



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture  
Forty-eighth session**

**Summary record of the first part (public)\* of the 1078th meeting**

Held at the Palais Wilson, Geneva, on Tuesday, 22 May 2012, at 10 a.m.

*Chairperson:* Mr. Grossman

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*Second periodic report of Cuba*

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\* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1078/Add.1.

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*The meeting was called to order at 10 a.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention** *(continued)*

*Second periodic report of Cuba (CAT/C/CUB/2; CAT/C/CUB/Q/2 and Add.1)*

1. *At the invitation of the Chairperson, the delegation of Cuba took places at the Committee table.*

2. **Mr. Pino Bécquer** (Cuba) said that the second periodic report of Cuba was the outcome of broad-based and participatory consultations involving governmental and State bodies, the Parliament, NGOs and other institutions, which had jointly engaged in an objective assessment of the country's compliance with the Convention.

3. Torture and cruel, inhuman and degrading treatment had been commonly practised by the authorities in Cuba until 1959 and had reached a climax during the bloodthirsty dictatorship of Fulgencio Batista. The Cuban Revolution, motivated by humanist and ethical values, had put an end to such policies. Cuba had fulfilled its obligations under the Convention since becoming a party in 1995. However, the State was unable to exercise its sovereignty over the territory that was illegally occupied by the United States naval base in Guantánamo Bay, a base that had been converted into an international torture centre.

4. Some aspects of the penitentiary regime and conditions of detention still needed to be improved. It was important to note, however, that notwithstanding the economic difficulties that Cuba had encountered, it had never invoked such difficulties to justify any denial of justice or to prevent persons deprived of their liberty from enjoying their basic rights. The Investment Master Plan for the Penitentiary Regime, which covered the period up to 2017, was currently being implemented, and the allocated budget would permit the gradual upgrading of prison facilities and the improvement of living conditions. A large number of general and conjugal visiting areas, kitchen-dining areas, classrooms and medical units had already been upgraded.

5. The 95 Standard Minimum Rules for the Treatment of Prisoners were a cornerstone of the Cuban penitentiary regime. Educational facilities were provided and persons deprived of their liberty were encouraged to improve their conduct through a gradual reduction in the severity of the prison regime with a view to granting early release. Provision was also made for social reintegration, especially of young people. The prison population had benefited from the education programmes, which had led to improved relations between inmates and their families, better communications with prison and rehabilitation staff, and a more forward-looking environment in prisons. Forty-seven per cent of the prison population were currently enrolled at different levels of education; 43 per cent were attending training courses and 3,079 had concluded university studies since 2002. As a humanitarian gesture, pardons had been granted in 2011, in strict compliance with the law, to 2,992 convicted persons, including young people whose level of cultural development and prospects for social reintegration had improved. Each year the People's Supreme Court, the Office of the Attorney General of the Republic and specialized units of the Ministry of the Interior systematically assessed and approved the early release of convicted persons, taking into account their behaviour, the types of offences committed and their family and health conditions.

6. The existing legislation, including instruments applicable to places of detention, contained universally accepted safeguards aimed at protecting all persons against torture and other cruel, inhuman or degrading treatment or punishment. Practical measures were also taken to prevent the commission of acts that violated the Convention and contravened domestic law. The definitions of relevant offences in Cuban criminal law were consistent

with the provisions of the Convention, and acts of torture and ill-treatment were absolutely prohibited. Impunity was not tolerated or protected by any laws or regulations.

7. However, the Cuban authorities were not satisfied with what had been achieved to date and were taking action to guarantee compliance with all the normative and practical provisions of the Convention. For example, studies were being conducted with a view to amending and updating the Criminal Code. The definition of the crime of torture would be made more explicit and brought into line with the Convention. The National Assembly of People's Power had decided in December 2011 to upgrade criminal legislation. Material difficulties, however, including the economic blockade imposed by the United States Government, had impeded the renovation of some prison facilities. The blockade affected all aspects of Cuban life and had inflicted direct damage of US\$ 104,000 million on the economy.

8. The compilation of statistics was a challenge for all developing countries and he was unable to provide the Committee with all the detailed statistical data that it had requested. Cuban criminal legislation did not contain a definition of the offence of gender violence but imposed penalties for conduct that could constitute such an offence and for violence in general. It was difficult, however, to provide disaggregated statistics relating to cases of gender violence that had been prosecuted.

9. The delay in submitting the report did not imply that Cuba had been remiss in fulfilling its obligations under the Convention. The current dialogue was being held under special circumstances. Cuba was the victim of a hostile policy by the United States Government designed to promote internal instability and to overturn the constitutional order chosen freely by the Cuban people, in other words to promote "regime change". United Nations human rights mechanisms were also being manipulated to that end. Those mounting the campaign against his country resorted to lies and distortion of the facts. The Committee should be aware of those circumstances in order to conduct an objective and impartial assessment of the situation in Cuba. Cuba had responded to the communications it had received from United Nations human rights procedures, but deplored the failure to scrutinize the sources and credibility of the allegations that they contained.

10. The wide range of issues listed by the Committee had required extensive national consultations. Some of the questions seemed to have been formulated on the basis of biased and false allegations from sources that supported the United States Government's hostile policy. For instance, question 22 of the list of issues mentioned persons who were allegedly on hunger strike. Some of the persons concerned had not even been in custody at the time and others had never gone on hunger strike. The Cuban authorities strictly complied with the Malta Declaration of the World Medical Association on hunger strikers when dealing with such cases. State-of-the-art medical care was provided. All persons deprived of their liberty received free medical attention and were guaranteed stomatological care.

11. Question 26 requested statistical data on complaints of acts of torture or ill-treatment. The Office of the Attorney General of the Republic gave high priority to reports, complaints and petitions from citizens concerning alleged irregular conduct and violations of legal norms. Between 2007 and 2011 the Office had dealt with 419,982 reports, complaints or petitions pertaining to civil, employment, criminal or administrative proceedings. On investigating the 263 complaints concerning ill-treatment in prison facilities or detention centres, the Office had found that 46 law enforcement officers had incurred criminal responsibility.

12. The persons referred to in question 32 and the remainder of the list as "human rights defenders" did not qualify for such an appellation pursuant to the 1998 Declaration on Human Rights Defenders. Acting in the service and under the guidance of a foreign Power, they basically sought to undermine and destroy the internal Cuban legal order, in the

framework of which all such activities should be conducted, in accordance with article 3 of the Declaration. In Cuba genuine human rights defenders were protected. Nobody had been persecuted or punished for having exercised any of the rights, including the right to freedom of expression, opinion and association, guaranteed by the Constitution and laws of the Republic, which were fully consistent with international human rights instruments. Lastly, he noted that Cuba had made every effort to implement the recommendations issued by the Committee in 1997.

13. **Mr. Mariño Menéndez** (Country Rapporteur), noting the State party's strong attachment to its sovereignty, welcomed its willingness to accept international monitoring, for instance by the Committee and the Universal Periodic Review Working Group. As Country Rapporteur, he had also consulted the reports of the Inter-American Commission on Human Rights, which was presumably above suspicion.

14. Cuba was a small country that could boast of major achievements in the areas of social development, health care and education. As mentioned by the delegation, it had a very powerful neighbour that was hostile to the Cuban regime, a state of affairs that had entailed a wide range of political and economic consequences, which the Committee had taken into account in general terms. Human rights were indivisible and interdependent, as recognized in the 1993 Vienna Declaration and Programme of Action. Progress in economic, social and cultural rights should be accompanied by progress in civil and political rights. The lack of statistics, especially on the application of the provisions of the Convention in places of deprivation of liberty, impeded the Committee's ability to monitor the situation in the State party. While he welcomed the figures for complaints submitted during the period 2007–2011 provided by the delegation, he emphasized the need for additional disaggregated statistics.

15. As recommended by the Committee in its concluding observations on the State party's initial report (A/53/44), torture, as defined in the Convention, should be clearly identified and criminalized. He therefore welcomed the delegation's announcement that the National Assembly of People's Power had approved the amendment and updating of the Criminal Code. While, as noted in the report, Cuban criminal legislation contained a whole range of offences that could form part of the crime of torture, such as abuse of authority, assault, deprivation of liberty, threats, duress, sexual abuse, and maltreatment of prisoners of war, legal certainty required that torture should be defined as a separate offence and entail a penalty that corresponded to the seriousness of the crime.

16. According to the Constitution, international treaties had primacy over domestic law. He asked whether the Convention had been invoked directly in any judgement by a Cuban court. The Committee believed that the death penalty constituted inhuman treatment and recommended that States parties should abolish capital punishment. There appeared to be a de facto moratorium in Cuba, since no death penalty had been handed down since 2003. He asked whether the authorities intended to pass legislation abolishing the penalty altogether.

17. States parties were required to adopt measures aimed at preventing and eradicating torture and ill-treatment by law enforcement agencies. He wished to know who was officially empowered to detain a person on behalf of the State. For instance, could an individual be detained by the intelligence services? There was a practice known as short-term arrest or detention, the purpose of which was allegedly to control the political activities of certain parties. According to the Inter-American Commission on Human Rights, which used the term temporary arbitrary detention, the period of detention, which was initially for 24 hours, could be extended for up to 7 days. He asked whether short-term detention was officially recorded, whether detainees could contact their families and how long such detention normally lasted. According to the report, habeas corpus was guaranteed under Cuban legislation. He wished to know whether it was also applicable to short-term detention and, if so, whether there were any relevant court decisions. He enquired about the

distinction between provisional and pretrial detention in the Code of Criminal Procedure and asked whether the Attorney General of the Republic could transfer a detainee from one category of detention to another. He also enquired about the circumstances in which either form of detention could be extended beyond 180 days.

18. The Committee had been informed of certain practices in Cuba that seemed to constitute inhuman treatment, for instance collective threats or acts of repudiation or harassment directed against social or political activists or opponents of the regime. He asked whether the authorities took action against the perpetrators of such acts. Noting the existence of administrative detention centres in Cuba that were not subject to the control of the Attorney General of the Republic or the courts, he asked how many such centres existed and how many people were detained in them. When deaths occurred in places of detention, what kind of investigation was conducted and were the results made public?

19. He recommended that Cuba should ratify the Convention relating to the Status of Refugees and the Protocol thereto, the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons. Cuba had signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, but it had not yet ratified them. He was pleased to note, however, that the former Covenant formed part of the State party's training courses for judges and prosecutors.

20. The Committee had been informed of cases of enforced expulsion or permanent expatriation of Cuban citizens by the State party. The persons concerned were allegedly denied the possibility of return and could face criminal charges if they entered the country. Their status was thus equivalent to that of stateless persons. He asked whether their children could acquire Cuban citizenship. Some detainees had apparently been given the option of expulsion but had preferred to remain in the country. He enquired about their current circumstances. Moreover, José Daniel Ferrer had been released from prison but informed that charges of "public disorder" were still pending against him.

21. The Committee had received reports that some people's movement within the State party was restricted as a means of control or punishment. He asked which authority denied people the right to move freely around the country, and how many people were currently affected by such restrictions. Given the State party's habitual generosity in matters of asylum, he asked whether a more sympathetic approach might be adopted towards migrants in an irregular situation. It appeared that currently they could be sent back to their country of origin with no regard for the principle of non-refoulement. He asked how many people had been treated in that way to date.

22. Turning to the question of the independence of the judiciary, he would welcome the delegation's comments on the 2011 report of the Inter-American Commission on Human Rights, which had indicated that the subordination of the State party's courts to the Council of State, which was presided over by the head of State, meant that the judicial branch was directly answerable to the executive branch. The same report raised concerns about the provisions of article 72 of the Criminal Code, which defined as an offence a so-called "dangerous state" (*estado peligroso*), and articles 479 and 480 of the Criminal Procedure Act, which provided for especially expedited summary proceedings. He would appreciate additional information on those aspects of the State party's legislation, including statistics on the number of such summary proceedings. He asked whether there had been any independent and transparent investigation into the death of Mr. Juan Wilfredo Soto García on 7 May 2011, apparently as a result of beatings he had received. He wished to know whether any foreign citizens who had allegedly committed acts of torture abroad but who found themselves on Cuban soil had been tried there, in accordance with the provisions of article 5 of the Convention. Lastly, he enquired about the scope of military jurisdiction,

particularly whether civilians could be tried by military courts and if so, subject to what limitations.

23. **Ms. Sveaass** (Country Rapporteur) requested more detailed information on which organizations, particularly civil society organizations, had participated in the preparation of the periodic report and in what way exactly they had contributed. She asked whether the State party planned to launch a consultation process concerning the implementation of the Committee's concluding observations. The Committee had received reports detailing some of the difficulties encountered by persons active in civil society organizations, particularly those who defined themselves as human rights defenders or presented critical opinions. It was, however, a basic human right to be able to express an opinion. Allegedly, NGOs such as the Comisión Cubana de Derechos Humanos y Reconciliación Nacional and the Consejo de Relatores de Derechos Humanos de Cuba had been trying to register as civil society organizations since 1987. She asked what criteria NGOs were required to fulfil for official registration and how the registration process was conducted.

24. It would be useful to know whether detainees were informed in writing or orally of their right to appoint a lawyer, and whether there was a maximum time limit regarding notification of that right. If so, were those rules strictly obeyed and what oversight mechanisms ensured that they were observed? She would welcome the delegation's comments on the legitimacy of the "dangerous state" offence and its compatibility with the presumption of innocence. She asked how many individuals were currently detained on the basis of that charge and whether the crimes that motivated that charge were specified. The Committee would welcome any news of plans to revise the article of the Criminal Code that provided for that offence. It would also be useful to have data on the number of detainees currently in the prison system and the charges that had been brought against them. The State party had affirmed that training was provided on the proper conduct of forensic examinations and the implementation of the Istanbul Protocol. It would be useful to know what happened to the reports of legal examinations, who requested them in places of detention and how many examinations had taken place in police detention solely in order to document and investigate signs of torture and ill-treatment.

25. The Committee had received reports of poor prison and police detention conditions in the State party, including a lack of water and food, people being held at low temperatures and the frequent use of isolation as part of punishment. While family visits were allowed, some detainees were allegedly held in centres so far from their homes that relatives could not make frequent visits. All detainees had the right to be held in conditions that met the standards laid down in the relevant international instruments, regardless of their crimes or origin. The Committee would welcome additional details about detention conditions in the State party. She would also appreciate clarification of the legal status of the human rights defenders who had been exiled on their release from prison in 2010 and 2011 under the framework of an agreement with the Catholic Church, and that of those who had chosen to stay in the State party.

26. While welcoming the information provided in reply to question 17 on the list of issues, she requested details of the mandates under which national and social organizations conducted prison visits. It would be useful to know which organizations conducted such visits and to whom they reported. She asked whether staff of the International Committee of the Red Cross could make unannounced visits to places of detention in the State party and whether they could speak to detainees in private during such visits. Noting that those held responsible for the deaths of 26 patients in January 2010 in a psychiatric hospital in Havana had been charged with abandonment, neglect and embezzlement, she asked what measures and safeguards had been put in place to ensure that such a tragedy could not occur in the future. It would be interesting to learn whether the surviving patients of that hospital and the relatives of those who had died had received compensation. The Committee would

welcome additional information on the legal framework for the deprivation of liberty of persons owing to psychiatric illness, including details of the legal provisions under which patients could be placed involuntarily in psychiatric hospitals.

27. She welcomed the statistics that the head of delegation had provided on the complaints received by the Office of the Attorney General of the Republic between 2007 and 2011. It would, however, be useful to have more information on the subjects raised in those complaints. In particular, she asked for a more detailed account of the 263 complaints relating to ill-treatment in detention centres and an indication of what action had been taken against the perpetrators in those cases. She wished to know whether there were mechanisms in place for registering complaints anonymously. She requested clarification of the fact that no redress was available to victims of torture unless compensation was ordered by the courts and was the outcome of a criminal conviction. She asked how many cases of compensation had been registered for acts of torture or ill-treatment and whether there had been any cases in which victims of violence had received compensation owing to a lack of due diligence on the part of the law enforcement agencies.

28. The Committee was concerned at reports that people who staged demonstrations in public spaces, particularly human rights defenders, journalists and writers, were routinely arrested on the presumption that they were creating public disorder. The authorities appeared to use excessive force and beatings during those detentions, and they seemed to be becoming increasingly frequent. She asked what steps the State party planned to take in relation to that unacceptable practice. Moreover, dissidents, especially members of the Ladies in White movement, were reportedly harassed, their homes stoned, their children victimized at school, their relatives forced to resign from their jobs, while surveillance of Government opponents was allegedly commonplace. She wished to know how the apparent lack of protection for those individuals could be explained, how many victims and perpetrators of so-called acts of repudiation (“actos de repudio”) had been detained, and what measures the Government would take to prevent such harassment in the future. In particular, she requested updated details of the legal situations of Mr. Oscar Elias Biscet, Mr. José Daniel Ferrer García and his family and Mr. Calixto Ramón Martínez Arias. The Committee would also welcome details of any investigations into the death of Mr. Wilmar Villar Mendoza, a member of the Unión Patriótica de Cuba, who had died on 18 January 2012 in the Juan Bruno Zayas hospital in Santiago de Cuba. Lastly, while welcoming the State party’s apparent moratorium on the death penalty, she urged the Government to amend the Criminal Code to abolish it.

29. **Mr. Bruni** requested additional details of the legal definition of an offence against State security. It would be useful to have information on any cases in which individuals had been prosecuted for such offences, including the charges that had been brought and the penalties that had been imposed. Given that the State party had not signed any extradition treaties concerning torture, he asked whether the Convention was considered to be the legal basis for extradition in respect of the offence of torture, as recommended in article 8, paragraph 2, of the Convention.

30. He wished to know whether the Government had an official list of places of detention where persons could be deprived of their liberty. If so, it would be useful to know whether detention outside those places automatically constituted a violation of the law and if those responsible for such illegal detention were automatically prosecuted. He requested data on the current rate of occupancy in the penitentiary system, which would reveal whether prison overcrowding was a problem in the State party. If the prisons were overcrowded, he would like to know how the authorities planned to address that problem. He asked whether the reports of the Attorney General’s visits to places of detention were published. It would be useful to receive details of the findings and recommendations made

in those reports. He would appreciate an account of the detention conditions in holding cells in police stations in the State party.

31. **Ms. Belmir** said that she failed to understand how the State party could claim that the judiciary was independent, given that it was clearly subordinate to the National Assembly of People's Power and the Council of State. In addition, the State party had affirmed that military courts could try civilians under certain circumstances. Given that justice was the last bastion of hope for victims of crime, she urged the State party to ensure that its judicial system was truly independent.

32. **Mr. Gaye** said that he would like to know whether persons held in detention were allowed to be examined by a doctor of their own choice. He asked whether there was a maximum period by which a person held in pretrial detention must be brought before a court, as it appeared from the State party's periodic report that examination of the preliminary case file could be prolonged indefinitely. He was perplexed by the fact that habeas corpus was not applied where the deprivation of liberty arose out of a sentence or pretrial commitment order pronounced in criminal proceedings, as indicated in the report.

33. Given the absence in Cuban legislation of a definition of torture as a stand-alone crime, he wished to know on what basis persons could be charged with the offence of carrying out acts of torture. He asked whether a non-Cuban national who was in Cuban territory and had committed such an offence in another State could be tried in Cuba. It was unclear from the periodic report of the State party exactly which offences fell under Cuba's universal jurisdiction. He would like to know whether measures were in place to protect law enforcement officers who reported or refused to carry out orders given by superiors to commit acts of torture. He also asked for more information on the role of the Compensation Fund provided for under the Criminal Code.

34. **Ms. Gaer**, noting the State party's assertion that complaints by detainees of physical or psychological ill-treatment were investigated by the Office of the Attorney General of the Republic, said that she wished to know how many such complaints had been investigated and what the outcome had been. Had any officials been disciplined as a result? She asked whether the families of persons who died in custody could arrange to have independent autopsies conducted by medical examiners of their own choice. Any information the delegation could provide on the fate of prisoners on hunger strike, whose names appeared in the list of issues (CAT/C/CUB/Q/2, para. 22), would be welcome. She also requested information on the situation of Alan Gross, who was being held in detention without charges and who had complained of poor prison conditions. She reiterated the Committee's request for information on the situation of human rights defenders, including the Ladies in White group (CAT/C/CUB/Q/2, para. 32).

35. She invited the delegation to explain why the State party had rejected recommendations, contained in the Report of the Working Group on the Universal Periodic Review (A/HRC/11/22, para. 132), to release prisoners of conscience and to explain exactly what rights such persons enjoyed in the State party. She repeated the Committee's request for information on any registered cases of refusal of legal assistance during the period under consideration, and asked how many visits to places of detention had been conducted by the International Committee of the Red Cross in the same period.

36. **Mr. Wang Xuexian**, noting that the State party did not oblige asylum seekers to return to their country of origin if the Office of the United Nations High Commissioner for Refugees in Cuba did not reply to their asylum requests within the 90-day period in which they were allowed to remain in the country, asked where they were sent instead. He would also like to know what punishment had been received by the 46 law enforcement officers found to have incurred criminal responsibility by the Office of the Attorney General of the Republic in its investigation of complaints of ill-treatment. Had compensation been

provided to the victims? He reiterated the Committee's request for information on any cases that had been dismissed by courts because of the use of evidence or testimony obtained through torture or ill-treatment. He wished to know whether the presumption of innocence and the right to remain silent had been incorporated into the State party's legislation.

37. **Mr. Tugushi**, noting the State party's assertion that the Office of the Attorney General of the Republic played the role of a national human rights institution, underlined that the Committee wished to know whether it planned to establish such an institution in line with the Paris Principles. He would also like to know whether the State party planned to accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish a national preventive mechanism. In that context, he observed that the Committee had received numerous reports concerning poor prison conditions, as well as of beatings of detainees and the use of solitary confinement. He asked for information with regard to reports that, in 2010 and 2011, some convicts had been offered the option of exile from Cuba in place of prison sentences ranging up to 10 years.

38. **The Chairperson** welcomed the moratorium on the death penalty in Cuba, where the last death sentence had been carried out in summary fashion in 2003, but observed that it remained in the Criminal Code and that it could be applied as punishment for a broad array of offences. He asked whether planned amendments to the Criminal Code would include modifications to the application of the death penalty. He said that he also wished to know whether it was true that article 75 of the Criminal Code, which provided for the preventive detention of persons on the basis of the suspicion that they might commit a criminal offence, was used widely as a weapon against political opponents of the State. According to the Comisión Cubana de Derechos Humanos y Reconciliación Nacional, more than 2,500 persons had been temporarily detained for political reasons in the State party in the first nine months of 2011. Would articles 72 to 75 of the Criminal Code, on measures against potential offenders, be amended? He wished to know whether the arrest and beating of representatives of the opposition, including at least 22 members of the Ladies in White group, had been investigated and, if so, with what results. He encouraged the State party to set a date for a visit to Cuba by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, to whom it had extended an invitation in 2009.

39. **Mr. Reyes Rodríguez** (Cuba) said that he was concerned that the delegation would not be accorded sufficient opportunity to rebut what it considered to be false allegations but that it was prepared to discuss any subject that the Committee wished to cover.

40. **The Chairperson** assured the delegation that it would receive a full opportunity to contest any views expressed by Committee members at its next meeting with the State party.

*The public part of the meeting rose at 12.05 p.m.*