



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

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Committee against Torture

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List of issues to be considered during the examination of the second periodic report of Cuba (CAT/C/CUB/2)*

Articles 1 and 4

1. With regard to paragraph 54 of the periodic report of the State party, please provide updated information on the legislative measures adopted to include in the planned amendment of the Criminal Code a definition of torture that includes all of the elements that appear in article 1 of the Convention.¹ Please indicate the measures adopted by the State party to ensure that such crimes are punished with appropriate sentences, which take into account their seriousness, in accordance with the provisions of article 4, paragraph 2 of the Convention. Please also clarify whether on the basis of article 64 of the Criminal Code, the statute of limitations is applicable for crimes involving torture.²

Article 2³

2. With regard to paragraphs 59 to 76 and 273 to 278 of the report of the State party,⁴ please provide detailed information on the measures adopted and the existing procedures that ensure that:

* Late submission.

¹ CAT/C/CUB/2, paras. 50 to 58, 90 to 110 and 265. See also: CAT/C/SR.309, paras. 12, 14, 22, 31 and 59; CAT/C/SR.100/Add.1, paras. 8 and 32; A/HRC/WG.6/4/CUB/1, para. 94; and A/HRC/WG.6/4/CUB/2, para. 14.

² CAT/C/CUB/2, para. 110.

³ The questions that arise within the framework of article 2 may also have links with other articles of the Convention, such as article 16. According to paragraph 3 of the Committee's general comment No. 2, "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture." See also: section V of general comment No. 2.

⁴ See also: CAT/C/SR.309, paras. 7, 15 and 17.

(a) All persons deprived of their liberty receive access to a lawyer without delay and are able to contact their relatives or any person that they choose.⁵ Please indicate how soon detained persons are permitted to meet with their lawyers, and who makes this decision. Have there been any registered cases of refusal of legal assistance during the period under consideration? In addition, please provide clarification on paragraph 74 of the report of the State party, in particular with regard to the governmental nature of the National Organization of Collective Law Firms (ONBC) and its dependence on the Ministry of Justice. Are lawyers authorized to practice independently?⁶

(b) All detainees are informed of their rights at the time of arrest and of the charges against them and are promptly brought before a judge;

(c) All detainees undergo a medical examination, and all medical certificates that indicate injuries compatible with torture and ill-treatment are systematically brought to the attention of the relevant prosecutor. How are detainees provided with information on their right to request an independent medical examination by a doctor and to ensure the accuracy of medical reports, including the right to see the reports?⁷

(d) All persons deprived of their liberty who do not understand Spanish are provided with the services of an interpreter.

3. According to the report of the State party (paras. 77 et seq.), “Under no circumstances, however exceptional, may the orders of a superior officer or public authority be used to justify torture or other cruel, inhuman or degrading treatment or punishment.” Please provide examples of cases in which this principle has been applied by the Cuban courts and relevant statistics, if any are available.

4. Please provide more detailed information on the measures adopted to guarantee the full independence and impartiality of judges and prosecutors, by ensuring, inter alia, that appointments are made according to objective criteria (paras. 283 and 284).⁸ Please provide detailed information on the appointments procedure for judges, both professional and lay judges, the regulations that govern their tenure and the procedure by which they can be dismissed (paras. 130–134). Has the State party amended the rules of procedure of the courts to fully guarantee their independence in the performance of their duties in conformity with international standards, notably the Basic Principles on the Independence of the Judiciary, as previously recommended by the Committee?⁹

5. Please describe the jurisdiction of the military courts. Do the military courts exercise their jurisdiction in peacetime? Are military courts allowed to try civilians? Do they have jurisdiction over ordinary law crimes committed by military personnel?¹⁰

6. Have any measures been adopted to establish an independent national human rights body, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly

⁵ CAT/C/CUB/2, paras. 60, 66, 69 and 70.

⁶ A/HRC/WG.6/4/CUB/3, para. 19.

⁷ CAT/C/CUB/2, paras. 60, 61, 65, 67 to 70 and 74; and CAT/C/SR.309, para. 47.

⁸ See: CAT/C/SR.309, paras. 9 to 11 and 63; CAT/C/SR.310/Add.1, paras. 5, 10 and 11; A/HRC/WG.6/4/CUB/2, para. 20; A/HRC/WG.6/4/CUB/3, para. 18; and A/HRC/11/22, paras. 53, 85, 96, 127 and 131 (16).

⁹ A/53/44, para. 118 (e).

¹⁰ CAT/C/CUB/2, paras. 45, 53 (g), 104 to 110, 117, 118, 130, 181, 211, 214, 248, 250, 251, 253 to 255, 271 and 281; CAT/C/SR.309, para. 67; A/HRC/WG.6/4/CUB/2, para. 21; and A/HRC/WG.6/4/CUB/3, para. 18.

resolution 48/134 of 20 December 1993, annex)?¹¹ If no measures have been adopted, why not?

7. Please provide updated information, disaggregated by age and ethnicity of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences handed down in cases of gender-based violence since the consideration of the State party's initial report.¹² Please also provide detailed information on current legislation in the area of gender-based violence.

8. Please provide updated information, disaggregated by age and ethnicity of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences imposed in cases of human trafficking since the consideration of the State party's initial report. Please also provide additional information on:

(a) Any new legislation or measure that has been adopted to prevent and combat trafficking in persons;

(b) The measures adopted to ensure that victims of human trafficking have access to effective remedies and reparation;

(c) The signature of bilateral and subregional agreements with countries concerned, including neighbouring countries, to prevent and combat human trafficking.

Article 3

9. Please provide detailed information on the current legislation relating to asylum and refugees, as well as the measures adopted to amend Acts 1312 and 1313 of 1976 on Migration and Aliens, respectively.¹³ Please indicate the number of refugees, asylum-seekers and other non-citizens, such as immigrants or expatriates, present in the State party's territory.

10. Please provide information about the number of persons, broken down by country of origin, who have been granted asylum or humanitarian protection, and the number of those who have been returned, extradited or expelled since the consideration of the State party's initial report. Please provide details of the grounds on which they were sent back, including a list of countries to which individuals were returned. Please provide detailed information on the type of appeal mechanisms that may exist, on whether any appeals have been made and if so, their outcome.

11. Please indicate the number of cases of refoulement, extradition and expulsion carried out by the State party during the reporting period through the acceptance of diplomatic assurances or the equivalent thereof, as well as any instances in which the State party has offered such diplomatic assurances or guarantees. What are the minimum contents of any such assurances or guarantees, whether given or received, and what measures with regard to subsequent monitoring have been taken in such cases?

12. Please provide information on the measures taken to establish an effective mechanism to identify persons in need of international protection among victims of trafficking found in the territory of the State party.

¹¹ A/HRC/11/22, paras. 95 and 131 (6).

¹² A/HRC/WG.6/4/CUB/2, paras. 17 to 19; A/HRC/11/22, paras. 82, 96, 129 and 131 (12) and (15); CEDAW/C/CUB/CO/6, paras. 6, 18 and 20; E/CN.4/2000/68/Add.2, paras. 17 and 103; and E/CN.4/2000/131.

¹³ CAT/C/CUB/2, paras. 83 to 89; CAT/C/SR.309, paras. 26 and 46; CAT/C/SR.310/Add.1, paras. 6 and 7; CERD/C/CUB/CO/14-18, para. 18.

13. Please provide information on the number of reported cases of ill-treatment or physical abuse committed by law-enforcement officials against asylum-seekers since the consideration of the State party's initial report and the penalties imposed on perpetrators of such acts.

Articles 5, 7 and 8

14. With regard to paragraph 152 of the report, please indicate whether, since the examination of the initial report in 1997, the State party has rejected, for any reason, any request for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result. If so, please provide information on the status and outcome of such proceedings.¹⁴

Article 10

15. With regard to the information related to article 10 of the Convention contained in the report (paras. 158 to 176), please clarify whether the training programmes for police officers and other law-enforcement officers include specific training on the provisions of the Convention.¹⁵ Please also indicate whether the State party has developed a methodology to assess the effectiveness and impact of these programmes and, if so, please provide information on the results of the application of this methodology.

16. Please provide more detailed information on training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, to detect and document physical and psychological sequelae of torture. Do such programmes include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)?¹⁶

Article 11

17. With regard to the reply given by the State party to the recommendation included in the previous concluding observations of the Committee on the establishment of a system of regular review of places of detention as required by article 11 of the Convention (paras. 279–282), please provide detailed information on the efforts made by the State party to ensure effective and independent supervision of detention facilities.¹⁷ Are representatives of non-governmental organizations, including the International Committee of the Red Cross, permitted to conduct regular and unannounced visits to all places of detention?¹⁸

18. Please provide updated information, including statistics, disaggregated by sex, age and ethnicity, on the number of pretrial detainees¹⁹ and convicted prisoners and the occupancy rate of all places of detention. Please provide a complete list of special work and

¹⁴ See: CAT/C/CUB/2, paras. 111 to 157; and CAT/C/SR.309, paras. 26 to 30 and 57.

¹⁵ CAT/C/CUB/2, paras. 158 to 165 and 285.

¹⁶ Ibid, paras. 166 to 176; CAT/C/SR.309, para. 47.

¹⁷ A/53/44, para. 118 (f); A/HRC/WG.6/4/CUB/2, para. 15; and A/HRC/11/22, paras. 64, 65, 124 and 131 (14).

¹⁸ A/HRC/WG.6/4/CUB/2, para. 31; A/HRC/WG.6/4/CUB/3, para. 7; A/HRC/11/22, paras. 79, 82 and 131 (10) and (11); and CAT/C/CUB/2, para. 293.

¹⁹ CAT/C/SR.209, paras. 37 and 60; and CAT/C/SR.310/Add.1, paras. 30 and 31.

education centres in the territory of the State party as well as statistics, disaggregated by sex, age and ethnicity, on the number of persons detained in such centres.

19. Please give details of the different levels or stages of the penitentiary system and of classification procedures and criteria.²⁰ Please comment on the information that suggests that in the Cuban prison system, prisoners allegedly experience overcrowding, malnutrition, lack of hygiene, unhealthy conditions, and inadequate medical care. According to the information received by the Committee, persons detained for political reasons are systematically held in solitary confinement, undergo beatings, political re-education programmes, visiting restrictions and are denied medical care.²¹ Please provide information on any investigation into this alleged degrading treatment.

20. Please provide information on the number of prisoners sentenced to death who are awaiting execution and on the number of executions carried out since the consideration of the previous periodic report. What methods of execution are used by the State party? What are the conditions of detention for prisoners awaiting execution? Has the State party considered abolishing the death penalty or, failing that, formalizing the current *de facto* moratorium on the death penalty?²²

21. Please provide updated information, disaggregated by sex, age and ethnicity, on the number of persons deprived of their liberty as a result of the application of the security measures taken prior to the commission of an offence contained in articles 78 to 84 of the Criminal Code.

22. Please provide disaggregated statistical data regarding deaths in custody during the period under consideration, broken down by place of detention, sex, age, ethnicity of the deceased and cause of death.²³ Please give detailed information on the results of the investigations into the deaths and the measures taken to prevent suicides and other sudden deaths in detention centres. Please also indicate the protocols in place for the treatment of detainees who are on hunger strike, as well as the measures adopted in relation to the following cases of hunger strike: Mr. Orlando Zapata Tamayo (died on 23 February 2010), Mr. Guillermo Fariñas, Mr. Darsi Ferrer Ramirez, Mr. Franklin Peregrino, Mr. Jose Ubaldo Izquierdo Fernández, Mr. Juan Bermudez Toranzo, Ms. Iris Támara Aguilera, Mr. Jorge Luis García Pérez, known as “Atúnez”, Mr. Diosiris Santana Pérez and Mr. Segundo Rey Cabrera González. According to information received by the Committee, Mr. Yordani Martínez and Mr. David Piloto were handcuffed and beaten by one of the officers at Valle Grande prison in retaliation for declaring a hunger strike in May 2011. Please comment on this information.

23. Please provide information about the frequency of violence among prisoners, including any cases involving possible negligence on the part of the law-enforcement personnel, and the number of complaints made in this regard. What preventive measures have been taken?

24. Please provide information on the number of persons deprived of their liberty in psychiatric hospitals and in other institutions for persons with mental or physical

²⁰ A/HRC/WG.6/4/CUB/1, paras. 90 (b) and (c) and 93.

²¹ A/HRC/WG.6/4/CUB/1, paras. 88 to 104; A/HRC/WG.6/4/CUB/2, paras. 15 and 16; A/HRC/WG.6/4/CUB/3, paras. 14 and 15; A/HRC/11/22, paras. 42, 110 and 123; A/HRC/WG.6/4/CUB/1, paras. 90 (h) and 99 to 101; A/HRC/WG.6/4/CUB/2, para. 16; A/HRC/11/22, para. 117; and A/HRC/WG.6/4/CUB/1, paras. 102 to 104.

²² CERD/C/CUB/CO/14-18, para. 12; A/HRC/WG.6/4/CUB/1, para. 39; A/HRC/WG.6/4/CUB/2, para. 13; A/HRC/WG.6/4/CUB/3, paras. 11 and 12; A/HRC/11/22, paras. 74, 79, 86, 105, 106, 126 and 131 (13).

²³ A/HRC/WG.6/4/CUB/3, para. 17; CAT/C/SR.309, para. 24.

disabilities. What is the situation with respect to alternative forms of treatment, such as community-based rehabilitation services and other forms of outpatient treatment programmes? Please provide information on any investigations and any disciplinary or criminal proceedings related to the deaths of 26 patients in the Havana Psychiatric Hospital in January 2010.

Articles 12 and 13

25. With regard to the response given by the State party to the recommendation included in the Committee's previous concluding observations for the development of a permanent and transparent procedure for receiving complaints about torture and ill-treatment (paras. 266–272), please describe the measures adopted to ensure that all reports of torture and ill-treatment are investigated promptly and impartially by an independent body.²⁴

26. Please provide detailed statistical data, disaggregated by sex, age, ethnicity, prison regime and place of detention, on complaints of acts of torture and ill-treatment recorded during the period under consideration. Please include information on investigations, disciplinary and criminal proceedings, convictions and the penal or disciplinary sanctions applied. In particular, please provide information on the outcome of the investigations and on disciplinary and/or criminal proceedings concerning:

(a) The death of Mr. Juan Wilfredo Soto García at Santa Clara Provincial Hospital on 8 May 2011, three days after reporting that police officers had arrested and beaten him up;

(b) The beating inflicted by some eight State security officers on the human rights defender Mr. Darsi Ferrer during his arrest on 9 July 2009.

27. Please clarify whether there is an internal complaints system in place for persons deprived of their liberty.²⁵ If so, please provide information on the measures adopted to guarantee the independence of this mechanism.

Article 14

28. With regard to paragraphs 236 to 246 and 286 to 288 of the periodic report of the State party, please provide information on redress and compensation measures, including the means of rehabilitation ordered by the courts and actually provided to victims of torture, or their families, since the examination of the initial report of the State party.²⁶ This information should include the number of requests made, the number granted, and the amounts awarded and those actually paid in each case.

29. Please clarify whether the right to receive compensation depends on the existence of a criminal conviction ordering compensation. Please indicate how many victims have been compensated despite the perpetrator not being identified. Do investigations into such cases continue until the perpetrator(s) is/are identified and brought to justice? Can compensation be obtained by a victim of torture or cruel, inhuman or degrading treatment if the perpetrator has been subjected to a disciplinary, but not a criminal penalty?

²⁴ A/53/44, para. 118 (b); CAT/C/CUB/2, paras. 211 to 235, 283 and 284; CAT/C/SR.309, paras. 38 and 39; A/HRC/WG.6/4/CUB/3, para. 13; A/HRC/4/12; A/HRC/WG.6/4/CUB/2, paras. 3, 14 and 23; A/HRC/WG.6/4/CUB/1, paras. 80 and 87; and A/HRC/11/22, paras. 40 and 124.

²⁵ A/HRC/11/22, paras. 19 and 124; and A/HRC/WG.6/4/CUB/2, para. 15.

²⁶ See also: CAT/C/SR.309, paras. 42 and 49; CAT/C/SR.310/Add.1, paras. 14 and 33; and A/HRC/WG.6/4/CUB/2, para. 14.

30. Please provide information on any reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes.

Article 15

31. In respect of paragraphs 247 to 255 of the periodic report, please describe the specific measures adopted to ensure actual observance of the principle of inadmissibility of evidence obtained through torture.²⁷ Please provide examples of any cases that have been dismissed by courts because of the use of evidence or testimony obtained through torture or ill-treatment.

Article 16

32. Please comment on the reports that independent human rights defenders, writers, teachers, journalists and bloggers, as well as leaders of opposition political movements, dissident social or trade union militants and their relatives continue to be subject to acts of intimidation and harassment, including, inter alia, house arrest, arbitrary detention, ostracism, intrusive surveillance, restrictions on free movement, and loss of employment.²⁸ Please provide detailed information on the outcome of criminal investigations and prosecutions, including sentences imposed, for physical attacks and death threats made against human rights defenders. In particular, please provide information on the outcome of the investigations and any disciplinary and/or criminal proceedings related to:

(a) The alleged acts of harassment and physical aggression experienced by Ms. Reina Luisa Tamayo Danger following the death of her son, Mr. Orlando Zapata Tamayo, in February 2010;

(b) The continuous acts of harassment, intimidation and physical aggression allegedly suffered by members of the Ladies in White group during the period under review;

(c) The alleged acts of intimidation and physical aggression committed by State security officers against the bloggers Ms. Yoani Sánchez and Mr. Orlando Luis Pardo in November 2010;

(d) The alleged acts of aggression committed by the police during a peaceful demonstration in Sancti Spíritus on 24 February 2008;

(e) The alleged aggression against Mr. Alexandre Santos Hernández, who was attacked in public in Holguín by eight members of a “rapid response brigade” in June 2006;

(f) The alleged attack in December 2006 on relatives of the journalist Raymundo Perdigón Brito in Sancti Spíritus by a number of members of a “rapid response brigade” as he left the court where he had been convicted of “posing a risk”.

²⁷ CAT/C/SR.309, paras. 16, 21 and 45; and CAT/C/SR.310/Add.1, para. 29.

²⁸ A/HRC/WG.6/4/CUB/2, paras. 29, 30 and 36; A/HRC/WG.6/4/CUB/3, paras. 16, 17, 21, 22, 25 and 29; A/HRC/11/22, paras. 64, 79, 82, 83, 96, 110, 114, 115 and 131 (17); and A/HRC/WG.6/4/CUB/2, para. 26.

33. Please indicate the measures taken to ensure that corporal punishment of children is explicitly prohibited in all situations. Please provide information on the criminal penalties that apply to those who inflict corporal punishment.

34. Please provide information as to whether the use of restrictions on persons with disabilities in specialized institutions is registered and recorded. If so, please provide information on the number of persons who have been subjected to restraining measures, disaggregated by location, age, gender, and reason for the restriction being imposed. Please also clarify whether there is any mechanism in place to monitor the restraining measures on persons with disabilities housed in this type of institution.

Other issues

35. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe how, these anti-terrorism measures have affected human rights safeguards in law and in practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention.²⁹ Please describe the relevant training given to law-enforcement officers; the number and types of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there have been complaints of non-observance of international standards; and the outcome of these complaints.

36. Does the State party intend to ratify the Optional Protocol to the Convention?³⁰ If so, are there plans to establish or set up a national mechanism which would conduct periodic visits to any place under its jurisdiction and control where persons are or may be deprived of their liberty, in order to prevent torture or other cruel, inhuman or degrading treatment or punishment?

37. Is the State party considering making the declaration under article 22 of the Convention?³¹

38. Does the State party intend to ratify the Rome Statute of the International Criminal Court?³²

²⁹ A/HRC/WG.6/4/CUB/3, para. 25; A/HRC/WG.6/4/CUB/3, para. 64; A/HRC/11/22, para. 96.

³⁰ A/HRC/11/22, para. 64.

³¹ Ibid., paras. 86 and 131 (2).

³² Ibid., para. 131 (2).