

## STUDY

# The situation of rule of law and human rights in Cuba and Venezuela and EU engagement

### ABSTRACT

The EU has a range of tools at its disposal for the advancement of rule of law and human rights objectives in its external relations. However, there are considerable policy challenges in this field in relation to countries that may resist such policies, illustrated in this study's assessment of EU engagement with Cuba and Venezuela since 2014. Cuba is currently undergoing a significant, yet delicate, process of political change, which offers a strategic opportunity for the EU. Venezuela, in contrast, is experiencing a complex humanitarian emergency that defies simple policy solutions by any external actor. EU-Cuba rapprochement is also contrasted in the study with the EU's increasingly robust policies adopted in relation to Venezuela. While Cuba and Venezuela are on different trajectories in their respective relations with the EU, the study develops concrete recommendations to enhance the coherence, effectiveness and normative alignment of EU rule of law and human rights policies towards the two countries, as well as more generally. The study also analyses the fate of the Sakharov Prize laureates from both Cuba and Venezuela with a view to strengthen the impact of this specific tool in support of human rights defenders.

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## List of abbreviations

AI	Amnesty International
ALBA	Bolivarian Alliance for the Peoples of Our America (Alianza Bolivariana para los Pueblos de Nuestra América)
ANPP	National Assembly of People's Power (Asamblea Nacional del Poder Popular de Cuba)
CCDHTN	Cuban Commission for Human Rights and National Reconciliation (Comisión Cubana de Derechos Humanos y Reconciliación Nacional)
CELAC	Community of Latin American and Caribbean States
CFSP	Common Foreign and Security Policy
CLM	Christian Liberation Movement
CP	Common Position
CSDP	Common Security and Defence Policy
Cubalex	Legal Information Centre (Centro de Información Legal)
DCI	Development Cooperation Instrument
EEAS	European External Action Service
EIDHR	European Instrument for Democracy and Human Rights
EP	European Parliament
ESDP	European Security and Defence Policy
EU	European Union
EUROsociAL	EU Regional Programme for social cohesion
HR/VP	High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission
HRC	UN Human Rights Council
HRDs	Human Rights Defenders
HRW	Human Rights Watch
ICC	International Criminal Court
IFIs	International financial Institutions
IGOs	Intergovernmental Organisations
IMF	International Monetary Fund
MCL	Christian Liberation Movement (Movimiento Cristiano de Liberación)
MEPs	Members of the European Parliament
Mercosur	Southern Common Market (Mercado Común del Sur/Mercado Comum do Sul)
MUD	Democratic Unity Roundtable

NATO	North Atlantic Treaty Organisation
NGO	Non-governmental Organisation
OAS	Organization of American States
OCDH	Observatorio Cubano de Derechos Humanos
OHCHR	UN Office of the High Commissioner for Human Rights
OLP	Operation Liberation and Protection of the People
OPCAT	Optional Protocol of the Convention against Torture
OSCE	Organization for Security and Cooperation in Europe
OTP	Office of the Prosecutor of the International Criminal Court
PDCA	Political Dialogue and Cooperation Agreement
RCTV	Radio Caracas Televisión
SMEs	Small and Medium-sized Enterprises
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNASUR	Union of South American Nations (Union de Naciones Suramericanas)
UNHCR	United Nations High Commissioner for Refugees
UNPACU	Patriotic Union of Cuba (Unión Patriótica de Cuba)
UPR	Universal Periodic Review
US	United States
USA	United States of America
WHO	World Health Organization

## Executive summary

The European Union (EU) has a range of tools at its disposal for the advancement of rule of law and human rights policies in its external relations. However, there are considerable policy challenges to EU engagement in relation to countries that may resist such policies. This study offers an in-depth assessment of two 'difficult' countries for the promotion of human rights – with a primary focus on civil and political rights – and the rule of law: Cuba and Venezuela. The two countries have diverging trajectories in terms of EU engagement: the ongoing process of EU-Cuba rapprochement offers a stark contrast with the EU sanction measures adopted targeting officials in Venezuela.

There are concrete changes underway in today's Cuba, demonstrated in the generational shift in the country's politics, a strategy of diversification of external relations, continuing economic reforms and an ongoing constitutional reform process. Yet, there are also significant continuities in terms of violations of civil and political rights and limits on the rule of law. The period since 2014 in EU-Cuba relations has been dominated by the Political Dialogue and Cooperation Agreement (PDCA) adopted in 2016. While there is a need for strategic patience by EU institutions in the PDCA's implementation, it will be important for the EU to set targets and to regularly review progress, with input from a broad range of stakeholders, including civil society actors. The EU-Cuba human rights dialogue also offers an important opportunity to advance the EU's human rights and rule of law objectives. The EU's strategic opportunity to deepen the bilateral relationship with Cuba is particularly significant given the reversal of the rapprochement between the United States of America (USA) and Cuba under the current United States (US) administration. The EU needs to demonstrate to pro-change factions in the Cuban government and to society at large that there are concrete benefits to opening up to the outside world.

Venezuela is experiencing deep political polarisation, institutional breakdown, political repression, impunity and a spiralling economic crisis that combine to produce a complex humanitarian emergency in the country. EU institutions have consistently communicated concerns over the deterioration of the human rights and rule of law situation in Venezuela, and that a political solution to the country's crisis would need to respect basic human rights values and be based on a return to credible electoral and democratic processes. The EU's engagement with Venezuela has become increasingly robust since 2014, with the adoption of an evolving sanctions regime. The EU needs to remain clear in its public justification of the sanctions regime as a tool to lead the Venezuelan government towards a negotiated solution to the country's ongoing crisis. An appropriate transitional justice framework will also need to be developed that could offer clear 'exit strategies' for Venezuelan officials, while at the same time operate 'in the shadow' of the International Criminal Court. Any strategy needs to include sustained efforts to support and encourage domestic political actors to organise themselves into democratic options for the future. The importance of a long-term political strategy should not detract attention from the urgent need to extend targeted humanitarian assistance to the Venezuelan population wherever and whenever practically possible.

The Sakharov Prize is one of the central tools available to the European Parliament to promote human rights, with Cuban laureates awarded on three occasions (in 2002, 2005 and 2010) and Venezuela's opposition and political prisoners awarded in 2017. The Sakharov prize has had an important impact in raising the visibility of the laureates' work. With a view to strengthening the impact of the prize, there is scope to review the process and criteria of the prize based on the EU Guidelines on Human Rights Defenders and the United Nations (UN) Declaration on Human Rights Defenders. The role of the Sakharov Network should also be strengthened further through the development of robust engagement strategies and consistent follow-up activities.

While this study evaluates the EU's engagement on the rule of law and human rights in relation to Cuba and Venezuela, it also develops concrete recommendations to further enhance EU rule of law and human rights policies more generally. The EU has significant political capital as a credible human rights and rule of law

promoter. To turn that capital into influence requires strategic patience. A key priority of EU institutions should be to engage with a plurality of civil society actors and domestic constituencies in target countries. Civil society groups receiving EU support should be encouraged to develop local strategies for change whenever possible and wherever local conditions allow. The EU's commitment to effective multilateralism can be strengthened by increasing support to international human rights institutions and regional mechanisms in order to facilitate independent and regular human rights and rule of law monitoring. Sanctions have become increasingly used as human rights tools, including by the EU, but the very significant limitations of sanctions to bring about positive human rights change need to be recognised. If adopted, at the very minimum, targeted sanctions need to form part of a broader negotiating strategy. The EU can clearly offer significant material incentives to countries it engages with, but it has become increasingly important to recognise that the current world order is characterised by geostrategic competition and increasingly assertive alternative value systems, which may offer strategic alternatives to target countries.



## 1 Introduction: methodology and definitions

The objective of this study is to assess recent trends in the rule of law and human rights situations in Cuba and Venezuela, respectively, since 2014. The study also evaluates the European Union's engagement on the rule of law and human rights with both countries in order to develop concrete recommendations as to how to further enhance EU action in this regard. In addition, this study analyses the fate of the Sakharov Prize laureates and finalists from both Cuba and Venezuela with the view to assess the impact of this specific tool of the European Parliament (EP) in support of human rights defenders.

The research conducted for this study was primarily desk based, comprising a review of policy statements, resolutions, parliamentary debates, media sources, reports from international organisations and independent human rights organisations and existing academic research.

The desk-based research was complemented with eighteen semi-structured telephone and email interviews with country and human rights experts, international organisation officials, representatives of non-governmental organisations (NGOs) and European Union (EU) officials that took place in June and July 2018. Several Sakharov Prize laureates were also consulted for this study. All interviews were conducted on the basis of anonymity and all interview sources are cited by basic identifiers and date of interview only. Draft versions of the study have been subject to several rounds of reviews with comments received from interviewees and expert reviewers.

This study understands human rights to be indivisible, interdependent and interrelated, and it references a range of dimensions related to the situation of socio-economic rights in the two countries examined. The primary focus of the analysis herein, however, is concerned with what international human rights instruments tend to categorise as civil and political rights, as per the stipulations of this commissioned study. The definition of the rule of law in this study is adopted from the conventional United Nations (UN) description as 'a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency' (United Nations, 2014). In this regard, the main emphasis of the evaluation in this study is on the institutional dimensions of the rule of law in the two countries, primarily the operation of judiciaries and court systems in relation to criminal justice and law enforcement.

## 2 An overview of rule of law and human rights trends in Cuba and Venezuela since 2014

This section provides an overview of key trends in the rule of law and human rights in Cuba and Venezuela since 2014 and the major political and economic factors underpinning them. By way of comparison, both countries share some important characteristics with regard to their respective human rights and rule of law situations. First, both Cuba and Venezuela have negative records on a wide range of civil and political rights. With regard to both countries human rights organisations report systematic oppression of political dissent, detention of human rights defenders (HRDs) and political opposition, and restrictions on freedom of expression. With regard to the latter, for example, in the 2018 World Press Freedom Index, compiled by the NGO Reporters Without Borders, Cuba is ranked 172<sup>nd</sup> and Venezuela at 143<sup>rd</sup> of the 180 countries surveyed (Reporters Without Borders, 2018). More generally, in the Economist Intelligence Unit's 2017 Democracy Index – measuring a range of civil and political rights – Cuba and Venezuela are both ranked as 'authoritarian regimes' and ranked 131<sup>st</sup> and 117<sup>th</sup> respectively of a total of 167 countries (The Economist Intelligence Unit, 2018). Similarly, according to Freedom House, Cuba and Venezuela are currently the only countries in the Americas categorised as 'not free' (Freedom House, 2018).

Second, the two countries' constitutional and legal systems limit civil and political rights both in terms of law and in terms of practice. Cuba's political system has restricted political rights and civil liberties for decades. In Cuba, the law is constitutionally subordinated to the ruling party, there is no explicit separation of powers, and the judiciary is subject to political control by the National Assembly and the Council of State. In Venezuela, there have been successive constitutional reforms and legal changes aimed at consolidating the power of the ruling party coalition and dismantling institutional checks and balances in the country, and there has been a particularly clear deterioration in the rule of law and in the justice system since 2014. There has been a steady erosion of judicial independence and in the separation of powers in the country, which has been exacerbated in recent years (Inter-American Commission on Human Rights, 2017). For example, Venezuela had the lowest overall score among the 113 countries assessed in the 2017-2018 Rule of Law Index compiled by the World Justice Project (World Justice Project, 2018)<sup>1</sup>. Similarly, according to the World Bank's Worldwide Governance Indicators, Venezuela's percentile rank for 2016 was 0 indicating the lowest rank in the world, and Cuba's was 35 (World Bank, 2017)<sup>2</sup>.

Third, both countries have political regimes that explicitly reject conventional liberal notions of human rights, the rule of law and representative democracy. Instead, the central legitimating rationale for governments in both Cuba and Venezuela lies in their conceptions of participatory and redistributive modes of democracy with particular emphasis on social welfare and strident defence of 'national sovereignty'. In the case of Cuba there has been notable and sustained progress on several economic and social rights measures. This is reflected in the country's relatively high human development index (0.777 in 2017, ranked 73 in the world; similar to Venezuela at 0.761, ranked 78, though the latter is experiencing a downward trend) as assessed by the United Nations Development Programme (UNDP). In the case of Venezuela, there were significant achievements following Hugo Chávez's election in 1998, who ushered in socio-economic reforms that strengthened social rights, particularly access to health and education services, and that particularly benefited the traditionally most vulnerable sectors of the country's

<sup>1</sup> Cuba was not included in this survey.

<sup>2</sup> In the period between 2011 and 2016, however, the contrasting movement on the range of indicators measured by the World Bank for Cuba and Venezuela should be noted. While there has been a marked decline in the governance indicators for Venezuela, there has been a notable strengthening in Cuba. See further below regarding the significance of these contrasting governance and institutional trajectories.

population. This record combined with the political incorporation of previously marginalised sectors of the population explain the repeated electoral successes of Chávez and the enduring political and ideological support for *Chavismo* in Venezuela. While the exact scale and depth of these socio-economic achievements remain hotly disputed and highly politicised with regard to both countries (Hawkins, 2016), the main point here is simply to note the difficulty of promoting human rights, rule of law and democracy when there is so little consensus on the meaning of these notions and the direction in which political change should proceed.

While the cases of Cuba and Venezuela are comparable in some respects, they are also starkly dissimilar in others. Most notably, the countries have highly divergent state formation processes and historical trajectories. The evolution and duration of Cuba's state socialism model since the 1959 revolution makes the country truly exceptional. In the case of Venezuela, for decades the country's oil wealth brought significant economic prosperity, democratic stability and political party consensus, though against a backdrop of highly exclusionary elite rule. In terms of more current concerns regarding human rights and rule of law, the respective country trajectories are also starkly dissimilar in many ways. Cuba has displayed significant continuities over the years as measured by a range of standard human rights measures, as already alluded to. Venezuela, in contrast, has experienced a dramatic political and social deterioration in recent years. Freedom House downgraded the country from 'partly free' to 'non-free' in 2017 (Freedom House, 2017), and the human rights and rule of law situation has worsened further in the last two years.

Building on the last point, in terms of the relative strength and capacity of state institutions, as well as in terms of comparative political stability, the two countries are clearly different. While Cuba displays stable state institutions and the hallmarks of a durable regime, Venezuela has been in a constant state of considerable flux in recent years, with violent political polarisation, and a spiralling economic crisis that has brought deep social hardships. Moreover, while both countries can point to significant socio-economic progress on several dimensions as highlighted above, the current humanitarian crisis in Venezuela contrasts dramatically with the situation in Cuba. This is not to overlook the relative inadequacies in food and medical supplies, for instance, in Cuba. But these are significantly different in both extent and severity. The dramatic socio-economic deterioration in Venezuela has led to a complex humanitarian emergency in the country.

Finally, in their respective relationships with the outside world, Cuba and Venezuela are also on divergent trajectories. The Cuban government has adopted a strategy of rapprochement and diversification of its external relations, which is likely to be sustained despite recent reversals in the country's relations with the United States of America (USA). Venezuela, in contrast, is increasingly isolated internationally, notwithstanding its ongoing efforts to cultivate support from influential countries such as China and Russia. In short, while comparisons of the trends and prospects for human rights and the rule of law in Cuba and Venezuela may offer instructive general insights, the analysis will need to be informed by the many significant contrasts between the two countries.

## 2.1 Cuba: trends and prospects

There have been **significant political shifts in Cuba's relations with the outside world** in recent years, most dramatically since the US-Cuba rapprochement was publicly announced in December 2014 (Piccone, 2014). The restoration of diplomatic relations between the USA and Cuba (Crahan & Castro Mariño, 2016), the country's return to regional fora<sup>3</sup>, former US President Barack Obama's visit to the island in March 2016, as well as the signing of the Political Dialogue and Cooperation Agreement (PDCA) with the EU in

<sup>3</sup> Cuba was suspended from the Organization of American States (OAS) in 1962. In April 2015, President Raúl Castro attended the Summit of the Americas, marking the formal return of Cuba to hemispheric fora.

2016 (see 3.2) all constituted consequential political shifts in Cuba's external relations. The US administration also followed up with the easing of some of the constraints of the long-standing US embargo on Cuba, allowing for increased travel and remittances to the island (LeoGrande, 2015)<sup>4</sup>. Domestically, a generational change in political leadership, continuing stop-and-go economic reforms, an ongoing constitutional reform process, increasing internet access and growing demographic pressures from the island's youth population have all combined to raise the **possibility of a gradual, piecemeal transition** for some Cuba observers (Hoffmann, 2016). The **country's political system, however, continues to restrict political rights and civil liberties**, and there are no discernible moves towards multi-party democracy on the island. Moreover, since 2014 human rights groups continue to report systematic repression, detention and harassment of political dissidents and human rights defenders, and extensive restrictions on the freedom of association and expression.

The Cuban authorities have continued to **repress and suppress political opposition**, with regular detention of dissidents throughout the period since 2014. The Cuban Commission for Human Rights and National Reconciliation (*Comisión Cubana de Derechos Humanos y Reconciliación Nacional*, CCDHRN) documented 8 899 short-term detentions in 2014, compared with 6 424 in 2013. According to the CCDHRN, in August 2015 alone there were 768 instances of what it termed 'politically motivated' detentions; an increase from 674 in July 2015. In 2015, there was also a crackdown on dissent following the visit of Pope Francis, and in October that year there were extensive arrests and detentions, including 60 members of the Ladies in White (see 3.4)<sup>5</sup>. In November 2015, Amnesty International (AI) reported the highest number of politically motivated detentions (over 1 400) in years, with many detainees being held between one and 30 hours and some reporting excessive use of force by the police during detention. In 2016, the CCDHRN documented a monthly average of 827 politically motivated detentions, while in 2017 there was a drop to 430 detentions per month on average. In 2018, the CCDHRN continued to document a downward trend with 263 monthly detentions on average reported by the end of June.

While AI currently has fewer prisoners of conscience on Cuba registered than in the 1970s, 1980s, and 1990s<sup>6</sup>, Cuban authorities have changed their repression strategy. There has been a reduction of long-term incarceration of political dissidents, alongside, as already noted, systematic use of **short-term detention as a form of intimidation and harassment of dissent**. In a September 2015 report (Amnesty International, 2015a), AI documents the routine detention of peaceful demonstrators, human rights activists and journalists: 'Activists are often detained to stop them from attending public demonstrations or private meetings. Independent journalists reporting on these detentions are themselves harassed by the authorities or put behind bars. Often, the relatives of those detained are never informed of their loved ones' whereabouts' (Amnesty International, 2015a). AI also reports that political dissidents are 'frequently set free under *licencia extrapenal* in Cuba, a form of conditional release meaning that charges are not dropped but that those convicted are allowed to spend the remainder of their sentences outside prison' (Amnesty International, 2017b). Conditionally released prisoners are often subject to continuing

<sup>4</sup> Cuba's rapprochement with the USA had some substantial immediate human rights implications. In December 2014, there was a prisoner exchange between the USA and Cuba as part of efforts to normalise relations between the two countries, with the release of Alan Gross in exchange for the 'Cuban Five' prisoners held in the USA since 1998 on espionage charges. Moreover, in January 2015, the Cuban authorities started the release of a group of more than 50 political prisoners to be freed following the agreement between the USA and Cuba to 'normalise' relations. Many of them were members of the Patriotic Union of Cuba (*Unión Patriótica de Cuba*, UNPACU), a prominent opposition group in Cuba.

<sup>5</sup> The CCDHRN's database on detentions in Cuba is available at <http://ccdhrn.org/informes-mensuales-de-represion-politica/> (last accessed: 25/09/2018).

<sup>6</sup> In its 2017/18 annual report on Cuba, for example, AI specifically refers to six individuals as 'prisoners of conscience', but also notes that the Cuban 'authorities continued to present trumped-up charges for common crimes as a way to harass and detain political opponents, meaning there were likely many more prisoners of conscience than documented.' (Amnesty International, 2018)

harassment by the authorities. A country expert interviewed for this study also noted that human rights defenders are regularly prevented from travelling abroad (Interview #16). There are still cases of long-term imprisonment of political opponents, however. For example, in March 2017 Cuban authorities sentenced human rights defender Eduardo Cardet, the leader of the Christian Liberation Movement (Movimiento Cristiano Liberación, MCL), to three years in prison after having held him in provisional detention since November 2016 (Amnesty International, 2015a; Amnesty International, 2017h).

The Cuban authorities are using a range of **provisions in the country's criminal code to harass political dissidents, including human rights defenders, journalists and artists** (Amnesty International, 2015a). For example, Article 91 of the country's criminal code provides for sentences of 10 to 20 years for anyone who 'in the interest of a foreign state, commits an act with the aim of damaging the independence or territorial integrity of the Cuban state'. Similarly broad provisions include article 72, which states that 'any person shall be deemed dangerous if he or she has shown a proclivity to commit crimes demonstrated by conduct that is in manifest contradiction with the norms of socialist morality' and article 75.1, which states that any police officer can issue a warning for such 'dangerousness'. The declaration of 'dangerous disposition' is subject to few legal safeguards and is used to prosecute government opponents, who can then become subject to politically motivated criminal prosecutions and other forms of harassment. These provisions do not comply with relevant international human rights law and are often arbitrarily and summarily applied (Amnesty International, 2015a). For example, members of the Ladies in White, as well as their relatives, have been charged with public disorder (*desórdenes públicos*) and have not been given the right to call defence witnesses or to challenge evidence against them.

There are also reports of **intimidation and harassment of government critics** through acts of repudiation (*actos de repudio*) (Amnesty International, 2015a). These are government-coordinated demonstrations attended by government supporters, which are usually carried out in front of the homes of political dissidents and include verbal and physical abuse. The authorities also seek to discredit human rights defenders through defamation campaigns. For example, in 2015 the Inter-American Commission on Human Rights issued a precautionary measure for Laritza Diversent Cambara, the head of the Legal Information Centre (*Centro de Información Legal*, Cubalex), a group providing independent legal and human rights assistance, following one such campaign (Inter-American Commission on Human Rights, 2015).

In addition to rights-violating legal provisions, particularly in the country's criminal code, **Cuba's constitutional and judicial system is generally not compliant with international human rights and rule of law standards**. Constitutionally, the law is subordinate to the ruling party, there is no explicit separation of powers in the constitution, and the judiciary is subordinated to the National Assembly and the Council of State (Article 121 of Cuba's 1976 Constitution). While the Constitution stipulates that the People's Supreme Tribunal heads the country's judicial system (Article 121) and nominally protects the independence of judges (Article 122), the National Assembly is invested with the authority to decide on the constitutionality of laws and legal decrees (Article 75). Human rights NGOs regularly highlight the subordination of Cuban courts to the executive and legislative branches of government, which undermines institutional checks and balances and judicial independence (Human Rights Watch, 2017b). Cuba does not have a separate constitutional court or chamber, and courts have no powers of judicial review. The Cuban judicial system also uses lay judges who are appointed to sit on panels together with professional judges (Grant et al., 2017).

It should be noted here that **a constitutional reform process is currently underway in Cuba**. On 22 July 2018 the National Assembly approved a draft of a new Constitution that would recognise the right to own private property (a right significantly circumscribed in the present constitutional text) in a move that effectively offers constitutional recognition to the burgeoning non-state sector of the Cuban economy. The new Constitution would also redefine marriage as 'between two people', which would in turn open up

the possibility for same-sex marriage. The constitutional draft also contains provisions that advance judicial reforms, including by recognising the presumption of innocence in the criminal justice system. The draft Constitution would also entail some changes to Cuba's political system by creating the position of a prime minister and by introducing governorships to the island's 15 provinces. However, while the constitutional draft has eliminated the provision that aimed for Cuba 'to advance towards a communist society', it is clear that the country's one-party system will remain constitutionally protected (BBC, 2018; Granma, 2018). The constitutional draft will be subject to a process of public deliberation in a series of meetings around the country and then voted on in a national referendum scheduled for February 2019<sup>7</sup>. Hence, as one country-expert interviewed for this study noted, while the constitutional reform process is not expected to bring about significant changes to Cuba's political system, the process itself has opened up narrow but noticeable spaces for deliberation in Cuban society (Interview #4).

Nonetheless, there continue to be **extensive restrictions on the freedom of association and on freedom of thought and expression**. With regard to the former, the Cuban authorities prohibit membership in independent associations and unions. In relation to freedom of expression, long-standing restrictions also persist, for example, with the Cuban Constitution prohibiting private media ownership (Article 53). The Cuban state therefore has a complete media monopoly, including on television, radio, the press, internet service providers and other electronic means of communication. There are also reports of threats and physical violence against independent journalists. Moreover, the Law for the Protection of the National Independence and Economy of Cuba (Law No. 88) stipulates imprisonment for collaborating with radio, TV stations or publications deemed to be assisting US policy (Amnesty International, 2015a). The cumulative and sustained impact of these legal restrictions combined with the extensive 'web of control' developed over decades in Cuba have had chilling effects on everyday life (Amnesty International, 2017e). Al documents these forms of restrictions in Cuban society in a recent report: 'Ordinary Cubans perceived to be even subtly critical of life in the country face a future of harassment at work, or unemployment as authorities use their control over the job market as an additional tool of repression' (Amnesty International, 2017e). It is important to emphasise, however, that the media scene in Cuba is currently in a period of transformation, with the gradual emergence of a new generation of independent reporters (Committee to Protect Journalists, 2016).

Building on this last point, it should also be highlighted that there is a notable expansion of internet access in the country. One country expert interviewed for this study notes that there is a proliferation of 'internet parks' in the country offering public internet access, that mobile phones are ubiquitous, particularly among the youth, and that government internet censorship appears to be diminishing (Interview #4). Moreover, while internet access is still prohibitively expensive for those relying on state salaries, many Cubans have alternative sources of income. Many state employees and all university students also have internet access at work or at university. There are, nonetheless, continuing **restrictions on internet access** in Cuba (Amnesty International, 2017a), and the country remains the least connected of the countries in the Americas. Internet access continues to be censored by the Cuban authorities (OONI, 2017), though the system is far less sophisticated than in other countries with state censorship, such as China.

In sum, **notable political shifts have taken place in Cuba since 2014, making the current conjuncture in the country a critical one**. While significant uncertainties remain, the combined effects on Cuban society of the gradual changes currently underway including the constitutional reforms, the ongoing economic reform process and expanding internet access may be consequential. **There are, however, clear continuities in terms of human rights violations and limits on the rule of law**. These are likely to persist

<sup>7</sup> The draft constitution is available at: <http://www.parlamentocubano.cu/wp-content/uploads/Tabloide-Constituci%C3%B3n.pdf> (last accessed: 25/09/2018).

as the Cuban authorities seek to manage the transition to a new political generation since Raúl Castro stepped down as President in April 2018. Indeed, looking forward, there are considerable political and economic uncertainties facing Cuba. In addition to the generational shift in Cuban politics following the death of Fidel Castro in 2016 and Raúl Castro's recent handing over of the presidency, the reversal in the US-Cuban rapprochement under the current US administration is significant. While there are still ongoing areas of cooperation between the USA and Cuba (e.g. crime, drug trafficking, migration), several interviewees for this study noted that the Donald Trump administration's return to adversarial rhetoric and an emphasis on the US embargo on Cuba have made further reversals in Cuba-US relations increasingly likely (Interviews #4, #11). Moreover, Cuba's economy has been adversely impacted by the ongoing economic and humanitarian crisis in Venezuela, a main provider of economic aid and political support to Cuba in recent years. There are risks for further destabilisation for both Cuba and Venezuela as a result of their continuing relationship of interdependence (Piccone & Trinkunas, 2014). These risks are compounded by the uncertainties surrounding the direction of the economic reforms that have been taking place in Cuba since the introduction of new market-based mechanisms in 2009. Legislative changes, including a 2011 change in the country's real estate law, allowing for sale and purchase of residential properties, thereby creating a real estate market, the passing of a new investment law in 2014 (Feinberg, 2014), the emergence of a non-state sector in Cuba's economy (Mesa-Lago, 2017) and an accompanying increase in the number of self-employed people on the island are certainly significant. Raúl Castro's strategy of 'perfecting' the Cuban socialist model consisted of loosening tight economic control by government on private economic activity and was driven by the government's concerns with protecting the gains of the revolution in health, education, security, as well as with boosting its international profile. The pace of change, however, is clearly slow and gradual, reforms are prone to reversals, and the scale of the structural changes required to transform the domestic economy is considerable (Feinberg & Piccone, 2014; Feinberg, 2018).

These trends have several **implications for future engagement on human rights and rule of law with Cuba**. First, the Cuban authorities' conception of human rights and democracy is likely to persist, and human rights and democracy promotion will remain deeply contentious (Grugel & Fontana, 2018). For external promoters, such as the European Union and the USA, support for political and economic freedoms is a cornerstone of policies towards Cuba. For the Cuban regime, such policies constitute direct challenges to its mode of control and should therefore be resisted. Similarly, in international fora, such as the UN Human Rights Council, the very skilled Cuban diplomatic corps will continue to pursue initiatives aimed at presenting an alternative human rights vision. In part, this is rooted in deep political differences and in different visions of human rights: 'what they include, how they are exercised and protected and how the international community can and should support them' (Miller & Piccone, 2016). And, in part, the resistance to international monitoring and criticisms is driven by government pride in the achievements of the revolution in terms of the improvements in access to human rights such as health, housing and education. Therefore, and second, there will continue to be limits to Cuba's opening up and prospects for human rights engagement. Cuba has signed and ratified a range of international human rights treaties, but its ratification of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, respectively, is still pending. Nor has Cuba accepted the individual complaints procedures under any of the human rights treaties the country has ratified. There have been some recent indications that Cuba would open itself up to international scrutiny by independent human rights monitors. For example, the UN Special Rapporteur on trafficking in persons and the UN Independent Expert on human rights and international solidarity both visited Cuba in 2017. However, the Cuban government has rejected

other requests by UN Special Procedures for in-country visits<sup>8</sup>. Third, following decades confronted with hegemonic rule and repression, the weaknesses of political opposition forces in Cuba need to be recognised. As several interviewees for this study indicated, there is slight popular support for opposition groups and dissidents have limited political weight in Cuba (Interviews #4, #7, #8). This has implications for any external promotion strategy emphasising the need for local civil society partners and the strengthening of local capacity for political reforms. Finally, and building on this last point, despite the ongoing constitutional reform process, Cuba's constitutional and legal system will continue to diverge from conventional liberal rule of law templates. The institutional consolidation of Cuba's legal system since the 1959 revolution would make any reforms pushed by international rule of law promoters, such as the EU, exceptionally difficult to implement.

## 2.2 Venezuela: trends and prospects

Venezuela has experienced **deep political polarisation, institutional breakdown, increasing political repression and a spiralling economic and humanitarian crisis** since 2014. With the death of Hugo Chávez on 5 March 2013, the subsequent 14 April 2013 presidential election narrowly won by Nicolás Maduro (by 1.6 %) led to ever escalating political conflict and violent protests (Corrales & Hidalgo, 2017; Smilde, 2015). The political opposition, represented by presidential candidate Henrique Capriles, disputed the electoral results, which further fuelled public protests. The security forces used excessive force to disperse demonstrators, as well as widespread arbitrary detentions. It should be noted, however, that although the Maduro government inherited an economy in deep trouble, with the inflation rate exceeding 50 %, public support for *Chavismo* remained strong, not least due to the concrete achievements of government-run social programmes in health and education over the past decade. This support was manifested in the 8 December 2013 municipal elections convincingly won by candidates associated with the governing party (49 % of the votes). However, from early 2014 the government's violent response to public protests further radicalised parts of the opposition, who mobilised their supporters around the slogan of '*la salida*' (i.e. the exit of President Maduro from office). The situation in Venezuela has increasingly deteriorated with a violent crackdown on protestors by the security forces, imprisonment of opposition politicians, a political opposition in disarray, increasingly authoritarian government and the effective dissolution of representative institutions, acute economic and social hardship, a deep public security crisis and extraordinarily high levels of crime-related violence, and increasing number of Venezuelans fleeing their country.

Since the escalation of protests in February 2014 there has been severe **repression by the security forces**, which has resulted in extensive human rights violations (OHCHR, 2017; 2018). Security forces have employed unlawful force, including shooting and severely beating unarmed individuals. There have been widespread arbitrary arrests and violations of due process guarantees. Detainees have been subjected to physical and psychological abuse, including torture in some cases. There are reports of torture and ill treatment at the time of arrest, in detention and in the context of excessive use of force by law enforcement officials in responding to social protests (Amnesty International, 2014b; OHCHR, 2018). Security forces have allowed armed pro-government gangs (*colectivos*) to assault unarmed civilians and have in some cases collaborated with them. AI reports that during the February-July 2014 protests, 43 people died and almost 900, including 300 members of the security forces, were injured. More than 3 300 people were detained (Amnesty International, 2015b). This indicates that these violations were not

<sup>8</sup> At its second Universal Period Review (UPR) in 2013, Cuba rejected recommendations to extend a standing invitation to the Special Procedures of the Human Rights Council and rejected recommendations by various states to accept visits by the Special Rapporteur on the rights to freedom of peaceful assembly and association and the Special Rapporteur on torture. Cuba's third UPR took place in May 2018, though the outcome report is still pending.

isolated practices or excesses, but part of a systematic practice by the Venezuelan security forces. Human Rights Watch maintains that '[t]he nature and timing of many of these abuses – as well as the frequent use of political epithets by the perpetrators – suggests that their aim was not to enforce the law or disperse protests, but rather to punish people for their political views or perceived views' (Human Rights Watch, 2014). Although there is evidence that some authorities, such as the Attorney General (*Fiscal General de la República*) and the Ombudswoman (*Defensora del Pueblo*) received and investigated complaints of human rights violations by the security forces – and that some members of the security forces were detained for their participation in abuses – there has been widespread impunity for violations (Amnesty International, 2015b)<sup>9</sup>.

In addition to violent repression of public protests, there has also been extensive **persecution and criminalisation of the political opposition as well as of human rights defenders**. Several prominent opposition figures have been detained for their involvement in anti-government protests and denied due process<sup>10</sup>. Most notably, Leopoldo López, the leader of the opposition party *Voluntad Popular* (Political Will), was arrested together with party colleague Daniel Ceballos in April 2014<sup>11</sup> for alleged responsibility for violence that occurred during and after demonstrations. In August 2014, the UN Working Group on Arbitrary Detention stated that the detentions of López and Ceballos were arbitrary. In September 2015, López was sentenced to 13 years and nine months in prison for inciting violence during protests. He was released to house arrest in July 2017, which while subsequently (in August 2017) briefly revoked, remains in force. Another prominent example of the targeting of opposition politicians is Caracas mayor Antonio Ledezma, who was arrested in February 2015 accused of coup plotting (in November 2017 Ledezma fled house arrest in Venezuela to Spain, via Colombia). There have been disqualifications of leading opposition candidates from running for public office by seemingly arbitrary decisions by the country's comptroller general. The prominent opposition politician María Corina Machado was also arbitrarily expelled from the National Assembly in March 2014<sup>12</sup>. AI reports figures from the Venezuelan Mayors' Association, which indicate that at the end of February 2015, 33 of the 73 mayors belonging to opposition parties were facing legal proceedings (Amnesty International, 2015b). This highlights the authorities' use of the criminal justice system to intimidate people for criticising the government. There was also violence against opposition politicians reported in the run-up to parliamentary elections in December 2015. **Human rights defenders have been targeted with criminal prosecutions** intended to discredit and intimidate. HRDs argue that in a society as polarised and violent as Venezuela, the ongoing attacks and smear campaigns by government authorities could incite government sympathisers to carry out attacks on them. Moreover, in 2010 a law was passed (Law for the Defence of Political Sovereignty and National Self-Determination) that prohibits human rights groups from receiving foreign funding (Human Rights Watch, 2012).

There was a further **escalation of repression by the security forces** following the extensive anti-government protests that broke out again in April 2017. The repression, **unprecedented in scope and severity**, has raised the **spectre of international human rights** crimes being committed by the

<sup>9</sup> The obstacles to accountability have indeed been formidable (see OHCHR, 2018). There is fear of reporting abuse and the authorities responsible for investigating and prosecuting violations are themselves implicated in due process violations (Amnesty International, 2015b). Repression of protests as a policy was consolidated in February 2015 when the Venezuelan military was granted powers to use force to control peaceful demonstrations (Amnesty International, 2015b). Moreover, the Attorney-General, Luisa Ortega Diaz, investigating abuses by the security forces, was dismissed in August 2017, forced into exile, and has subsequently emerged as a strong opposition voice against the Maduro government (OHCHR, 2018).

<sup>10</sup> Opposition politicians targeted include: Daniel Ceballos, Antonio Ledezma, Leopoldo López, Maria Corina Machado, Rosmit Mantilla, Enzo Scarano and Carlos Vecchio.

<sup>11</sup> López has been barred from running since 2008 due to corruption allegations.

<sup>12</sup> Corina Machado participated in a meeting of the Committee on Foreign Affairs of the European Parliament on 14 April 2014, and her situation was referred to in EP resolutions 2014/2998(RSP), adopted on 18 December 2018, and 2015/2582(RSP), adopted on 12 March 2015, concerning Venezuela.

Venezuelan government and the security forces (OHCHR, 2018). The immediate trigger for the protests was the government-controlled Supreme Court's attempt to take over legislative powers from the National Assembly (Human Rights Watch & Foro Penal, 2017). The protests were met by the security forces using excessive, including lethal violence. AI reports that between April and July 2017, at least 120 people were killed and more than 1 177 wounded, including demonstrators and members of the security forces (Human Rights Watch & Foro Penal, 2017). Military forces were deployed to repress protests, and according to the Venezuelan Penal Forum, 5 341 people were arrested. Of these, 726 were subject to military jurisdiction and charged for demonstrating against the government. At the end of 2017, 216 remained in pre-trial detention. The Venezuelan Penal Forum reports at least 275 civilians tried by military courts, with systematic allegations of abuses and lack of due process. International human rights groups, as well as the United Nations Office of the High Commissioner for Human Rights (OHCHR) (OHCHR, 2017), have considered these abuses to be part of a systematic practice by the Venezuelan security forces. In a July 2017 statement, AI declared that the attacks against protestors are part of a 'premeditated policy of violent repression of any form of dissent' and indicated that evidence is being assembled to hold perpetrators and Venezuelan authorities to account before international criminal justice mechanisms, including the International Criminal Court (ICC) (Amnesty International, 2017d)<sup>13</sup>. From this perspective, the prevailing impunity for these violations is exacerbated by the fact that high-level officials have either downplayed or denied abuses and delegitimised protestors as terrorists<sup>14</sup>.

Venezuela has also been experiencing a **deepening institutional and rule of law crisis**, particularly since the 6 December 2015 legislative elections (Alarcón, Álvarez & Hidalgo, 2016). While the election was a landslide win for the opposition coalition, the Democratic Unity Roundtable (MUD), winning 112 out of 167 seats in the National Assembly, the government moved swiftly to neutralise its influence. The outgoing Assembly appointed government-aligned judges to vacant seats on the Supreme Court before the newly elected legislators took office in January 2016. The Supreme Court then proceeded with a series of decisions that were aimed at blocking the legislative work of the National Assembly (Inter-American Commission on Human Rights, 2017; Ramírez, 2017). In May 2017, the executive took the further step to call for the election of a Constituent Assembly designed to take over legislative functions from the opposition-led National Assembly (Human Rights Watch, 2017a). The July 2017 election to the Constituent Assembly, boycotted by the opposition, resulted in a new entity exclusively made up of government supporters, acting as a shadow legislature. Most regional governments in Latin America, as well as the EU, have refused to recognise the Constituent Assembly. Moreover, the Maduro government's hold on political power tightened further in the October 2017 regional elections, when the government won 18 out of 23 governorships, while the opposition alleged widespread voter fraud. Then on 20 May 2018 President Nicolás Maduro secured another six-year term in widely discredited presidential elections, boycotted by most parts of the political opposition, and which served to consolidate the Maduro government's increasingly blatant authoritarian rule. Several country experts interviewed for this study noted that the primary concern of the current Venezuelan government is to stay in power (Interviews #3, #6, #10).

In addition to a political opposition emasculated and in disarray, the consolidation of authoritarian rule in Venezuela has been facilitated by the **concentration of power in the executive and the gradual erosion**

<sup>13</sup> According to AI, 'the government has created and implemented State bodies and mechanisms with a mandate to carry out acts of violent repression against the population. The development of apparatuses designed exclusively for the prosecution of demonstrators and suspected dissidents, such as the creation of the "Anti-Terrorist Command" and the increase in the number of weapons and conscripts of the Bolivarian militia, indicate a calculated preparation for the implementation of a policy of violent repression' (Amnesty International, 2017d).

<sup>14</sup> While a Truth Commission has been mandated to investigate cases of human rights violations during the protests, human rights organisations such as Amnesty International have raised concerns regarding its independence and impartiality.

**of judicial independence** over the course of nearly two decades (Corrales, 2015; Inter-American Commission on Human Rights, 2017). In 2004 there was a far-reaching institutional reform of the Supreme Court. Through changes to removal and appointment procedures of judges, purges and stacking it with judges who publicly pledged their commitment to advancing the political agenda of the executive branch, the government has gained political control of the Supreme Court (Human Rights Watch, 2004). The government has also taken a series of steps to bring the country's judiciary under closer executive control (Human Rights Watch, 2012). Government interference in the judiciary has been enabled by the fact that most judges in Venezuela are appointed on a temporary basis, leaving them open to political pressures (Inter-American Commission on Human Rights, 2017). Individual judges whose judgements the government disagrees with have also been targeted. A prominent example is the case of judge Maria Lourdes Afiuni, who was arbitrarily detained in December 2009 after authorising the conditional release of an individual whose pre-trial detention had been declared arbitrary by the UN Working Group on Arbitrary Detentions. The government has repeatedly rejected international condemnation of the gradual erosion of judicial independence in the country. Most dramatically, Venezuela withdrew from the jurisdiction of the Inter-American Court of Human Rights in 2012.

The absence of formal checks and balances is also mirrored in sustained **restrictions on the freedom of expression**<sup>15</sup>, which is combined with **regular harassment and intimidation of critical voices**, as well as ongoing **discrimination on political grounds**. The June 2018 OHCHR report documents extensive violations of the right to freedom of expression, including attacks against media outlets and journalists, drawing on documented cases by the Venezuelan NGO Espacio Público<sup>16</sup>. The OHCHR also reports that 'restrictive administrative measures, including regarding the distribution of printing paper, [have] targeted certain media outlets based on their alleged anti-government editorial lines and their coverage of certain topics, including demonstrations, limiting the diversity of information to which Venezuelans have access, in particular for those who have limited or no access to the internet' (OHCHR, 2018: p. 38). Discrimination on political grounds has become a defining feature of *Chavismo* as well as *Madurismo*. For example, the recent case of Rocio San Miguel et al. v. Venezuela before the Inter-American Court of Human Rights put the spotlight on instances of individuals being fired from their government positions after they supported a recall referendum petition against former President Chávez in 2003 (Inter-American Court of Human Rights, 2018). There are also widespread concerns that the *Carnet de la Patria* (the Card of the Fatherland), which the authorities use to control who receives food and subsidised petrol, for example, is administered in a politically discriminatory way to condition benefits to political support (Bloomberg, 2018b).

In addition to political violence and state repression of protest, Venezuela is riven by **crime-related violence and a profound public security crisis**. The country has an alarmingly high homicide rate and is the home of some of the most violent cities in the world. While official statistics are unreliable and determining homicide rates is an inexact science, the Venezuelan Violence Observatory (*Observatorio*

<sup>15</sup> Although there have been very tense government-media relations since the early days of *Chavismo*, it should be noted that throughout much of former President Chávez's rule there was no prior censorship and the press enjoyed broad freedoms. Indeed, much of the private media was clearly sympathetic to the opposition, including even acting as advocates for opposition positions and using aggressive language to attack the government (Human Rights Watch, 2002). Since 2002, however, the government has gradually undermined freedom of expression through a series of measures, including the adoption of a broadcast media law (Law for Social Responsibility in Radio, Television and Electronic Media, and Organic Law of Telecommunications) that strengthened restrictions on radio and television content, gave the executive powers to terminate broadcasting licenses on arbitrary grounds and introduced broad restrictions on internet traffic. Independent radio stations have been closed down and the media has been censored from covering public protests. These restrictions on critical media have had chilling effects on freedom of expression, and fear of government reprisals has led to journalistic self-censorship (Human Rights Watch, 2012).

<sup>16</sup> Espacio Público's 2017 annual report on the situation of freedom of expression and information in Venezuela is available at: <http://espaciopublico.org/informes/#.W6udo3tKiUI> (last accessed: 25/09/2018).

*Venezolano de Violencia, OVV*) put the national murder rate at 89 per 100 000 in 2017<sup>17</sup>. Venezuela's criminal justice system appears incapable of tackling violent crime. The country's prisons and police stations, which often serve as permanent detention facilities, are notoriously overcrowded and prison riots and deaths in custody are rampant. The authorities' public security responses also tend to violate human rights and due process guarantees. For example, in July 2015 the government implemented the Operation Liberation and Protection of the People (OLP), which consisted of police and military raids directed at residents of low-income and immigrant communities in an operation the authorities claimed was aimed at combating criminal gangs (Human Rights Watch & PROVEA, 2016). Cases of grave human rights violations that ensued included mass detentions with few charges being brought, killings in what the security forces claimed were 'confrontations' with alleged criminals, evictions and housing demolitions, as well as arbitrary deportations of Colombian immigrants. Moreover, in August 2015, the Venezuelan authorities declared a state of emergency in the border region with Colombia, with the stated aim to combat paramilitarism, drug trafficking and smuggling. There were reports of ill-treatment of detainees and at least 1 000 people deported to Colombia without due process. In January 2017, the government relaunched its public security programme under the banner of Operation Humanist Liberation of the People, but the use of excessive force and arbitrary detentions continued. Between April and July 2017, these forms of arbitrary actions and raids increased in the broader context of anti-government protests. In a devastating 2017 report entitled 'Nights of Terror', AI documents attacks and raids on homes carried out by different security forces in several cities throughout Venezuela without court orders and with excessive use of force<sup>18</sup>. The AI report found that these raids followed a consistent pattern, indicating that they were part of a policy of repression, which has moved from the streets into peoples' homes. In April 2017, the government also activated the Plan Zamora, which entails the active deployment of civilians alongside police and military forces to 'preserve public order'.

The political and public security crises in Venezuela are compounded by a **humanitarian emergency** of alarming proportions. Severe shortages of food and medical supplies have intensified since 2014 (Human Rights Watch, 2016). In 2016, AI, drawing on information compiled by Datanalisis, a Venezuelan polling firm, reported that the country lacked 80% of the food and medicines that it needed (Amnesty International, 2016). Venezuela's economic crisis, exacerbated by low oil prices and spiralling inflation rates, has eroded many of the social and economic gains of the poorer sectors of the country's population. There is a scarcity of basic products and the country has been unable to pay for the import of essential food items. This has led to rising malnutrition and increasing desperation manifested in incidents of looting that have fed into ongoing demonstrations. The distribution strategy imposed by the authorities to mitigate the food crisis has been ineffective, and Caritas Venezuela, a charity, reported in 2017 that it had found '27.6% of children [the organisation had] studied were at risk of malnutrition and 15.7% of them suffered mild-to-acute malnutrition' (Various Human Rights Organisations, 2017). Basic health services have also collapsed and there is lack of access to essential medicines and medical supplies, in both the private and the public healthcare systems (Lohman, 2015). Venezuela is experiencing, as a result, a rapidly rising number of maternal deaths and increasing infant mortality rates. The country's dwindling stock of antiretroviral medications is running out and the World Health Organization (WHO) reports that malaria is on the rise (WHO, 2018). The continuing economic and health crisis in Venezuela has, in turn, fuelled a **regional migration crisis**. According to the United Nations High Commissioner for Refugees (UNHCR), since 2014 over 1.5 million Venezuelans have left their country and there has been a 2 000% increase in

<sup>17</sup> The OVV's annual reports documenting and estimating homicide rates in Venezuela are available at: <https://observatoriodeviolencia.org.ve/category/informes/#> (last accessed: 25/09/2018).

<sup>18</sup> In the report, AI documents reports of at least 47 raids and attacks on residential areas by state security forces and groups of armed civilians. This occurred in 11 different states between April and July 2017 (Amnesty International, 2017f).

the number of Venezuelan nationals seeking asylum worldwide (UNHCR, 2018). The Venezuelan government has consistently refused to recognise the scale of the humanitarian crisis and it has rejected offers of international assistance (European Parliament, 2018b).

In sum, there has been a **consistent pattern of a deteriorating human rights and rule of law situation** in Venezuela since 2014. In the context of deep political polarisation and a growing humanitarian crisis in recent years, human rights violations have taken a variety of forms, including excessive use of force in response to public protests, criminal prosecution of political dissidents (Amnesty International, 2017c; OHCHR, 2018), the use of politically motivated arbitrary detentions (Amnesty International, 2017g), the unjustified and disproportionate use of pre-trial detention, grave deficiencies of justice administration undermining due process guarantees and the right to a fair trial, incommunicado detention and solitary confinement and ill-treatment of detainees. Venezuela's political conflict and violence have, in turn, contributed to the deepening of the country's economic and humanitarian crisis. The multiplicity of violations, including of a range of socio-economic rights, the very large number of victims, and the absence of any effective institutional efforts to address these violations (OHCHR, 2017) combine to produce a **complex humanitarian emergency** in Venezuela. Thus far the Maduro government has managed to politically stave off the challenges to its rule. Several interviewees for this study highlight, however, dissent emerging even at the upper echelons of the Maduro government<sup>19</sup>, as well as within the powerful armed forces, especially at the lower ranks (Interviews #1, #2). Still, despite several recent reports of alleged military coup attempts, it appears that its growing role in the Venezuelan economy has created a situation of mutual dependence between the military and the government (Bloomberg, 2018a). Nonetheless, there is clearly a great degree of uncertainty surrounding the current situation with President Maduro emerging politically weakened from the discredited May 2018 elections, facing increasing international isolation, and an economy in freefall with continuously falling oil production and an inflation rate estimated to reach 1 000 000 % in 2018 according to the International Monetary Fund (IMF) (IMF, 2018; Financial Times, 2018).

The current situation has several **implications for future engagement on human rights and rule of law with Venezuela**. First, the term '**complex humanitarian emergency**' should give pause for thought and reflection as well a critical sense of urgency. Acknowledging the scale and depth of the Venezuelan crisis should also entail recognition that there are **no simple policy solutions**. There is great uncertainty about the current situation in Venezuela and there is a multitude of possible future scenarios. While historical and comparative experiences indicate that economic crisis and hyperinflation lead, eventually, to political change, the modalities and direction of change cannot be easily predicted. As noted, the Venezuelan military remains fragmented and heavily implicated in the running of the country. It also appears clear that in the absence of a negotiated political transition, and given the continuing sizeable political support for *Chavismo*, the risks for increasing violence and instability are not negligible. Second, and related, **the complexity of the crisis in Venezuela requires a multi-pronged approach**. The scale of the humanitarian crisis, the multiplicity of the violations committed and the very large number of people affected over a sustained period of time, including those who have been forced to leave the country, will need various forms of sustained engagement including humanitarian and development assistance, economic aid and debt restructuring, resettlement schemes, capacity-building and institutional reconstruction programmes, criminal justice reforms, as well as transitional justice. The stakes are very high not only for Venezuela but also for its neighbours, particularly for Colombia where the peace process is currently hanging in the balance and any spill-over effects from the Venezuelan crisis can further destabilise the situation there.

<sup>19</sup> Most notably, Attorney General Luisa Ortega Díaz split publicly with the Maduro government, which led to her dismissal under irregular circumstances in August 2017 (International Commission of Jurists, 2017).

Third, similar to Cuba, **the weakness of the domestic political opposition** would also need to be recognised. It is notable that the deepening of the political crisis in Venezuela in recent years is combined with a domestic opposition suffering from a lack of broad public support (Lewit & Brito, 2016; López Maya, 2018; Straka, 2017), notwithstanding the opposition's electoral gains in the 2015 legislative elections. It is clear that the splits among the country's opposition forces are long standing, that government repression has succeeded in demobilising the opposition, and that the capacity to organise protests on the scale of those that took place in 2017 has been reduced due to the needs of day-to-day survival for some sectors (López, 2018). Nonetheless, several interviewees for this study also highlight that the political opposition has no coherent political vision or plan for the country to rally around (Interviews #3, #6, #10). The solution to Venezuela's crisis is unlikely to be simply about the removal of the current government. Given the domestic situation, the political opposition has largely shifted its centre of gravity to the international sphere, where efforts to lobby foreign governments and international organisations to bring about 'regime change' in Venezuela have intensified, thereby further consolidating the more radical putative solutions to the country's crisis. Finally, and building on this last point, it is clear that **international engagement is needed to address the Venezuelan crisis**, but also that any international involvement would need to be prudent. Most Latin American countries have chosen to ignore the crisis as it has evolved over the years, and the Venezuelan government's 'oil diplomacy' proved successful in securing regional support (Ellner, 2007). They are now facing significant spill-over effects that risk getting worse and that cannot be ignored (International Crisis Group, 2018). Venezuela has increasingly attracted attention from international organisations (Organization of American States, United Nations) and coalitions of countries (Lima group) in recent years. International criticisms continue to be met with intransigence by the Venezuelan government; however, as demonstrated, for example, in its dismissals of the two recent OHCHR reports on the human rights situation in the country (OHCHR, 2017; 2018). Venezuela has ratified all main UN human rights treaties, with the notable exceptions of the Optional Protocol of the Convention against Torture (OPCAT) and the Convention for the Protection of All Persons from Enforced Disappearance. Several UN Special Procedures have long-standing pending requests to conduct country visits to Venezuela, but the government has not granted access to international monitors. The Venezuelan government indicated recently, however, that it would be willing to cooperate with the OHCHR under the new UN High Commissioner for Human Rights, Michelle Bachelet (AFP, 2018). Creative forms of engagement will therefore be needed to break the current deadlock (Buxton, 2018).

### 3 Assessment of EU's engagement with Cuba and Venezuela in the field of rule of law and human rights

This section provides an assessment of the EU's human rights and rule of law engagement with Cuba and Venezuela respectively, covering the wide range of tools available to the EU institutions. While sharing some similarities, not least in terms of being 'difficult' countries for the promotion of human rights and the rule of law, the respective countries' diverging trajectories in terms of relations with the EU are noteworthy, with EU-Cuba rapprochement contrasting starkly with the EU sanction measures recently adopted targeting Venezuelan officials. The discussion in this section starts with a general overview of the EU's policy toolset for rule of law and human rights promotion and some central considerations concerning the EU's role and capacity in this field. It then turns to an assessment of the EU's engagement with Cuba and Venezuela, with special emphasis on assessment criteria such as coherence, effectiveness and normative alignment. Each country section is followed by a series of specific recommendations concerning future EU engagement. In addition, the section offers an account of the situation of Sakharov prize laureates in the two countries. The Sakharov Prize for Freedom of Thought is one of the most visible elements of the European Parliament's human rights policy, and the most recent prize was awarded to Venezuela's opposition and to political prisoners in the country. The case of Cuba also stands out for being the country with the highest number of laureates, with the prize having been awarded to Cubans on three separate occasions (in 2002, 2005 and 2010). Several specific recommendations concerning the Sakharov prize are also included in this section.

#### 3.1 Human rights and the rule of law in EU's external relations

The EU has a range of tools at its disposal for the advancement of rule of law and human rights objectives in its external relations. First, the EU can generate significant **material incentives** to third countries – through trade, development cooperation and the promise of membership (for some countries) – for human rights and rule of law reforms. A recent study notes that '[a]s the world's largest trading block, and the number one trade partner for over 80 countries, the EU's trade policies constitute an exceptionally powerful tool to contribute to the promotion and protection of human rights worldwide. Throughout its history, EU trade policy has continuously and increasingly sought to use this leverage to promote a normative agenda, though with mixed results so far.' EU bilateral and regional trade agreements include human rights clauses, 'which make the application of the trade regime conditional upon a party's human rights performance and its respect for democratic principles' (Marx et al, 2016, p.3). The EU also provides direct programming funding to local human rights and rule of law projects, through instruments such as the European Instrument for Democracy and Human Rights (EIDHR) or the Development Cooperation Instrument (DCI). In this respect, the EU potentially has a comparative advantage over other multilateral actors in terms of its unique reach as the world's largest development aid provider.

Second, on the basis of its strong commitment to human rights as a foundational set of values, the EU can exert **normative influences** in its external relations (FRAME, 2017). Such normative commitments are translated into influence through a wide variety of mechanisms including formal dialogues and diplomatic tools, such as demarches and public statements. In the EU's Strategic Framework for Human Rights and Democracy and Action Plans there are a number of tools in its relations with third countries concerning human rights and rule of law promotion. The EU includes a human rights component in its political dialogue with third countries and regional organisations<sup>20</sup>. In terms of public diplomacy, the EU issues

<sup>20</sup> The EU guidelines on human rights dialogues with non-EU countries state that priority issues include: signing, ratification and implementation of international human rights instruments; cooperation with international human rights procedures and

public statements regarding measures that need to be taken or a particular situation. In the current global context of multiple challenges to and widespread scepticism about the values underpinning human rights and the rule of law norms, the importance of the EU's continuing commitment to these values is not to be underestimated (Hopgood, 2014; Posner, 2014). The European Parliament, more specifically, has a range of important tools available in this regard including the adoption of resolutions and press releases highlighting a variety of human rights concerns, the use of committee delegations and election observation missions, and inter-parliamentary meetings and assemblies.

Third, the EU can boost its policy impact through its multilateral engagement efforts. Indeed, the EU has elevated '**effective multilateralism**' as a dominant value and goal in its foreign policy and prioritised working in cooperation and partnership with other states and international regional or global organisations to promote multilateral solutions to common problems, in particular in the framework of the UN (Lisbon Treaty, Article 21). With regard to human rights specifically, the EU leverages and supports international and regional institutions ranging from the UN Human Rights Council and UN Security Council to regional human rights bodies, including the Inter-American Human Rights System (the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights) (Engstrom, 2018). It uses its positions and funding priorities in relation to these bodies at various levels to press for action and raise awareness through actions, statements and country visits. At the level of the UN, it uses its position to sponsor country-specific and thematic resolutions and to call for special emergency sessions, and participates in the development of soft law. The EU has provided financial support to the Inter-American Human Rights System with special emphasis on key human rights priority areas, including impunity, prison conditions and human rights defenders (OAS, 2014). In 2014, the EU and the Organization of American States (OAS) concluded a new agreement to support the strengthening of the Inter-American System. Funding levels continue to remain modest, however. For example, in 2017, in its capacity as a permanent observer, the EU contributed USD 76 100 to the annual budget of the Inter-American Commission on Human Rights, though some individual EU member states (Ireland, the Netherlands, Spain and Sweden) contributed additional funds.

Finally, the EU has developed **sanctions**, or what it terms 'restrictive measures', as a specific set of policy tools in recent years. For the EU, sanctions are designed as part of a comprehensive policy approach aimed at bringing about change in policy or activity by the target country, entity or individuals (Council of the European Union, 2014a). Specific measures include asset freezes and visa bans targeted at individual persons or companies, arms embargoes, sectoral trade and investment restrictions, and suspensions of development aid and trade preferences (Russell, 2018). EU sanctions are targeted and are meant to complement political dialogue with target countries. While the EU has embraced the sanctions toolkit and become an active user – in fact, only the USA currently has more sanctions in place – the effectiveness of these measures remains strongly disputed (Jones, 2015). A recent European Parliament briefing argues that '[t]he broader the international support for EU sanctions and the closer the relationship between the EU and the targeted country are, the stronger the prospects for success will be. On the other hand, effectiveness can be undermined by inconsistent application of sanctions standards and by the difficulty of coordinating implementation between multiple stakeholders' (Russell, 2018; see also Portela, 2018).

The range of policy tools available to the EU illustrates, however, the complexity of the policy formulation and implementation with regard to human rights and the rule of law, raising questions concerning the EU's policy coherence, effectiveness and normative alignment in these fields. In terms of **policy coherence**, the EU is an inherently complex structure made up of a variety of member states and institutions involved in

mechanisms; specific human rights concerns; the role of civil society; the protection of human rights defenders; cooperation in the field of international justice; conflict prevention and the rule of law; the promotion of democratisation and good governance.

policymaking. The EU's human rights and rule of law toolbox potentially encompasses disparate actions taken by different agents across a range of policy areas which include foreign policy (peacebuilding, confidence-building, high-level diplomacy, mediation, etc.), security and defence (security sector reform, disarmament and non-proliferation; international crime, trafficking, border management, etc.), promoting human rights and democratisation (EIDHR, election observation, etc.), justice and home affairs, trade and development assistance (cooperation agreements, judicial reform etc.) and social and environmental policy.

In relation to **policy effectiveness**, any assessment of the EU's human rights and rule of law policies will need to recognise the multitude of factors that shape outcomes in these fields. Policy effectiveness with regard to human rights, for example, generally refers to the degree to which the policies work to improve human rights conditions and decreases the likelihood of the repetition of abuses, while also providing satisfactory recourse to the victims. Assessing effectiveness, or policy impact, is inevitably complex both conceptually and practically, but any such exercise needs to involve regular monitoring and evaluation of policy formulation and impact based on robust methodologies, benchmarks and indicators (FRAME, 2017).

**Normative alignment** refers to the extent to which the EU's own human rights and rule of law commitments are applied in practice and across the different policy areas in which the EU operates. For example, the EU has responded to the common criticism that international trade policies, including those advanced by the EU, can potentially undermine the very norms such as equality, justice and human rights the EU seeks to promote. But challenges persist as regards the effective use of the various human rights conditionality clauses in trade agreements and other human rights policy mainstreaming tools (Beke et al., 2014; Brando et al., 2015).

EU institutions themselves recognise that human rights and rule of law promotion requires a more comprehensive approach including an emphasis on strengthening local institutional capacities and the need to cooperate with other relevant international actors. The EU issued a Strategic Framework and Action Plan on Human Rights and Democracy in 2012 (Council of the European Union, 2012b), with the latter updated in 2015 (Council of the European Union, 2015). The framework emphasises the importance of human rights in all EU external policies, and that of working with partners, including bilateral partners and multilateral institutions. The 2015 Action Plan prioritises the EU's commitment to strengthening the capacity of local actors and institutions, as well as civil society, to address a range of priority human rights challenges (freedom of expression, freedom of religion or belief, torture and ill-treatment, the death penalty, gender equality and women's rights, children's rights, non-discrimination, economic, social and cultural rights and business and human rights). The plan also commits the EU and its member states to engage with the UN human rights bodies. It further highlights regional organisations and mechanisms with which the EU should strengthen cooperation. Reforms in EU foreign policy-making have also aimed to address some of the historic constraints on the EU's role; these include the appointment of a High Representative of the Union for Foreign Affairs and Security Policy, rationalisation of competences between Council and Commission and consolidation of the European External Action Service (EEAS) tasked with coordination of EU activities and facilitating more coherent, multi-dimensional and effective EU action worldwide. The EU also appointed its first Special Representative for Human Rights in 2012, Stavros Lambrinidis, with a mandate to 'make EU policy on human rights in non-EU countries more coherent, effective and visible' (Council of the European Union, 2012a). The EU is also developing and implementing a rights-based approach to development cooperation (Council of the European Union, 2014b) and Human Rights and Democracy Country Strategies at the local level by EU delegations and member states' embassies to strengthen policy coherence and effectiveness.

Nonetheless, the challenges to EU engagement on human rights and rule of law matters with countries that may resist such policies are considerable. In the subsequent analysis of the EU's engagement with Cuba and Venezuela, respectively, the full range of policy tools as outlined above will be considered.

Particular attention will be given, however, to the factors that help to explain resistance to the EU's policy efforts, including: divergent perspectives on and understandings of human rights and democracy, relative capabilities to resist external promoters, and availability of alternative strategic options beyond the EU. The combined effects of these factors limit the EU's influence, including the potential impact of the two central drivers of change formulated in the EU's Human Rights and Democracy Action Plan, namely comprehensive support to public institutions and the 'invigoration' of civil society in target countries.

### 3.2 EU's engagement with Cuba

The period since 2014 in EU-Cuba relations has been dominated by the negotiations of the **Political Dialogue and Cooperation Agreement (PDCA)**. The adoption of the PDCA reflects a broader shift in EU policies towards Cuba from isolation to engagement. EU relations with Cuba were previously governed by the Common Position (CP) adopted by the EU Council in December 1996 (Council of the European Union, 1996; Hare, 2008), which stated that the EU's objective included encouraging 'a process of transition to pluralist democracy and respect for human rights and fundamental freedoms'. The Cuban government effectively viewed the CP as a policy of 'regime change'. In practice, however, the CP had gradually lost effectiveness as several EU member states developed bilateral relations with Cuba, particularly from 2008 when Fidel Castro retired from the presidency. The CP also started to look outdated following the deepening of Cuba's relations with Latin American states (Cuba joining the Community of Latin American and Caribbean States (CELAC), and the OAS lifting the country's suspension in 2009), and, in particular, the start of the US-Cuba rapprochement at the end of 2014. While the initiation of high-level political dialogues between the EU and Cuba in 2008 indicated a recognition that the CP had not worked, changes in Cuba also prompted further engagement. The Cuban government under Raúl Castro sought closer cooperation with the EU, largely driven by efforts to boost inward investment and to diversify the country's external relations.

The favourable political context facilitated the negotiations of the PDCA, which began in April 2014<sup>21</sup> and concluded, after seven rounds, in March 2016. The agreement was subsequently signed by the Council in December 2016. While the EP expressed quite significant reservations with the PDCA centred on human rights and democracy concerns (see below), the Parliament overwhelmingly approved the agreement in July 2017, which led the way to the start of its provisional application in November 2017. Notably, with the PDCA, EU-Cuba relations became subject to a **new legal framework containing provisions on the promotion of human rights (Art. 22) and the rule of law (Arts. 23 and 24), defined as essential elements of bilateral relations**. While the PDCA contains standard human rights clauses, the breaking of which can lead to the agreement's suspension, the Cuban government's insistence on maintaining political control over the implementation of the agreement is reflected in the repeated references to the parties' 'mutual respect, reciprocity, common interest and respect for their sovereignty' (see, for example, Article 2). For the EU negotiators, in the words of the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission (HR/VP) Federica Mogherini 'the agreement is not a policy goal in itself, but an instrument' (European Parliament, 2015c) to foster sustained dialogue and political and economic cooperation. For the Cuban government, on their part, the PDCA is a crucial tool to normalise their relations with the EU, as prior to its adoption Cuba was one of the few countries in Latin America and the Caribbean without a formal agreement with the EU. The repeal of the EU's Common Position constituted an important step for Cuba to further diversify its external relations in light of current uncertainties concerning its relationship with the USA, as well as the country's economic and political alliance with Venezuela.

<sup>21</sup> In February 2014, the Council authorised the Commission to open negotiations.

Crucially for the supporters of the PDCA, the agreement includes provisions for the establishment of a **human rights dialogue**. Article 5 of the agreement states that 'the Parties agree to establish a human rights dialogue, with a view to enhancing practical cooperation between the Parties at both multilateral and bilateral level. The agenda for each dialogue session shall be agreed by the parties, reflect their respective interests and take care to address in a balanced fashion civil and political rights and economic, social and cultural rights'. The human rights dialogue is meant to provide a space to identify areas with potential for technical cooperation, share experiences and best practices and address mutual concerns. In anticipation of the conclusion of the PDCA negotiations, a regular informal human rights dialogue was already launched in 2015, and three high-level dialogues have been held since (in June 2015 in Brussels, in June 2016 in Havana, and in May 2017 in Brussels), co-chaired by the EU's Special Representative for Human Rights. The three dialogue meetings to date have included discussions on a wide a range of human rights issues, including freedom of expression and association, elections, discrimination of vulnerable groups such as migrants, refugees and asylum seekers, as well as social protection systems. While officials from both parties have praised the 'respectful and constructive' nature of the discussions and their firm commitments to the continuation of the dialogue, deep differences are all too apparent. Beyond substantive differences concerning the contents of rights, while the EU stresses the need for compliance with international standards, the Cuban delegation has continued to emphasise 'full respect for the equal sovereignty [of the parties] [...] and non-interference in their internal affairs'. Similarly, while EU officials underline the political importance of human rights issues, the Cuban side refers to a 'technical dialogue' (Cuban Ministry of External Relations, 2015). These contrasting perspectives reflect long-standing differences in political visions and are likely to endure. Nonetheless, the very establishment of a human rights dialogue through which these political differences can be raised is in itself significant. Moreover, in addition to these formal human rights dialogues, the PDCA framework allows for regular exchanges between the EU and Cuba on democracy and human rights related questions.

Predictably, there have been extensive **criticisms of the PDCA**, which tend to focus on the perceived weaknesses of the agreement with regard to human rights conditionalities<sup>22</sup>. One prominent line of criticism holds that the EU has 'opened up towards Cuba without any conditions' or securing any 'concessions from the Cuban government', either with regard to political reforms or the reduction of repression of political opponents (Tvevad, 2017, 20). An NGO representative interviewed for this study was particularly scathing about the absence of any explicit human rights objectives or targets in the PDCA (Interview #16). Similarly, some critics maintain that any economic benefits secured from the agreement will only serve to strengthen the Cuban government and that EU negotiators have conceded to a regime that has no intention to reform. There is also the criticism that with the adoption of the PDCA the EU has put economic interests before its democratic values and the human rights of the Cuban people. Some also criticise the lack of civil society involvement in the negotiations of the PDCA (Tvevad, 2017, p.20). While the PDCA includes a general recognition of the contribution of civil society to the fulfilment of the agreement's objectives, there are no provisions for any formal participation of or consultation with civil society representatives in its implementation. For example, the NGO Civil Rights Defenders that works with local civil society groups in Cuba has strongly condemned the PDCA for legitimising the Cuban government and for undermining the political opposition on the island (Civil Rights Defenders, 2016).

The **European Parliament**, on its part, while overall supportive of the EU's negotiations with the Cuban government, has also **expressed reservations in relation to the PDCA**. Although there is a range of

<sup>22</sup> 'Among the critics of the PDCA and the rapprochement between the EU and Cuba in general are prominent dissidents such as Guillermo Fariñas, the 2010 Sakharov Prize laureate; members of the Ladies in White, who won the Sakharov Prize in 2005; and Elizardo Sánchez of the NGO Cuban Committee for Human Rights and National Reconciliation (*Comisión Cubana de Derechos Humanos y Reconciliación Nacional, CCDHRN*)' (Tvevad, 2017, pp.20-21).

perspectives in the EP with many Members of the European Parliament (MEPs) having urged the repeal of the 1996 Common Position, there is established support across a range of political groups in the Parliament for some form of conditionality in establishing closer relations with Cuba. Indeed, the EP has had long-standing concerns with the human rights and rule of law situation in Cuba, reflected in numerous resolutions adopted over the years, frequent parliamentary questions, visits to Cuba, as well as the award of the Sakharov Prize to Cuban human rights activists three times since 2002 (see 3.4). The EP has adopted several resolutions regarding political prisoners, expressing concern for repression of independent journalists, calling for an end to the harassment of political opponents and human rights defenders and for a peaceful process of political transition to multi-party democracy in Cuba<sup>23</sup>. With regard to the PDCA specifically, although giving its approval to the agreement in July 2017, the EP has insisted on the need for human rights to be at the centre of the EU's relations with Cuba. In a resolution accompanying its endorsement of the PDCA (European Parliament, 2017a), the EP urged the EU to promote 'the economic and political transition in Cuba' towards 'democratic and electoral standards' and called on the Cuban authorities to release imprisoned political opponents. The EP also reiterated its support for Cuban civil society in the promotion of human rights and democracy in Cuba and called for civil society to be a 'leading player' in the implementation of the PDCA. It also recommended the strengthening of the EU's dialogue with Cuban civil society and 'those who support a peaceful transition in Cuba', and urged the European Commission and the EEAS to organise regular exchanges with the Parliament regarding the implementation of the PDCA. As an illustration of the political sensitivities involved, the response to the EP resolution by the Cuban authorities was robust: the Committee on International Relations (*Comisión de Relaciones Internacionales*) of the National Assembly of People's Power (*Asamblea Nacional del Poder Popular*, ANPP) issued a declaration strongly rejecting the 'unacceptable' resolution which it branded as 'unnecessary, inopportune' and with a 'remarkable colonialist content', promoted by MEPs with 'an extensive anti-Cuban record', opposed to the advancement of relations between Cuba and the EU (Tvevad, 2017). Several interviewees for this study noted that the EP's influence on the implementation of the PDCA is rather limited in practice (Interviews #9, #13), and that the EEAS is likely to continue its strategy of engagement and dialogue within the framework of the PDCA, rather than publicly criticising the Cuban authorities on their human rights record (Interviews #7, #8).

In addition to the PDCA, which has attracted most attention in relation to EU-Cuba relations in recent years, **trade, development cooperation and humanitarian aid are other important dimensions in the bilateral relationship** through which the EU can influence developments in Cuba. The **EU is currently Cuba's largest trading partner** and the island's **largest foreign investor**. EU citizens constitute one third of the total number of tourists every year to Cuba, which generate important revenues for Cuba's most dynamic economic sector. It is important to note that the PDCA does not include provisions concerning trade preferences or investment measures, and as such the agreement's immediate impact is likely to be limited. However, other provisions in the PDCA, particularly with regard to trade-related cooperation, have direct effects on the Cuban economy. Moreover, PDCA proponents argue that the EU-Cuba rapprochement more generally has the potential to stimulate further foreign investments.

EU development cooperation with Cuba is covered by the **Development Cooperation Instrument (DCI)**<sup>24</sup>. Following the lifting of sanctions in 2008, development cooperation was resumed. According to European

<sup>23</sup> In a series of resolutions, the 'EP has condemned the lack of democracy, respect for human rights and fundamental freedoms in Cuba'. 'It has called on the Cuban government to release all prisoners of conscience and to stop the harassment of political opponents and human rights defenders'. However, the EP has also 'rejected the US embargo imposed on Cuba and called for it to be lifted' (Tvevad, 2017, p.27).

<sup>24</sup> Despite being categorised as an upper middle-income country, 'Cuba continues to be eligible for bilateral development cooperation from the Commission until 2020, under an 'exceptional clause' in the DCI' (Tvevad, 2017, p.22).

Commission figures, in the period until 2014 EUR 90 million were allocated to projects in the fields of food security, hurricane response and disaster preparedness, environment, climate change and energy, culture and heritage, support to economic and social modernisation as well as management capacities. For the subsequent funding period of 2014-2020, a further EUR 50 million have been allocated with a focus on three sectors: sustainable agriculture and food security, environment and natural resource management, and economic and social modernisation projects. Funding was also extended for support to vulnerable groups and for cultural projects led by civil society organisations or local authorities. The EU's 2017 annual human rights report, for example, indicates that funded projects to the value of EUR 3 710 200 that year included those that addressed 'youth, people with disabilities, sexual health, healthy aging and a gender approach for the care of the elderly and people with intellectual disabilities' (EEAS, 2018). Support to academic, scientific and research exchanges between Cuba and Europe has also been provided through thematic programmes such as Erasmus+ and Horizon 2020. In addition, Cuba has received funding from EU regional programmes in Latin America, with project support aimed at the internationalisation of Cuban small and medium-sized enterprises (SMEs), the development of technical South-South cooperation, cooperation on drugs policies, and climate change mitigation and adaptation strategies. The EU has also provided **support to disaster preparedness and humanitarian aid** following natural disasters, particularly hurricanes. The European Commission reports that more than EUR 94 million have been granted to humanitarian aid actions in Cuba since 1993. According to the EEAS, during both the formulation and implementation of cooperation programmes and projects in Cuba, EU officials actively seek to involve a variety of civil society actors, including international NGOs, Cuban associations, members of cooperatives, as well as independent professionals and economic operators from the non-state sector (*cuentalpropistas*). The EEAS also reports that there are support measures in place, totalling EUR 1 million, with the objective to elaborate a Gender Action Plan and a Youth and Infancy Action Plan, and to develop an EU Roadmap for engagement with Civil Society. All these areas of activities **facilitate cooperation between EU and Cuban institutions and officials and engage with the country's population**, in ways that may **strengthen the policy leverage of the EU**. Such influences are particularly impactful in a closed and controlled society such as Cuba's, though it should be emphasised that it is notoriously difficult to accurately assess their overall effectiveness. It should also be noted that the EU has not provided any significant funding to justice and rule of law-related programmatic activities during the 2014-2020 funding period.

In terms of **support to local human rights defenders** specifically, the EU delegation to Cuba maintains regular contacts with individual civil society representatives (see further 3.4), including through a human rights working group (EEAS, 2015). The Cuban authorities continue to impose, however, significant limitations on the EU's interactions with Cuban independent civil society. Open meetings with critics of the Cuban government are deemed to be 'off-limits' (EEAS, 2015). An EU official interviewed for this study noted that the EU so far has not provided funding to local human rights defenders through the EIDHR and that the Cuban authorities remain opposed to its use, as a question of principle, as they see it as undermining trust and confidence in the implementation of the PDCA (Interview #17). The issue was raised by HR/VP Mogherini as part of the Joint Council discussions under the PDCA framework most recently in May 2018, and the matter remains on the bilateral agenda. Moreover, while the EEAS regularly raises individual cases, particularly concerning detentions of political dissidents, with the Cuban authorities in the context of bilateral meetings, there have been no public statements on individual cases in recent years. There are some indications that this form of 'quiet diplomacy' can occasionally sway the Cuban authorities to release detained political prisoners.

**In sum, the PDCA stands as a milestone shift in EU-Cuba relations, though its impact on human rights and the rule of law in Cuba remains to be seen.** An increasingly engaged EU has the potential to influence future developments in Cuba, by providing incentives to human rights and rule of law reforms.

Indeed, the continuing EU-Cuba rapprochement stands in bright contrast with the gradual reversal of US policies under President Trump, towards increasing restrictions and renewed rhetorical support for the embargo. While there clearly is increasing questioning in the USA of the effectiveness of the embargo to achieve its stated policy objectives, influential supporters of the embargo currently have the support of the US President. For some, this contrast with the USA entails important opportunities for the consolidation of the EU's position as a reliable political and economic partner. The broader geostrategic context in Latin America (Cuba's diplomatic reintegration), as well as beyond the region (in terms of Cuba's evolving relations with both China and Russia), could also mean that strengthening bilateral relations between the EU and Cuba could pay further dividends.

There are nonetheless important **reasons for strategic patience in EU-Cuba relations**, generally, and with regard to human rights and rule of law reforms specifically. In terms of **policy effectiveness**, therefore, while regular monitoring and evaluation of the implementation of the PDCA continues to be crucial, EU engagement with Cuba will not lead to immediate or radical economic and social transformation in the country, and still less to immediate political changes or a democratic opening. EU officials interviewed for this study have stressed 'that the reform process in Cuba is likely to proceed at its own pace and is not likely to respond to pressure from external actors' (Tvevad, 2017, p.20; Interviews #7, #8). It is precisely the delicate and possibly reversible character of the gradual political shifts in Cuba that makes prudent yet value-oriented EU engagement all the more essential. Nonetheless, the expectation in the medium and long term is that by expanding and consolidating EU-Cuba relations, the 'PDCA may serve as a vehicle for promoting European interests and values and thereby contribute not only to facilitating economic reform, but ultimately also to creating a democratic opening' (Tvevad, 2017, p.20). In terms of **normative alignment** of EU policies and actions towards Cuba, there have been clear tensions between the promotion of a human rights-based agenda on the one hand, and the strategic priority of ensuring continuing engagement by the Cuban authorities on the other, which reflects a tactical decision regarding policy sequencing (normative influences requires prior engagement). It is also worth pointing out that **EU-Cuba relations are riven by controversies and profound differences over both means and ends that are likely to endure**. This was highlighted, for example, in HR/VP Mogherini's visit to Cuba in January 2018. While the Cuban authorities welcomed Mogherini's public criticism during her visit of the US embargo as obsolete and illegal, Cuban opposition groups continued to criticise the EU for what some argue is a 'dialogue without demands' with the Cuban government<sup>25</sup>. And, as long as detention and harassment of activists and political opponents continue on the island, profound disagreements over what strategy to pursue – engagement/dialogue or ostracism/condemnation – will persist. These differences are also apparent within the EU, as several political groups in the EP continue to express reservations over the perceived marginalisation of human rights and democracy concerns in EU's engagement with Cuba. Such policy differences pose challenges to a **coherent EU approach to Cuba**.

<sup>25</sup> The Cuban Human Rights Observatory Committee published an open letter rejecting the EU's position of maintaining a 'dialogue without demands' with the Cuban government. Available at: <https://observacuba.org/ochd-reprocha-actitud-de-ue/> (last accessed: 25/09/2018).

### 3.2.1 Specific recommendations

Drawing upon the analysis of EU policies towards Cuba together with the assessment of trends in the rule of law and human rights in the country since 2014, it is possible to identify specific recommendations concerning future EU engagement with Cuba:

I. The **PDCA** represents significant progress and provides an institutional framework for EU-Cuba relations. The agreement **represents leverage** for the EU as Cuba is actively seeking to diversify its external relations and is facing important domestic demographic and economic pressures with a youth population that actively seek to reach out to the outside world. The PDCA should be approached, therefore, as a **formal framework to foster wide-ranging and multiple forms of cooperation whose norms and procedures Cuban authorities have material incentives to comply with**. Political change in Cuba will be highly protracted, however. After all, Cuba's institutional and legal structures are consolidated – with high state capacity – and robust change is likely to be resisted by established bureaucratic practices even if there is willingness at the top of the system to embrace change. Economic and generational changes are already advanced but changes in the country's political system are likely to proceed at a distinct, slower pace. While external pressures for multi-party democracy will continue to be fiercely rejected, support for liberalisation in other significant areas of political life, encouraging values such as transparency and accountability, might be subject to less resistance and more support by local political actors. There is, therefore, a need for strategic patience by EU institutions, while at the same time a need to set clear targets, to establish transparent procedures for assessing progress towards the targets set, as well as to set an appropriate timeframe for evaluation. The EP could play a role in this regard, using, for example, its parallel resolution with the adoption of the PDCA as a set of criteria for the evaluation of the EU-Cuba agreement. There is also an important role for civil society input in progress review.

II. The **EU-Cuba human rights dialogue** is a central element of the PDCA and constitutes an important opportunity to advance the EU's human rights and rule of law objectives in the bilateral relationship. Again, strategic patience will be required. The Cuban authorities will continue to resist what they would perceive as intrusive international monitoring efforts, and they will maintain their commitment to their specific human rights vision rooted in national pride in the socio-economic achievements of the Cuban revolution. There is also a need to clearly and consistently communicate that any change will need to come from Cubans in Cuba, with international assistance whenever appropriate. Still, the EU-Cuba human rights dialogue should be developed in consultation with the relevant EU guidelines<sup>26</sup>, and clear targets and procedures for assessing progress need to be established. Again, the role of the EP in this regard could be to monitor progress on commitments entered into as part of the human rights dialogue, and EP representatives could be brought in as formal observers of the dialogue. Overall, there is a need to communicate to the Cuban government that the human rights dialogue is a normal and integral part of the bilateral relationship. With a formalised dialogue, cooperation should move to identify priority areas for technical assistance and capacity-building programmes, in such central areas as gender, aging and non-discrimination, which are less likely to be contentious. There is also significant scope in this regard to develop technical assistance programmes in the areas of rule of law, constitutional law, strengthening of the judicial system and access to justice for Cuban citizens, as well as training for legal professionals, involving both EU funding and technical expertise through the EU's Judicial Cooperation Unit (Eurojust), as well as the EU Regional Programme for social cohesion for Latin America (EUROSociAL). The dialogue should be approached with an understanding of human rights as indivisible, interdependent and interrelated, which is most likely to resonate with both parties. Such an approach would also enable the

<sup>26</sup> Available at: [https://eeas.europa.eu/sites/eeas/files/eu\\_guidelines\\_on\\_human\\_rights\\_dialogues\\_with\\_third\\_countries.pdf](https://eeas.europa.eu/sites/eeas/files/eu_guidelines_on_human_rights_dialogues_with_third_countries.pdf) (last accessed 01/10/2018)

inclusion of connected and overlapping human rights and rule of law issues related to accountability of public servants, corruption, transparency, environmental and public health concerns and employment, which are all pressing concerns in Cuban society. It will be important to build trust between the parties, and while there needs to be transparency on both procedures and substantive matters of the dialogue, public statements should be prudent. Crucially, the human rights dialogue should offer a regular space for civil society to be consulted and informed of developments. The EEAS reports that opportunities for civil society engagement are planned for the first formal human rights dialogue scheduled for late 2018, and such meetings should become an integral part of the implementation of the PDCA going forward. The EU should aim for broader representation at these meetings by ensuring that appropriate levels of EU funding are provided to enable civil society participation.

III. Building on this last point, the EU should strengthen its **engagement with Cuban civil society**, including beyond the context of the implementation of the PDCA. This engagement should be addressed towards Cuban civil society at large, using all policy tools and instruments available, to support not only civil society groups, but also cultural and student exchanges as well as support to private enterprise. Interaction with civil society in Cuba should be regular and formal, the latter not least because it will signal the recognition of the existence of an independent civil society on the island. In light of the weaknesses of the domestic political opposition forces in Cuba, it will be particularly important to ensure wide representation of civil society interests in order to strengthen the EU's promotion strategy as outlined in its Human Rights and Democracy Action Plan emphasising the centrality of local civil society partners and the building of local capacity for political reforms. The EU delegation in Havana should develop a continuous and formal dialogue with civil society groups in Cuba, facilitate meetings with visiting EU officials, and local journalists should be issued with standard invitations to press meetings. There is also scope for the EU to more strongly emphasise the importance of **corporate social responsibility and the potential role that EU-based companies operating in Cuba can play**. With the ongoing expansion of EU economic operators in Cuba, the EU delegation in Havana could develop an active role in promoting good practices in this regard.

IV. The EU should further leverage the fact that Cuba engages in **UN human rights fora**, particularly in the Universal Periodic Review (UPR), and accepts recommendations that are made. The EU's human rights and rule of law initiatives towards Cuba should build on these recommendations as well as actively draw on international human rights and rule of law standards. The EU should consider increasing the support to Cuba-related activities by international human rights mechanisms, including UN Special Rapporteurs and the Inter-American Human Rights System, in order to facilitate independent and regular monitoring of Cuba's human rights and rule of law records. The EU should also support the development of a country-specific strategy by the Office of the UN High Commissioner for Human Rights to encourage an active engagement with Cuba, including by supporting efforts to conduct an official visit to Cuba.

V. The **EU's strategic opportunity** to deepen the bilateral relationship with Cuba is particularly significant given the **reversal of the US-Cuba rapprochement** under the current US administration. While the US embargo remains a considerable stumbling block both for political and economic engagement with Cuba, the opportunity for the EU lies in pursuing a different approach to Cuba and demonstrating to pro-change factions in the Cuban government and to society at large that there are concrete benefits to opening up to the outside world.

### 3.3 EU's engagement with Venezuela

Venezuela has regularly been on the agenda of EU institutions since 2014, particularly following the deterioration in the country's human rights and rule of law situation (European Commission, 2013). In its responses to the escalating political violence in Venezuela since 2014, the **EU institutions have gradually hardened their position, going from diplomatic statements emphasising the need for mediation to**

**imposing a targeted sanctions regime.** In the context of the 2014 protests, statements by the European Council and by then-HR/VP Catherine Ashton emphasised the need for respect for human rights in responding to social protests and expressed support for the freedom of expression particularly of journalists and broadcasters covering the protests. Concern was also expressed regarding the use of excessive and disproportionate force by Venezuelan security forces<sup>27</sup>. The HR/VP on behalf of the EU also issued several statements condemning violence 'by all sides in Venezuela', with concern expressed for the increasing 'number of casualties including demonstrators, law enforcement officers and bystanders'<sup>28</sup>. In a statement to the European Parliament in December 2014, the newly appointed HR/VP Federica Mogherini highlighted the worsening economic situation, as well as the deepening tensions and the increasing polarisation in Venezuela.

One common thread since 2014 has been the HR/VP's emphasis on **negotiations and inclusive political dialogue** as 'the only way back to stability and progress in Venezuela'<sup>29</sup>. In July 2016, the Foreign Affairs Council joined in this call for all relevant political actors in Venezuela to be involved in a process of dialogue 'in full respect of the democratic and constitutional framework, rule of law and human rights and fundamental freedoms, including those of jailed opponents who cannot exercise their rights' (Council of the European Union, 2016). The EU has repeatedly expressed its willingness to support such a process of negotiation. The EU has also given **diplomatic support to the various mediation efforts** that have been attempted in recent years, particularly under the auspices of the Union of South American Nations (*Union de Naciones Suramericanas*, UNASUR), involving the Vatican as well as prominent political figures including former Spanish Prime Minister José Luis Rodríguez Zapatero. It should be noted, however, that while expressing support for mediation, the EU's direct involvement in these initiatives has been highly limited (see for example: EEAS, 2016). Similarly, while the EU has repeatedly **offered to send election monitoring missions**, the Venezuelan authorities have rejected these offers, generally preferring to invite regional electoral observers from the UNASUR, Mercosur, the Bolivarian Alliance for the Peoples of Our America (*Alianza Bolivariana para los Pueblos de Nuestra América*, ALBA) and CELAC. It is worth noting here that this comparatively reserved approach adopted by the EU stands in quite stark contrast with the more combative approach adopted by the Organization of American States under its Secretary-General Luis Almagro (see below). It could also be highlighted that the EU has developed a relatively limited working relationship with the OAS in relation to the evolving political crisis in Venezuela. More recently, in terms of EU efforts to promote international mediation of the Venezuelan crisis, more 'innovative' approaches have been floated. In May 2018, following the EU's first Joint Council with Cuba HR/VP Mogherini urged the Cuban government to seek to broker a solution to the situation in Venezuela<sup>30</sup>.

The EU, in **statements by the HR/VP, has repeatedly raised concerns for political detainees**, calling on the Venezuelan authorities to ensure due process guarantees for detainees. While initially the EU focused on procedural concerns, gradually its position has shifted towards a more robust condemnation of the treatment of what EU statements described as 'political prisoners', increasingly calling for their release. For example, in a February 2014 statement to the European Parliament, the HR/VP called on 'the Venezuelan authorities to ensure that the accusations brought against those detained are impartially investigated, to decide on the lawfulness of their detention or to order their release'. Similarly, in a

<sup>27</sup> The HR/VP repeatedly emphasised the importance of respect for human rights in EU Statements on Venezuela issued on 14 February 2014, 21 February 2014, 28 March 2014, and 15 April 2014.

<sup>28</sup> HR/VP statements issued on 21 February, available at: [http://www.eeas.europa.eu/statements/docs/2014/140221\\_02\\_en.pdf](http://www.eeas.europa.eu/statements/docs/2014/140221_02_en.pdf); and 28 March 2014, available at: [http://www.eeas.europa.eu/statements/docs/2014/140328\\_01\\_en.pdf](http://www.eeas.europa.eu/statements/docs/2014/140328_01_en.pdf) (last accessed: 06/07/2018)

<sup>29</sup> See, for example, declarations to the EP in December 2014 and February 2015 by the HR/VP.

<sup>30</sup> According to Reuters, HR/VP Mogherini told a joint news conference with Cuban Foreign Minister Bruno Rodríguez: 'I personally believe that Cuba could play a positive role in trying to avoid further negative developments (in Venezuela) and trying to re-open and negotiate a political solution and dialogue' (Reuters, 2018).

December 2014 statement to the EP, while expressing 'alarm at the detention of political figures and students', the HR/VP urged the different groups in Venezuela to 'work together' to 'find a consensus to overcome the situation'. In contrast, the HR/VP raised the issue of freedom for political prisoners directly with the Venezuelan Foreign Minister during a meeting in June 2016 in Brussels. The HR/VP also gradually started to issue robust statements expressing concerns for the detention of political figures and to explicitly call for the release of political prisoners (Council of the European Union, 2017). In August 2017, the HR/VP's spokesperson called upon the Venezuelan government 'to urgently liberate all political prisoners and ensure the respect of the rule of law and human rights' (EEAS, 2017b). More generally, while there is no formal forum for political dialogue with the Venezuelan authorities, the EU has had regular bilateral meetings both in Brussels and in Caracas during which EU officials have raised their concerns about the imprisonment of political opposition figures in Venezuela (EEAS, 2017c). The EU delegation in Caracas has also engaged in trial observations in specific cases, though the Venezuelan authorities have regularly blocked access to court proceedings (EEAS, 2016b). Though it is difficult to assess the impact of these forms of quiet diplomacy in support of political detainees, there is evidence to suggest that the attention given can at least affect the detention conditions and treatment of individual prisoners.

The **European Parliament**, on its part, has expressed its serious concern at the situation in Venezuela through several **urgency debates** and a range of **resolutions** since February 2014. The EP has generally adopted a more forceful language condemning the Venezuelan government than the statements on behalf of the European Commission and Council. In December 2014, for example, the EP adopted a resolution calling 'on the Government of Venezuela to respect human rights, to conduct effective investigations into alleged human rights violations, and to enable an environment in which human rights defenders and independent non-governmental organisations can carry out their legitimate work of promoting human rights and democracy' (European Parliament, 2014). The EP adopted further specific resolutions on the situation in Venezuela in March 2015, June 2016 and April 2017. Moreover, despite not receiving an official invitation from the Venezuelan authorities to this effect, the EP also sent an 'exploratory mission' to Caracas in November 2015, where it met with a range of civil society representatives, though not with government officials<sup>31</sup>. The resulting report from this visit called for a political delegation to observe the December 2015 legislative elections, but this specific initiative was eventually abandoned. The EP has also sought to engage with the Venezuelan crisis within the framework of the **Euro-Latin American Parliamentary Assembly** but has failed to agree on a common approach largely due to internal splits concerning the appropriateness of condemning the Venezuelan government for what some parliamentarians consider would amount to undue interference in the country's internal political affairs. The EP has also repeatedly expressed support to the Venezuelan political opposition and human rights defenders in resolutions, the organisation of events as well as through the Sakharov prize (see 3.4). This extensive range of activities by the EP concerning Venezuela has had the significant effect of keeping the situation in the country on the EU's political agenda.

Following the widespread repression of the 2017 protests and the July 2017 election of the Constituent Assembly, **positions across EU institutions have markedly hardened**. The increasingly assertive condemnation of the Venezuelan government was apparent in HR/VP Mogherini's 2 August 2017 statement that declared that EU member states 'deeply regretted the decision of the Venezuelan authorities to go ahead with the election of a Constituent Assembly', and that given 'concerns over its effective representativeness and legitimacy' the EU would not recognise the election (Council of the European Union, 2017). The EP also refused to recognise the Constituent Assembly election and, in a

<sup>31</sup> The European Parliament resolution 2014/2600(RSP), adopted on 27 February 2014, called for an ad-hoc European Parliament delegation to be sent to Venezuela.

resolution adopted on 13 September 2017, the Parliament went as far to call on the European Council to consider sanctions in the form of asset freezes on Venezuelan officials responsible for serious human rights violations (European Parliament, 2017b).

This highlights the EU's evolving approach to the use of **coercive measures such as sanctions**, generally, and with regard to Venezuela specifically. In contrast to the US imposition of sanctions on Venezuelan officials, the European Commission has displayed resistance to such measures. For example, in June 2015 in a response by HR/VP Mogherini to a question in the EP, sanctions were rejected<sup>32</sup>. Similarly, in July 2015 the Commission explicitly ruled out considering sanctions<sup>33</sup>. In the following months, however, there was a gradual shift towards the acceptance of sanctions as an appropriate and potentially effective measure in the EU's engagement with Venezuela. In many respects the EP proved to be ahead of the curve on the question of sanctions. For example, in April 2017, following the outbreak of a new wave of social protests the EP adopted a resolution on Venezuela condemning the country's 'unconstitutional violation of the democratic order' and calling on the Council to adopt targeted sanctions on individual Venezuelan officials (European Parliament, 2017c). Following the disputed election to the Constituent Assembly in July 2017, the HR/VP announced on behalf of the EU that it was 'ready to gradually step up their responses in case democratic principles are further undermined and the Venezuelan Constitution is not respected' (EEAS, 2017a; Council of the European Union, 2017). It is notable that the European Council had adopted a position before the Constituent Assembly elections that it continued to support dialogue efforts between the Venezuelan government and the opposition, and that after the election result the EU still refrained from imposing sanctions.

However, following the October 2017 regional elections in Venezuela the EU's position on sanctions consolidated. Despite pre-election polls indicating strong electoral support for the opposition, the Venezuelan government and its allies won overwhelmingly amidst numerous reports of voting irregularities. In response, on 13 November 2017, the Foreign Affairs Council adopted by unanimity **targeted, gradual and reversible 'restrictive measures', or sanctions**, as an expression of the EU's concern with the political situation in Venezuela<sup>34</sup>. The measures provide for an export ban on arms and material that might be used for internal repression, IT surveillance equipment, as well as a legal framework for travel ban and assets freeze measures. The Council refrained, however, at this point from targeting individual Venezuelan state officials, though left it open that such sanctions could be imposed at a later stage. The EU's official position remained focused on efforts to push the Venezuelan government and the opposition towards a dialogue, as expressed in the following 26 January 2018 declaration by the HR/VP on behalf of the EU: 'The EU reiterates the need for a negotiated and peaceful solution to the crisis in Venezuela based on credible elections, the recognition and respect of the role and independence of all democratically elected institutions, notably the National Assembly, the release of all political prisoners and the upholding of human rights and fundamental freedoms. The EU stands ready to take appropriate measures in light of developments and will continue using all its instruments to foster shared democratic solutions that can bring political stability and allow the country to address the pressing needs of the population that is harshly affected by the present crisis'. However, on 22 January 2018 the EU extended its Venezuela sanctions regime when the Council adopted a list of seven senior Venezuelan officials that

<sup>32</sup> 'The EU does not share the US approach on sanctions with regard to Venezuela. It however does have concerns over the political, social and economic situation in Venezuela' (European Parliament, 2015a).

<sup>33</sup> 'The EU cannot intervene in the affairs of third countries, however we have repeatedly underlined in statements that it is essential that fundamental rights and freedom of expression are respected. On a practical level the EU provides support to civil society working in the field of democracy and human rights under the European Instrument for Democracy and Human Rights. The EU is not considering sanctions' (European Parliament, 2015b).

<sup>34</sup> Council Decision (CFSP) 2017/2074 and Regulation (EU) 2017/2063 of 13 November 2017.

would be subject to travel ban and assets freeze measures for their responsibility in the violation of human rights, democratic principles or rule of law<sup>35</sup>. While the Venezuelan government expelled the Spanish ambassador in Caracas, the European Parliament called for the sanctions to be extended further (European Parliament, 2018). When HR/VP Mogherini issued a statement indicating the possibility of additional sanctions in April 2018, the Venezuelan government responded by criticising the EU for effectively cowering to US policy. Following the European Council's rejection of the results of the May 2018 presidential elections in Venezuela, bilateral relations became increasingly strained, and in June additional sanctions were imposed, including on newly nominated Vice-President Delcy Rodríguez and her predecessor, Tarek El Aissami.

The evolving sanctions regime in relation to Venezuela notwithstanding, it should be noted that the EU has developed a **varied cooperation portfolio** with the country. Relations between the EU and Venezuela are not governed by any bilateral legal framework, nor does the EU have an overarching political or trade agreement in place with the country. Still, in terms of development assistance, the EU was Venezuela's largest international donor for the 2007-2013 funding period. Following changes in EU's aid allocation policies from 2014, Venezuela is no longer eligible for bilateral development cooperation, but the country remains eligible for funding from thematic and regional programmes under the DCI and there has been some continuing funding, for example in relation to efforts to fight drug trafficking. In addition, the EU provides **support to local civil society** working in the field of democracy and human rights under the European Instrument for Democracy and Human Rights. The EU's 2017 annual human rights report states that EU cooperation activities focused on the reinforcement of the capacity of NGOs and human rights defenders, the promotion of gender equality, women empowerment, youth professional training, and the support to democratic institutions' capacity. The EU also hosts an annual consultation with Venezuelan HRDs in Caracas (EEAS, 2017c). In previous years there has been funding of various **capacity-building activities**, including technical assistance to the National Assembly (EEAS, 2016b) and training programmes for the security forces (EEAS, 2014). With regard to justice and rule of law programmatic activities specifically, EU support has been highly limited. The scope for such forms of assistance is severely constrained given the overt politicisation and institutional weakening of Venezuela's justice sector in recent decades, and Venezuela's government has not requested to participate in any relevant regional programmes under the DCI, such as Eurosocial/Eurosocial+ or ElPacto.

Moreover, the European Commission has provided **humanitarian assistance** to Venezuela since 1998, including support to disaster preparedness. In response to the evolving humanitarian crisis in recent years, the Commission has undertaken monitoring missions and extended funding for projects focused on basic health and nutrition interventions for particularly vulnerable groups, and in March 2018 additional humanitarian funding of EUR 2 million was extended. Moreover, on 7 June 2018 the Commission announced EUR 35.1 million in emergency aid and development assistance to Venezuela as well as to neighbouring countries affected by the crisis (European Parliament, 2018b). However, due to the Venezuelan government's rejection of international humanitarian assistance, the EU's reach with regard to in-country activities in this area is highly restricted.

**In sum**, since 2014 the **EU's engagement with Venezuela has become increasingly robust**. This consists of a shift from a strong emphasis on the need for political dialogue between the Venezuelan government and the country's political opposition forces to the imposition of an evolving sanctions regime targeting individual former and current state officials. Since 2014 there have also been changes in regional

<sup>35</sup> Council Decision (CFSP) 2018/90 and Regulation (EU) 2018/88 of 22 January 2018. Available at: <http://www.consilium.europa.eu/en/press/press-releases/2018/01/22/venezuela-eu-sanctions-7-individuals-holding-official-positions/> (last accessed: 06/07/2018).

governments' responses to the Venezuelan crisis. Following the outbreak of protests in 2014 Latin American leaders remained largely silent. In 2017, by contrast, the Lima 12 group, consisting of 11 Latin American governments and Canada, condemned what they referred to as the breakdown of democracy and systematic human rights abuses in Venezuela. They also refused to recognise the Constituent Assembly, called upon the Venezuelan authorities to accept international humanitarian aid and imposed an arms embargo on the country. This partly reflects the political right-wing trend in Latin America, but it also illustrates Venezuela's increasing regional isolation. Moreover, OAS Secretary-General Luis Almagro has been an increasingly strident critic of President Maduro and has published a series of reports condemning the human rights and humanitarian crisis in Venezuela (OAS, 2016; 2017a; 2017b). Also, in April 2017, 19 out of 35 OAS member states, citing the Inter-American Democratic Charter, expressed 'grave concern regarding the unconstitutional alteration of the democratic order', prompting the Maduro government to announce its withdrawal from the OAS in May 2017. The US government, both under President Obama and then President Trump, has gradually extended its sanctions regime. As further evidence of the international pressures the Maduro government is under, the OHCHR has published two reports that indicate that crimes against humanity may have been committed in Venezuela and that call for an international investigation into alleged crimes (OHCHR, 2017; 2018). And, finally, in February 2018, the Office of the Prosecutor (OTP) of the International Criminal Court announced the opening of a preliminary examination of international crimes allegedly committed since April 2017 in Venezuela (Office of the Prosecutor of the International Criminal Court, 2018). Similarly, a report prepared by a group of experts convened by the OAS Secretary-General and published in May 2018 presented evidence of human rights violations and international crimes having been committed in Venezuela with a recommendation to refer the situation to the OTP (OAS, 2018). In September 2018 several Latin American governments joined efforts with the Canadian government to call for the opening of a formal ICC investigation of international human rights crimes having been committed in Venezuela.

It is against this background of **increasing international pressures** on the Maduro government that the EU's evolving sanctions regime needs to be seen. Sanctions remain part of a broader EU policy approach and they are justified by EU officials as a way to incentivise change in behaviour by the Venezuelan authorities, to pressure them towards genuine negotiations, to deter future violations, and not as a form of punishment for abuses they are accused of (Interview #15). Still, significant questions remain regarding the **policy effectiveness** of the measures imposed (Portela, 2018). In the first instance, in general terms sanctions remain controversial foreign policy tools. With regard to Venezuela specifically, many observers note in relation to the US sanctions imposed on the country that they have had little or no discernible impact on the government's policies to date. Sanctions may have a symbolic value for some critics of President Maduro and his allies, but some observers argue that for any sanctions to shift the calculations of regime supporters in Venezuela they need to target the country's oil sector and to include financial sanctions. Such measures, however, will lead to further hardship for the Venezuelan population. The stakes are very high indeed, as the consequences of a possible regime collapse will be severe. Several interviewees for this study highlighted the importance for the EU of keeping channels of communication open with the Venezuelan government (Interviews #6, #10, #12). Ultimately, for sanctions to have any policy utility they would need to contribute towards a negotiated solution to the Venezuelan crisis, which is the stated purpose of the EU sanctions regime. In terms of **policy coherence**, the EU's developing set of responses to the Venezuelan human rights and rule of law situation has been extensively and controversially debated by the EU institutions. While the EP's resolutions manifested early support for the adoption of sanctions, the Council and Commission expressed initial reluctance. There has been increasing policy convergence over time, however, between the approach supported by a majority in Parliament and that eventually adopted by the Council. In relation to the **normative alignment** of EU policies on Venezuela, EU institutions have consistently communicated concerns over the deterioration of the human rights and rule of law situation in Venezuela, and that a political solution to the country's crisis would need

to respect basic human rights values and be based on a return to credible electoral and democratic processes.

### 3.3.1 Specific recommendations

Based on the analysis of existing EU policies towards Venezuela and taking into account trends in the rule of law and human rights in the country since 2014, certain recommendations can be identified that could advance the EU's policy objectives.

Venezuela's political, economic and humanitarian crisis defies simple solutions. Complexity should not, however, block the urgent humanitarian assistance that Venezuelan society needs and prevent commitments to support the future reconstruction of the country.

I. It is precisely for these reasons that a careful assessment of the impact of the **EU's evolving sanctions regime** is crucial. Sanctions can have important symbolic value, when other policy options have been exhausted. It is important that the EU remains clear in its public justification of the sanctions regime as a tool to lead the Venezuelan government towards a negotiated solution to the ongoing crisis and an improvement in the country's human rights situation. The sanctions should remain individually targeted. Smart tactical use of the reversibility feature of the sanctions will also need to be made in order to send political signals to the Venezuelan authorities as to what type of behavioural change will lead to the lifting of sanctions<sup>36</sup>. The sanctions should be clearly tied to outcomes, such as credible moves towards internationally observed elections. Several country experts interviewed for this study noted that while the sanctions regime has put some pressure on the Venezuelan government, there continue to be significant limitations on the sanctions tool to bring about change in behaviour, related to the absence of a clear 'end game' and an exit strategy, the political complexity of the EU's decision-making concerning the reversibility (or non-renewal) of existing sanctions, and the risks of domestic backlash in case of perceptions that sanctions constitute a form of foreign aggression and interference (Interviews #1, #2, #3, #6, #10). What remains clear, however, is that sanctions have not brought a solution to the unfolding Venezuelan crisis. The EU should continue to actively work to keep channels of communication open with the Venezuelan government, not least to be able to credibly explain the logic of sanctions as measures to contribute to a negotiated solution to the crisis, and to avoid government officials from closing ranks. For sanctions to be effective as a policy tool, they need to be reversible in order to incentivise desired behavioural change<sup>37</sup>. Moreover, there will be little to be gained to extend the sanctions regime beyond targeted sanctions against individuals, particularly to the country's oil industry which is already near collapse. Extending sanctions beyond individuals would also add to the humanitarian crisis.

II. Similar to the above, there is a pressing need to assess the impact of the Venezuelan situation evolving **'in the shadow' of the International Criminal Court and how international criminal justice may shape political negotiations and 'exit strategies'** for individual officials potentially targeted. International criminal justice may in some circumstances disincentivise the relinquishing of political power by human rights violators, but there are certainly many factors that influence such decisions. Moreover, while

<sup>36</sup> The European Council conclusions on Venezuela, adopted on 13 November 2017, specify such changes: 'The measures can be reversed depending on the evolution of the situation in the country, in particular the holding of credible and meaningful negotiations, the respect for democratic institutions, the adoption of a full electoral calendar and the liberation of all political prisoners.' Press release available at: <http://www.consilium.europa.eu/en/press/press-releases/2017/11/13/venezuela-eu-adopts-conclusions-and-targeted-sanctions/> (last accessed: 25/09/2018).

<sup>37</sup> It should be noted that Council Decision (CFSP) 2017/2074, adopted on 13 November 2017, concerning sanctions on Venezuela contains a sunset clause (Article 13) stipulating that the restrictive measures shall apply until 14 November 2018. It is still the case however, that political pressures to sustain sanctions once adopted tend to be formidable and any decision to lift – or not renew – such measures are likely to be subject to intense political negotiations.

accountability for grave human rights crimes has emerged as a robust norm in international law, amnesties, when appropriately designed, can constitute a legitimate form of accountability. Given the legal and political complexities of 'transitional justice', particularly in the context of ongoing conflict (Engstrom, 2012) and international standards prohibiting amnesties for grave human rights crimes, the EU should resist simple dichotomies between 'peace', or conflict resolution, and 'justice', in its approach to the ongoing ICC preliminary examination of the Venezuelan situation. Such a position would be aligned with the EU's Policy Framework on support to transitional justice<sup>38</sup> and its commitment to the ICC. Moreover, a credible and internationally supported transitional justice framework for Venezuela could also offer lower and mid-ranking officials in particular more robust guarantees that their due process rights would be respected in the context of a political transition in the country.

III. For any significant improvement to the human rights and rule of law situation in Venezuela, there needs to be a **resolution to the country's underlying political conflict**. Moreover, while the current political context is not amenable to credible negotiations, and the various initiatives for dialogue undertaken to date have all failed, a sustainable resolution to Venezuela's crisis **can only happen through negotiations**. It is clear that the fall, or removal, of the current Venezuelan government will in itself not produce a sustainable solution to the country's political conflict. The EU will need to be clear in its continuing emphasis on a long-term policy strategy consisting of patient and sustained efforts to support and encourage domestic political actors to develop pluralistic and democratic options for the future. It is precisely in this regard, beyond the immediate humanitarian crisis, that the EU can play an important role. Once a political solution to the political crisis is found, the EU can offer support to institutional and justice sector reforms through technical assistance. The EP could then also consider offering support to Venezuelan political actors through its parliamentary assistance and mediation programmes. To reiterate, however, the importance of a long-term political strategy should not detract attention from the urgent need to extend targeted humanitarian assistance to the Venezuelan population wherever and whenever practically possible.

IV. Closely related to the previous recommendation, for any negotiation initiative to be able to break the current deadlock, there would need to be a **representative political opposition**. Venezuela's domestic political opposition, however, faced with severe repression by the government, has not managed to promote a vision for a post-conflict Venezuela that could generate broad-based support in the country. The domestic opposition's weakness and lack of unity raises distinct policy challenges. The EU institutions, including the EP, should continue to **encourage dialogue and support Venezuela's democratic political forces** through all available channels including the Sakharov Network and the EUROLAT delegation. The EU should continue to unequivocally **reject military intervention** as a solution to Venezuela's crisis, not least because of the predictable negative human rights consequences of any such action. It should focus minds that while Venezuela is already suffering from high levels of violence, there is considerable risk of further deterioration.

V. At the current juncture, coherent action and a negotiated solution to Venezuela's crisis can only happen with **international mediation**. The EU can, in this respect, play the role as a credible mediator, and a human rights and rule of law promoter. Such an initiative may be pursued in **cooperation with relevant regional institutions and groupings**, such as the OAS, UNASUR, and the Lima group. It should be noted that the OAS Secretary-General and the Lima group countries have taken a robust approach to Venezuela, almost exclusively focusing on censoring the Maduro government, but without conveying a sense of how

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Available at: [http://eeas.europa.eu/archives/docs/top\\_stories/pdf/the\\_eus\\_policy\\_framework\\_on\\_support\\_to\\_transitional\\_justice.pdf](http://eeas.europa.eu/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf) accessed: 25/09/2018).

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the political and humanitarian crisis in the country can, and should be, solved. The EU could develop a more constructive role in this regard, as actively 'taking sides' in political conflict situations, or being perceived to do so, can have negative consequences and undermine humanitarian as well as human rights efforts. The EU should also consider supporting the appointment of a UN Special Representative on Venezuela, whose sustained attention to the country's crisis may more effectively support the development of creative policy approaches. There is also a pressing need to **coordinate policies and initiatives with neighbouring countries**, which are being directly affected by Venezuela's crisis and that have a significant stake in its peaceful resolution. In addition, EU policies towards and engagement with Venezuela should consider the strategic dimension to the country's crisis. China, in particular, has a direct stake in a stable Venezuela given its investments in the country. The EU should pursue **dialogue with China** in order to encourage a positive role with regard to the Venezuelan crisis<sup>39</sup>. Above all, notwithstanding that the current political situation in Venezuela is not propitious for the holding of new elections, the EU should encourage attempts to move towards genuine negotiations and a political transition, with credible elections overseen by EU electoral observers.

VI. The EU's position is generally aligned at the **UN Human Rights Council (HRC)**. Building on the recent OHCHR reports on Venezuela, the EU member states in the HRC supported the September 2018 resolution on Venezuela, which provides the High Commissioner for Human Rights with a mandate to offer an update on the situation in Venezuela in the upcoming sessions and a written report followed by an interactive dialogue at the 41<sup>st</sup> session. The EU could also consider a call for the stronger HRC tool in the form of a Commission of Inquiry.

### 3.4 The Sakharov Prize

The Sakharov Prize is awarded by the European Parliament each year for a specific achievement in one of the following fields: defence of human rights and fundamental freedoms, particularly the right to freedom of expression; safeguarding the rights of minorities; respect for international law; development of democracy; and implementation of the rule of law. The prize aims to recognise the laureates and to support their work, as well as to bring attention to specific causes and/or country contexts. The underlying rationale for the prize is that it will offer some protection for laureates, who often work in politically inhospitable conditions. The Parliament has also set up the Sakharov Prize Network to maintain a relationship with laureates, develop contacts between them and encourage collaboration. The Network has emerged as an integral part of the EP's human rights activities in relation to the Sakharov Prize. Regular Network events serve as crucial opportunities for laureates to come together and explore ways to exchange information, experiences and tactics, as well as to pursue collaborations. The Network has developed information exchange facilities with, for example, monthly newsletters reporting on the situation of laureates, social media activities and processes to coordinate responses to urgent protection requests. The Network also serves an important awareness-raising function by, for instance, facilitating the participation of laureates in events and activities in EU member states.

With the development of the EU's activities for the protection of human rights defenders more generally, the EP seeks to monitor the situation of laureates and to ensure support for their work through political

<sup>39</sup> While there is extensive scepticism concerning the role of China in relation to international human rights generally, and with regard to its influence in Venezuela more specifically, it needs to be recognised that there are potentially significant shifts underway in China's evolving relationship with what Rosemary Foot refers to as the international 'human protection regime' (Foot, 2017). In short, the Chinese government's efforts to gain recognition as a responsible great power have led to, for example, increasing involvement in international peacekeeping and a stronger emphasis on the prevention of wide-scale abuses. These normative shifts in China's interests combined with its economic concerns in Venezuela can provide a meaningful basis for its involvement in international efforts to negotiate an end to Venezuela's humanitarian crisis.

statements, demarches and emergency aid. In 2013, the EP created the Sakharov fellowship programme for human rights defenders, which includes capacity-building and awareness-raising activities. A 2013 study commissioned by the European Parliament found that the Sakharov Prize has had 'considerable impact on individual laureates and their organisations' (Pishchikova et al., 2013). The study showed the ways in which the prize has provided visibility and recognition, both in the laureates' home countries and abroad, access to international support, moral and psychological support, as well as a sense of empowerment, partly through the financial award associated with the prize. The study also highlighted, however, that laureates have occasionally been subjected to backlash in their home countries, including through defamation campaigns. A further limitation on the impact raised by the study included the sometimes limited diffusion of the award. In particular, the study emphasised that the impact of the prize depends on a range of 'geostrategic' and domestic political factors that are generally beyond the scope of the EU's influence. Overall, the study argued that the potential of the Sakharov prize remains 'under-utilised'.

#### **The Sakharov prize has been awarded to Cubans on three separate occasions.**

**2002: Oswaldo José Payá Sardiñas.** Payá was the founder of the Christian Liberation Movement (CLM), founded in 1988 as a civil society organisation opposing the Cuban government, which was persecuted by the authorities with many of its members detained and abused. In 1998, Payá was the initiator of the Varela Project, which challenged the Cuban government by demanding a referendum on fundamental rights in Cuba. The Cuban authorities ignored the referendum initiative and cracked down on the people associated with it, including Payá. In 2002, Payá was awarded the Sakharov Prize for his work, though the impact of the award in Cuba was limited. In 2012, Payá died in a car crash under circumstances that remain disputed. The 2013 study assessing the impact of the Sakharov Prize commissioned by the European Parliament states that Payá's family expressed disappointment with the EU for not having done more in response to the numerous death threats received by Payá. Some efforts were made to launch an independent investigation into the car crash that caused Payá's death, but they never came to fruition.

**2005: Ladies in White (Damas de Blanco).** In 2004 the Ladies in White was formed by a group of women to protest against the detention and harassment of their family members who are political dissidents. The members of the group adopted white clothes as their symbol to illustrate the innocence of their imprisoned husbands and sons and they actively draw on the experiences of other human rights groups in Latin America in their emphasis on peaceful resistance, such as the Argentine group Mothers of the Plaza de Mayo. The group was awarded the Sakharov Prize in 2005. According to the 2013 study on the Sakharov Prize, the members of the group perceived the award to serve as a 'shield' from persecution by the Cuban authorities. The increased profile and visibility of the group both at home and abroad following the award has also been notable, and their membership has increased in the period since, with the group opening more branches in different provinces on the island. The group has also emerged as a strong critic of the EU-Cuba PDCA (see 3.2). Members of the group have travelled to Brussels to condemn the continuing repression by the Cuban authorities, which also targets the group. Indeed, the leader of the Ladies in White, Berta Soler, as well as other members of the group, have been repeatedly harassed and detained by Cuban security forces and subject to court proceedings. Soler has also been prevented from travelling outside the country, including for trips to attend events at the European Parliament. Soler was detained by the authorities at the time of the visit of HR/VP Mogherini to Cuba in January 2018. Four members of the Ladies in White are currently imprisoned.

**2010: Guillermo Fariñas.** Guillermo Fariñas received the Sakharov Prize in 2010 for his political activism on behalf of all prisoners of conscience in Cuba. An independent journalist, with a background in the Cuban armed forces contingent in Angola, Fariñas's relationship with the Cuban

government changed radically at the end of the 1980s, after which he has continued to denounce abuses. He has been repeatedly detained and imprisoned and has conducted numerous hunger strikes in protest over human rights violations. In 2013 he became the spokesperson for the Patriotic Union, a large dissident group in Cuba. Prevented by the Cuban authorities to travel to Brussels to receive the award, Fariñas, together with representatives of the Ladies in White, were finally able to accept their prizes in person in 2013. In October 2016, as part of a Cuban delegation Fariñas participated in meetings with the European Parliament, including an event with the Subcommittee on Human Rights and the Committee on Foreign Affairs in association with the Delegation to the Euro-Latin American Parliamentary Assembly (Euractiv, 2016). Similar to the Ladies in White, Fariñas has strongly criticised the PDCA, not least for lack of involvement of civil society in the negotiations of the agreement, as well as for what he perceives is the prioritisation by the EU of economic interests over human rights concerns in its dealings with the Cuban government.

Overall, with regard to Cuba, interviewees for this study have confirmed that the Sakharov prize has had an impact in strengthening local human rights networks and in raising the visibility of the work of the laureates both at home and abroad (Interview #18). The prize money, currently EUR 50 000, has also been important for laureates in supporting their advocacy activities. However, the impact should not be overstated. Repression and harassment of HRDs continue in Cuba, including for Sakharov laureates themselves. Moreover, as already noted (see 2.1), the domestic political opposition in Cuba has limited public support, and despite the increased international profile of Sakharov laureates, there is no evidence to suggest that the award of the prize to political opposition figures has had more than highly limited positive impact in this regard. It should also be mentioned in this context that several Cuban laureates have expressed criticisms of the EU delegation in Havana, which in their perception prioritises relations with the Cuban government over support to beleaguered human rights defenders on the island. Cuban laureates have also encountered obstacles to participation in Sakharov Network activities in the form of problems in accessing the internet in their country, as well as Cuban authorities preventing them from travelling to international events. EU officials, on their part, note that they regularly raise individual cases of concern with the Cuban authorities.

**In 2017, the Sakharov Prize was awarded to the 'Democratic Opposition' in Venezuela**, referring to the National Assembly and the political prisoners (as listed by the Venezuelan Penal Forum) in the country. Venezuela's political opposition had already been shortlisted for the Prize in 2015. In its statement announcing the award, the European Parliament stated that it sought to 'express its proximity and pay tribute to the Venezuelan people: to all those who have been unjustly jailed for expressing their opinion, to those struggling to survive on a daily basis because of a brutal regime, to those families in mourning because they have lost loved ones in months of uninterrupted protests for freedom' (European Parliament, 2017d). As described above in this study (see 2.2), after having won control of the National Assembly in the December 2015 legislative elections, Venezuela's opposition – grouped together in the Democratic Unity Roundtable (Mesa de la Unidad Democrática, MUD) – saw its legislative powers dramatically reduced with the creation of Constituent Assembly in July 2017. This prompted widespread protests that were severely suppressed by the security forces.

**Julio Borges** in his capacity as the President of the National Assembly, together with a group of the most prominent imprisoned opposition figures represented the 2017 laureates. The group, standing for all

political prisoners in Venezuela (Venezuelan Penal Forum listed 380 'political prisoners' as of 31 October 2017)<sup>40</sup> included:

- **Leopoldo López:** Barred in 2008 from holding public office due to alleged corruption. Sentenced in 2015 to 13 years and 9 months in prison. In house arrest since August 2017.
- **Antonio Ledezma:** Former Caracas mayor. Arrested in 2015 accused of plotting a coup. Fled from house arrest and currently in exile in Spain.
- **Daniel Ceballos:** Arrested in March 2014 and sentenced to 12 months in prison for not clearing street barricades erected by protesters. Put in house arrest in August 2015. Released from prison in June 2018.
- **Yon Goicoechea:** Student activist and subsequently a member of the Popular Will party (Voluntad Popular). Detained in August 2016 on vague charges of carrying explosive materials. Released from detention in November 2017.
- **Lorent Saleh:** Youth activist. Detained on several occasions in Venezuela. Deported by the Colombian authorities to Venezuela in September 2014 and remains detained by the Venezuelan national intelligence service.
- **Alfredo Ramos:** Mayor of Iribarren, Barquisimeto, in the state of Lara. Detained in July 2017 for having allowed street protests following an order by the Venezuelan Supreme Court. Released from detention in December 2017.
- **Andrea González:** Detained in August 2015. Accused of being co-conspirator in an alleged plot to assassinate the daughter of Diosdado Cabello, a leading government official. Released from detention in December 2017.

While it is somewhat too early to assess its impact on the situation of individual laureates, and on the Venezuelan political crisis more generally, the award raised the international profile of the Venezuelan political opposition and highlighted the issue of political prisoners in the country. Some interviewees for this study also pointed out that a strong driver for supporters of the award within the EP was to encourage the unity of the Venezuelan political forces (Interviews #5, #10). Continuing deep splits in the Venezuelan opposition since the award, particularly in the context of the May 2018 presidential elections, which parts of the opposition decided to boycott, reveal however the very real limitations of the Sakharov Prize to shape domestic political dynamics in Venezuela. The Sakharov Prize was also awarded at a time when the EU's position on Venezuela noticeably hardened with the adoption of a sanctions regime (see 3.3). The Venezuelan opposition's award followed a series of EP resolutions concerning the deteriorating country situation and signalled a marked political escalation of the EP's criticisms of and pressures on the Venezuelan authorities.

It should be noted that the award has been criticised for its perceived politicised nature, as highlighted by several interviewees for this study (Interviews #5, #6, #9, #13, #14). For close observers of the EP, there are apparent splits within Parliament concerning Venezuela. Some political groups are strongly supportive of the Venezuelan political opposition and have pushed for the award for several years (for example, as mentioned above, the Venezuelan opposition was nominated for the award in 2015). On the other hand, there are also critics in the EP of parts of the opposition for their long-standing efforts to oust the Venezuelan government through non-electoral means. There was also resistance in the EP against awarding the Sakharov Prize to a political opposition group, rather than to human rights defenders. This line of criticism of the 2017 award notes that the political situation in Venezuela is clearly highly complex and, with clear and deep splits in the political opposition, giving high-profile and symbolic support to some opposition figures could further deepen such splits. There was also the risk of the award having the

<sup>40</sup> Updates are available at: <https://foropenal.com/2018/04/22/marzo-2018/> (last accessed: 06/07/2018); (see also: Foro Penal Venezolano, 2018).

counter-productive effect of strengthening narratives in Venezuela of there being an international plot to overthrow the government. Moreover, while united in their motivation to send a clear political message regarding their concern for the political and humanitarian situation in Venezuela, there was a parallel campaign for the prize to highlight the situation of political prisoners specifically. The compromise solution was to combine the prize and award it to the political opposition, in the form of Venezuela's National Assembly, as well as to political prisoners in the country<sup>41</sup>. A further issue raised with respect to the 2017 award concerned the possible dilution of the impact of the prize when given to a large and broadly defined group of individuals. Be this as it may, the impact of the 2017 Sakharov Prize remains difficult to assess. As mentioned above (see 3.3.), the award to the Venezuelan opposition and political prisoners fed into an evolving set of EU policies towards Venezuela. However, while several political prisoners specifically listed as laureates in 2017 have subsequently been released from detention by the Venezuelan authorities, as referred to above, it is far from clear that this can be directly traced back to the Sakharov Prize itself.

### 3.4.1 Specific recommendations

Based on the analysis in this section, several recommendations can be identified concerning the future development of the Sakharov Prize.

It would be an opportune moment to **review the process and criteria of the prize**. Such a review could consider the appropriateness and effectiveness of awarding the prize to groups defined by their affiliation to a political institution, political parties or a political movement, as opposed to individual human rights defenders (a category that does not exclude politicians acting outside their professional or employment context) and civil society groups. The EP would benefit in the conduct of such a review from wide consultation with relevant stakeholders, including through the Sakharov Network, as well as other EU institutions. Developing criteria based on the EU Guidelines on Human Rights Defenders and the UN Declaration on Human Rights Defenders would be helpful in framing the review in this regard, though the central role of informal consultations in the EP among political groups to assess candidates prior to nomination should be maintained. The broader point here is that while the struggle for human rights is invariably political in character, human rights defenders are engaging in activities that are not always easily reconcilable with the compromises that characterise political decision-making processes and party politics (Engstrom & Hurrell, 2010). It is precisely for these reasons that human rights, though inevitably shaped by politics, need to at least aspire to a normative sphere that lies beyond politics. Less prosaically, the status and prestige of the EP's most high-profile recognition of human rights through the award of the Sakharov prize would be strengthened by supporting the work of individuals, and groups, not defined by their affiliations with political parties, political movements and political institutions .

The impact of the Sakharov Prize would also be reinforced by the development of a more explicit and integral role of the Sakharov Prize in the **EU's broader programme activities for the support of human rights defenders** around the world including those beyond the relevant mechanisms put in place by the EP. **Engagement strategies** and the capacity of the EP to plan and implement **follow-up activities** with laureates to maximise potential impact of the Prize should be strengthened. The role of the **Sakharov Network** would be crucial in identifying and developing such strategies and activities. The EP could consider concrete measures to increase the impact of the Sakharov Prize **in conjunction with other EU policy instruments**, such as the EIDHR. There is also scope to **strengthen the capacity and expertise of EU in-country delegations to support HRDs**, drawing on expertise from EU members states' diplomatic

<sup>41</sup> There were extensive discussions before an agreement was reached on a list of political prisoners, but eventually the list maintained by the respected Venezuelan NGO Venezuelan Penal Forum was used for this purpose.

corps with extensive and historical experiences in this area on how to best and most appropriately balance different foreign policy objectives.

## 4 General recommendations

In previous sections, specific recommendations were made concerning the EU's engagement on human rights and the rule of law with Cuba and Venezuela respectively. It was noted that the challenges to EU engagement in this field with countries that may resist such policies are considerable. The general recommendations in this section build upon the analysis developed in this study and are specifically geared towards policy considerations inherent in dealing with 'difficult' countries for human rights and the rule of law promotion, such as Cuba and Venezuela, with central focus on civil and political rights. Such resistance limits the EU's influence, including the potential impact of the two central drivers of change formulated in the EU's Human Rights and Democracy Action Plan (Council of the European Union, 2015): comprehensive support to public institutions and the 'invigoration' of civil society in target countries. The general recommendations below draw upon the analysis developed in previous sections of this study regarding the achievements and limitations of the EU's human rights and rule of law toolset.

**1. Public diplomacy, human rights dialogue, and conflict resolution. *The EU is a credible human rights and rule of law promoter.*** Actively 'taking sides' in political conflict situations, or being perceived to do so, can have negative consequences and undermine humanitarian as well as human rights efforts. ***The EU can serve as a neutral arbiter while supporting victims of human rights violations and promoting its fundamental values.*** Both country cases in this study illustrate the ***importance of strategic patience*** for the EU to realise its potential. The most viable policy strategy is a long-term one emphasising patient and sustained efforts to support and encourage domestic political actors to organise themselves into pluralistic and democratic options for the future. Where the EU engages in formal human rights dialogues, the effectiveness of these can be enhanced through ***an emphasis on technical assistance and local capacity-building***. It will continue to be important to identify areas where there is room for manoeuvre, scope for collaboration and where advances can be made. There is an ongoing need to ***increase internal coherence and coordination across different policy instruments and EU institutions in order to effectively implement the EU's human rights strategic framework and the current action plan. At the local level, the EU's country-specific human rights and democracy strategies are essential.*** The importance of coordination between EU member states would also need to be stressed in this regard.

**2. The EU's commitment to effective multilateralism** can be strengthened by ***increasing support to international human rights institutions and regional mechanisms***, including the UN Human Rights Council, the UN Special Rapporteurs and the Inter-American Human Rights System, ***in order to facilitate independent and regular human rights and rule of law monitoring.*** There is some political leverage in the fact that most countries engage in the UN Human Rights Council, particularly in the UPR. EU policy recommendations should build on these and actively draw on international human rights and rule of law standards, including those developed in the UN treaty bodies' general comments. ***Cooperation with relevant regional institutions and groupings*** should be explored wherever available, including through providing funding, resources and diplomatic support. The targets and indicators contained in the UN Sustainable Development Goals also provide productive entry-points for EU engagement with countries on relevant human rights and rule of law priorities.

**3. Material incentives, policy linkages, and geo-strategy.** There is a continuing need to ***ensure the effective use and the best interplay of EU policies, tools and financing instruments.*** The EU's human rights and rule of law policies in its external relations are not taking place in a political vacuum. The EU needs to consider the strategic dimensions to these policy areas and engage not only with like-minded countries, but also consider the interests of the major ***geostrategic partners and competitors***, particularly as they may offer important strategic alternatives to target countries.

**4. Coercive, or restrictive, measures.** The EU should continue to assess ***the effectiveness, as well as the appropriateness, of sanction measures.*** The comparison between Cuba and Venezuela is after all

instructive in this regard, with the US embargo on Cuba illustrative of limitations of sanctions in bringing about positive political changes in target countries as well as the risks of policy stasis. While the USA's comprehensive sanctions regime on Cuba is clearly distinct from the EU's targeted sanctions on Venezuela in both scope and objective, the risks of sanctions becoming counterproductive by shrinking the political space for negotiations and mediation need to be carefully monitored. Similarly, there is a pressing need to assess **how international criminal justice may shape political negotiations** and 'exit strategies' for individual officials potentially targeted, while ensuring adherence to core values of accountability and redress to victims.

**5. Support to local (pro-human rights) civil society.** The EU institutions need to engage with a **plurality of civil society actors and domestic constituencies in target countries** and the further development of the **EU country roadmaps for engagement with civil society actors could be central in this regard**<sup>42</sup>. The EU should promote the **opening of spaces for civil society involvement in its policy-making and implementation processes**. At the same time, there is a need to ensure wide representation of civil society interests (beyond vocal exile groups and particularly active international NGOs, as illustrated in both the Cuban and the Venezuelan cases), to foster debates from a range of different perspectives while ensuring a common commitment to the promotion of human rights and the rule of law. Civil society groups receiving EU support should be **encouraged to develop local strategies for change** whenever possible and wherever local conditions allow. The EU should **strengthen public diplomacy and communication** on human rights and the rule of law, including by EU country delegations, in order to engage with local civil society and the public on country specific human rights priorities and activities.

<sup>42</sup> Available at: <https://concordeurope.org/2018/05/14/eud-engagement-paper-2018/> (last accessed: 26/09/2018).

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2. United Nations official. Telephone interview with author, 27 June 2018
3. Venezuela country expert. Telephone interview with author, 27 June 2018
4. Cuba country expert. Telephone interview with author, 27 June 2018

5. European Union official. Telephone interview with author, 28 June 2018
6. Venezuela country expert. Telephone interview with author, 28 June 2018
7. European Union official. Telephone interview with author, 3 July 2018
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