



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

Distr.: General
18 September 2024
English
Original: Spanish
English, French and Spanish only

Committee on Enforced Disappearances

**Additional information submitted by Cuba under
article 29 (4) of the Convention***

[Date received: 26 August 2024]

* The present document is being issued without formal editing.



Additional information relating to paragraph 8 of the concluding observations (CED/C/CUB/CO/1)

1. Cuba keeps under constant review those optional provisions by which it is not bound, even after having ratified a legally binding international instrument, as is the case with articles 31 and 32 of the Convention.
2. Cuba reminds the Committee that making a declaration such as those referred to in articles 31 and 32 of the Convention falls within the sovereign powers of States, bearing in mind the non-binding nature of those provisions.
3. Cuba has a broad and inclusive inter-institutional system that ensures that complaints and reports of any possible violation of human rights, including those set forth in the Convention, are received, processed and addressed in a timely manner. Therefore, it is not currently necessary to carry out the actions mentioned in paragraph 8 of the Committee's recommendations.
4. Since the triumph of the Revolution on 1 January 1959, no acts of enforced disappearance have been reported in Cuba. Therefore, no convictions have been handed down for this type of crime or related crimes.
5. However, in keeping with the country's firm commitment to strengthen its legal and regulatory framework in the light of its international obligations, the crime of enforced disappearance was incorporated into Cuban criminal law, specifically under article 367 of the Criminal Code (Act No. 151/2022), accompanied by severe penalties.
6. During the period between the entry into force of the new Criminal Code in 2022 and July 2024, the Attorney General's Office received 37,177 complaints. In four of them, the complainants reported that they did not know where a particular inmate was being detained or their whereabouts following their transfer to another prison. All the complaints were investigated, and no violations of the law were found. In the light of this finding, a personalized and timely response was provided to the complainants.

Additional information relating to paragraph 10 of the concluding observations

7. Cuba continues to strengthen and improve its legal and institutional framework for the promotion and protection of human rights, in accordance with the needs of Cuban society and the country's international obligations.
8. As part of the institutional strengthening process, progress is being made with the cohesive work of national structures on various human rights issues, which invariably includes the broad and active participation of civil society organizations.
9. There is no single model for the establishment of national human rights institutions, nor is there an international obligation to create them.
10. Cuba has a system for the promotion and protection of human rights that works and yields tangible results. While there are currently no plans to modify this system, this does not mean that Cuba will not continue to study the international recommendations received in this regard.
11. In 2019, the new Constitution of the Republic of Cuba was adopted in a general referendum, with a turnout of 90.15 per cent and 86.85 per cent voting in favour.
12. It was the outcome of a process of public consultation with the extensive involvement of civil society, reflecting the genuinely democratic and inclusive nature of the Cuban political system.
13. The text ratifies the firm commitment of Cuba to respect and protect human rights. The corpus of rights and guarantees for their effective enjoyment has been expanded. All rights have the same status and value, in accordance with the principles of universality,

indivisibility and interdependence. The principle of the progressiveness of rights is established.

14. The adoption of the new Constitution made it necessary to update a large number of laws and legal provisions, and to adopt new ones. Thus, from 2019 to the present day, laws such as the Criminal Code and the Criminal Procedure Act have been updated, and others such as the Sentence Enforcement Act have been adopted. In all these provisions, legal guarantees for the protection of human rights were strengthened, including those against enforced disappearance.

Additional information relating to paragraph 12 (a) of the concluding observations

15. Article 46 of the Constitution establishes that the protection of the right to life, liberty, physical and moral integrity, justice, and security and peace is a priority. Article 51 stipulates that “no one shall be subjected to enforced disappearance, torture or cruel, inhuman or degrading treatment or punishment”.

16. Thus, the Constitution’s status as a guarantor of rights has been strengthened, as it includes a special chapter on the protection of rights from threat or injury by the State, non-State entities or private individuals. It also improves access to the courts to ensure the effective protection of rights and due process as a guarantee of legal certainty.

17. Enforced disappearance has been incorporated as a stand-alone crime under title XIII, article 367 of the Criminal Code (Act No. 151/2022), published in Official Gazette No. 93, ordinary edition, of 1 September 2022.

18. Article 367 of the Code provides that “any public official, authority or the agents thereof who, abusing their authority or contravening procedures laid down by law and with the intention of removing them from the protection of the law, deprives a person of their liberty and does not acknowledge their detention or refuses to provide information about their whereabouts, shall be deprived of their liberty for 4 to 10 years”.

19. Article 371 of the Criminal Code provides for a harsher penalty if violence is used to carry out the act or if it results in serious damage to the health, dignity or property of the victim or the victim’s family or persons close to them; if the victim is subjected to inhumane treatment; if the person deprived of their liberty is under 18 or over 60 years of age, has a disability or is a pregnant woman; if the act is committed on the basis of the victim’s gender; or if it is committed against an authority or a public official owing to the nature of their duties.

20. A penalty of up to 15 years’ deprivation of liberty is prescribed in cases where the victim dies as a result of the act, and the accessory penalty of permanent disqualification from the post, profession or employment in question is imposed on the authority, public official, agent or assistant who commits this crime.

21. When the wording of this provision was being finalized, it was determined that the penalties provided for therein are to be imposed as long as the acts in question do not constitute a more serious crime.

22. Therefore, in substantive criminal law, the stand-alone crime of enforced disappearance is complemented by the crime of unlawful deprivation of liberty, which also ensures that the person deprived of their liberty may be brought before the judicial authorities through the remedy of habeas corpus provided for in the Criminal Procedure Act.

23. Thus, the principles of existing Cuban law ensure the non-derogability of the prohibition of enforced disappearance and conform to relevant international standards.

Additional information relating to paragraph 12 (b) of the concluding observations

24. Criminal doctrine defines a crime against humanity as a crime that is committed as part of a widespread or systematic attack against the civilian population or part of it, or

because the victim belongs to a group or collective persecuted for unacceptable reasons (political, racial, national, ethnic, cultural, religious, gender, disability or others recognized as unacceptable under international law), or in the context of an institutionalized regime of systematic oppression and domination by one racial group over one or more other racial groups and with the intention of maintaining such a regime, resulting in, inter alia, death, rape, disappearance, deportation, unlawful detention, subjection to slavery or sexual exploitation.

25. However, there is diversity in the definition of crimes against humanity.

26. Similarly, article 5 of the Convention provides that enforced disappearance constitutes a crime against humanity when it is practised in a widespread or systematic manner.

27. Since enforced disappearance is not a phenomenon that occurs in Cuba, not even in the form of an isolated incident, the Criminal Code does not refer to it as a crime against humanity. Nor does article 5 of the Convention refer to the need to recognize it as such.

28. However, under the title “Crimes against peace and international law” of the Criminal Code, articles 134 and 136, which address the crimes of genocide and apartheid, respectively, criminalize conduct that would cover any possible acts of enforced disappearance that might be carried out against groups of individuals.

29. Article 134 of the Criminal Code punishes the crime of genocide with a penalty of 10 to 30 years’ deprivation of liberty, life imprisonment or death, applicable to any person who, with the intention of destroying, in whole or in part, a national, ethnic, religious or skin colour group:

“(a) Imposes on such a group conditions of existence that threaten to exterminate the group or any of its members;

(b) Takes action to prevent or obstruct births within the group;

(c) Forcibly transfers children under 18 years of age from such a group to another; and

(d) Causes the death or seriously impairs the physical or mental integrity of members of the group.

Similar penalties shall be incurred by any person who, in contravention of the rules of international law, bombs or machine-guns defenceless civilians or commits other atrocities against them.”

30. Article 136 of the Criminal Code punishes the crime of apartheid with a penalty of 10 to 30 years’ deprivation of liberty, life imprisonment or death, applicable to any person who, with the purpose of instituting and maintaining the domination of one group of people over another, in accordance with policies and practices of extermination, segregation and discrimination based on skin colour:

“(a) Denies members of a group the right to life and liberty by causing their death, seriously infringing their physical or mental integrity, liberty or dignity, or subjecting them to torture or cruel, inhuman or degrading treatment or punishment, arbitrary detention or unlawful imprisonment;

(b) Subjects a group to legislative or other measures designed to obstruct its participation in the country’s political, social, economic or cultural life and intentionally to create impediments to its full development by denying its members fundamental rights or freedoms;

(c) Divides the population into groups according to criteria based on skin colour, setting up reservations or ghettos, prohibiting marriage between members of different groups or expropriating their property; and

(d) Exploits the labour of members of a group, in particular by subjecting them to forced labour.

If the act entails persecuting or harassing organizations and individuals who oppose or combat apartheid, the penalty shall be 10 to 20 years’ deprivation of liberty.

Responsibility for the offences covered by this provision must be ascribed, irrespective of the country in which the participants act or reside, and extends, regardless of motive, to individuals, members of organizations and institutions, and representatives of the State.”

31. In view of the above, Cuban criminal law, despite not explicitly recognizing the crime of enforced disappearance as a crime against humanity, can be said to be in line with criminal doctrine and to cover crimes considered to be crimes against humanity that may involve acts of enforced disappearance.

Additional information relating to paragraph 14 of the concluding observations

32. Cuban criminal law establishes a regime of general criminal responsibility which is applicable to all offences, including enforced disappearance.

33. Criminal responsibility may be ascribed to both individuals and legal entities. Perpetrators of and participants in criminal acts and their accomplices are subject to penalties irrespective of the form of authority they hold and their level of seniority.

34. In crimes against humanity, human dignity or collective health and in those crimes established in the treaties in force for Cuba that provide as such, all those who bear criminal responsibility are classed as perpetrators, irrespective of the manner and form in which they participated in the act.

35. The court, in order to determine the appropriate penalties to be imposed on perpetrators and participants, takes into account the degree to which the actions of each party contributed to the commission of the crime. In the case of accomplices, the court evaluates the importance of their contribution to the commission of the unlawful act.

36. Moreover, articles 13 and 14 of the Criminal Code regulate the punishment of consummated crimes, attempts to commit a crime and preparatory acts, the latter being punishable only when specifically provided for in the special part of the Code.

37. In view of the above, persons who order or induce the commission of acts of enforced disappearance, attempt to commit them, are accomplices or participants in them, or in other similar circumstances, could be liable to punishment.

38. Similarly, acts of omission and negligent conduct are punished, as is failing to report an incident, which is the duty of any person who is aware that an offence has been committed. For this reason, citing orders received from a superior officer in an attempt to justify instances of unlawful detention or enforced disappearance is inadmissible.

39. Articles 203 and 204 of the Criminal Code also establish penalties for the crime of concealment and for the crime of failure to report an offence, respectively. Therefore, superior officers who knew or consciously disregarded information that clearly indicated that subordinates under their authority and effective control were committing or about to commit an act of enforced disappearance, who were responsible for and exercised effective control over activities associated with the act of enforced disappearance and failed to adopt all necessary and reasonable measures within their power to prevent or repress the commission of an act of enforced disappearance, or who failed to submit the matter to the competent authorities for investigation and prosecution, must be held criminally liable.

40. Likewise, the exclusion from criminal responsibility on the grounds of due obedience, provided for under article 27 of the Criminal Code, cannot be cited as justification for an act of enforced disappearance, given the illegality of the act. In accordance with this provision, a subordinate is permitted to oppose a superior officer’s order, if that order is contrary to the law or goes beyond the powers of the officer issuing it or the competencies of the subordinate receiving it. Persons who cite the order of a superior officer, including orders issued by the military authorities, in justification, are not excluded from criminal responsibility.

41. While there are no legal provisions that cover situations in which complying with a superior officer’s order may be invoked in relation to acts of enforced disappearances, judicial practice in Cuba does not allow as justification for the commission of an offence the

defence that the act arose as a consequence of a superior officer's order. The judicial, administrative and political authorities of the State interpret the law to mean that due obedience cannot be invoked as justification for the commission of a criminal act.

42. Articles 181 and 174 of the Criminal Code prescribe penalties for the offences of wrongful execution of penalties and security measures and abuse of authority, respectively, applicable to public officials who, being required by virtue of their position to enforce penalties or security measures, alter such penalties or measures or have them enforced in an unlawful manner; and to public officials who, with the intention of causing injury to a person or obtaining unlawful benefit, perform their duties in a manner manifestly contrary to the law, or arbitrarily exceed the legal limits of their authority.

43. Violations committed by agents or officials of these institutions are investigated and severely punished, based on the seriousness of the offence committed and the strict application of criminal law and the corresponding regulations.

44. Such offences are prosecutable *ex officio*. This means that the prosecutor is able to initiate legal proceedings whenever any such offence is committed. On an exceptional basis, proceedings may also be initiated by the injured party or the victim in the event that the prosecutor requests the dismissal of the case and the court deems this to be unjustified.

Additional information relating to paragraph 16 of the concluding observations

45. Criminal proceedings become time-barred after the expiry of the established period from the date on which the offence was committed.

46. Articles 96.5 and 97.5 of the Criminal Code provide for the non-applicability of statutory limitations to criminal proceedings and criminal penalties in the case of crimes against humanity and crimes punishable by the death penalty, as well as crimes punishable by life imprisonment and others established in the international treaties in force for Cuba.

47. A correct interpretation of Cuban substantive criminal law shows that, in cases that may involve an act of enforced disappearance, as in the case of crimes against humanity and those provided for in the international instruments in force in Cuba, criminal proceedings and penalties are not subject to a statute of limitations.

Additional information relating to paragraph 18 of the concluding observations

48. Articles 147 to 155 of the Constitution establish that the function of administering justice derives from the people and is performed on the people's behalf by the People's Supreme Court and the other courts established by law.

49. Article 150 of the Constitution in particular states that magistrates and judges, in exercising their function of dispensing justice, are independent and owe obedience only to the law. Furthermore, they have security of tenure as long as there are no legal grounds for them to be relieved of their duties.

50. Article 148 of the Constitution also states that "the courts constitute a system of organs of the State structured to be functionally independent from any other organ".

51. Articles 2 and 3 of the Courts of Justice Act (No. 140/2021) recognize that the mission of the courts is to administer justice, in accordance with the Constitution, the international treaties in force for the country and national law, with a sense of justice, rationality, transparency, diligence and respect for the guarantees of the parties and other participants in the judicial proceedings. Similarly, article 4.1 of the Act expressly states that the judicial function entails the exercise of authority and, in turn, the provision of a public service. This is complemented by article 14 of the Act, which provides that the objectives of judicial activity include complying with and enforcing socialist legality; safeguarding the economic, social and political system established in the Constitution, legal certainty and social discipline;

and protecting the rights and legitimate interests of individuals, organs, agencies and other State entities.

52. In Cuba, magistrates and lay judges of the People's Supreme Court are elected by the National Assembly of People's Power or, where necessary, the Council of State. Cuban law lays down the modalities for the election of other judges, who may only be removed from office for the reasons and through the procedures established by law, thus ensuring that they enjoy autonomy and independence in the performance of their functions.

53. Other principles of the Cuban justice system that guarantee the right of individuals to a fair trial include the active participation of citizens in the administration of justice, the fact that judges are elected, the collegiate composition of the courts when adopting decisions at all levels and the public and oral nature of trial proceedings.

54. Similarly, women are strongly represented in the Cuban judiciary, accounting for 79.7 per cent and 36 per cent of judges in the people's courts and military courts, respectively.

Additional information relating to paragraph 20 of the concluding observations

55. The Convention does not oblige States parties to hear cases of enforced disappearance in ordinary courts. The statements, comments and recommendations of the treaty bodies do not give rise to new obligations for the States parties to those treaties.

56. In Cuba there is only one judicial system. Article 147 of the Constitution establishes that "the function of administering justice derives from the people and is performed on the people's behalf by the People's Supreme Court and the other courts established by law".

57. Article 148 of the Constitution likewise states that "the courts constitute a system of organs of the State structured to be functionally independent from any other organ" and, unlike the previous Constitution, does not make them subordinate in rank to the National Assembly of People's Power and the Council of State, a feature which strengthens the guarantees of independence and impartiality required by the Convention.

58. This was made official by the enactment of the Courts of Justice Act (No. 140/2021), which establishes the military courts and stipulates that it is incumbent upon them to administer justice in a sovereign manner in all incidents in which military personnel are involved or which have occurred in military zones, unless a decision is taken to decline jurisdiction in favour of the people's courts.

59. The ordinary and military courts pursue the same interests and constitutional principles and, in essence, were made equivalent to achieve uniformity in the administration of justice in the country, since they are part of the same judicial system, headed by the People's Supreme Court.

60. Articles 150 and 151 of the Constitution state the following:

"(a) Magistrates and judges, in exercising their function of dispensing justice, are independent and owe obedience only to the law. Furthermore, they have security of tenure as long as there are no legal grounds for them to be relieved of their duties.

(b) Judgments and other enforceable decisions of the courts, pronounced within the limits of their jurisdiction, are binding on State organs, agencies and citizens, both on those directly affected by them and on those who have no direct interest in their implementation but have an obligation to participate in it."

61. The Constitution envisages a set of rights and safeguards that fully guarantee due process; these rights and safeguards are also reflected in the criminal procedure laws of both jurisdictions (Acts No. 143 and No. 147 of 2021).

62. Articles 3 and 4 of the above laws provide that no one may be tried except by an independent and impartial court, ordinary or military, respectively, that is pre-established by law, under laws that existed prior to the crime, in keeping with the principles of immediacy, celerity and concentration, in adversarial, oral and public proceedings, and in strict

accordance with the guarantees established for individuals and with the privileges and rights of defendants, accused persons and detained suspects, of victims or injured parties and of civilly liable third parties; that no one may be subjected to enforced disappearance, torture or cruel, inhuman or degrading treatment or punishment; and that no one may be deprived of their liberty except in the circumstances and in keeping with the procedures established by law.

63. The military courts are responsible for trying and determining the liability of accused persons and civilly liable third parties in criminal proceedings arising from the commission of punishable acts of which a member of the Revolutionary Armed Forces or the Ministry of the Interior or a combatant of the latter institution stands accused, even when one of the participants is a civilian, or when the crime is committed in a military zone.

64. Thus, criminal matters are investigated based on the status of those involved (civilian or military) and the place where the events occurred, factors which determine the courts competent to try the case. The rights and guarantees flowing from the Constitution and supporting procedural provisions must, however, always be respected.

65. In accordance with the constitutional provisions and the laws in force, nothing obliges military courts to abstain from hearing cases when they are competent to try them. They are, however, obliged to guarantee access to justice, due process and equality among the parties, including the victim or injured party, who, in the event of any irregularities, may submit an appeal for annulment and even bring private criminal proceedings with legal representation, as these are safeguards expressly provided for in the Military Criminal Procedure Act (No. 147/2021).

66. Since the enactment of the new Criminal Code, no member of the military or civilian has been tried by the military justice bodies for committing the crime of enforced disappearance or other related crimes.

67. Moreover, to date, it has not been necessary to halt the processing of any cases brought before the military courts owing to violations of due process that have wholly invalidated the related military criminal proceedings.

Additional information relating to paragraph 22 of the concluding observations

68. Articles 20 to 35 of Act No. 143/2021 lay down the criteria that must be met in order for magistrates, judges, prosecutors, investigators and police officers to take part in criminal proceedings.

69. Officials and authorities who, in the performance of their duties, violate the guarantees and limits established in the applicable regulations are held criminally and administratively liable and are required to restore compliance with the law.

70. Law enforcement officers charged or accused in criminal proceedings may be suspended from duty in accordance with the regulations in force and do not participate in the investigation of the facts.

71. The above is also reflected in articles 17 to 32 of the Military Criminal Procedure Act (No. 147/21). Thus, both sets of provisions set out the restrictions that may be imposed on these officials and authorities in the context of criminal proceedings, which is in accordance with the guarantees and rights set forth in the Constitution.

72. From an employment and military service standpoint, the regulatory provisions governing disciplinary action for all categories of personnel provide for the possibility of applying immediate precautionary measures in the form of suspending the individual's employment contract with the entity in question when the acts committed necessitate an immediate response and subsequently imposing the measure of definite dismissal from the entity or sector.

73. However, as the Military Criminal Code itself establishes, it is supplementary to the Criminal Code, meaning that military personnel or civilians involved in the commission of

acts of enforced disappearance, depending on the extent of their participation, have imputed to them the crimes of abuse of authority (art. 174), enforced disappearance (art. 367) or any other applicable crime.

74. When the possible participation of military personnel in a criminal act of this nature becomes known, they are suspended from duty by virtue of the disciplinary regulations laid down in Order No. 2/06 of Commander in Chief Fidel Castro Ruz and do not participate in the investigation of the act.

75. If the offender is a prosecutor in the ordinary justice system, it is considered a serious disciplinary offence under the Act on the Attorney General's Office (No. 160/2022) and its implementing regulations and, consequently, the disciplinary measure of definitive dismissal is imposed, thus preventing them from participating in the investigation as an authority. Thereafter, they become a defendant pending the opening of a criminal investigation.

76. This is also the case for judges, to whom the provisions of the People's Courts Act apply.

77. The measures to be taken in respect of persons involved in or suspected of having carried out these acts set out in the Military Criminal Procedure Act (No. 147/21) include that provided for in article 348 (h), namely the prohibition on approaching the victim, injured party, relatives or persons close to them.

Additional information relating to paragraph 24 of the concluding observations

78. Article 91 of the Constitution provides that foreign nationals resident within the Republic are treated identically to Cubans as regards protection of themselves and their property; the obligation to abide by the Constitution and other legal provisions; the obligation to contribute to public spending in the form and amounts established by law; the obligation to submit to the jurisdiction and decisions of the Cuban courts and authorities; and the enjoyment of the rights and performance of the duties laid down in the Constitution, subject to the conditions and limits established by law.

79. Article 54 of the Criminal Code establishes that the court, when sentencing a foreign national, may impose the accessory penalty of expulsion from the national territory, if the nature of the offence, the circumstances of its commission or individual characteristics of the convicted person suggest that their continued presence in Cuba is detrimental.

80. The Ministry of Justice may, in exceptional cases, order the expulsion of a convicted foreign national before the main sentence has been served, even if the accessory penalty mentioned in the above provision has not been applied. In such cases, the criminal liability of the convict is declared annulled in accordance with article 90 (m) of the Criminal Code, which refers to the annulment of criminal liability where an order has been issued for the expulsion from the national territory of the convicted foreign national, in the case referred to in article 54 (2).

81. Article 715 of Act No. 143/2021 provides that international cooperation in criminal matters between Cuban and foreign authorities is governed by law, the international treaties in force for Cuba and, failing that, by the principle of reciprocity within a framework of respect for the rights and guarantees of citizens. This is therefore a general precept that is applicable across the board to all types of cooperation in criminal matters.

82. According to article 744 of the same law, assistance may be denied when there are reasonable grounds to believe that the request has been submitted for the purpose of persecuting or punishing a person on the basis of sex, gender, sexual orientation, gender identity, ethnic origin, skin colour, religious belief, disability, national origin, affiliation or political opinions, or on account of any other personal circumstance that implies a distinction detrimental to human dignity or that contravenes provisions contained in international human rights treaties.

83. Article 720 of the Criminal Procedure Act provides that the extradition of persons requested so that they might be prosecuted, tried, punished or serve a sentence may be granted

in accordance with the law, the international treaties in force for Cuba and, failing that, the principle of reciprocity. Moreover, article 721 states that extradition may only be requested or granted for crimes provided for in Cuban law, as is, in this case, enforced disappearance.

84. Article 723 of the same law lists the circumstances in which extradition is not granted. Paragraph 7 of this provision states that extradition is not granted when the requesting State fails to provide assurances that the rules of due process will be respected or that the requested person will not be subjected to punishment or treatment that violates their bodily integrity or that is inhuman, cruel or degrading.

85. Article 17 of the Constitution provides that asylum may be granted, in accordance with the law, to persons who are being persecuted for their ideals or struggle for national liberation, for progressive activism, for socialism and peace, for democratic rights and related claims, and to persons who are fighting against imperialism, fascism, colonialism, neo-colonialism and any other form of domination, discrimination or racism.

86. Cuban criminal law provides that the State may extradite its citizens when the person in question is a Cuban national who is also a citizen of the requesting State; a Cuban national who permanently resides in the requesting State; or a foreign national who has acquired Cuban citizenship before, during or after committing the punishable act for which they are being requested.

87. The extradition of foreign nationals, stateless persons and Cuban citizens in the cases mentioned above is carried out in accordance with Cuban law, the international treaties in force for Cuba and, failing that, the principle of reciprocity, provided that the rights and guarantees of citizens are respected.

88. The extradited person may not be tried or punished for acts other than those that gave rise to the extradition request. Nor is extradition granted in the case of political crimes, a category which excludes acts of terrorism, crimes against humanity covered by treaties, or attempts on the life of a Head of State or Government or a member of their family; in the case of military offences provided for in Cuban criminal law, except those provided for in treaties; or when the person is being requested to stand trial before a special court created for that purpose.

89. Extradition may also be refused if the offence giving rise to the request carries the death penalty under the law of the requesting State, unless that State provides assurances to the effect that this penalty will not be imposed, and that, if it is imposed, it will not be carried out; and if it is decided that, given the circumstances of the case, the person should not be extradited for humanitarian reasons or owing to their age, state of health or other personal circumstances.

90. Under article 725.1 of the Criminal Procedure Act, the Ministry of Justice is the central authority responsible for extradition proceedings. Cuba has also signed 11 bilateral extradition treaties and, in cases where no bilateral treaty exists, requests for legal cooperation in this matter are processed in accordance with the principle of reciprocity, as established in article 743.1 of the Criminal Procedure Act. During the period from 2023 to 2024, three extradition requests have been processed.

Additional information relating to paragraph 26 of the concluding observations

91. Legal guarantees for individuals are established in the Constitution, which recognizes their right to due process in both the judicial and administrative spheres, which includes receiving legal assistance to exercise their rights, as provided for in article 94 (b).

92. Article 12.1 of the Criminal Procedure Act (No. 143/2021) provides that accused persons have the right to a defence and to appoint a lawyer once they have been arraigned, which marks the beginning of the trial proceedings, and clarifies that, if the accused person is subject to pretrial detention as a precautionary measure or is imprisoned for another reason and does not appoint a defence lawyer within 48 hours of having been arraigned, one will be appointed on their behalf by the acting authority for the taking of their initial statement, if

this is in their interest. In this case, the presence of a court-appointed lawyer is mandatory during those acts and proceedings in which the law states this to be a requirement, as it affects the rights and guarantees of accused persons.

93. Article 130.1 (c) of the above law provides that accused persons have the right to be represented by one or more defence lawyers of their choice; by a court-appointed lawyer if they are detained, subject to pretrial detention as a precautionary measure or imprisoned for another reason, when they request one and do not appoint one of their own choice; if the proceedings are at the judicial stage or if they wish to represent themselves in court, provided that they are included in the general register of lawyers and have not been disbarred. In addition, paragraph (d) of the above provision establishes the right of accused persons to communicate privately with their defence lawyer at any stage of the proceedings and as many times as they wish.

94. Regarding statements made by accused persons, article 248.1 of the Criminal Procedure Act provides that such persons are informed of their right to make a statement or not and to appear assisted by a defence lawyer, in accordance with the provisions of this law.

95. The Criminal Procedure Act also lists the types of annulment that may apply for violation of due process. Instruction No. 281/23 of the Governing Council of the People's Supreme Court elaborates on the action to be taken in the event of non-compliance with the provisions of the Constitution and Cuban law.

96. The lawyers of the accused persons and the public prosecutor have the opportunity to respond to breaches of due process, and there are legal mechanisms in place that allow timely access to the courts, if necessary. The party concerned is given an opportunity to respond and to exercise their rights when possible violations of law arise. No proceedings may be halted for this reason.

97. Since the entry into force of the new Criminal Code, 15 sets of habeas corpus proceedings have been brought before the military courts, 3 of which have been declared admissible owing to violations of the procedural guarantees of the defendants, who were immediately released, while the remaining 12 were declared inadmissible.

98. The Attorney General's Office has not received any complaints regarding the inability to gain access to a lawyer from the outset of the deprivation of liberty, whether appointed by the defendant or by the court on their behalf.

Additional information relating to paragraph 28 of the concluding observations

99. The Cuban justice system provides various means and procedural opportunities to ensure that the rights of detainees are respected and that the measures to which they are subject are reviewed. Depending on the stage reached in the proceedings, one or more authorities are empowered to intervene and the accused person or their lawyer is entitled to challenge the measure imposed.

100. Article 348 of the Criminal Procedure Act states that one of the purposes of precautionary measures in criminal proceedings is to ensure the presence of the defendant at the different stages of the proceedings in question.

101. Once the precautionary measure has been imposed, its effects remain in place until the measure becomes permanent and the decision terminating the proceedings is implemented, unless the measure has been revoked beforehand.

102. When the prosecutor brings preliminary charges against a person who is at liberty, and there is sufficient reason to believe that they will try to evade justice, the court may order any of the measures provided for in law or the modification of a measure already imposed.

103. The precautionary measure of pretrial detention in the investigative phase is ordered by the prosecutor. Under article 351 of the Criminal Procedure Act, if the accused person or their defence lawyer disagrees with the prosecutor's decision on the remedy of a complaint

exercised in respect of the imposition or modification of the measure, they may request the competent court to carry out a judicial review of it to the same end.

104. The investigator, prosecutor or the court, depending on the stage reached in the proceedings and in accordance with the powers provided for in the Criminal Procedure Act, may order, of their own motion, the modification or revocation of any precautionary measure imposed on the accused person when the reasons justifying its imposition have changed or ceased to exist.

105. The precautionary measure of pretrial detention is applied when the act is serious or when there is a possibility that the investigation, prosecution, trial or enforcement of the sentence may be impeded or obstructed.

106. Prior to the imposition of the measure, an assessment is made of its necessity and relevance, the person's age, state of health, family situation, vulnerability and any other circumstance relevant to the person or the act imputed to them. Once the measure has been applied, it is subject to ongoing review.

107. In Cuba, criminal responsibility becomes operative at 16 years of age. This precautionary measure may only be imposed on persons under 18 years of age in connection with serious criminal acts that have a social or economic dimension or that affect the constitutional order of the country, or when, to commit the crime, they make use of means or forms that entail disregard for human life or represent a high risk for society, or demonstrate a notorious disrespect for the rights of others, or are repeat offenders.

108. Pretrial detention is served out in an establishment different to those reserved for the serving of custodial sentences or in separate wings of such establishments.

109. The accused person or their defence lawyer may, at any time during the preparatory phase, request the competent court to conduct a judicial review of the precautionary measure of pretrial detention, in keeping with article 351 of the Criminal Procedure Act. The parties may request the court to hold hearings to this end.

110. The prosecutor or the court may, of their own motion or at the request of a party, and depending on the stage reached in the proceedings, replace the measure of pretrial detention with one or more of the other measures provided for by law when its duration reaches the lower limit of the penalty prescribed for the crime or, if there are several crimes that gave rise to the imposition of the precautionary measure, the most serious of the crimes with which the defendant has been charged.

111. When the defendant, accused person or detained person has spent one year in pretrial detention, the court or the prosecutor, as the case may be, evaluates and decides on the relevance of the measure.

112. From 2022 to June 2024, the precautionary measure of pretrial detention was imposed by the prosecutor on 11,219 defendants, in accordance with the requirements of the law.

113. Similarly, from 2022 to the first half of 2024, the military courts conducted a judicial review of the precautionary measure of pretrial detention on 270 occasions; in 241 cases, the review upheld the decision by the prosecutor to maintain the measure imposed. In 29 cases, the review led to the revocation of the measure or its replacement with another, non-custodial measure, as there were no legal grounds for its imposition.

Additional information relating to paragraph 30 of the concluding observations

114. The Ministry of the Interior, the people's and military courts, the Attorney General's Office and prevention and social welfare groups are actively involved in upholding and ensuring legality in the prison system. The Attorney General's Office, acting through its department for the supervision of legality in prisons, plays an essential role in this regard.

115. The Attorney General's Office, by virtue of the powers conferred upon it by the Act on the Attorney General's Office, and in compliance with its constitutional mandate to uphold legality, carries out regular inspections of prisons and detention facilities.

116. This work is carried out according to its internal programme of work, but also allows for the investigation of allegations, complaints and claims submitted by prisoners, detainees or their family members.

117. Moreover, under Act No. 101/2006 and, more recently, under article 12 (h) of the Act on the Military Prosecutor's Office (No. 166/2024), one of its functions is "to verify the legality of detention and to interview persons held in places of detention or arrest, in disciplinary holding units, persons subject to a therapeutic post-crime security measure and persons held in prisons or special centres of the national health system".

118. Article 198 of the Sentence Enforcement Act empowers both the court and the prosecutor to:

“(a) Visit places of detention to verify compliance with the law and respect for the rights and guarantees of persons deprived of their liberty or held in detention;

(b) Process and investigate complaints, petitions and claims received from convicts, detained persons, defendants, accused persons or their relatives, and take appropriate action under the law;

(c) Examine documents related to rights, guarantees and compliance with post-crime penalties and security measures imposed on persons serving custodial sentences or being held in pretrial detention;

(d) Interview convicts, detained persons, defendants and accused persons, and officials or employees linked to legal persons subject to criminal penalties or other obligations stipulated in the sentence;

(e) Request reports from the prison authority, State bodies and entities, and social and grass-roots organizations involved in caring for inmates;

(f) Request reports from State bodies and institutions, agencies and entities involved in enforcing criminal penalties imposed on legal persons; and

(g) Verify that State bodies, agencies and entities comply with their obligations with respect to the enforcement of criminal penalties, therapeutic post-crime security measures and other established obligations, carrying out the appropriate checks and making the necessary pronouncements.”

119. Furthermore, prisons are regularly visited by prisoners' relatives and other individuals, including representatives of national political and social organizations, law students and artists who take their work into prisons.

Additional information relating to paragraph 32 of the concluding observations

120. The Constitution recognizes the right of victims to protection in the exercise of their rights as a guarantee in criminal proceedings. The State guarantees access to criminal justice for victims or injured parties in crimes under the terms set by the Criminal Procedure Act.

121. A victim or injured party, with the procedural rights inherent to this status, is a natural or legal person who, as a consequence of a crime, has suffered physical, psychological, moral or property damage.

122. A victim or injured party is defined as the individual directly affected by the crime; the spouse, domestic partner and relatives within the fourth degree of consanguinity or second degree of affinity, in cases where the affected person has died; in cases where the affected person has an incapacitating mental disability or is a minor; and the heir and successors, in crimes that result in the death of the decedent.

123. The victim or injured party has the right to be compensated, under the terms set by the Criminal Procedure Act (No. 143/2021), for the moral and material damages caused and to be indemnified for the injury done to them, by the person criminally responsible for the crime or by the third parties held accountable, with whom they may conclude reparation agreements or waive these rights.

124. The law mentioned above also provides that the court, after declaring civil liability, is to enforce the obligation to restore the property, including through payment for any damage done, and, if this is not possible, to order reparation for material damage and compensation for injury, in accordance with the law. The court also enforces the obligation to provide reparation for moral damage, in the manner established in the sentence. In cases of gender-based violence, if appropriate, the court orders reparation for moral damage and is responsible for enforcing that measure.

125. The Compensation Fund of the Ministry of Justice is the entity empowered by the Criminal Code to enforce the civil liability declared in the sentence with respect to reparation for damages or compensation for financial damages, or both, in accordance with the law.

126. As no acts of enforced disappearance have occurred or been tried in Cuba since the triumph of the Revolution on 1 January 1959, there are no criminal proceedings related to this crime that have resulted in the obligation to make reparation.

Additional information relating to paragraph 34 of the concluding observations

127. Article 26 (3) of the Civil Code establishes that the disappearance of a person whose death cannot be proven is governed by the provisions on absence and presumption of death. Thus, individuals who have been missing from their home with no indication of their whereabouts for more than a year may be declared absent.

128. The individual declared absent is represented by their spouse or domestic partner, if there is one, or otherwise by an adult child, a parent, a grandparent, a sibling or a child or parent by marriage. Where there are several family members of the same degree who are not in agreement, the court will appoint one of them. In exceptional cases, and where there are grounds for doing so, the court may designate a representative other than those listed above. The absence may be declared by a court at the request of an interested party or the prosecutor.

129. If three years elapse without any news of the absent person, they may be declared to be presumed dead, regardless of whether they have been declared absent. The judicial declaration of presumed death is made at the request of the interested party.

130. Once a person is declared to be presumed dead, the interested parties are entitled to exercise the same rights that they would have had if the death had been certified medically.

131. If a person who has been declared absent or presumed dead is found alive or provides proof of their existence, the court annuls the declaration of absence or presumption of death and, subject to the exceptions provided for by law, orders the restoration of their rights, the recovery of their property in its existing state and the payment of the value of any property that has been transferred or sold. They are not, however, entitled to any benefits from it.

132. The Criminal Code includes no specific offences related to “the wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance”.

133. However, the crime of enforced disappearance is regulated in such a way that the penalty to be imposed, namely 4 to 10 years’ deprivation of liberty, is increased if violence is used to carry out the act or if it results in serious damage to the health, dignity or property of the victim or the victim’s family or persons close to them; if the victim is subjected to inhumane treatment; or if the person deprived of their liberty is under 18 or over 60 years of age, has a disability or is a pregnant woman.