



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

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Committee against Torture Seventy-third session

Summary record of the 1881st meeting*

Held at the Palais Wilson, Geneva, on Thursday, 21 April 2022, at 10 a.m.

Chair: Mr. Heller

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* No summary record was issued for the 1880th meeting.

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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)*

Third periodic report of Cuba (CAT/C/CUB/3; CAT/C/CUB/Q/3; CAT/C/CUB/RQ/3)

1. *At the invitation of the Chair, the delegation of Cuba joined the meeting.*
2. **The Chair** said that the delegation of Cuba had faced travel-related difficulties, making it impossible for most of its members to attend the meeting in person. Therefore, a representative of the Permanent Mission of Cuba in Geneva would introduce the country's third periodic report (CAT/C/CUB/3) and the Committee members would ask their questions. The second part of the dialogue had been postponed until the Committee's 1893rd meeting, when it was hoped that a full delegation could be present to reply to the issues raised.
3. **Mr. Quintanilla Román** (Cuba) said that his country's third periodic report was the result of a broad and participatory consultation process involving many governmental institutions and non-governmental organizations. Until 1959, when the Cuban revolution had put an end to such practices, torture and ill-treatment had been widespread. Since becoming a State party to the Convention in 1995, Cuba had met its obligations throughout its territory, except for the territory in Guantanamo Bay illegally occupied by the United States of America and used as an international centre of torture, where it was unable to exercise jurisdiction.
4. In the four years since the submission of the report, following extensive popular consultation and a referendum, a new Constitution with a provision expressly prohibiting torture and ill-treatment had been ratified. Comprehensive legal reforms were under way to ensure that the new constitutional guarantees were upheld. A new Criminal Code soon to be adopted would expressly prohibit torture, which would be defined on the basis of article 1 of the Convention, and would provide for penalties commensurate with the grave nature of the crime, in line with the Committee's previous recommendations.
5. A new Criminal Procedure Act would reinforce the adversarial justice system and guarantees of victims' rights, the right to a defence and the right to have legal assistance from the outset of criminal proceedings. The new Act would also establish the right to challenge the imposition of pretrial detention before the courts. Gender-based and domestic violence would be addressed under a dedicated comprehensive strategy, the national programme for the advancement of women and a new Family Code.
6. The task ahead would be to improve training for justice system officials and raise legal awareness among the general population to ensure that the new legal framework was given effect in practice. Despite significant progress, challenges remained, particularly regarding detention conditions in some prisons, which were made more difficult to address by shortages resulting from the economic embargo imposed by the United States. Nonetheless, it had been possible to offer all prisoners in the country vaccinations against coronavirus disease (COVID-19).
7. The Government was aware that challenges also remained with regard to the production of statistical data. However, the implementation of the newly adopted laws would be accompanied by improvements in the collection of data. For example, disaggregated data on prosecutions for gender-based violence would now be collected, as recommended by the Committee.
8. Regrettably, in recent years, the United States had been applying maximum pressure with a view to destabilizing the country and paralyzing its economy. As part of its campaign to discredit Cuba, it had attempted to manipulate the United Nations human rights system, which had resulted in the submission of spurious allegations to bodies such as the Committee. Cuba maintained its unwavering commitment to cooperating with international human rights mechanisms and therefore responded to all the communications it received. However, a failure to verify the credibility of the sources and allegations sometimes undermined the seriousness and objectivity of such interactions. He hoped that the upcoming dialogue would enable Committee members to appreciate his Government's efforts to implement the Committee's

recommendations and also help the Government to continue promoting justice and working to ensure that all human rights could be fully enjoyed by everyone in Cuba.

9. **Mr. Touzé** (Country Rapporteur) said that the Committee welcomed the fact that the draft Criminal Code included a specific criminal offence of torture and provided for appropriate penalties. However, while the definition of torture in the draft Code largely reproduced the content of article 1 of the Convention, the absence of an expression equivalent to “for such purposes as” narrowed the scope of the offence. He wondered whether the Government would consider amending the draft to introduce such an expression and remove the requirement for a perpetrator to have a specific intention.

10. He would appreciate clarification with regard to how the statute of limitations for criminal proceedings applied in relation to current provisions that might be used to prosecute acts of torture, as it was not clear whether the limitation period was 10 or 15 years. He wondered whether the Government would consider introducing a specific statute of limitations for torture into the draft Criminal Code. Although the statute of limitations for the enforcement of sentences was clearer, it would be useful to have more information about the practical application of the relevant provisions currently in force.

11. He would appreciate more information on the measures taken to guarantee the independence and impartiality of prosecutors and professional and non-professional judges, including measures to ensure that their appointment was based on objective criteria. He would also like to know what guarantees were in place to ensure that the judiciary and the prosecution service were independent of each other. Specifically, he wished to know whether investigating judges took instructions from prosecutors or were completely independent. In the absence of a list of grounds on which judges could be removed from office, it would be useful to hear about specific examples in which judges had been dismissed and an explanation of the grounds for their removal. He would also appreciate statistics on violations of the law on the impartial administration of justice and examples of the nature of the violations and the sanctions imposed.

12. He would be interested in data on the number of lawyers and collective law practices and whether the numbers were increasing or decreasing. He would like to understand whether membership of the National Organization of Collective Law Practices was truly voluntary for lawyers and would appreciate clarification regarding the conditions under which lawyers could benefit from the exemption from the requirement for membership of that organization provided for in Decree-Law No. 81 of 1984. More generally, he wished to understand the conditions a lawyer must meet to represent a client in court and the legal restrictions on the lawyer’s freedom to defend a client. It would be useful to hear the delegation’s response to allegations that the Ministry of Justice had the power to interfere in the work of the legal profession, including that of the Organization of Collective Law Practices. Information about any measures taken to prevent such interference would also be welcome. He would like to know what measures had been taken to prevent any conflict of interest arising from the requirement for lawyers to belong to a collective law practice subject to approval by the Ministry of Justice and their duty to uphold the right to a defence and a fair trial.

13. It would be useful to have further information on conditions in places of police custody, particularly with regard to sanitation and hygiene and overcrowding. He would appreciate comments from the delegation concerning reports of torture and cruel and degrading treatment following arbitrary arrests of dissidents, especially in the wake of the July 2021 protests. He also wished to know what legal requirements had to be met in order to place suspects in police custody and what the relevant law provisions were.

14. He wondered what action had been taken to bring official record-keeping of arrests and detentions into line with the requirements of the International Convention for the Protection of All Persons from Enforced Disappearance and to comply with the recommendations of the Committee on Enforced Disappearances in that regard. He also wondered whether any steps had been taken towards incorporating enforced disappearance – a crime often linked to torture and ill-treatment – as a separate criminal offence under the Criminal Code. In addition, he would like to know whether the Government intended to amend domestic legislation to allow anyone with a legitimate interest to access information on a person deprived of liberty, including the date, time and place of deprivation of liberty, the name

of the supervising authority and elements relating to the state of health of the person. In cases where a proper record of arrest and detention had not been established, was it possible for the detention to be declared null and void?

15. He would appreciate a response to the reported use of arbitrary arrests and short-term detention, often without any charges being filed, to prevent artists, political activists, members of opposition parties and others from attending public demonstrations or private meetings and exercising their right to freedom of expression, assembly and movement. It would be useful to have up-to-date information on the number of people currently in pretrial detention, the alternative measures to pretrial detention available and the impact of such measures. In the light of reports that a significant number of persons who had not committed a crime had been detained because they were considered to be dangerous or because they had allegedly acted in a manner contrary to the norms of socialist morality, he wished to know on what grounds individuals were regarded as dangerous and what the legal justification was for detaining individuals who had not committed any offence. He would also welcome a precise definition of the concept of “socialist morality”.

16. Given that Cuba had one of the highest incarceration rates in the world, he would be interested to hear whether alternatives to imprisonment existed. It would be helpful to know what the current prison occupancy rate was, whether the Government planned to build new prisons to accommodate the increasing numbers of detainees and what budget was allocated to the justice and prison systems. He would also welcome a list of all the prisons in Cuban territory, with an indication of their location, year of construction and any refurbishment work undertaken.

17. He wished to hear the delegation’s comments on reports of appalling conditions in prisons, including scarce drinking water, limited and low-quality food, overcrowding, poor sanitary conditions and inadequate ventilation. He would like to know what measures had been taken to ensure that persons deprived of their liberty had access to adequate food, safe drinking water and adequate sanitation and hygiene facilities and whether the Cuban Government intended to restructure the budget allocated to the justice and prison systems to improve conditions in detention centres. He would also appreciate an update on the status of the renovation work undertaken on several detention centres following the investment of 82 million Cuban pesos over the period 2011–2015.

18. He would welcome a response to complaints by several human rights organizations of shortages of medicines and a lack of medical care at detention centres. He wished to know whether the Government was aware of reports of prisoners who had been denied medical assistance for political reasons and, if so, what measures had been taken to punish the officials responsible. It would be interesting to learn what recommendations had been made by the Office of the Attorney General as a result of its inspections of prison facilities in 2019.

19. While the Committee was fully aware of the problems related to control over the territory of Guantanamo Bay and the implementation of the Convention there, the treatment of the 39 detainees still being held at the detention centre remained a concern. He wondered whether the Cuban Government might introduce legislation providing for universal jurisdiction that would allow Cuban courts to hear cases from detainees who had been, or were being, treated in a manner that violated the Convention.

20. It would be helpful to know how many people, especially those from rural communities, had access to campaigns run by non-governmental organizations to combat and raise awareness of gender-based violence and whether the Cuban authorities had adopted measures to encourage victims to come forward and report such violence and to ensure that they were aware of their rights. Statistics on the number of reports of domestic and gender-based violence received on the 103 hotline and an indication of the effectiveness of that service would be appreciated. He would also be grateful for an update on the progress made on legislative amendments to incorporate femicide into the Criminal Code and to introduce harsher penalties for perpetrators of sexual and gender-based violence.

21. He would be interested to hear the delegation’s response to the 2021 Trafficking in Persons Report published by the United States Government, which placed Cuba in tier 3, among governments that were not taking sufficient action to address the problem. He was aware that the Cuban Government had in the past disputed such a classification and would

welcome examples of the specific measures in place to combat human trafficking. It would also be useful to have reliable statistics on the number of persons involved in prostitution and their working conditions. In particular, he wished to know whether they were Cuban and whether they had a choice in the work they carried out. Lastly, he would welcome an overview of action taken to address the issue of sex tourism.

22. **Mr. Heller** (Country Rapporteur) said that the State party's new Constitution was a major step forward for its legal order, incorporating as it did new definitions and guarantees of individual rights. Of particular interest to the Committee were the specific references to the concept of human rights itself and, in the area of detention and deprivation of liberty, to the concepts of due process and habeas corpus. The Committee was pleased to note that, for the first time, those rights had become constitutional rights.

23. However, the domestic laws currently in force still contained no definition of torture that was in conformity with article 1 of the Convention, and the State party continued to rely on diverse legislative provisions to protect individuals and prohibit torture. The Committee was therefore pleased to learn of the forthcoming new Criminal Code that would explicitly define torture in accordance with article 1 of the Convention and provide for appropriate penalties in accordance with article 4 (2). The Committee also took note of the new Criminal Procedure Act of 2021, which explicitly prohibited enforced disappearance, torture and cruel, inhuman and degrading treatment and punishment, and unlawful deprivation of liberty.

24. Noting that refugees' only means of obtaining international protection was by applying directly to the Office of the United Nations High Commissioner for Refugees (UNHCR) in Cuba, he said that he would be interested to learn why Cuba was not a signatory to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto. He would appreciate updated statistics on the number of persons registered as refugees and the number of persons who had been granted temporary protection, and he invited the delegation to comment on the situation of Haitians shipwrecked on the Cuban coast while attempting to reach the United States of America. Although the principle of non-refoulement was enshrined in the State party's Constitution, the State party should, as recommended by UNHCR, establish legal standards and procedures to ensure that the principle was fully respected and that persons who were at risk of torture in their country of origin were protected. It should also, with the assistance of UNHCR, establish official mechanisms to identify persons in need of international protection.

25. According to reports in the *Granma* newspaper, over 650,000 Cubans had left the country in 2019, a figure that had fallen to around 240,000 by 2021. *Granma* had also reported that the United States had ceased issuing the 20,000 visas provided for in its bilateral migration agreements with Cuba. That situation had reportedly led many Cubans to leave the country illegally, which had resulted in great loss of life as their boats had foundered in the Straits of Florida. He would be interested to know whether the State party had made any progress in its discussions with the United States in that regard.

26. He would appreciate more information on the way that the training for law enforcement and justice officials, described in paragraphs 269 to 282 of the State party's report, was evaluated. He would also like to know whether the Istanbul Protocol was a topic covered in the training provided to doctors and lawyers.

27. Noting that oversight of the prison system, including matters such as the legality and conditions of detention, was the responsibility of the Office of the Attorney General, the courts and the social services and prevention committees, he said that the Committee was concerned that there was no independent body to conduct prison inspections, evaluate prison conditions and make recommendations to the authorities. The Committee therefore invited the State party to consider becoming a party to the Optional Protocol to the Convention, which would entail the establishment of a national mechanism for the prevention of torture and the inspection of places of deprivation of liberty by the Subcommittee on Prevention of Torture. He wished to make it clear that the role of the Subcommittee was not to impose decisions or sanctions but to cooperate with States parties with a view to implementing the Convention and its Optional Protocol. A national preventive mechanism could play a constructive role in the protection of human rights in the State party, among other reasons because it would give the public greater confidence in the operation of the penal system. He also wished to point out that the

establishment of a national human rights institution could be a first step towards the creation of a national preventive mechanism. He would welcome the delegation's thoughts on those matters.

28. Further to the questions put by Mr. Touzé on prison conditions, he wondered how the COVID-19 pandemic and the unilateral sanctions against the State party had impacted on prison facilities. He would also like to know whether the State party had sought international cooperation for the implementation of its prison rehabilitation programme, which had suffered constraints for the same reasons. It would be useful to have an update on the information given in paragraph 152 of the report on the statistical distribution of the penalties handed down by the courts, namely deprivation of liberty, correctional labour with internment, correctional labour without internment, restriction of freedom and fines.

29. The Committee had noted that the State party had not taken advantage of the constitutional reform process to do away with the death penalty, despite the fact that the right to life was enshrined in the Constitution. The death penalty applied to a variety of offences, and the fact that some were only vaguely defined and others were subject to summary proceedings left ample room for arbitrary decisions. The Committee welcomed the fact that the death penalty had not been applied in Cuba since 2003 and would like to know whether the State party might consider converting its de facto moratorium into a permanent moratorium with a view to eventual abolition.

30. He would be interested to know what progress had been made in respect of ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In the light of the State party's reassurances in its report regarding the right to freedom of assembly and the conduct of law enforcement officials in demonstrations and regarding the treatment of accused persons, he would appreciate the delegation's comments on the many allegations of excessive force made against the police following the demonstrations of July 2021 across the country.

31. He would like to know how many people had been detained in the aftermath of those demonstrations and how many of those detained had been acquitted and released. Alternative sources had characterized the rulings in a number of cases relating to those events as excessive and intended to inhibit future protest and had indicated that some of those who had been arrested had been accused of sedition, an offence that carried heavy penalties. He would appreciate information on how many people had been arrested and tried for the crime of sedition and on how the prosecutor's office had differentiated between detainees who were charged with sedition and detainees who were considered to have been exercising their constitutional right to peaceful protest.

32. He would also welcome a comment from the delegation on the reported harassment, intimidation and arrest of dissenters and independent journalists and artists, and the concerns expressed by the Office of the High Commissioner for Human Rights since 2015 about the deprivation of liberty of political opponents, human rights activists and members of civil society organizations, about which a number of complaints had been received. The Committee understood the hostile context that the State party faced as a result of the unilateral sanctions imposed on it by the United States. Nevertheless, it was up to the Government and the people of Cuba to find ways to address the difficulties in order to build a better future and ensure the enjoyment of human rights.

33. **Ms. Racu**, noting that the legal provisions applicable to children under the age of criminal responsibility who had committed criminal acts dated from the 1980s, said that she would appreciate an update on the measures being taken by the State party to establish a rights-based juvenile justice system in accordance with the principle of the best interests of the child. Information on the legislation that provided for alternative measures and non-custodial sentences for minors who had reached the age of 16, the age of criminal responsibility, would also be welcome. She would also like information on educational and rehabilitation activities, disciplinary sanctions and the use of solitary confinement for minors held in detention. She wished to know whether any improvements had been made in recent years to the material conditions in prisons and places of pretrial detention for minors.

34. **Mr. Tuzmukhamedov** said that he would appreciate clarification of whether judges received training on how to make proper reference to the Convention and information on any

instances in which judges had referred to the Convention. He would particularly like to know how judges made decisions in cases where the Convention conflicted with domestic law, in view of the provisions of the Constitution that placed international treaties ratified by the State party on the same footing with domestic law. In addition, since the State party had maintained a de facto moratorium on capital punishment since 2003, he wondered whether any person who had been convicted of a capital offence remained on death row.

35. **Mr. Liu** said that, notwithstanding the assertion made to the contrary in paragraph 255 of the State party's report, a specific law on gender-based violence and domestic violence was necessary. He invited the delegation to indicate the latest developments in that regard and to explain the State party's legal approach to the prevention and punishment of gender-based and domestic violence and the protection of victims.

36. **Mr. Touzé** said that he would welcome information on the legal recourse available to detainees to enable them to challenge rights violations by prison officials, particularly as information from alternative sources indicated that detainees had no access to an effective complaints mechanism. Information on the practice of forced exile, primarily of opponents of the regime, had also been brought to the Committee's attention; he wished to know whether the State party acknowledged the existence of such practices and, if so, on what legal grounds forced exile could be applied, for example in the case of Carolina Barrero. Since there was no single law governing extradition procedures, it would be useful to know more about the applicable procedures, including the means of appeal, the safeguards in place to ensure that persons extradited would not be subjected to torture or other ill-treatment in violation of the Convention and the subsequent monitoring of such persons. It would also be helpful to know whether the extradition agreements that the State party had established with various countries remained in effect.

37. **Mr. Quintanilla Román** (Cuba), noting that the illegal detention centre in Guantanamo Bay maintained by the Government of the United States had been condemned by the international community, said that the centre was located on illegally occupied territory. The Cuban Government was therefore not responsible for the centre and could not exercise jurisdiction over that territory. The Government of the United States should be held accountable for any acts of torture committed against detainees held at that facility.

38. In order to fully understand the events of July 2021, it was important to take into consideration the campaign of disinformation being waged against Cuba by the Government of the United States using false information and images, and the efforts by the United States and radicals of Cuban origin outside Cuba to bring about regime change in his country. The Committee should consider information from civil society organizations based in Cuba, rather than those outside the country.

39. It was regrettable that a report by the Department of State of the United States had been mentioned with reference to trafficking in persons. That Department had no international mandate to produce such reports, which were unilateral in nature and were published for political reasons. He invited the Committee to consult the reports published by his Government that provided details of the measures taken to prevent and combat trafficking in persons and assist victims. His Government took a zero tolerance approach to all forms of trafficking and had a national plan to combat it. Regarding migration, conversations on the topic between his Government and the Government of the United States were scheduled to resume that very day, in Washington, D.C.

The meeting rose at 1 p.m.