options for transforming the current electoral law and process; and*
- *Offer technical assistance and training to modernize and automate electoral process and systems. This would involve reviewing and modernizing civil registries, and promoting voter participation and civic electoral education.*

Electoral observation missions have been an OAS tool for the promotion and strengthening of democracy in the hemisphere. The observation process often begins at the voter registration stage and continues through actual voting until the verification stage. The main objective is to observe and report on the electoral process. The basic reference point for these missions is the constitution and the laws of the member state in which the election is taking place. The missions work closely with the entity charged with running elections in each country and sign an agreement for each observation.

#### **E. Inter-American Democratic Charter**

The Inter-American Democratic Charter, adopted by all 34 active OAS member states in 2001, provides the ideal hemispheric tool and standard to encourage the development of a democratic system in Cuba. It provides clear benchmarks agreed to by all the countries of the Western Hemisphere by which the progress of democracy in Cuba and the strength of democratic institutions could be assessed. The Charter also provides a roadmap for reinstating the government of Cuba as a full and active participant in the OAS and the inter-American system.

At the same time, one of the most important elements of the Inter-American Democratic Charter has been the recognition that representative democracy requires constant efforts to promote the basic principles, values, and practices of a democratic political culture among the citizens, as well as continuous work to provide advanced training for its leaders. Assuming the transition government requested such aid, the United States would support a Unit for the Promotion of Democracy mission to Cuba that would target such assistance.

By adopting the Charter, a transition government would be accepting the principle that representative democracy is indispensable for Cuba's stability, peace, and development. In order to adopt the Charter, Cuban leaders would have to agree to a number of important provisions reflected in the Charter related to representative democracy, transparency in government functions, freedom of speech and the press, the institutionalization of civilian authority, building democratic institutions, providing opportunities for citizen participation, protecting human rights and democracy, conducting free and fair elections, and promoting the rule of law.

## **RECOMMENDATIONS:**

- *In order to promote good governance and the rule of law, the U.S. Government would work within the OAS to encourage a hemispheric effort to explain to Cuba the importance of signing, ratifying, and otherwise acceding to, the following inter-American instruments, processes, and commitments:*
  - *The Charter of the OAS and its Protocols;*
  - *The Inter-American Democratic Charter;*
  - *The commitments established in the Summit of the Americas processes;*
  - *Inter-American Convention Against Corruption and the Document of Buenos Aires, establishing the Follow-up Mechanism;*
  - *Inter-American Convention against Terrorism;*
  - *The Anti-Drug Strategy of the Americas;*
  - *Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials;*
  - *Inter-American Convention on Mutual Assistance in Criminal Matters; and*
  - *Agreement establishing the Inter-American Development Bank.*

## **F. Public Sector Reform**

An early and critical priority for a transition government will be to begin the process of reconstituting public sector institutions. The Cuban people and their new leaders will need to decide what qualifications — and disqualifying considerations — should apply to hiring and retaining public sector employees. The experiences of other post-communist and post-dictatorial countries in recent years will provide valuable models and lessons. Assuming the Cuban government agrees, the United States would be prepared to offer assistance in fostering the professional development and training of those personnel who will fill the ranks of a new Cuban government.

Through exchange and training programs financed by the U.S. Government, international organizations, educational institutions, and academies of public administration, the Cuban people could develop a new cadre of leadership and administrative talent equipped with modern skills of public management. Some examples of exchange and training programs are:

- Mass media public awareness campaigns;
- Training programs for civil servants, journalists, and educators; and
- In-school programs for high school and university students.

The transition government may wish to consider creating a government-donor Task Force for Comprehensive Public Sector Modernization, which could set parameters and objectives that could guide that process. Such a process could begin by developing a new merit-based civil service, which would foster leaders who adhere to high standards of integrity and transparency.

The long-term credibility of a transition and successor governments will rest to a considerable extent on the quality and integrity of its elected and appointed officials at all levels, as well as its permanent staff. A professional and well-trained civil service, founded on merit principles, will therefore be an essential component of Cuba's transformation to a democratic culture. By fostering the development of a capable, efficient, and impartial civil service, the Cuban people will come to trust and respect their government, lay the foundation for economic growth, and win Cuba the

respect of the international community as the new government negotiates a spectrum of agreements with other countries and re-enters international organizations.

## **G. Fighting Corruption**

A transition government will face the challenge of addressing the destructive results of the Cuban communist system, in which corruption is endemic and in many respects considered normal. Both petty acts of administrative corruption, widespread theft of state-controlled goods by individuals, and state-sponsored forms of corruption have thrived under Castro's rule. Without a proactive strategy for transparency and accountability in government, the levels of corruption and official malfeasance of all sorts could increase as the transition gets underway.

The current civil service is bloated, notorious for its inefficiency, poorly attuned to modern managerial concepts, enmeshed in a tradition of secrecy and lack of transparency, and oblivious to the notion of customer service. Civil servants are poorly paid and its upper echelons are explicitly politicized.

Should the transition government request it, the U.S. Government would be able to offer assistance to transition authorities to establish a civil service personnel system that will build public confidence in the integrity, honesty, and efficiency of government officials. Principles of merit-based employment and standards of ethical conduct for public officials can be emphasized in training and information packets.

A professional Cuban civil service would operate under transparent and fair rules. Individuals would be selected for jobs based on merit and qualifications alone, rather than for political reasons, favoritism, or nepotism. Measures for ensuring transparency in government processes and finances, public access to government information, and impartiality in government decision-making could also be shared with officials and civil servants of a transition government.

To embody the value that government employment is a public trust, a transition government could adopt and enforce rules prohibiting the use of public office for private gain and barring preferential treatment, bribery, special privilege, or retribution in the provision of government services. In

this effort, it can draw upon the many tools, resources, and incentives offered by the U.S. Government through its initiatives to combat corruption globally.

Cuba's new leaders could demonstrate their commitment to take action to end corruption by cooperating in international monitoring and enforcement endeavors and by becoming a signatory to intergovernmental conventions such as the OAS Inter-American Convention Against Corruption and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Through various mechanisms, including the follow-up mechanism to the Inter-American Convention against Corruption, the OAS could provide assistance to a new Cuban government in this respect.

Corruption facilitates other crimes. Until government officials at all levels respect the rule of law and abide by legally accepted policies and procedures, any attempt to effectively combat other crime will be seriously hindered. The U.S. Department of Justice as well as other USG agencies could assign advisors to work with a willing transition government in training public officials to prevent, detect, investigate, and prosecute corruption.

## **H. Independent Trade Unions**

Currently, Cuban workers do not have the right to organize independent unions. This is true in the domestic economy as well as in areas open to international investment, where the government controls hiring and firing. Workers have no access to independent unions and are denied the rights to strike or to bargain collectively. Those who attempt to organize have been persecuted and, in some cases, imprisoned. In other cases, their families also have been subject to employment discrimination by the government, which maintains "employee files" that contain information on political activities.

The International Labor Organization (ILO) has been especially critical of the lack of freedom of association in Cuba, in particular with regard to the trade union monopoly institutionalized for the official union confederation in the Labor Code.

During 2003, the ILO also examined cases related to threats, detentions, and pressure against workers who attempted to form independent unions. That June, the ILO requested that the Cuban government accept an ILO “direct contacts mission” with a view to ensuring the application of freedom of association in law and practice. The Castro government rejected this, however, and instead argued that Cuban labor movement “unity” reflected the will of the workers themselves and that attempts to establish new unions were in fact subversive activities funded by the United States.

To fully recognize basic rights in the workplace, a transition government should enact democratic labor legislation. It would also be essential to strengthen national labor law administration and compliance. The Department of Labor (DOL) could provide appropriate technical assistance and training. It would also be essential to strengthen national labor law administration and compliance.

USAID and the National Endowment for Democracy (NED) are already providing support to Cuba’s incipient independent trade union movement through grants to U.S. NGOs. Such support should be increased when a transition government is in place in order to ensure that internationally recognized labor rights are fully respected. These rights, embodied in the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work, include freedom of association and collective bargaining; elimination of forced and compulsory labor; abolition of child labor; and the barring of employment discrimination.

These principles are essential for the promotion of an open economy, higher living standards, and a favorable climate for trade and investment. Although the Castro regime has committed itself to upholding these standards by accepting the 1998 ILO Declaration in theory, and ratifying core ILO Conventions on fundamental labor rights, many of these rights are systematically denied in practice.

One key to such an effort will be a complete reform of the Labor Ministry’s inspection functions and investments in efforts to raise awareness among employers, workers, and government representatives about labor rights. To serve as a vehicle for workplace democracy and to open a national dialogue on labor rights, these efforts should be undertaken in a transparent process involving employers, workers, and government representatives.

DOL has experience in other countries implementing programs to improve labor law, strengthen labor inspection, eliminate forced labor, and reduce commercial sexual exploitation. It has worked primarily through the ILO in these efforts, but it has also involved other international and national organizations with expertise.

## **RECOMMENDATIONS:**

- *If requested by a transition government, the U.S. Government should be prepared to provide technical assistance and capacity building to:*
  - *Reform labor laws to facilitate private sector development by establishing a sound, equitable, and predictable framework for collective and individual labor relations, promoting democratic participation, cultivating transparent and accountable laws, and making legislation more accessible;*
  - *Provide technical advice in the reform effort, with special emphasis placed on democratic and participatory approaches in all stages of the discussions with employer and worker organizations and other concerned parties. Promote sustainability by building the capacity to effectively amend, implement, and enforce labor laws;*
  - *Develop public awareness of labor issues, in part by training Cuban partners to conduct seminars on labor laws, core labor principles and available services. After four and a half decades of Cuban government repression of any signs of independent labor activity, substantial effort will probably be needed to provide Cuban workers and employers the knowledge and tools to secure full respect for their rights; and*
  - *Improve the effectiveness of government labor inspection functions by creating a corps of inspectors trained in modern inspection techniques and to assist in developing a system for monitoring violations. This would include steps to:*
    - *Develop policies, training, and procedures for carrying out labor inspections to enforce national laws;*

- *Foster strong institutional linkages among government officials, employers, and workers;*
- *Implement a program to target inspections to the most problematic employers and sectors;*
- *Audit labor inspectorates and develop national plans for labor law compliance;*
- *Train staff in the technical knowledge of modern inspection systems; and*
- *Create a computerized database for labor inspection reports.*

## **I. Support for Decentralization**

In the framework of the inter-American system, decentralization is an instrument for fostering citizen participation and for enhancing democracy at a local level. Diffusion of the powers that have been highly centralized in Havana during Castro's dictatorship would respect the country's earlier history of encouraging effective provincial government. Decentralization would have the added benefit of increasing accountability since it would allow monitoring at the local level. The U.S. Government would support a request by Cuba to the OAS's UPD to develop a program for decentralization in Cuba.

Finally, the protection of private property is fundamental to Cuba's future development. The United States could provide valuable assistance to a transition government that sees the wisdom of protecting property rights, as well as any continuing threats to those rights.

The U.S. Department of Commerce could work directly with Cuba's private sector to develop sound business practices, combat corruption, and improve transparency. It has worked with the private sectors in a number of other countries to improve business practices.

## **VI. THE RULE OF LAW**

As the transition to democracy proceeds, new legislation and constitutional mandates affecting judicial and legal affairs will no doubt be

approved. With both public and private assistance from the United States and other democratic countries, Cubans will be able to access the intellectual resources to draft and approve a new constitution, reconstitute criminal and civil procedures and codes, modernize the legal profession, develop new law school curricula and standards as well as bar associations, institute public prosecutor and defender capabilities, de-politicize the police and military forces and train them in human rights, and establish a new corrections system that will all fully respect the rights of citizens and operate under the rule of law.

### **A. Constitutional Reform**

The Cuban people will decide how to secure their new democracy with a popularly ratified constitution that liberates and empowers them as collectively sovereign. If asked, the U.S. Government would be prepared to offer technical assistance either to amend the current communist constitution through interim legislation and executive orders or to suspend it entirely. In either event, Cubans will want to immediately enjoy the freedoms of unencumbered speech and expression, assembly and association, including the right to form political parties. U.S. assistance could include technical materials and studies to assist in the drafting and popular vetting of a constitution, as well as help in conducting a referendum.

The current communist constitution formalizes an authoritarian, one party political system that has stifled fundamental political and economic freedoms. The immediate, minimal priorities of transition government authorities with respect to the constitution will probably therefore be to dismantle all of the authoritarian powers it propounds and to delete its ideological vehemence. Some of its provisions that are most inimical to democratic governance follow:

- The primacy it grants to the Cuban Communist Party, and the special status its related Communist Youth Union enjoys, has sanctified a single-party, ideologically driven system.
- The privileged status it bestows on Castro's mass organizations contributes substantially to the pressures citizens feel to affiliate with these regime-sponsored entities.

- Language that extols military virtue, struggle, and missions (and requires compulsory military service) places the armed forces on an elevated plane in comparison to civilian society.
- The general mobilization of society for defense contributes to Cuba's militarization and the militancy the regime frequently demands of the populace.
- The principle of state socialist property within a "command" economy, the supremacy of state directives even over peasant private property, and limits on private property and inheritance rights are enunciated.
- The state is constitutionally granted monopoly control over education, culture, sports, health care, and most other services.

Proceeding during the transition period toward democratic governance and the rule of law would be impossible under such constraints. Even if transition government leaders were to decide temporarily to work with some parts of the current communist constitution while amending and deleting others, they will want to immediately countermand its authoritarian and ideological content. The U.S. Government would be prepared to offer technical assistance to facilitate the changes Cubans decide to make.

Ultimately, the full consolidation of democracy will require a wholly new constitution. Thus, an early priority for a transition government — in intensive and broad consultation with Cuban citizens — no doubt will be to begin deliberating specific ways to amend it. A constitutional convention of popularly elected delegates specifically empowered to debate and draft a new charter will be one option.

There are many model constitutions now undergirding newly consolidating democracies in other countries. Constitutional drafting and ratifying processes in the experiences of other newly democratized nations could also be of use to the Cuban people. And once a draft has been completed, the final step, as in most countries that in recent years have made the transition from dictatorship to democracy, would be to submit it for public approval in a referendum.

USAID is currently providing constitutional and rule of law experts to work with the constitutional and juridical commissions of the government of

Afghanistan. Lessons learned there and in Iraq, the former Soviet Union, and other countries would inform whatever U.S. assistance to the Cuban constitutional reform process is requested.

The U.S. Government, as well as other governments and private sources, would also make available to the Cuban people whatever documents and studies they may want as they consider incorporating a Bill of Rights in their constitution. The United Nations Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, those outlined in the Inter-American Democratic Charter of the OAS, as well as those developed in other countries that in recent years have adopted democratic charters, could be useful.

## **B. The Armed Forces**

Although Cuba's military services, serving under the Ministry of the Revolutionary Armed Forces, are directly treated in only two of the constitution's numerous articles, the general militarization of society, including compulsory military service, appears in a number of other places in the document. In effect, the constitution decrees the subordination of every Cuban's existence to the country's defense, postulating the need for eternal vigilance against external threats.

Given the inordinately large size of the armed forces today (even after substantial downsizing in recent years), their shrunken defense and international missions, domestic deployment for agricultural and other production purposes, and the involvement of many officers in managing the economy, the military's role — if any — in a democratic Cuba will likely be a key issue. Furthermore, the respect the armed forces historically enjoyed with the populace may have eroded in recent years as a substantial number of active and retired officers have become engaged in entrepreneurial activities, especially in the tourism sector, and perceptions that some have become corrupt have increased.

At a minimum, therefore, transition government authorities, in consultation with the populace, may conclude early in the transition that an all volunteer force would be preferable to the existing conscript force. The transition government will need to determine early in the transition process the appropriate short-term and long-term missions for the armed forces. In the short term, such missions could include domestic security and disaster

assistance. Over the longer term, the armed forces could become involved in peacekeeping operations. Regular military units that in recent years have been assigned largely if not exclusively to agricultural work will probably be decommissioned and their work privatized. A transition government may also conclude that loyal and dependable military units will be needed at least until a democratic government can be consolidated and a new constitution approved by the people. Reliable military forces could help transition authorities prevent massive seaborne migration and distribute humanitarian assistance.

### **C. Independent Judiciary**

After enduring decades of repressive totalitarian rule in which the judiciary is constitutionally subservient to the communist executive, and the executive used that authority routinely to intervene in judicial matters, the establishment of a truly independent judiciary will be a critical step toward the establishment of a rule of law in Cuba. An independent judiciary, however, is more than a collection of judges who render impartial decisions on cases before them. An independent judiciary also is accountable to the public for both its decisions and its operations. It requires, among other things, judges who know the law, are selected through an apolitical process, enjoy security of tenure, share an expectation that they will be allowed to act independently, and are subject to appropriate disciplinary procedures. Judges need as well to be managers of their courtroom and of resources. There are different models and different views on judicial independence between common and civil law countries. A free Cuba will have to evaluate its judiciary and its many options for judicial reform.

USAID and the Department of Justice have been working with judiciaries in Latin America for almost twenty years. In November 2001, USAID published “Guidance for Promoting Judicial Independence and Impartiality,” based on its worldwide experience in this area. Its programs focus on judicial ethics, selection, training, and administration (including the separation of administrative from judicial functions and creation of court management offices). USAID and the Department of Justice’s contacts throughout the hemisphere include supreme court justices and appellate and lower court judges, court administrators and civil society organizations that have spearheaded important judicial reforms in their own countries. U.S. judges and other experts have participated in many of these programs. This

experience and these resources could all be made available to interested Cuban authorities in the context of a transition.

While a free Cuban judiciary will have to face the legacy of 45 years of politicization and the judiciary's role in acts of repression, at the same time, Cuba at transition will want to address many of the same judicial reform issues now under discussion in the rest of Latin America. Much of the work that has been done by U.S. agencies over the last two decades to strengthen the administration of justice in other countries in the region has focused on the criminal justice system — and more specifically, the need for new procedural codes and new relationships among police, prosecutors, judges and defense counsel to implement them. Given the notorious failings and politicization of the criminal justice system in Castro's Cuba, particularly where cases against the political opposition or those seeking the exercise of their fundamental freedoms are concerned, it would seem natural that transition authorities would want to focus attention on issues related to criminal procedure.

Should that occur, the United States should be prepared to assist in any way possible in the development of information and options for their consideration. Because of the many actors involved in developing, presenting and rendering judgments in criminal cases, assistance in this area would preferably be provided within an inter-institutional context that included all interested parties. The starting point for analysis would be unique within the Latin American context. USAID and the Department of Justice both have considerable experience working this issue in other countries and could be asked to support such an effort. There are also experts from other Latin American countries, as well as Europe, who could readily be tapped to provide their experience moving to a different system of criminal justice, should a free Cuba so desire.

At a broader level, judicial reform should be recognized as a political process that, to be fully successful, must involve the society at large. In other countries in the region, including the United States, civil society groups — such as bar associations, law schools and civil rights watchdog organizations — play a critical role in assessing judicial performance and demanding reform when needed. Civil society is in effect the ultimate constituency for judicial reform; another important challenge faced by a free Cuba is the systematic crushing of independent civil society by the current totalitarian government. When the opportunity arises in a free Cuba to make

changes in the institutional structure of government, attention should be given early on to identifying the most knowledgeable and committed actors outside government — be they organizations or individuals — who will begin to articulate the changes needed in the justice system. These sources may provide new names for government positions, but perhaps more importantly in the long run, they will become part of the judicial reform process. In all countries, judicial reform is an ongoing evolutionary process that needs civil society participation. USAID has worked in many other countries in the hemisphere facilitating the development of such groups. The United States should be prepared to support similar groups in Cuba.

## **RECOMMENDATIONS:**

- *If requested by a transition government, the U.S. Government, through DOJ, USAID and other agencies, should be prepared to provide technical assistance and capacity building to:*
  - *Train new and current professional and lay judges to abide by rule of law procedures in criminal adjudications, as well as train and employ courthouse staff — including marshals, reporters, legal clerks, notaries, and other administrative personnel;*
  - *Provide full-time advice and technical assistance through resident legal advisors (RLAs) to help establish fair and effective legal and judicial practices and institutions;*
  - *Train judges and prosecutors in methods of effective trial advocacy through programs designed to assist prosecutors in instituting effective trial advocacy, including techniques for the analysis and use of evidence, handling witnesses, police/prosecutor interaction, presentation of evidence, charging decisions, and oral trial techniques. Technical assistance could also be provided to prosecutorial and judicial components in organizational development, judicial and witness security, and case management;*
  - *Assist in drafting a uniform criminal procedure code that respects the rights of criminal defendants, including the right to counsel, the presumption of innocence, and the right to a trial with an impartial and incorruptible decision maker;*

- *Assist in drafting constitutional amendments and laws that increase separation between the judiciary and the executive, buffering judges and attorneys from political influences that can distort the judicial process. Work to eliminate inconsistencies in criminal laws, striving to achieve a coherent legal framework to which judges and attorneys could refer when adjudicating cases;*
- *Educate Cuban citizens about their new administration of justice system, which will be critical to the success of democracy. Administration of justice specialists would be able to teach citizens the difficulties inherent in their jobs and the assistance they require from the general public; and*
- *Develop effective community policing and community prosecution programs. Citizens would learn how public officials (and defense attorneys) should be doing their jobs, which would increase the transparency of government prosecutions and make citizens more likely to join together and fight against corruption within the administration of justice system.*

#### **D. Reconstituting Police Forces and Functions**

The reorientation of the security services from internal control to democratic policing and service to the community will be an important part of the transition. The United States has assisted other countries in Latin America to establish civilian police forces in the wake of democratic openings. However, the changes in structure, attitude and capability that will be needed in Cuba will undoubtedly have unique characteristics.

Cuban security forces are profoundly politicized and serve as agents of repression. They have been privileged members of Cuban society under Castro and are undoubtedly resented and feared by others in the community. An initial question will be whether those currently in the police service can so transform their relations with the public to be accepted as legitimate leaders and officers of a new law enforcement organization. Certainly, as a point of policy and at a minimum, the United States would recommend the dissolution of the apparatus of political repression, including the General Directorate for State Security.

One of the most important tasks that should be assumed by the transitional Minister of the Interior and the Director General of police would be the development of a mission statement and strategic plan for the new police force. A problem-solving, community-oriented approach to policing could be an appropriate organizational philosophy. A civilian, as opposed to a military, structure should be developed for the police, along with policies and procedures that reflect generally accepted international norms of policing, professional conduct and human rights. Effective management and administrative systems, including personnel, budget, and information, should be put in place, as well as an office of professional responsibility, internal affairs unit, and/or an inspector general to handle allegations of misconduct in a transparent and credible way. A review of all training curricula would be needed, as well as new core curricula, to implement the new vision for the police force. There is abundant material from other countries in Latin America and other regions of the world that have made the transition to democratic policing that could provide useful models for Cuban authorities as they address these many issues.

The Departments of State and Justice have considerable experience working with police forces in transitional situations, often in coordination with other donors and international organizations. In general, such assistance programs have begun with in-depth needs assessments of both the police organization and existing training programs. An initial vetting of existing command and officer levels is recommended, to eliminate individuals who have engaged in criminal activities or human rights abuses. Those who are accepted into the new force have generally been required to complete “transition courses” that are designed to introduce or emphasize basic concepts of democratic policing. This initial training has been of a limited duration (customarily three to four weeks), so that a large number of officers could be cycled through the course without wholesale disruption to actual police services.

The U.S. Government should be prepared to assist a free Cuba develop a democratic police force. Assistance could cover all or some of the areas identified, as well as specialized training or technical assistance in areas of interest for international law enforcement cooperation, such as counter-narcotics, terrorism, or pursuit of international organized crime. The Department of State would have responsibility for overall organization and policy direction of any such effort and would call upon the expertise of the Departments of Justice, Treasury, and Homeland Security, as well as

state and local law enforcement agencies, as appropriate. Any assistance to the police would be closely coordinated with assistance to other institutions in the criminal justice system, as well as interested civil society organizations.

## **RECOMMENDATIONS:**

- *If requested by a transition government, the U.S. Government should be prepared to provide technical assistance and capacity building to:*
  - *Coordinate internships for Cuban police with internal affairs units in major U.S. police department where they could observe how investigations are conducted, the way the internal affairs units are managed, and how they handle public complaints;*
  - *Provide integrated criminal investigation training to Cuban police, prosecutors, and judges. This training would initially focus on basic criminal investigation training and management development;*
  - *Provide other programs to bolster the institutional strength of Cuban police forces, including instructor development and training, academy development assistance, strategic planning assistance, and forensic development assistance;*
  - *Assist in vetting personnel in order to ensure a police force that is committed to respecting democratic due process and the human rights of all individuals; and*
  - *Implement a basic- recruit training program that would provide basic police skills to the members of police forces. The curricula would place a major emphasis on human dignity and respect for human rights.*