



## **FREEDOM NOW – INDIVIDUAL SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)**

### **UNIVERSAL PERIODIC REVIEW: CUBA, SESSION 4 – FEBRUARY 2009**

#### **I. Introduction**

1. Freedom Now individually submits this report to assist the Human Rights Council (HRC) in the Universal Periodic Review (UPR) of Cuba's human rights policies and practices. Freedom Now is a non-profit organization based in Washington, D.C., that seeks to free prisoners of conscience through focused legal, political, and public relations advocacy efforts.<sup>1</sup> The Most Reverend Desmond M. Tutu, Archbishop Emeritus of Cape Town, and the Honorable Václav Havel, the former President of the Czech Republic, serve as Freedom Now's honorary co-chairs.

2. Complementing other submissions that examine the broader picture of Cuba's human rights abuses, this report highlights Cuba's ongoing detention and inhumane treatment of Dr. Oscar Elías Biscet Gonzáles (Dr. Biscet), a physician, human rights defender, and founder of a Cuban human rights organization. Dr. Biscet currently is serving a twenty-five year prison sentence for peaceably advocating for democratic reform and human rights in Cuba. Dr. Biscet's case exemplifies Cuba's general failure to respect human rights and its mistreatment, on an individual level, of human rights advocates.

3. On two separate occasions, the United Nations Working Group on Arbitrary Detention has ordered Cuba to immediately release Dr. Biscet. One such call for his release was based upon an urgent action appeal filed by Freedom Now. Despite these demands for Dr. Biscet's release, which have been echoed by human rights organizations and foreign governments worldwide, Dr. Biscet remains in prison. Dr. Biscet's case aptly demonstrates Cuba's failure to comply with international law and the dictates of those bodies that enforce international law. Finally, Dr. Biscet's plight, which is representative of the cases of potentially hundreds of other Cuban prisoners of conscience, is "emblematic" of a larger pattern of human rights abuses.<sup>2</sup>

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<sup>1</sup> For more information on Freedom Now, please visit <http://freedom-now.org/home.php>.

<sup>2</sup> OHCHR's *Information and Guidelines for Relevant Stakeholders on the Universal Periodic Review Mechanism* states on page nine that only "emblematic" individual cases will be referred to in the summary. As reported by the United States Department of State, "at least 240 political prisoners and detainees" currently languish in Cuban prisons. UNITED STATES DEPARTMENT OF STATE, CUBA:

Thus, UPR drafters can and should highlight his name and case in the summary of NGO submissions, as permitted under OHCHR's guidelines.

## **II. Cuba has Failed to Uphold its International Obligations to Respect Basic Human Rights**

4. Despite the fact that Cuba has signaled its intent to comply with international human rights treaties, the government's continued imprisonment of Dr. Biscet demonstrate its failure to uphold its obligations. A recent signatory to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR), Cuba nevertheless defies both the letter and spirit of these and other treaties.<sup>3</sup>

### **a. Cuba's Transgressions of International Law Contradict its Professions of Compliance**

5. According to the OHCHR, a state's "voluntary pledges and commitments, including (where relevant) those undertaken when presenting candidature to the HRC," factor into a state's UPR.<sup>4</sup> Thus, Cuba's statements both before and after its election to the HRC should be considered in its 2009 UPR.

6. Before its election, Cuba proclaimed "its will to continue working tirelessly in attaining the common aspiration of the full enjoyment of all human rights for all peoples and nations of the world, on the basis of respect to the UN Charter [and] the instruments internationally agreed upon in human rights matters[.]"<sup>5</sup> Cuba also extolled its "tremendous achievements" in honoring domestic "civil and political rights."<sup>6</sup> After its election and subsequent to its signing of the ICCPR and ICESR, Cuba stated that it "has systematically been upholding [the rights protected in each treaty] since the triumph of the revolution."<sup>7</sup>

### **b. Cuba Denies Numerous Protected Liberties in Violation of International Law**

7. Far from "systematically . . . upholding" human rights, Cuba "systematically *denie[s]* basic [human] rights[.]"<sup>8</sup> Nowhere are these transgressions more visible than in Cuba's policies and practices relating to arbitrary detention, free speech and press, travel, and free association.

8. ICCPR Article 9 guarantees the "liberty of person," such that "no one shall be subjected to arbitrary arrest or detention."<sup>9</sup> Cuba has failed to abide by this guarantee.

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COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2007, at <http://www.state.gov/g/drl/rls/hrrpt/2007/100635.htm>.

<sup>3</sup> Press Release, Freedom House, Cuba's Signing of Human Rights Treaties a First Step in Long Road Toward Compliance, Mar. 4, 2008, at <http://www.freedomhouse.org/template.cfm?page=70&release=630>.

<sup>4</sup> OHCHR, *Information and Guidelines for Relevant Stakeholders on the Universal Periodic Review Mechanism* (July 1, 2008).

<sup>5</sup> *Aide-Memoire of Cuba Supporting its Candidacy to the Human Rights Council*, Mar. 16, 2006, at <http://www.un.org/ga/60/elect/hrc/cuba.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> James C. McKinley, *Cuba Signs Two Human Rights Treaties*, INT'L HERALD TRIB., Feb. 29, 2008.

<sup>8</sup> Human Rights Watch, *World Report: Cuba* (2008), at <http://hrw.org/englishwr2k8/docs/2008/01/31/cuba17767.htm> (emphasis added).

“According to a domestic monitoring group, the Cuban Commission for Human Rights and National Reconciliation, there are more than 300 prisoners of conscience in Cuba, most held in cells with common criminals and many convicted on vague charges such as ‘disseminating enemy propaganda’ or ‘dangerousness.’”<sup>10</sup>

9. ICCPR Article 19 guarantees “freedom of expression,” which Cuba also denies to its citizens. Free speech in Cuba is primarily a fiction. In fact, the Regime’s “media monopoly . . . ensur[es] that freedom of expression is virtually nonexistent.”<sup>11</sup>

10. Cuba also fails to adhere to ICCPR Article 12, which guarantees the “liberty of movement.” Only days after Cuba’s election to the HRC, for instance, a chair stood empty on the stage at Columbia University’s commencement ceremony when Cuban authorities disallowed activist Oswaldo Payá Sardiñas from leaving the country to accept an honorary degree recognizing his efforts to foster democratic reform in Cuba.<sup>12</sup> Sardiñas’ case is hardly unique. Citizens cannot leave the country without permission, which frequently is denied.<sup>13</sup>

11. ICCPR Article 21 guarantees the “right of peaceful assembly,” yet Cuba denies this right. In Cuba, assembling with “more than three persons” without state permission carries a penalty of “up to three months in prison and a fine,” no matter the topic discussed.<sup>14</sup>

### **III. Cuba’s Abuses Exemplified: The Case of Human Rights Defender Dr. Oscar Elias Biscet Gonzales**

12. As a renowned pacifist, human rights leader, and physician, Dr. Biscet emblemizes the struggle of the Cuban people to gain basic human rights and democratic freedoms.<sup>15</sup> A husband and father of two, the Cuban native and follower of the non-violent philosophies of Martin Luther King, Jr. and Mahatma Gandhi has spent nine of his past ten years in Cuban prisons for acting on his belief in human rights. As the founder of the internationally recognized Lawton Foundation, a leading organizer of the Cuban-based Friends of Human Rights, and now as a prisoner of conscience, Dr. Biscet’s story personalizes the larger drama of Cuba’s appalling human rights practices.

#### **a. Dr. Biscet’s Efforts to Peacefully Promote Human Rights and Democracy**

13. Born in 1961 to a Havana family of meager means, Dr. Biscet graduated from medical school in 1985 as a specialist in internal medicine.<sup>16</sup> A devout Christian, Dr. Biscet opposes the death-penalty and abortion. He published a clandestine study in 1997 titled,

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<sup>9</sup> International Covenant on Civil and Political Rights, Mar. 23, 1976 [hereinafter “ICCPR”].

<sup>10</sup> Press Release, Freedom House, Freedom in the World – Cuba (2007), at [http://www.freedomhouse.org/uploads/press\\_release/cuba\\_FIW\\_07.pdf](http://www.freedomhouse.org/uploads/press_release/cuba_FIW_07.pdf).

<sup>11</sup> Human Rights Watch, *supra* note 8.

<sup>12</sup> Madeleine Albright & Vaclav Havel, Op-Ed., *Cuba: Human Rights à la Havana*, INT’L HERALD TRIB., July 21, 2006.

<sup>13</sup> Human Rights Watch, *supra* note 8.

<sup>14</sup> Freedom House, *supra* note 3.

<sup>15</sup> Mary Anastasia O’Grady, *Overcoming Castro’s ‘Culture of Fear,’* WALL ST. J., May 6, 2005, at [http://www.free-biscet.org/biscetarticles/2005/overcoming\\_castro.htm](http://www.free-biscet.org/biscetarticles/2005/overcoming_castro.htm).

<sup>16</sup> Pablo Bachelet, *Cuba’s Biscet Becoming Face of Dissident Movement*, MCCLATCHY NEWSPAPERS, at Nov. 5, 2007, <http://www.mcclatchydc.com/homepage/story/21085.html>.

“Rivanol: A Method to Destroy Life,” which exposed Cuba’s abortion practice of killing infants immediately after birth.<sup>17</sup> The Cuban authorities revoked his medical license and banned his wife, a nurse, from working in health care. One year later, the Cuban regime evicted Dr. Biscet and his wife from their home.<sup>18</sup>

14. Dr. Biscet subsequently increased his activism within the Lawton Foundation, an organization he founded to bring democracy and human rights to Cuba through non-violent means.<sup>19</sup> During the next two years, Cuban authorities arbitrarily detained him at least twenty-six times.<sup>20</sup> Dr. Biscet and his supporters nevertheless staged several landmark human rights campaigns beginning in 1998. He first organized a successful forty-day liquid fast – “one for each year of Fidel Castro’s rule.”<sup>21</sup> He then led a wide-scale silent march to advocate for the release of political prisoners. During a press conference for foreign media, he displayed the Cuban national flag upside down, in an internationally recognized symbol of distress, as an act of protest. Cuban authorities soon used this symbolic protest as a pretext to deprive Dr. Biscet of his liberty.

15. On November 3, 1999, Cuban agents arrested Dr. Biscet on charges of “insult to symbols of the homeland” and “instigation to commit crime,” among others. Convicted, he spent three years in the Cuba Si prison in Holguin province. While there, he was “beaten, repeatedly threatened, humiliated, blackmailed, subjected to brutal interrogation, and thrown into cells with [mentally ill] convicts.”<sup>22</sup>

#### **b. Contrary to the Demands of the UN Working Group on Arbitrary Detention, Dr. Biscet Continues to Languish in Prison**

16. Upon his release in 2002, Dr. Biscet remained free for only thirty-six days. Cuban secret police arrested Dr. Biscet again on December 6, 2002, while he was en route to attend what the United Nations Working Group on Arbitrary Detention later described as a “peaceful meeting” of the Friends of Human Rights organization in Havana.<sup>23</sup>

17. Dr. Biscet received a twenty-five year sentence for threatening state security after a one day summary trial. Dr. Biscet thereafter found himself in a punishment cell hardly bigger than his body for seven months.<sup>24</sup> Guards at the Kilo 5 1/2 prison in Pinar Del Rio vectored hot ventilation pipes into Dr. Biscet’s cell, exposing him to high levels of noxious gases. Left in complete darkness, Dr. Biscet was denied the ability to clean himself, to accept visitors or even to wear clothing after he refused to wear a prison uniform.

18. Enduring numerous acts of torture, being forced to co-habitate with common criminals, and even languishing for several weeks without food, Dr. Biscet bears the effect of his

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<sup>17</sup> Lawton Foundation, *Biography*, at <http://www.lawtonfoundation.com/index-2.html>.

<sup>18</sup> *Id.*

<sup>19</sup> Information on the Lawton Foundation is available at: <http://www.lawtonfoundation.com/>.

<sup>20</sup> Lawton Foundation, *supra* note 17.

<sup>21</sup> Bachelet, *supra* note 16.

<sup>22</sup> International Committee to Free Dr. Oscar Elias Biscet, *What is a Prisoner of Conscience?* (2002).

<sup>23</sup> *Leonardo Miguel Bruzón Ávila et al v. Cuba*, U.N. Doc. E/CN.4/2004/3/Add.1 at 87 (2003) (Opinion No. 17/2003 (CUBA)).

<sup>24</sup> O’Grady, *supra* note 15; see also *U.S. Diplomat Builds a Backyard Cuban Prison Cell*, ASSOCIATED PRESS, Sept. 10, 2004, at <http://www.msnbc.com/id/5960481>.

torments.<sup>25</sup> During the course of his imprisonment, he has lost at least forty pounds (18 Kilograms) and most of his teeth. Dr. Biscet now suffers from hypercholesterolemia, gastric ulcers, chronic gastritis, and hypertension.

19. The Cuban regime has blatantly ignored two orders from the United Nations Working Group on Arbitrary Detention to immediately release Dr. Biscet. Following a 2003 petition, the Working Group declared that Cuba was holding Dr. Biscet “in contravention of articles 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights” and demanded his release.<sup>26</sup> A second “urgent action appeal” filed by Freedom Now in 2005 triggered a further demand to release Dr. Biscet from the Working Group, the Special Rapporteur on the Question of Torture, the Special Representative of the Secretary-General on Human Rights Defenders, and the Special Rapporteur on Freedom of Expression and Association for Cuba.

20. Even in captivity Dr. Biscet continues to stir support for his message of peaceful change. Over the past year, he has received the Presidential Medal of Freedom, which is the United States’ highest civilian award; the Honorary Plaque of the Prime Minister of the Czech Republic; and the Dr. Rainer Hildebrandt International Human Rights Award.

#### **IV. Conclusion and Recommendations**

21. Cuba egregiously violates the human rights of its citizens and ignores the orders of international human rights bodies. Dr. Biscet’s case is emblematic of Cuba’s practice of denying the most basic human rights to its citizens, especially those who peacefully press the regime to allow for greater freedoms.

22. The case of Dr. Biscet, as well as others like his, merit serious consideration by the HRC during the UPR. We respectfully request that the HRC hold Cuba accountable for violations of international legal requirements to which it has voluntarily committed its compliance. In particular, the HRC should call upon Cuba to take the actions set forth below.

#### **Freedom Now’s recommendations to Cuba are as follows:**

- Immediately release Dr. Biscet without any conditions. Allow Dr. Biscet to again practice medicine and to actively and peaceably promote the cause of human rights in accordance with the rights guaranteed to him in the ICCPR.
- Permit Dr. Biscet’s wife, Elsa Morejón Hernández, to practice her chosen profession of nursing.
- Allow the Lawton Foundation, the Friends of Human Rights, and all other peaceful civil society organizations to meet and discuss freely, in accordance with the rights guaranteed to them in the ICCPR.
- Require Cuba to fulfill its promise to ratify the ICCPR and ICESCR and to take all steps necessary to bring the relevant Cuban laws into accord with the Covenants and other international standards.

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<sup>25</sup> Lawton Foundation, *supra* note 17.

<sup>26</sup> *Ávila*, U.N. Doc. E/CN.4/2004/3/Add.1.