



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

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## Committee against Torture

### Consideration of reports submitted by States parties under article 19 of the Convention

#### Second periodic report due in 2002

#### Cuba<sup>\*,\*\*</sup>

[18 January 2010]

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\* The initial report submitted by the Government of Cuba is contained in document CAT/C/32/Add.2; it was considered by the Committee at its 309th, 310th, 312th and 314th meetings, on 17, 18 and 19 November 1997 (CAT/C/SR.309, 310/Add.1, 312 and 314). For the concluding observations, see A/53/44, paras. 101-118.

\*\* In accordance with the information transmitted to States parties regarding the processing of their report, the present document was not edited before being sent to the United Nations translation services.



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## **I. General information**

1. The Government of the Republic of Cuba is glad to have the opportunity to inform the Committee against Torture of the measures adopted to comply with its commitments under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This document contains the consolidated second, third and fourth periodic reports of Cuba, due in 2000, 2004 and 2008 respectively. It is structured in accordance with the guidelines on the form and content of initial reports to be submitted under article 19 by States parties to the Convention (CAT/C/4/Rev.3) and the guidelines on the form and content of reports to be submitted by States parties to the international human rights treaties (“core documents”) (HRI/GEN/2/Rev.3).

2. This report is the outcome of a process involving a multidisciplinary group, composed of numerous ministries and Governmental and/or State institutions, Parliament, non-governmental organizations (NGOs) and other relevant bodies. The Ministry of Foreign Affairs coordinated the national group set up to conduct the process of broad and inclusive consultation that led to the adoption of this document.

3. The scope of this report does not extend to the territory illegally occupied by the United States naval base at Guantánamo, where the Cuban people is deprived of sovereignty and within whose bounds the universally reviled centre of arbitrary detention and torture has been installed.

### **A. Territory and population**

4. According to the National Statistical Office of Cuba, the Cuban archipelago occupies a surface area of 109,886.19 square kilometres and the total population is 11,236,099, with the high life expectancy at birth of 77.97 years and an urbanization rate of 75.4 per cent.

5. In 2008, the infant mortality rate was 4.7 per 1,000 live births (the lowest in Cuba’s history), with 26 of the country’s municipalities recording zero rates. At the end of 2008, the unemployment rate stood at 1.6 per cent, which means that Cuba has achieved the status of a full employment country.

6. On the economic side, despite adverse conditions, Cuba achieved 4.3 per cent growth in 2008.

### **B. General political structure**

7. With the triumph of the Revolution on 1 January 1959, the Cuban people achieved true independence and were able to create the conditions for full and universal enjoyment of all human rights. The profound economic, political and social changes undertaken made it possible to do away with the structural injustices inherited from colonial and neocolonial rule in Cuba. The foundations of a democratic, fair, inclusive, equitable and compassionate society were laid and continuous progress has been made.

8. At the time that the Revolution triumphed, Cuba was in a state of total and absolute dependence on the United States, suffering underdevelopment, corruption, political and administrative fraud, chronic malnutrition, arbitrary arrest, torture, disappearances and extrajudicial executions, illiteracy, neglected and inadequate health services, widespread poverty, discrimination against women, and racism; in short, the absolute negation of individual and collective rights.

9. The Cuban people, by its sovereign will, established its own political, economic and social system, as enshrined in the 1976 Constitution of the Republic of Cuba. It did so drawing on the experience of the failure of successive models and prescriptions imposed by the powers that had dominated Cuba. It had suffered humiliating experiences: military interventions and constant interference by the United States, the pernicious impact of clearly unfair free trade agreements and the collapse of the so-called liberal bourgeois democracy. Successive United States Governments, with the connivance of the Cuban oligarchy, imposed brutal dictatorships to prevent the Cuban people from exercising its right to self-determination.

10. The principle of equality began to be translated into reality in all spheres of the country's life on 1 January 1959, being reflected in both the laws and the policies introduced by the Cuban State, in accordance with the fundamental principle that mere juridical formulations are not enough: abstract concepts must be transformed into specific rights. This could be brought about only by the profound political, economic, social and cultural changes that the country initiated long ago and that it still maintains, despite the economic difficulties and the adverse effects of external factors, particularly the economic, commercial and financial embargo imposed against Cuba by the United States.

11. It was at that time, in the context of the changes introduced by the Revolution, including access to education and culture, that it first became possible to speak of the enhancement of the dignity and status of all Cubans.

12. That moment marked the start of a profound and continuing process of political, social and economic change, deeply rooted in anti-racist and liberating principles and designed to lay the foundations for the full enjoyment of equality and social justice and for stronger popular participation by all Cubans. This process was invested with legal protection by the creation of a constitutional and legal framework guaranteeing the full equality of all citizens and the enjoyment of all human rights.

13. Cuba's democratic system is based on the principle of "government of the people, by the people and for the people". The Cuban people participates in the exercise and active control of the process of government through its political and civic institutions within the framework of its laws.

14. As established in the Constitution, Cuba is an independent and sovereign socialist workers' State, organized with the involvement of all and for the good of all as a united and democratic republic, for the enjoyment of political freedom, social justice, individual and collective well-being and human solidarity.

15. Sovereignty is vested in the people, from whom all the power of the State originates. This power is exercised directly or through the assemblies of people's power and other State bodies that derive their authority from these assemblies.

16. The Cuban political system is the expression of the will of its people. It is a truly Cuban undertaking, based on its rich history of struggle for equality and solidarity between men and women, for independence, sovereignty, non-discrimination, unity, participation, people's power and social justice.

17. In 1976, the Constitution of the Republic of Cuba was approved in a general referendum, with a turnout of 98 per cent of all voters, 97.7 per cent voting in favour. This made it possible to consolidate Cuba's institutional framework with the creation, among other things, of the organs of people's power.

18. In 1992, a reform of the Constitution and of the Cuban electoral system consolidated the system's democratic foundations and made possible, among other things, the direct election of deputies to the National Assembly of People's Power and of delegates to the provincial assemblies by direct and secret ballot. The high turnout in elections testifies to Cubans' overwhelming support for their political system. The Constitution was again amended in 2002, by the votes of more than 8 million Cubans, thereby reaffirming, by the will of the overwhelming majority of the people, the socialist nature of the Cuban Revolution.

19. The Cuban State is made up of legislative, executive, administrative, judicial, fiscal, oversight and defence bodies. Each group of bodies has a specific function in the power structure.

20. The National Assembly of People's Power, a single-chamber representative body, is the supreme organ of State power. It represents and expresses the sovereign will of all the people, in accordance with article 69 of the Constitution. It is the only body in Cuba with constituent and legislative power.

21. Article 89 of the Constitution provides that the Council of State is the National Assembly body that represents the Assembly in the period between sessions. It executes the Assembly's resolutions and performs the other duties assigned by the Constitution. It represents the Cuban State at the highest national and international levels.

22. The Council of Ministers is the supreme executive and administrative organ and constitutes the Government of the Republic.

23. The National Defence Council is constituted and prepared during peacetime to lead the country during a state of war, a general mobilization or a state of emergency. The law regulates its organization and activities in accordance with article 101 of the Constitution.

24. 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.

25. The Office of the Attorney-General of the Republic is an organ of the State invested with the primary responsibilities of supervising and upholding the rule of law and instituting criminal proceedings on behalf of the State.

26. The Office of the Comptroller General of the Republic is a recently established body, whose basic purpose and mandate is to help the National Assembly of People's Power and the Council of State to monitor State and Government bodies at the highest level. It puts forward the overall State policy with regard to the maintenance of public finances and economic and administrative controls. Once a

policy is approved, it directs, executes and checks its implementation, as well as directing the methodology and overseeing the national audit system. It also conducts the activities that it considers necessary to safeguard the proper and transparent administration of public assets and prevents and combats corruption.

27. The provincial and municipal assemblies of people's power in the country's political-administrative divisions are the supreme local organs of State power and are accordingly invested with supreme authority to perform the functions of the State in their respective jurisdictions. There are 169 municipal assemblies, with a total of 15,236 delegates, most of whom are not professionals and all of whom are elected by majority vote for a term of two and a half years.

28. The organs of people's power are not the sole expression of democracy in Cuban society. Other forms of direct democracy are encouraged, as well as a participatory culture, which includes grass-roots and community-based organizations representing the plurality of Cuban society. Important decisions are taken only when the broadest social consensus has been reached.

29. The Cuban State recognizes and encourages the grass-roots and community-based organizations that have emerged from the historic struggles of its people and that bring together various sectors of the population, represent their specific interests and involve them in the tasks of building, consolidating and defending society.

### **C. General legislative framework for the protection of human rights**

30. The Republic of Cuba's legal system governs and protects the rights of the individual. In accordance with that system, Cuban legislation establishes not only the universally recognized basic legal guarantees for the protection of human rights but offers substantive guarantees for the real and effective exercise of all human rights, both civil and political, and economic, social and cultural.

31. Once the triumph of the Cuban Revolution had been achieved, the repressive bodies that acted without respect for the law or safeguards, inflicting the most terrible tortures and humiliations on the population, were abolished. A judicial system was immediately established in accordance with the saying of José Martí: "I want the first law of our Republic to be the homage of Cubans to the full dignity of man".

32. The Constitution of the Republic of Cuba, which was proclaimed on 24 February 1976, sets out a significant body of basic rights, duties and guarantees, which, for the first time, put into effect the ideas of equality and social justice enshrined in the Universal Declaration of Human Rights.

33. The system of legal protection for human rights in Cuba is not confined to a description in the Constitution; human rights are duly developed and guaranteed in other substantive and procedural provisions. Acts, decree-laws, decrees, decisions of the Council of Ministers and resolutions of ministers and heads of the central organs of State all establish benefits and supplement the principles, rights and duties established in the Constitution, which define the relationship between individual members of society and between individuals and the State.

34. Chapter VII of the Constitution, entitled “Fundamental rights, duties and guarantees”, basically sets forth the principles and guarantees of human rights and fundamental freedoms, which are in line with the rights contained in the Universal Declaration of Human Rights and the other international human rights instruments. These are complemented by other chapters of the Constitution and the provisions of ordinary law.

35. The rights and guarantees recognized in the Cuban legal system include the right to life, liberty and inviolability and integrity of the person; the right to work with rest and leisure and to social security; the right to inviolability of the home and confidentiality of correspondence; the right not to be tried or convicted except by a competent court under laws that existed prior to the offence and with the procedure and guarantees established by law; the right to a defence; the right not to be subjected to violence or coercion of any kind to be forced to testify; the retroactive application of criminal law where that is favourable to the accused; the obligation to observe the law; the obligation to comply with court judgements and other final decisions; and the monitoring and upholding of legality by the Attorney-General’s Office.

36. Article 9 of our Constitution stipulates that the State “guarantees the liberty and full dignity of man, the enjoyment of his rights, the exercise and fulfilment of his duties and the complete development of his personality”.

37. Under article 10, “[A]ll State organs and their leaders, officials and employees act within the limits of their respective areas of competence and have the obligation strictly to observe socialist legality and ensure that it is respected in society as a whole.”

38. Moreover, article 26 sets out the right of any person who suffers loss or harm unjustly caused by a State official or employee acting in an official capacity to claim and obtain the appropriate redress or indemnification as prescribed by law.

39. Under article 42, “discrimination on grounds of race, skin colour, sex, national origin or religious belief or any other discrimination detrimental to human dignity” is prohibited and punishable by law.

40. Moreover, article 58 of the Constitution states that “the freedom and inviolability of persons are guaranteed to all who live in the national territory ... . The physical integrity of detainees and prisoners is inviolable”.

41. Pursuant to article 59, a person who has committed an offence under a law that existed prior to that offence may be tried or convicted only by a competent court and only in accordance with the procedures and guarantees established by such a law. Also under this article, “[e]very accused person has the right of defence. No violence or coercion may be used against people to force them to testify. Any statement obtained in violation of this provision is null and void and those responsible for the violation shall be punished in accordance with the law.” The same guarantee is laid down in article 166 of the Criminal Procedure Act (Act No. 5 of 15 August 1977).

42. Cuba has a large and effective inter-institutional system, with the participation of grass-roots and community-based organizations, for receiving, processing and responding to any complaint or petition from an individual or group concerning the enjoyment of any human right.

43. Under article 63 of the Constitution, any citizen has the right to submit complaints or petitions to the authorities and to receive an appropriate response within an acceptable period of time, in accordance with the law.
44. The various laws comprising substantive domestic law have been categorized in an organizational structure based on the Constitution and the principles contained therein.
45. Act No. 59 of 16 July 1987 (Civil Code), Act No. 49 of 28 December 1984 (Labour Code), Act No. 81 (Environment Act), Act No. 14 of 1977 (Copyright Act), Act No. 105 of 27 December 2008 (Social Security Act), Act No. 1289 of 1975 (Family Code), Act No. 16 of 1978 (Children and Youth Code), Act No. 62 of 1987 (Criminal Code), Act No. 7 of 1977 (Civil, Administrative, Labour and Economic Procedure Act), Act No. 5 of 1977 (Criminal Procedure Act), Act No. 22 of 15 February 1979 (Military Offences Act, as amended by Decree-Law No. 152 of 21 August 1994), Act No. 6 of 8 August 1977 (Military Criminal Procedure Act) and other laws supplement and establish guarantees of the exercise of all human rights in Cuba.
46. With regard to the national implementation of the provisions of international instruments, once the Council of State has ratified the instrument in question or decided to accede to it, the instrument acquires full legal effect in the domestic legal system in keeping with the international commitment undertaken. In addition, article 20 of the Civil Code stipulates: "If an international agreement or treaty to which Cuba is a party contains provisions different from those contained in the corresponding articles of the preliminary provisions of the Code or provisions not contained therein, the provisions of the said agreement or treaty shall apply."
47. The international treaties signed on behalf of the Cuban State or its Government also form part of the country's legal order. Cuba has signed and/or ratified the principal legally binding international human rights instruments; it is party to 42 international human rights instruments,<sup>1</sup> including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

#### **D. Factors affecting the implementation of the Convention**

48. The implementation in Cuba of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is in line with the principled position and the humanistic ethics of the Revolution.

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<sup>1</sup> Cuba is party to many international human rights instruments, including the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on the participation of children in armed conflict; the Convention on the Elimination of All Forms of Discrimination against Women; the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention against the Recruitment, Use, Financing and Training of Mercenaries; and the International Convention for the Protection of All Persons From Enforced Disappearance. In February 2008, Cuba signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.



49. Cuba has been subjected for almost 50 years to the most varied forms of hostility and aggression by the United States, principally through the latter's imposition of an economic, trade and financial embargo, which constitutes an act of genocide under article II (c) of the Convention on the Prevention and Punishment of the Crime of Genocide and an act of economic warfare, violating the human rights of all Cuban people. No action, whether external or internal, however, has succeeded in impeding Cuba's strict compliance with the rules set out in the Convention.

## **II. Information relating to each of the articles of the Convention**

### **A. Article 1**

50. The Republic of Cuba has been a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 17 May 1995.

51. In both its domestic and its foreign policy, Cuba puts into practice respect for the physical and moral integrity of the individual and, in particular, for the defence of the legitimate interests of citizens. Since the triumph of the Revolution in 1959, torture has been abolished and there has not been a single case of disappearance or extrajudicial execution, except in the territory illegally occupied by the United States naval base in Guantánamo Bay.

52. The crime of torture is not explicitly defined in Cuban criminal legislation. There are, however, other similar offences, the provisions on which provide for the comprehensive protection of the person and all individual rights. There also exists the will to tackle and suppress any occurrences of such offences and the legal means to impose severe punishment for conduct of the kind defined in the Convention.

53. Given the definition of torture contained in article 1 of the Convention, any act of torture is prohibited and punishable under Cuban law. Actions involving torture are punishable under various sections of the Criminal Code in relation to a wide range of offences, such as:

- (a) Abuse of authority (Offences against the administration and the courts, art. 133);
- (b) Assault (Offences against life and physical integrity, art. 272);
- (c) Deprivation of liberty (Offences against individual rights, art. 279);
- (d) Threats (Offences against individual rights, art. 284);
- (e) Duress (Offences against individual rights, art. 286);
- (f) Sexual abuse committed by an authority, official or public employee acting in an official capacity (Offences against the normal development of sexual relationships, the family, children and the young, art. 301.1.2);

(g) Maltreatment of prisoners of war (Military Offences Act, art. 42.1); violence against the population in a region of military operations (art. 44.1); dishonourable conduct (art. 36); looting (art. 43.1).

54. It should be noted that research is being carried out with a view to the future amendment of Act No. 62, the current Criminal Code. Consideration is being given to including the offence of torture, on the basis of the principles set out in the Convention against Torture.

55. The various unlawful acts that may fall under the definition given in the Convention against Torture are covered by a number of criminal offences provided for in Cuba's Criminal Code. Cuban domestic legislation contains provisions for a broader sphere of application than that provided for in the Convention, in that it guarantees full protection for the individual, covering all a person's rights. Cuba has at its disposal effective domestic remedies to ensure the rigorous implementation of the Convention.

56. Article 18.4 of the Criminal Code, relating to involvement in offences, defines perpetrators as all those criminally responsible for crimes against humanity, human dignity or public health, or for crimes under international treaties, irrespective of the nature of their involvement.

57. Article 30.11 of the Criminal Code provides that "a convicted person may not be subjected to corporal punishment, nor is it admissible to employ against him any measure that causes humiliation or is detrimental to his dignity".

58. It should also be stressed that the Cuban State is taking the necessary measures to prevent acts prohibited by the Convention, since it considers them an affront to human dignity and a violation of the relevant domestic laws and international standards. There is no room for impunity in Cuba, or for laws or regulations that protect it.

## **B. Article 2**

### **1. Paragraph 1**

59. Following the triumph of the Revolution, torture is inadmissible in Cuba, owing to the very nature of the social system. That is why there is no provision for the possibility of the use of torture under any circumstances, however exceptional.

60. In accordance with this principle, the Cuban State has implemented a set of effective measures to prevent or hinder acts of torture and other cruel, inhuman or degrading treatment or punishment against the individual. The Cuban Constitution provides:

(a) In article 58: "The liberty and inviolability of the person are guaranteed to every person residing in the national territory. No one may be arrested except in the manner, with the guarantees and in the cases indicated by law. The physical integrity of detainees and prisoners is inviolable.";

(b) In article 59:

(i) “No one may be tried or convicted except by the competent court by virtue of laws that existed prior to the offence and with the procedure and guarantees established by law”;

(ii) “Every accused person has the right of defence”;

(iii) “No violence or coercion of any kind may be used against people to force them to testify”;

(iv) “Any statement obtained in violation of this provision is null and void and those responsible for the violation shall be punished in accordance with the law.”

61. As an essentially preventive measure to avoid non-compliance with the law, article 127 of the Constitution stipulates that the main objectives of the Office of the Attorney-General are to monitor and preserve legality by ensuring that the Constitution, laws and other legal provisions are obeyed by State agencies, economic and social institutions and the general public.

62. One of the principles of Cuban criminal procedure is established in article 1 of the Criminal Procedure Act, which states: “Every offence shall be proved independently of the testimony of the accused, his or her spouse or his or her relations up to the fourth degree of consanguinity and the second degree of affinity. This means that, on its own, a statement by the persons listed above does not remove the obligation to furnish the evidence required to prove the facts.”

63. There is an inescapable duty on all bodies, agencies, organizations and other entities, including economic entities of any kind, to submit to the courts, prosecutors, examining magistrates or the police any reports, information or background material that they may require in order to investigate an offence, within a time limit of not more than 20 working days after a file is received, extendable only under exceptional circumstances. If the request is not complied with, the above-mentioned authorities will contact the heads of the institutions in question in order that they may take appropriate measures, irrespective of any responsibility incurred.

64. The rules and procedures governing the work of the judicial investigation bodies establish the principles for dealing with detained persons and their rights, which are in keeping with the provisions of articles 58 and 59 of the Constitution, quoted above.

65. Cuban criminal procedure provides for the taking of statements. This provision appears, among others, in article 161 of the Criminal Procedure Act, which grants an accused person the right to make a statement or to refrain from doing so, and in articles 163 and 166 of the Act, the latter of which states that no violence or coercion of any kind shall be used against individuals to force them to testify.

66. The provisions for dealing with detainees and ensuring respect for their rights stipulate that interviews of detainees shall be conducted in strict compliance with constitutional guarantees.

67. Moreover, article 183 of the Criminal Procedure Act states: “Under no circumstances may coercion, deceit, promises or subterfuge be used to force or induce a witness to testify in a specific sense.”

68. In Cuba, no violence or coercion is used to force a detainee to make a statement; persuasion and encouragement are used at all times. Statements obtained through violence are considered null and void and offenders are punished. Detainees are guaranteed medical assistance and medication, if required and for as long as prescribed, and decent conditions of detention.

69. The concept of holding a detainee or prisoner incommunicado is totally alien to criminal and procedural practice in Cuba. Accused persons have the right to medical attention and to be visited by their relations and their counsel, in accordance with the statutory regulations, while the habeas corpus procedure provides an additional guarantee.<sup>2</sup>

70. Book Two, Section IV, of the Criminal Procedure Act sets out in detail the whole procedure for the arrest and detention of an accused person.

71. Article 241 of the Act states that no one may be arrested except in the cases and following the procedures prescribed by law. The Act sets out the procedures required for arrest. Of particular importance is article 244, under which the authority in charge of proceedings is required to report an arrest and the location in which the detained person is held and to facilitate communication between a detainee and his family, within the time limit and in the form established by the regulations.

72. The Act also states that officials acting in legal proceedings are required, within their respective terms of reference, to keep records of the proceedings, to take account in their decisions of the circumstances working for and against the accused and to inform accused persons of their rights, thus demonstrating the objectivity of the criminal process.

73. Under article 245 of the Criminal Procedure Act, both the police and the police investigator in charge of the case have the powers to apply the precautionary measures set out in the Act, except that of pretrial imprisonment, which may be imposed only by the relevant prosecutor. The time frames for the procedure governing the arrest and detention of an accused person are legally established and those failing to comply with them are subject to criminal prosecution.

74. The right to qualified representation is enshrined in the Cuban Constitution (art. 59) and is guaranteed in practice. The National Organization of Collective Law Practices is a group of Cuban lawyers who provide legal representation in court. Where the accused cannot afford the cost of legal services, qualified representation is automatically guaranteed in criminal proceedings in Cuba.

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<sup>2</sup> The habeas corpus procedure is governed by section IX of the Criminal Procedure Act, article 467 of which states: “A person deprived of liberty without completion of the formalities or compliance with the procedures and guarantees set out in the Constitution and the law shall be released, at his or her own request or at the request of any other person, by a summary habeas corpus procedure before the relevant court. Habeas corpus shall not apply where the deprivation of liberty arises out of a sentence or pretrial commitment order pronounced in criminal proceedings.”

75. The Criminal Code provides for the offence of false imprisonment. Any illegality in the procedure for detaining a person is thereby prevented. For this offence to be committed, an official has to exceed his powers or unduly prolong the detainee's deprivation of liberty. This provides effective protection for detainees' rights and ensures the full observance of legal deadlines.

76. Article 252 of the Criminal Procedure Act sets out clearly and precisely the circumstances that must exist before the precautionary measure of pretrial detention may be imposed. Article 251 of the Act states that such a precautionary measure may be extended only where the original grounds for the detention persist.

## **2. Paragraph 2**

77. 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 in Cuba. The National Defence Act does not authorize torture or other cruel, inhuman or degrading treatment in any circumstances, including emergency situations.

## **3. Paragraph 3**

78. Due obedience, as a criterion for exemption from criminal liability, has no bearing on the effective implementation of the prohibition against acts of torture or other cruel, inhuman or degrading treatment or punishment. Article 25, paragraph 2, of the Criminal Code, entitled "Compliance with a duty or exercise of a right, profession, duty or office", defines due obedience as obedience that "is required of the agent by law, provided that the person ordering the act is empowered to do so and the performance of the act is among the obligations of the person who has performed it".

79. Moreover, article 4 of the Code of Ethics for members of the National Revolutionary Police, of 1 June 1985, stipulates:

"The professional activities of members of the National Revolutionary Police, regardless of their specialization or rank, shall be conducted in accordance with the following principles:

'Paragraph ch. Act at all times with respect for human dignity and the rights of every citizen.

'Paragraph n. Perform the duties required of them by law at all times, by serving society and protecting all persons against illegal acts, in keeping with the high degree of responsibility required by their profession.

'Paragraph p. Be aware of, respect and protect the rights of all citizens: police authority shall be exercised with firmness, respect and justice".

80. Article 7 of the Code stipulates: "Members of the National Revolutionary Police may in no circumstances perform, instigate or tolerate any act of torture (physical or mental) or other cruel, inhuman or degrading treatment, even in compliance with an order from a superior officer."

81. Meanwhile, the Cuban Prison System Rules, as amended and put into effect by Order No. 30 of the Minister of Internal Affairs of 12 December 2008, states that the penalties and other measures referred to in the Rules must be carried out with

respect for socialist legality; any type of measure that may cause physical or psychological suffering or humiliation is prohibited.

82. Nobody is authorized to order torture or related treatment in Cuba. On the contrary, as shown in this report, it is prohibited under the Constitution and other legislation in force. No individual, official or superior officer may order or direct a subordinate to commit such acts.

### **C. Article 3**

83. As sources of law for extradition of various types, Cuba recognizes, in order of importance, international treaties, domestic laws and, in their absence, the principle of reciprocity. The 1928 Bustamante Code on International Private Law, article 3 of which governs extradition, is also in force in Cuba.

84. Cuban criminal legislation provides for so-called active extradition, when the Cuban Government requests a foreign State to hand over an indicted or convicted person, and passive extradition, which occurs when a foreign State requests that an indicted or convicted person be handed over by the Cuban Government.

85. In particular, article 6.1 of the Criminal Code stipulates that Cuban citizens may not be extradited to another State and that foreigners shall be extradited in conformity with international treaties or, in their absence, Cuban legislation.

86. Article 12, paragraph (e), of the Constitution states that Cuba repudiates “(...) physical violence against persons residing in other countries (...)”.

87. Regarding the expulsion of foreigners from Cuban territory, article 46 of the Criminal Code provides that foreign nationals are to be expelled after serving their primary sentence.

88. Article 46, paragraph 3 of the Criminal Code establishes that in exceptional cases the Minister of Justice may order the expulsion of a convicted foreign national before the completion of the sentence, while article 59 (j) of the Code provides that the sentence shall be considered to have been served when an order is issued for the expulsion of the convicted foreign national, in accordance with the requirements of article 46, paragraph 3.

89. The mechanisms and bodies established to bring complaints and address petitions to the authorities may be used by Cuban or foreign nationals subjected to the extradition procedure, which is governed by Cuban criminal law. In some cases, the intervention of the Ministry of Justice may be required, as in the case of foreign nationals and stateless persons not resident in Cuba.

### **D. Article 4**

90. While Cuban criminal law does not contain specific provisions regarding the crime of torture, it nevertheless establishes penalties for any criminal conduct which could constitute an act of torture or other cruel, inhuman or degrading treatment or punishment.

91. In addition to the primary penalties, which may range from three months' to twenty years' imprisonment as a function of the nature and gravity of the crime committed, accessory penalties are also provided which disqualify offenders from holding a post or office, or from performing particular functions.

92. As an accessory penalty to be ordered by the court, the accessory penalty of deprivation of rights provided under article 37.1 of the Criminal Code is to be applied on a compulsory basis in cases involving persons holding senior positions in bodies engaged in the political and administrative activity of the State, State-owned companies, or in grass-roots and community-based organizations.

93. Moreover, article 39 of the Criminal Code provides, in cases where the offender has misused his or her post or been negligent in fulfilling his or her duties, for the accessory penalty of disqualification from pursuing a profession or holding a post or office for a period of one to five years, which may be extended by up to two times for offences carrying a penalty of over five years' imprisonment.

94. The aggravating circumstances set forth in article 53 of the Criminal Code include committing the offence with cruelty or extreme depravity, with abuse of power, authority or trust or by taking advantage of the victim's defencelessness or dependency on or subordination to the offender.

95. An attempt to commit an offence is also punishable under the Criminal Code. Article 12 of the Code stipulates: "Both completed and attempted offences are punishable", and considers an attempt to be "if the individual has begun to commit an offence but not completed it". The article further specifies that the penalties for an attempt to commit an offence shall be the same as those laid down for the offences themselves, although the court may reduce them by up to two thirds of their lower limit.

96. Article 133 of the Criminal Code, setting forth the offence of abuse of authority, provides that "the public official, who, in attempting to cause prejudice to a person or obtain unlawful benefit, performs his or her duties in a manner manifestly contrary to the law or arbitrarily exceeds the legal limits of his or her authority, shall be punishable by a custodial sentence of between one and three years, or a fine of 300 to 1,000 units, provided that the offence was not a serious crime."

97. Article 284 of the Criminal Code, setting forth the offence of criminal threats, provides that anyone who "threatens to commit an offence against a person or a member of his or her family, which, given the conditions and circumstances under which it was made, would give rise to serious and well-founded fear on the part of the victim" shall be between three months' and one year's imprisonment, or a fine of 200 to 500 units, and that "if a firearm or another weapon is used to make the threat", the offence is punishable by six months' to two years' imprisonment.

98. Article 286 of the Criminal Code establishes that the penalty for coercion, when an individual "without legitimate reason, behaves violently towards another individual or threatens him or her in order to compel him or her to immediately perform a legal or illegal action that he or she does not want to do, or so that he or she allows someone else to carry out that action, or to prevent him or her from performing a legal act," shall be a custodial sentence of between six months and two years or a fine of 200 to 500 units.

99. The Criminal Code, in articles 279 to 283, sets forth penalties ranging from three months' to twelve years' imprisonment, along with fines ranging from 200 to 500 units, for the unlawful deprivation of liberty.

100. As regards the crime of bodily injury (articles 272-4 of the Criminal Code), various sentencing options are provided. Article 272 provides for a penalty ranging from two to five years' imprisonment for "anyone who causes another person bodily injury or seriously harms their health". Article 272 also defines serious injury, which is considered to be any injury that "places the victim's life in imminent danger or causes deformity, disability or any other anatomical, physiological or psychological sequelae".

101. Article 273 provides for a penalty of five to 12 years' imprisonment for "anyone who blinds or mutilates another person or renders him or her unfit for procreation".

102. Article 274 provides that "Anyone who causes another person bodily injury or damages their health, even if the victim's life is not endangered and he or she is not left with any of the sequelae mentioned in articles 272 and 273, and when the injury is such as to require medical treatment, shall be liable to a penalty of three months' to one year's imprisonment and/or a fine of 100 to 300 units".

103. Article 301.1 of the Criminal Code establishes that the penalty for sexual harassment, when "any person in a position of authority, civil servant or public employee proposes sexual relations to an individual in his or her power, either detained, under arrest or convicted or in his or her custody, or to the spouse, son or daughter, mother, father or sibling of the individual in that situation, or the spouse of the son, daughter or sibling," is between two and five years' imprisonment.

104. Article 42.1 of the Military Offences Act provides that "any person who seriously mistreats a prisoner of war" is liable to a penalty of six months' to three years' imprisonment. Article 42.2 of that Act provides that "the same penalty shall apply to anyone who mistreats an injured prisoner in any way (...)".

105. Article 36 of the Military Offences Act includes the offence of dishonourable conduct, and provides that any member of the armed forces who commits an act which, while not constituting torture, may constitute ill treatment of another person is liable to a penalty of between three months' and three years' imprisonment.

106. The Military Offences Act establishes that the crime of looting shall be punishable by between one and five years' imprisonment under article 43.1, and between five and 20 years' imprisonment, or death, under article 43.2.

107. Article 13 of the Military Offences Act sets out the crime of abuse of office. It provides for penalties of between two and ten years' imprisonment for any leader or officer who, repeatedly or for personal gain performs functions that are not assigned to him or oversteps the functions assigned to his or her post, causing consequences for the activities or interests of the military institutions or any of their members, even if this does not occur repeatedly or result in personal benefit. During wartime or combat activities, owing to the danger to society this offence entails, the penalties are increased to between 10 and 20 years' imprisonment, or death.

108. Article 44.1 of the Military Offences Act, which establishes the offence of violence against the civilian population in a region of military operations, provides



that “Anyone who performs acts of violence against the civilian population in a region of military operations or illegally destroys or occupies property [...] is liable to a penalty of one to eight years’ imprisonment”. Paragraph (2) of this article establishes that if such acts are performed repeatedly or with cruelty, or cause considerable material damage, the penalty shall be between eight and 20 years’ imprisonment or death.

109. In the case of offences committed as a prisoner of war, article 47.1 of the Military Offences Act establishes that “a prisoner given a position of authority who performs acts of violence against the other prisoners, or mistreats them, shall be liable to a penalty of between five and 20 years’ imprisonment”. Paragraph (2) of this article increases the penalty to between eight and 20 years’ imprisonment, or death, “if serious injury or death of a prisoner results from the acts described in paragraph (1)”.

110. Article 64 of the Criminal Code establishes the statute of limitations under Cuban criminal law, which ranges from three to 25 years. Crimes against humanity carry no statute of limitations. The statute of limitations under criminal law is also applicable to military jurisdictions.

## **E. Article 5**

111. The territorial jurisdiction of Cuban criminal law entails its applicability to all acts committed within State territory and to all persons who, for whatever reason, are present within that territory, whether they are citizens, foreign nationals or stateless persons. The territorial validity of internal law covers types of offences corresponding to the requirements of article 5 of the Convention.

112. Under article 4 of the Criminal Code, “Cuban criminal law is applicable to all offences committed in the national territory or on board Cuban ships or aircraft, wherever they happen to be, with the exceptions established by the treaties to which the Republic is a party.”

113. Cuban criminal law is also applicable to offences committed on board foreign ships or aircraft located in Cuban territorial waters or airspace, whether by Cubans or by foreign nationals, except for those offences involving only foreign crew members, unless in the latter case the ship’s captain or consul of the country of which the victim is a national asks the Cuban authorities to assist the victim.

114. An offence is also considered to have been committed in Cuban territory if the offender engages in preparatory acts, or acts which contribute to the execution of the offence, within Cuban territory, even though the result is produced abroad, or vice versa.

115. According to article 5 of the Criminal Code, criminal law is also applicable to:

(a) Cubans and stateless persons residing in Cuba who commit an offence abroad, whether they are present in Cuba or have been extradited;

(b) Cubans who commit an offence abroad and have been turned over to Cuba for trial by its courts under treaties to which it is a party;

(c) Foreign nationals and stateless persons not residing in Cuba who commit an offence abroad, if they are present in Cuba and have not been extradited, or if they reside in the territory of the State in which the offence was committed or in any other State, provided that the act is also punishable in the place where it was committed. This latter stipulation is not a requirement if the act constitutes an offence against the fundamental — political or economic — interests of Cuba, or against humanity, human dignity or public health, or is prosecutable under international treaties.

## **F. Article 6**

116. One of the key elements of the Cuban legal system is the principle of the official nature of investigations, which is established under article 2 of the Law of Criminal Procedure:

“Officials who intervene in criminal proceedings are required, within their respective terms of reference, to note for the record any circumstances, whether favourable to the accused or not, and take them into account in their decisions, and to inform the accused of his or her rights.”

117. Article 4.2 of the Military Criminal Proceedings Act stipulates that “any offence must be tried independently of the testimony of the accused, his or her spouse or family members to the fourth degree of consanguinity or second degree of affinity.”

118. Article 5 of the above-mentioned Act establishes that “military police investigators, prosecuting judges and military tribunals shall, within their respective competencies, fully, multilaterally and objectively uncover the facts and circumstances, both adverse and favourable to the accused. The burden of proof always lies with the prosecution.”

119. Cuban criminal law provides for the detention of any individual who has committed any act constituting torture as defined under the Convention. Following arrest, measures may be taken to ensure the safety of the accused, according to the level of outrage that the crime has caused, whether it has given rise to justified, widespread revulsion and animosity in the location where the act took place.

120. Cuban criminal law establishes that the following individuals may be detained:

- (a) Anyone who is attempting to commit an offence at the moment he or she is about to commit it;
- (b) Anyone caught in flagrante delicto;
- (c) A person who, by fleeing, violates the imprisonment or pretrial security measure to which he or she is being subjected;
- (d) An accused person sentenced in absentia.

121. Article 243 of the same Act stipulates that the police are under the obligation to arrest the following individuals:

(a) Anyone found in one of the above-mentioned situations, who has fled while in detention or pretrial custody or in respect of whom an arrest warrant has been issued;

(b) Anyone accused of an offence against State security;

(c) Anyone accused of an offence incurring a penalty of more than six years' imprisonment;

(d) Anyone accused of committing an offence under the following circumstances:

(i) that the offence has caused alarm, or is of the kind which is frequently committed in cities;

(ii) there is good reason to believe that the accused will try to evade justice.

122. Following arrest, custodial or non-custodial precautionary measures may be taken, in accordance with Cuban law.

123. The examination of the preliminary case file may not exceed 60 days, which may be extended by the examining magistrate's superior officers by a period not exceeding 180 days. In exceptional cases the Attorney-General may grant a further extension in order to conclude examination of the case file.

124. Cuba is a party to the Vienna Convention on Consular Relations of 24 April 1963. Under this Convention and in compliance with national legislation, Cuba promptly informs the appropriate consular office of the detention or pretrial custody of any national of the State represented by that office.

125. The competent authorities provide all facilities to enable foreign nationals detained for having committed an offence to communicate with their consular representative.

126. The detention, circumstances and outcome of criminal proceedings brought against a foreign national are communicated by the authorities to the consular representatives, who may organize his or her defence before the courts.

## **G. Article 7**

127. The legal system, which is regulated by chapter XIII of the Cuban Constitution, "Courts and the Prosecution Service", plays an essential role in the protection of human rights. This system meets international human rights standards, notably the decisions of the United Nations Congresses on Crime Prevention and Criminal Justice and the Basic Principles on the Independence of the Judiciary, which establish, inter alia, the principle of the individual and collective independence of judges, who, in their role as dispensers of justice, are independent and owe allegiance only to the law.

128. The Cuban State has institutionalized a system of independent bodies, headed by the Supreme Court, which are collegial bodies with a membership appropriate to

their competence and ensuring broad popular participation in the administration of justice. The Cuban legal system is based on the following principles:

- (a) The complete independence of individual judges and of the entire court system in the administration of justice;
- (b) The public nature of justice, achieved mainly by opening up judicial functions to lay judges who are granted equal powers alongside professional judges, the public nature of judgements, and the duty of the judges to explain and justify their decisions, thereby laying their reasoning bare for the public;
- (c) All judges, both professional and lay judges, are elected;
- (d) The fact that judges cannot be removed from their posts unless under the circumstances provided by law;
- (e) The absolute equality of all persons before the law;
- (f) Collegial courts for all acts of justice, regardless of the judicial instance or the nature of the case;
- (g) The presumption of innocence. Every person accused of a crime is innocent until proven otherwise. The burden of proof lies with the prosecution;
- (h) All trials are public, except where provided by law;
- (i) All court decisions are appealable in accordance with the law applicable in each case;
- (j) Every accused person has the right to a defence.

129. The bodies with judicial functions monitor and uphold legality through the observation of and strict compliance with the Constitution, the law, and other legal provisions.

130. In their role as dispensers of justice Cuban judges are independent and owe allegiance only to the law, as established under the Cuban Constitution, the People's Courts Act and the Military Courts Act. Judges are duly elected by the people's assemblies.

131. Professional judges are elected on the recommendation of the People's Supreme Court for an indefinite term and may only be removed from their posts on the grounds set forth in law, which contributes to the autonomous, independent performance of their functions.

132. An essential element in the public, or popular, nature of justice administration in Cuba is the institution of the lay judge, which also demonstrates yet again the democracy of our political system.

133. Lay judges are Cuban citizens with no juridical status who administer justice in the various instances of the Cuban people's courts for a period of five years. Their rights and duties are equal to those of professional judges.

134. Lay judges are selected through workers' collectives, communities, and civil society organizations. The requirements for election are to be a Cuban citizen and to have a good standing in society.

135. Cuban criminal procedure contains principles and guarantees based on the principle of the dignity of the human person and respect for their status as a subject of law.

136. The principles of legality, civil participation, the presumption of innocence, objectivity, reparation for miscarriages of justice, non-discrimination, the determination of sentence, equality between the parties, the entitlement to conduct criminal proceedings, the oral and public nature of proceedings, the immediacy and concentration of proceedings, the right of both parties to be heard, the evaluation and admission of evidence, the protection of victims and the other principles of due legal process are incorporated into the current criminal justice system and are respected in practice.

137. All trials are conducted orally and publicly except where provided otherwise by law, with all the guarantees that that requires. Judges are required to give grounds for their decisions, in accordance with the principle of rational, sound criticism.

138. Every accused person has the right to defence. No violence or coercion of any kind may be used against people to force them to testify. Any statement obtained in violation of this provision is null and void, and those responsible for the violation shall be punished in accordance with the law.

139. No person accused of a crime is obliged to defend him or herself. However, that individual has the right to make a statement when he or she considers it appropriate for the purposes of his or her defence and to explain the facts. If he or she does not speak Spanish or is illiterate and deaf-mute, then the court shall observe the regulation stipulating that he or she may present testimony through an interpreter.

140. The courts system in Cuba has a code of judicial ethics, which sets out the values and principles that guide the conduct of judges in a detailed way.

141. Criminal proceedings are brought by the prosecutor before the court competent to hear the charge against the accused, once the prosecutor considers the preliminary case file submitted by the parties to be complete; he or she then formulates the appropriate preliminary arguments and makes the detainee available to the court.

142. When the court considers that the pretrial proceedings are complete, it opens the oral proceedings, assuming the indictment has been made, and orders the accused persons to appear with a copy of the evidence submitted, so that they may appoint attorneys for their defence if they have not yet done so; if this is not done within five working days, an attorney is appointed for them by the court.

143. The counsel for the defence receives the record of the pretrial proceedings so that he or she may prepare preliminary arguments in response to those of the prosecutor.

144. In conformity with Cuban law, the standard of evidence required for prosecution or indictment is equally rigorous for any of the cases covered by article 5 of the Convention against Torture.

145. Under Cuban criminal procedure, every accused person is entitled in complete equality to the following guarantees:

(a) To be notified promptly of the nature and grounds for the charge against him, under article 161 of the Criminal Procedure Act;

(b) To be given the necessary time and means to prepare a defence, to appoint a defence attorney of his or her own choosing and to communicate with that attorney, in accordance with articles 244 and 281 of the Act;

(c) To be tried without undue delay, without prejudice to his or her right to claim compensation for damages and other responsibilities arising under article 31 of the Act;

(d) To request that preliminary enquiries be conducted immediately if there is any doubt over the possibility of conducting them as part of a public hearing, in accordance with articles 249 and 250 of the Act;

(e) To be convicted of the acts covered by the indictment at a public sentencing; in other words, the principle of proportionality between the charge and the sentence must be observed, in accordance with articles 350 and 357 of the Act;

(f) To appeal against convictions, so that they may be reviewed by a higher court.

146. Article 34 in Chapter III (“Status of foreigners”) of the Constitution provides that foreign nationals residing in Cuban territory are deemed to be comparable with Cuban citizens as regards the obligation to respect the Constitution and the law and to submit to the jurisdiction and decisions of the Cuban courts and authorities.

147. Oral proceedings are public in Cuba unless, for reasons of State security, morals or public order, or out of respect for the person injured by the offence or their family members, it is advisable for them to be held in camera. During the oral proceedings, the accused may, if desired, state whatever he or she considers necessary in relation to the charge, and may refrain from making a statement and from replying to any questions asked of him or her.

148. The accused must be present at all times during the presentation of evidence at the trial; when for whatever reason he or she cannot be present, the accused must be represented by his or her attorney.

149. Once the presentation of evidence is completed and the final arguments have been made by the parties, they must make their oral pleas; following the pleas, the accused will exercise the right to have the last word if he or she wishes to add anything to the case for the defence.

150. The Cuban courts must inform accredited embassies of any of their nationals standing trial and of the date of the oral proceedings through the Legal Office of the Ministry of Foreign Affairs, which is also in accordance with article 36 of the Vienna Convention on Consular Relations. They will also apprise the Cuban Immigration and Status of Foreigners Office of any sentences handed down against foreign nationals and stateless persons involved in criminal proceedings.

## H. Article 8

151. In accordance with article 6.1 of the Cuban Criminal Code, Cuban citizens may not be extradited. Article 6.2 stipulates that the extradition of foreign nationals is to be carried out in conformity with international treaties or, in their absence, Cuban law, which does not exclude the possibility of the foreign nationals being tried by Cuban courts in conformity with the comments on articles 4 and 5 of the Convention. Torture and other related crimes may accordingly result in extradition.

152. Cuba has not signed any extradition treaty that covers the use of torture, nor have there been any cases in which extradition has been granted with regard to persons accused of this crime.

## I. Article 9

153. With regard to the crimes set out in article 4 of the Convention against Torture, Cuba conducts legal assistance and cooperation between States in accordance with the international treaties to which it is party, with the assumption of the principle of reciprocity from other States, or, in the absence of those, Cuban law.

154. Foreign nationals sentenced to imprisonment by Cuban courts may be handed over to the States of which they are nationals to serve their sentences in the cases and in the manner prescribed by the treaties. Similarly, Cuban nationals sentenced to imprisonment by foreign courts may serve their sentences in Cuba, also under the terms of the relevant treaties.

155. In the absence of treaties, Cuban judicial practice adopts the procedure used in civil proceedings for the execution of final judgements handed down by foreign courts, which are to be served as though they were national sentences:

- (a) If they were handed down in consequence of bringing an action;
- (b) If they were not handed down in absentia;
- (c) If they relate to acts accorded comparable legal status under Cuban legislation;
- (d) If the document containing the sentence appears to have been issued in accordance with the conditions required for its authenticity in the country concerned, and if the legal requirements for their certification in Cuba have been observed;
- (e) If the sentence is accompanied by a communication from the Ministry of Foreign Affairs of the country in which it was handed down, stating that the authorities of that country will carry out sentences pronounced in Cuba, on the basis of reciprocity;
- (f) If the convicted person's Cuban domicile, should he have one, is clearly indicated.

156. The execution of foreign sentences is requested before the Supreme Court of the Republic unless, under an international treaty, that task comes under the competence of another court.

157. Cuba has signed 44 treaties on legal assistance. No cases have occurred in which Cuba has been requested to provide assistance with respect to crimes of torture, nor have there been cases in which Cuba has requested assistance.

## **J. Article 10**

158. A high priority in Cuba is providing technical and professional training for medical personnel, members of the National Revolutionary Police and the officials of the correctional system, as well as court staff in general.

159. The training of Cuba's police forces has undergone continuous improvement. These programmes have been conducted in step with the reorganization of police force operations, in order to achieve levels of response consistent with the requirements of police action. Grass-roots socio-cultural and education models are emerging which, together with the improved technology used by the police, facilitate the training of a more integrated force.

160. Different study programmes have been devised for the various training levels, from basic to advanced, the purpose of which is to firmly instil behaviour demonstrating appropriate professional conduct and abiding by socialist legality and the humanist ethic of the Cuban Revolution.

161. This police training procedure takes place through three main channels:

(a) The training of advanced-level professionals (graduates) in the higher education centres under the Ministry of the Interior (MININT), leading to the conferral of the academic degree of Bachelor of Law with programmes featuring the following specialties: public security; criminology; and forensic science and investigation. This professional training has been reinforced through the development of Cuban university study programmes, with State accreditation;

(b) The police officer training course, the aim of which is to train officers to maintain law and order and keep the public peace, working from strictly ethical, scientific and legal principles within the scope of competency of the police force;

(c) The basic police training course, where law enforcement officials destined primarily for surveillance and patrol services are trained.

162. Courses are also offered in ethics, personality psychology, sociology and social communication, which directly contribute to this training.

163. This training brings together the academic, work-related and investigative aspects of the study programme, taking an approach based on education in moral and humanist values as being fundamental to change and human growth.

164. The study programmes are not limited to law enforcement, but are reinforced by the study of closely linked disciplines such as law, social psychology and human sciences. Special attention is given to questions of civil, criminal and international law to ensure that officers comply with fundamental human rights legislation.

165. The model Cuban police officer is trained to show outstanding social and professional dedication, demonstrated primarily in his or her excellent discipline, exemplary moral conduct and professionalism in the service rendered to the community and individual citizens.



166. Both the Office of the Attorney-General of the Republic and the People's Supreme Court provide annual degree and postgraduate training courses for judges and prosecutors. These courses provide officials of the justice system with much more comprehensive professional training.

167. In their training courses, these officials are also taught the standards and rules set forth in the main international human rights conventions and covenants, such as:

- (a) The Universal Declaration of Human Rights;
- (b) The Standard Minimum Rules for the Treatment of Prisoners;
- (c) The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);
- (d) The Code of Conduct (setting out a number of ethical principles which directly contribute to the process whereby judges form judgements, analyse and interpret cases and make decisions);
- (e) The Code of Conduct for Law-Enforcement Officials;
- (f) The International Covenant on Civil and Political Rights;
- (g) The International Covenant on Economic, Social and Cultural Rights;
- (h) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (i) The Convention on the Prevention and Punishment of the Crime of Genocide;
- (j) The United Nations Declaration on the Elimination of All Forms of Racial Discrimination.

168. In the training of Cuba's law enforcement personnel, the ethical principle of respect for life and personal integrity, both physical and psychological, is paramount. In addition to their legal obligations, these personnel have duties corresponding to their very sensitive responsibilities, which include the strictest discipline and the obligation to account to their superior officers, colleagues and those who selected them on behalf of the Cuban people to discharge that responsibility.

169. Law students are given appropriate training on the scope and content of criminal conduct that may be characterized as constituting torture or other cruel, inhuman or degrading treatment or punishment. They are also taught about the international protection afforded to human rights in general.

170. In the State security and internal security agencies, officers in charge of the treatment of detainees, accused persons and convicted prisoners receive appropriate, in-depth professional training. These officers are required to observe the Code of Ethics and Disciplinary Rules, which explicitly include the prohibitions referred to in article 2 of the Convention against Torture.

171. Officials of penal establishments and examining bodies receive suitable professional training on the scope and content of criminal conduct that may be categorized as constituting an act of torture or other cruel, inhuman or degrading treatment or punishment.

172. In Cuba, doctors and health-care personnel in general are taught the principle of providing protection for physical and mental health, regardless of the characteristics of the patient. Thus, all persons in prison or detention receive medical assistance when they need it, on the same terms as persons not in custody. Public Health Act 41 provides the legal basis for the training of health-care personnel.

173. The Office of the Attorney-General has also implemented a system of training through diplomas and courses covering its various areas of competence. These qualifications include compulsory instruction for all participants on the need to guarantee strict compliance with legality and to act at all times in accordance with the principles set forth in the code of conduct for State employees.

174. In accordance with this system, regular and systematic training takes place at the various levels within the organizational structure of the Office of the Attorney-General; this training places great importance on strengthening the Office's functions relating to the monitoring of legality in criminal proceedings and compliance with the law in prisons and detention facilities.

175. Cuba has a broad and effective strategy in place for awareness-raising and legal education among the general public, with the aim of cultivating a heightened legal awareness in every Cuban citizen, enabling people to understand and defend the basic principles and guarantees set forth in the Constitution.

176. A number of specific measures have been adopted to publicize and raise awareness of the legal instruments which facilitate the achievement of the goals set out in the paragraph above. With regard to staff training, each institution or organization involved in this work has designed and carried out training for its personnel. The Ministry of Justice, the Office of the Attorney-General and the People's Supreme Court have conducted various programmes:

(a) A publicity and information programme conducted through the media, promotional activities and printed materials: in conjunction with the Cuban Radio and Television Institute (ICRT) the Ministry of Justice has been carrying out a plan of action, aimed at the general public, for publicizing and disseminating the law;

(b) Work is proceeding on the publication of texts, magazines and leaflets on legal topics for the general public;

(c) Publications such as *Revista Jurídica*, *Revista Cubana de Derecho*, the review of the Office of the Attorney-General and the bulletins of the People's Supreme Court are regularly issued, together with the review *Justicia y Derecho* [Law and Justice], also edited by the People's Supreme Court. These materials are an important part of strengthening the legal culture;

(d) The National Centre for Legal Documentation and Information (CENDIJ) of the People's Supreme Court provides legal information services for all the People's Courts of Cuba, both face-to-face and through the Internet and e-mail, enhancing the efficiency and quality of the services offered every year;

(e) The extension of the Information Bulletins service to the other Cuban courts, offering a selection of the most innovative and noteworthy sentences handed down by the judges of the People's Supreme Court in all legal matters;

(f) Centres providing information services have been set up in every provincial court and in the Judicial Training College;

(g) The provision of basic training courses for specialists who have graduated from other disciplines;

(h) National, provincial and municipal workshops have been held with the participation of all the organizations involved in monitoring the serving of a non-custodial sentence, as part of which members of the community have the opportunity to contribute to the social reintegration of persons who have received a non-custodial sentence or other punishment.

## **K. Article 11**

177. The Cuban Revolution did away with the prison system inherited from the Batista tyranny and built a profoundly humane and non-discriminatory penitentiary system, based on respect for and strict application of laws and regulations. It is inspired by the principle of re-educating and rehabilitating all inmates to enable them to be fully reintegrated in society.

178. The old prisons, which lacked the most basic amenities, were closed. New open and closed prisons were built, based on standards and principles developed by international criminal science and best practices for the treatment of prisoners.

179. Some of the key elements of the Cuban prison system are:

(a) Improvements in penitentiary law and regulations, applying the 95 Standard Minimum Rules for the Treatment of Prisoners;

(b) Adoption and enhancement of a graduated system, whereby prisoners move through various regimes until they are given parole, based on their behaviour and the minimum sentence to be served;

(c) Establishment of criteria for classification of the prison population in order to ensure better treatment for groups and individuals (based on legal situation, gender, age, nationality, personal characteristics, level of risk, etc.);

(d) Buildings of premises suitable for prison facilities (group and individual cells with air, light, ventilation, sanitary facilities and showers);

(e) Voluntary participation in socially useful work, paid in accordance with national pay scales and with workplace health and safety guarantees;

(f) Financial help to prisoners' families and social security for prisoners;

(g) Introduction of an education subsystem in prisons for general and technical schooling, including universalization of teaching;

(h) The guarantee of work for all ex-prisoners to facilitate their progressive integration back into society;

(i) Introduction of a health-care subsystem for primary and specialized medical care and dental care for prisoners;

(j) Artistic, sporting and leisure activities;

(k) Technical and vocational training and ongoing in-service training for prison staff (jurists, psychologists, teachers, defectologists, sociologists and administrators).

180. The foundations of the Cuban prison system are aligned with the principles set out in the Constitution and those enshrined in the Criminal Code, the Criminal Procedure Act and the Prison System Rules. The application of criminal policy is also based on such principles.

181. The Ministry of the Interior, the People's and Military Courts, the Office of the Attorney-General of the Republic and the Social Services and Prevention Committees participate actively in upholding and ensuring legality in the prison system. The role of the Attorney-General is essential in this regard.

182. Article 28 of Act No. 83 stipulates that "The organs of the Office of the Attorney-General of the Republic are authorized to carry out investigations in order to verify that the law is being upheld in prison and detention facilities." Departments for the Supervision of Legality in Penitentiary Facilities were established under the Office of the Attorney-General for this purpose.

183. With the graduated approach to prison treatment, prisoners may earn up to two months a year off their sentence for good behaviour, transfer from high- to low-security prisons, be awarded parole or have prison terms commuted to non-custodial sentences. There is further possibility for sentence reduction of up to 60 days for exceptional behaviour and outstanding results in the education programmes, as set out in the current Prison System Rules.

184. This graduated system is aimed at encouraging positive behaviour among prisoners, through the gradual reduction of the severity of prison sentences and as a basis for subsequent parole or suspension of the sentence. Eighty-two per cent of those who leave prison do so without completing their full sentence.

185. Violence and abuse, both physical and mental, are totally prohibited and constitute an offence under the law.

186. Article 6 of the aforementioned Cuban prison System Rules provides that it is strictly prohibited to subject persons that are deprived of their liberty to any type of humiliation, corporal punishment or any inhuman or degrading treatment or punishment; not is it admissible to employ against them any illicit means of coercion or any measure that may cause physical or psychological suffering or be detrimental to their dignity.

187. In this respect, article 7 of the prison System Rules stipulates that prison officers and authorities who violate the guarantees and limits established shall be held criminally and administratively liable and that compliance with the law shall be restored.

188. Prisoners in Cuba are guaranteed legal aid and personal contact with legal representatives is provided. Individual and group religious assistance is also guaranteed at the prisoners' request, and is provided by representatives of religious organizations that are officially registered in Cuba.

189. Prisoners have the right to submit complaints and petitions to the authorities and to receive an appropriate response, within an appropriate time limit in accordance with the law.

190. In accordance with the legislation in force and the provisions of the prison regulations, judges and prosecutors have access to prison and other detention facilities in order to monitor the implementation of penalties and re-educational measures imposed by the courts and the conditions in which these measures and pretrial detentions are served, in order for their purposes to be achieved.

191. Prisoners are given an adequate diet of at least 2,400 kilocalories a day along with drinking water. Their relatives may also bring them up to 40 pounds of food products and other items each time they visit.

192. Prisoners keep in regular touch with their families through visits, the use of conjugal quarters (available to male and female prisoners), telephone calls and letters. To encourage good behaviour, they may also be awarded special leave or home visits. Prisoners are taken to hospitals, funeral homes or burials in the event of the serious illness or death of a close relative.

193. Visits are conducted with no wire netting, bars, glass walls or other kind of barrier preventing direct contact between prisoners and relatives. As part of the comprehensive treatment for prisoners, and with a view to minimizing the negative effects of social isolation, supervised visits are made to cultural, sporting, historical and economic centres.

194. Article 31.3 (ch) of the Cuban Criminal Code stipulates that persons sentenced to imprisonment and held in prison facilities, whether for life or other sentences, are provided with medical and hospital care in the event of illness.

195. All prisoners are guaranteed free medical and dental care. The prison system has hospitals, health centres and medical posts and in every province there are ordinary hospitals with special wards equipped for prisoners. Prisoners are guaranteed specialist care in any hospital in the country and medical teams comprising a range of specialists make regular prison visits.

196. There is one doctor for every 300 prisoners, one dentist for every 1,000 for preventive, supportive and specialist care and one nurse for every 120 prisoners. No prisoner has a medical condition that is incompatible with their detention regime. Whenever this has occurred, the corresponding extra-penitentiary leave has been granted.

197. Female prisoners are held in women's prisons, where all the staff are female and fully trained. Young prisoners also receive special treatment and are held in juvenile prison facilities or in areas separate from adult prisons. They are looked after by specialist staff and are guaranteed access to religious activities.

198. Pregnant women and women who have given birth receive specialized medical care and are transferred to special mother-and-child wards that are provided in women's prisons. The birth takes place in hospital conditions and is attended by medical staff. Pregnant and breast-feeding women are also put on a special enhanced diet during the pregnancy and until the child is one year old, during which time the prisoner remains with her child to ensure breastfeeding. At the end of this period, the baby may be handed over to family members or placed in a nursery free of charge.

199. Cuba continues to improve its prison system and, in line with reforms in the area of education, a collection of programmes, projects and activities have been

developed within the prison system in order to attain new levels of development within the education system in relation to prisoners. It also aims to make the rehabilitation of prisoners and their social reintegration even more effective. Tarea 500 (Task 500) is a programme that was launched in 2000 and helps to rescue and guide young people.

200. The adult education subsystem in prisons has been extended to the twelfth grade and priority is given to guaranteeing training for the construction and services industries and for nurses and health technicians. The opportunity to carry out higher studies in university centres set up within prisons is offered for good behaviour. The school year 2008-2009 saw the first graduation of more than 40 prisoners in physical education.

201. Since 2002 all prison facilities have had audiovisual aids and computers for educational purposes. These are used in teaching, job training and patriotic education as well as other cultural and general activities and also offer prisoners the chance to enjoy programmes shown on Cuban television channels.

202. All prison facilities have libraries and mini-libraries with various books and study materials, which have made it possible to conduct reading schemes to improve the culture and knowledge of prisoners.

203. The prison system has signed an agreement with the José Martí National Library which includes the training of library technicians between prisoners and prison officers, the supply of books, the organization of literary competitions and the use of provincial and municipal libraries.

204. Juvenile prisoners are given special, individual attention and are held in different centres and kept apart from adult prisoners.

205. In 2001 the Experimental Centre for Juveniles was set up in the San Francisco de Paula area of Havana, with a teaching model designed in accordance with the educational needs of juvenile prisoners. It is an open centre without bars where juvenile prisoners work, study and take part in sport and cultural activities, and even carry out tasks in the interest of the community, and where their families play an active role in the education process. On the basis of the results of this experiment, the programme has been extended and similar centres have been set up throughout the country.

206. On the premise that voluntary, paid and socially useful work is one of the fundamental links in the chain of educational factors that affect prisoners' rehabilitation and the formation of their values, the Cuban prison system has received State funding since 2005 for the establishment of work and study centres. Prisoners with a good record of behaviour who pose little danger to society are sent to these centres, mainly to carry out social projects, such as building schools, hospitals, cultural centres and housing for the population, but also for agricultural jobs in food production. The Tarea Confianza (Trust Task) has enabled prisoners to take up these jobs.

207. Participation in socially useful work is regarded as an educational requirement and also a right for prisoners, who voluntarily participate in productive jobs, with the corresponding payment. In the light of the regulations for workers set forth in Act No. 105 of 27 December 2008 (Social Security Act), a number of social benefits have been established for working prisoners, including the accumulation of working

time during their sentence towards their employment record and pension plan, as well as other social entitlements identical to those of the general working population (part- or full-time payment with a medical certificate as well as financial support).

208. Various artistic and literary cultural events are organized in all the country's prison facilities, through the agreement between the prison system and the Ministry of Culture. These include presentations and concerts from orchestras and music groups, art exhibitions, book presentations by authors, as well as the promotion of amateur artist movements with the creation of music and theatre groups among prisoners and cultural festivals held both inside the facilities and at a provincial level.

209. The prison system has, in cooperation with the National Institute of Sports (INDER), organized sports activities and physical education programmes for prisoners. Teams of various disciplines are organized, sports equipment is provided and sports competitions are held within prisons, provinces and at a national level. Between 2005 and 2010, two National Sports Competitions were held in sports centres across the country, with more than ten disciplines and the participation of thousands of prisoners as athletes and spectators.

210. It can be claimed with justification that education programmes in Cuba have had a positive impact on the prison population. Such programmes have contributed to the improvement in relations and communication between prisoners and the prison staff responsible for their custody and rehabilitation by narrowing the gap between them. The programmes have also created an environment conducive to developing prisoners' potential and have contributed to instilling positive habits and values among them and raising their self-esteem. These programmes have also brought about improved order and discipline in prisons.

## **L. Article 12**

211. In accordance with article 116 of the Criminal Procedure Act, any person who witnesses the perpetration of an officially prosecutable offence, or is otherwise certain that such an offence has been committed, is required to bring it to the attention of the nearest court, prosecutor, examining magistrate or police unit or in the last resort, military unit. The same is required of those who, through their duties, profession or occupation, have information that an offence has been committed. The article further stipulates that if a State official or employee should fail to carry out this requirement, his or her superior officer shall be informed with a view to administrative or employment-related action. Article 98 of the Military Criminal Procedure Act sets out similar provision under the military regulations.

212. In accordance with article 119 of the Criminal Procedure Act, if the police are informed that an offence has been committed, they may arrest the suspect and take the requisite precautionary measure set out in this Act, except that of pretrial detention, which may be ordered only in accordance with the procedures and authority established by the Act and initiate the essential formalities immediately.

213. The Criminal Procedure Act establishes precise terms for carrying out investigations of offences and bringing their perpetrators before the competent

courts. The terms ensure that investigations are carried out with the necessary speed and grant equal rights to all persons involved in criminal proceedings.

214. Articles 245 to 260 of the Criminal Procedure Act establish the authorities that are competent to carry out investigations. Article 92 of the Military Criminal Procedure Act establishes the authorities that shall carry out such investigations in military courts.

215. The Office of the Attorney-General of the Republic is the State body responsible for monitoring and upholding legality and, in order to achieve those objectives, it has the following main functions:

(a) To ensure compliance with the Constitution, laws and other legislation by State bodies, economic and social entities, and citizens;

(b) To take action against violations of the rights embodied in the Constitution and the guarantees established by law and against infringements of legality in the acts and decisions of organs of the State and their dependent units, the agencies of local authorities and other economic and social entities, and to demand correction of the offences;

(c) To address complaints submitted by citizens about alleged violations of their rights;

(d) To verify observance of the constitutional and procedural safeguards during the investigation of reports and other information about offences or indications of danger, and to ensure legality in the conduct of legal proceedings, in accordance with the law;

(e) To institute and conduct public criminal proceedings as representative of the State;

(f) To monitor enforcement of penalties and other pretrial detention measures, in accordance with the provisions of the law and the corresponding court rulings, and to ensure respect for the rights of persons who are detained, held or imprisoned.

216. Furthermore, with regard to the observance of legality during preliminary investigations following the commission of an offence, article 109 of the Criminal Procedure Act provides that the Attorney-General shall guarantee that:

(a) Punishable acts are investigated, the objective truth is established and the perpetrators are tried before the courts;

(b) The dignity of citizens is respected and in no case shall a citizen's rights be unlawfully restricted;

(c) The law and other legislation are observed strictly in all actions carried out by the examining magistrate during preliminary investigations.

217. The Office of the Attorney-General also supervises compliance with the law in the conduct of preliminary activities, proceedings and investigations and in the legal classification of the acts. It supervises the course of the investigations and orders any actions and procedures that may be essential in proving the commission of an offence and the identity of the perpetrator and any other essential circumstances, or it may carry out such actions itself. It also ensures compliance with procedural



safeguards of the rights of the accused, as well as the rights of the victim or injured party and the interests of the State and of society.

218. Regarding enforcement of prison sentences and other detention methods, article 28 (1) of the Office of the Attorney-General of the Republic Act stipulates that the agencies of that Office are authorized to carry out inspections in order to monitor compliance with the law in prison facilities and detention centres.

219. Regarding the above, the second paragraph of article 28 of the Office of the Attorney-General of the Republic Act states that the designated prosecutor is authorized as follows:

(a) To examine documents and records of any detainee, or accused or convicted person;

(b) To inspect the facilities and premises used for that purpose;

(c) To ensure the legality of orders and provisions issued by the authority or body concerned and compliance therewith;

(d) To interview persons under arrest, persons being held in pretrial detention, and convicted persons;

(e) To carry out any necessary inquiries;

(f) To make recommendations regarding how best to achieve compliance with laws and regulations and propose measures to prevent crime and to deal with its causes and the conditions that are conducive to criminality;

(g) To issue orders to restore a state of legality where an offence has been committed. If the violation relates to the illegal detention of a person, the prosecutor may order that person to be released immediately, through a court order;

(h) If the violation relates to a person illegally deprived of liberty, the prosecutor shall act in accordance with the established procedure, according to the case;

(i) To examine documentation substantiating a decision to release a detained, accused or convicted person and to study and determine in which cases parole may be granted, based on compliance with the requirements established in the law, issuing appropriate statements in that regard.

220. Article 200 of the Criminal Procedure Act stipulates that an expert examination may be carried out if there is a need to establish a material fact or if scientific, artistic, technical or practical knowledge is required. It also stipulates that in cases of bodily injury, presentation of the certificate issued by the corresponding physician, containing the required details of the injuries sustained, shall be sufficient to trigger proceedings.

221. In cases where the designated authorities decide not to initiate criminal proceedings and request the competent court to order a general or partial dismissal of proceedings, if the court deems such an action to be unsuitable, the victim of the offence is legally entitled to bring a private criminal action, whereupon the case enters oral proceedings.

**M. Article 13**

222. As already pointed out in this report, article 63 of the Constitution states that any citizen has the right to submit complaints or petitions to the authorities and receive an appropriate response, within an appropriate time limit, in accordance with the law.

223. The main guarantee of this right is provided by the Office of the Attorney-General, whose function is to guarantee legality in order to protect the legal order and in particular the rights and freedoms of citizens. The Office is an organic unit subordinate only to the National Assembly of People's Power and the Council of State.

224. Article 7 of the Office of the Attorney-General Act sets the Office the following objectives among others:

(a) To re-establish legality when it has been violated by regulations or decisions contrary to the Constitution or the law or by improper application of or failure to apply the Constitution or the law;

(b) To protect citizens in the legitimate exercise of their rights and pursuit of their interests;

(c) To combat any manifestation of abuse of power or corruption;

(d) To help prevent crime and other antisocial activities by strengthening social discipline and educating the people in the conscientious observance of the law.

225. The Office of the Attorney-General has the following operational structure: a central Office along with 14 provincial and 169 municipal offices, plus a special municipal office located in the Special Municipality of Isla de la Juventud. This structure ensures that the whole population can rely on the State to take action against violations of their rights.

226. Article 19 of the Office of the Attorney-General Act provides that the leaders, officials, employees and members of State and economic or social entities and the public at large have a duty to cooperate with the organs of the Office of the Attorney-General, support them in their work, and comply with their requirements.

227. One of the Office's functions is to adopt resolutions in which the Attorney-General orders the restoration of legality when it has been infringed. They are legally binding on the organ, authority or official to which they are addressed, and such bodies, authorities or officials have a time limit of 20 days in which to notify the Office of the action taken, in accordance with article 21, paragraph 1, of the Office of the Attorney-General Act.

228. The Act contains a chapter on the protection of the rights of citizens. Article 24, paragraph 1 provides that the Office shall process and investigate, and respond within a time limit of 60 days, to reports, complaints and claims submitted by citizens in accordance with the legal procedures.

229. If in the performance of these functions the Office determines that a citizen's rights have been violated, it has to issue a resolution ordering the restoration of legality.

230. Furthermore, if it is decided that the report, complaint or claim is inadmissible or lacks sufficient merit, the Office must provide the applicant with a written or oral explanation of the reasons for this decision and place any written explanation on record.

231. Article 24, paragraph 4, provides that, if the applicant is dissatisfied with the handling of the case or the reply received, he or she may apply to the immediately superior official or directly to the Attorney-General, within a time limit of 30 days from receipt of the reply, with an explanation of the reasons for dissatisfaction, with a view to re-examination of the case and provision of a proper reply.

232. Article 109 of the Criminal Procedure Act provides that the Attorney-General, being responsible for ensuring the rule of law, shall guarantee respect for the dignity of citizens and shall in no case unlawfully restrict a citizen's rights.

233. The most common complaints are systematically monitored by a team of experts in the Office, with a view to determining the grounds for the complaints and taking measures to reduce their number.

234. Cuba has other bodies and mechanisms to deal with citizens' complaints and petitions in respect of human rights, including social organizations, the National Revolutionary Police and in particular its mechanisms for dealing with the public, departments which deal with the public in each of the bodies of the central State administration, the Office of the Secretary of the Executive Committee of the Council of Ministers, delegates to the people's municipal assemblies and municipal and provincial administrative councils as well as the standing committees of the National Assembly, and the Council of State's mechanisms for dealing with the public.

235. Cuba has legal guarantees to ensure that everyone, whether Cuban citizen or foreigner, can assert their rights before the courts or the competent authorities and require that their rights be defended from violation. This system, which is thoroughly authentic and adjusted to the needs of Cuba's people, has been systematically improved to ensure its effectiveness and its ability to meet people's needs and expectations.

## **N. Article 14**

236. The Cuban Constitution stipulates that any person who suffers damage or injury at the hands of State officials while they are carrying out their duties has the right to claim and receive appropriate redress or compensation as prescribed by the law.

237. In accordance with article 70, paragraph 1, of the Criminal Code, "any person who is held criminally responsible also bears civil liability for the moral and material damage caused by the offence. The court that hears the case declares the civil liability and its extent by applying the relevant provisions of civil law, and also directly enforce the obligation to restore the property or make good the moral damage ...".

238. If the guilty party refuses to provide moral redress, the court may impose an additional prison sentence of not more than six months.

239. Article 70, paragraph 1, of the Criminal Code provides that “The Compensation Fund is the body responsible for enforcing civil liability through the provision of redress for material damage and compensation for injury”.

240. Article 275 of the Criminal Procedure Act states that “proceedings for claims for civil liability arising from the criminal offence are carried out in conjunction with the criminal proceedings, except where an injured party’s health prevents him or her from testifying.” Article 276 stipulates that “notwithstanding the provisions of the previous article, the termination of criminal proceedings does not bring about termination of the civil proceedings, and the victim may bring such proceedings as appropriate.”

241. Article 277 of the Criminal Procedure Act stipulates that “at any stage of proceedings the examining judge, court or prosecutor may, either independently or at the request of one of the parties and in a reasoned decision, order the precautionary measures of bail, seizure and garnishment of property of the accused or third parties with civil liability, should such measures be necessary to ensure that the sentence is enforced in due course with regard to civil liability.”

242. Article 81 of the Civil Code defines illegal acts as those that cause damage or injury to another.

243. Article 82 of the Civil Code stipulates that the person responsible for illegally causing damage or injury to another is required to repair such damage or injury.

244. Lastly, article 83 of the Civil Code states that reparation of civil liability includes:

- (a) Restitution of property;
- (b) Reparation for the material damage;
- (c) Compensation for injury;
- (d) Reparation for moral damage.

245. The Cuban Labour Code and Resolution 200 of 13 September 2006 of the Ministry of Labour and Social Security stipulate that a worker who is subpoenaed by the court, by the Office of the Attorney-General or by the investigation agencies shall have the right to receive a wage based on the average earnings which he has forfeited without detriment to his right to seek compensation on other accounts.

246. Also in accordance with Resolution 200 of 13 September 2006 of the Ministry of Labour and Social Security, a worker who commits an offence during or outside working hours and is acquitted in criminal proceedings, either by way of an enforceable judgement or dismissal or stay of proceedings, that the right to receive the average earnings which he forfeited while being held in custody or pretrial detention.

## **O. Article 15**

247. Article 59 of the Cuban Constitution prohibits the use of violence or coercion against individuals to force them to testify, and declares null and void any statement

obtained in breach of this provision. Persons found guilty of such acts are liable to the penalties which criminal law establishes for acts categorized as offences.

248. Article 161 of the Criminal Procedure Act provides that “no defendant is required to make a statement against himself or herself. The examining judge, having complied with the formal requirement referred to in the previous article, has the duty to inform the defendant of what they are accused of, by whom, and the charges against him or her, as well as his or her right to testify at any time and as often as he or she may wish to do so.” Article 165 of the Military Criminal Procedure Act sets out similar provisions with regard to the right of the defendant to testify.

249. Likewise, article 163 of the Criminal Procedure Act provides that “the defendant shall be allowed to state all that he or she deems appropriate for his or her defence and in order to explain the facts. In the light of the defendant’s statements, the actions necessary in order to verify such statements shall be ordered.”

250. Article 166 of the Criminal Procedure Act confirms the aforementioned principle of the Cuban Constitution, stipulating that “No one may be subjected to any form of violence or coercion in order to obtain a statement. Any statement obtained in breach of this principle shall be null and void, without prejudice to any criminal liability that may be incurred.” Article 166 of the Military Criminal Procedure Act sets out a similar provision.

251. Article 172 of the Criminal Procedure Act provides that “no witness may be forced to make a statement concerning a question if answering it may cause direct or substantial material or moral damage to his or her person, honour or interests, or to the person, honour or interests of a close relative. Article 177 of the Military Criminal Procedure Act sets out a similar provision.

252. In accordance with Cuban legislation, no statement which is established to have been made as a result of an act of torture may be invoked as evidence in any proceedings, except against a person accused of committing the act of torture as evidence that the statement was made as a consequence of that act.

253. Article 183 of the Criminal Procedure Act states that under no circumstances may coercion, deceit, promises or subterfuge be used or be permitted to be used to force or induce a witness to testify in a specific sense. Article 179, paragraph 1 of the Military Criminal Procedure Act sets out a similar provision.

254. In accordance with article 109 of the Criminal Procedure Act, the prosecutor, as the person responsible for ensuring compliance with the law, guarantees that the citizen’s dignity is respected and that under no circumstances will he or she be subjected to unlawful restrictions of his or her rights. The same provision is contained in article 179, paragraph 1 of the Military Criminal Procedure Act.

255. Article 312 of the Criminal Procedure Act states that in the public oral hearing before the court, a person’s right not to be required to testify on his or her own behalf must be reasserted and that, logically, persons exempted from testifying as witnesses will not appear before the court in that capacity. Article 165 of the Military Criminal Procedure Act contains a similar provision.

**P. Article 16**

256. With regard to the requirement of prohibiting acts that constitute cruel, inhuman or degrading treatment or punishment, Cuban criminal law makes provision for offences or unlawful forms of behaviour related to compliance with the first paragraph of article 16, such as:

- (a) Wrongful execution of penalties or security measures (Criminal Code, article 141);
- (b) Offences against the rights of assembly, demonstration, association, complaint or petition (article 292);
- (c) Offences against property rights (article 293);
- (d) Offences against the right of equality (article 295);
- (e) Wrongful imposition of disciplinary measures (article 297).

257. These and other offences already considered in this report make it possible to punish acts or forms of behaviour relating to actions which, without actually constituting torture, may represent ill-treatment by public officials or other persons acting in an official capacity.

258. In accordance with the provisions of Chapter I of the Criminal Code, "Violation of the duties inherent in public office", Title II, "Offences against the administration and the courts", Book II, "Special section", penalties are imposed on a public official who, in attempting to cause prejudice to a person or obtain unlawful benefit, uses his position in a manner manifestly contrary to the law or arbitrarily exceeds his lawful powers (offence of abuse of authority).

259. Article 30 of the Criminal Code provides that the time spent by the prisoner in custody and pretrial detention is automatically deducted from the duration of the prison sentence. In addition, the prisoner may not be subjected to corporal punishment nor may any measure be used against him or her which involves or results in loss of his dignity.

260. The so-called summary procedure (Criminal Procedure Act, articles 479 and 480) applies only in cases where exceptional circumstances so require. The Attorney-General may inform the President of the People's Supreme Court, who may decide that offences coming within the competence of any court of justice will be tried in accordance with the summary procedure, with the exception of those which come within the competence of the people's municipal courts. None of the procedural guarantees already discussed may be restricted, but the time limits may be shortened to the extent that the competent court deems necessary.

261. Furthermore, in relation to the Cuban prison system, it is important to mention that a "Code of Ethics for Officials in the Prison System" has been issued.

262. This Code of Ethics establishes a set of principles, values and requirements regarding the standards of conduct and actions of prison officials, with the aim of providing for the appropriate and respectful treatment of prisoners and their relatives, ensuring that order and discipline are maintained among prisoners and preventing events that violate the established prison regime. The code is also strict in tackling acts of abuse of power, physical or verbal ill-treatment, the use of

despotic methods and humiliation, and other degrading actions detrimental to a strict respect for human dignity or the physical and moral integrity of prisoners.

263. As previously mentioned in this report, acts of torture or other cruel, inhuman or degrading treatment or punishment are contrary to the foundations, principles and values of the political, social and economic system of Cuba, its legal system and the fundamental rights, duties and guarantees of the Cuban people.

### **III. Responses to the Committee's recommendations contained in document A/53/44**

264. This chapter covers the recommendations of the Committee against Torture (A/53/44, paragraph 118), following the consideration of the initial report of the Republic of Cuba (CAT/C/32/Add.2) on 17, 18 and 19 November 1997.

#### **A. Recommendation contained in subparagraph (a)**

265. The paragraph relating to article 1 of the Convention (Chapter II, section A above) contains ample information on that recommendation.

#### **B. Recommendation contained in subparagraph (b)**

266. As previously stated in this report, Cuba has established a broad and effective inter-institutional system, which includes participation by non-governmental organizations, for receiving, processing and responding to any complaint or petition lodged by an individual or group concerning the exercise of any human right. The system is also designed to evaluate the effectiveness of the mechanisms, policies and programmes in place for the promotion and protection of human rights, and to make recommendations and take follow-up action in response to them as it deems appropriate in order to continue improving the enjoyment of human rights in Cuba.

267. The Attorney-General's Office, the State body responsible for monitoring and upholding legality, plays a fundamental role in addressing complaints submitted by citizens about alleged violations of their rights.

268. In order to strengthen this role, the Office created the Department for the Protection of Citizens' Rights and similar departments in each provincial prosecutor's office. In each of the municipalities, one of the prosecutors is assigned to this area of work.

269. The Attorney-General's Office considers, investigates and answers the reports, complaints and claims legally addressed to it by citizens, and in cases that report violations of the law, the Office issues a binding resolution in order to restore the rule of law. The most common complaints are systematically monitored by a team of specialists from the Attorney-General's Office, who look into the grounds for the complaints and take appropriate action to prevent further violations.

270. Cuba has other bodies and mechanisms to deal with citizens' complaints and petitions regarding human rights, including social organizations; the National Revolutionary Police and, in particular, its mechanism for dealing with the public;

departments which deal with the public in each of the bodies of the central State administration; the Office of the Secretary of the Executive Committee of the Council of Ministers, delegates to the people's municipal assemblies and municipal and provincial administrative councils as well as the standing committees of the National Assembly, and the Council of State's mechanisms for dealing with the public.

271. The Ministry of the Interior, the People's and Military Courts, the Office of the Attorney-General of the Republic and the Social Services and Prevention Committees are actively involved in upholding and ensuring legality in the prison system. The role of the Attorney-General is essential in this regard.

272. Article 28 of Act No. 83 of the Office of the Attorney-General provides that the organs of the Office of the Attorney-General of the Republic are authorized to carry out investigations in order to verify that the law is being upheld in all prison and detention facilities. Departments for the Supervision of Legality in Prison Facilities have been established within the structure of the Office of the Attorney-General for this purpose and are also responsible for receiving, processing and responding to any complaint lodged by prisoners and their relatives.

### **C. Recommendation contained in subparagraph (c)**

273. The paragraph relating to article 2 of the Convention (Chapter II, section B above) contains a great deal of information on that recommendation. However, we point out that:

274. Among the provisions applicable to the Cuban criminal process, article 1 of the Criminal Procedure Act states that "All offences must be proved independently of the testimony of the accused or his or her spouse and family members, up to the fourth degree of consanguinity or second degree of affinity. Therefore, on its own, a statement by the person does not remove the obligation to furnish the evidence required to prove the facts."

275. Article 161 of the Criminal Procedure Act provides that "no defendant is required to make a statement against himself or herself. The examining judge, having complied with the formal requirement referred to in the previous article, has the duty to inform the defendant of what they are accused, by whom, and the charges against him or her, as well as his or her right to testify at any time and as often as he or she may wish to do so."

276. Likewise, article 163 of the Criminal Procedure Act provides that "the defendant shall be allowed to state all that he or she deems appropriate for his or her defence and in order to explain the facts. In the light of the defendant's statement(s), the actions necessary in order to verify such statements shall be ordered."

277. Article 166 of the Criminal Procedure Act provides that "No one may be subjected to any form of violence or coercion in order to obtain a statement. Any statement obtained in breach of this principle shall be null and void, without prejudice to any criminal liability that may be incurred."

278. The right to make a voluntary statement or the right to remain silent is observed in public oral hearings, and, in that regard, article 312 of the Criminal



Procedure Act states that “no defendant is required to make a statement against himself or herself. The President of the Court shall ask the defendant whether or not he or she wishes to make a statement, advising him or her beforehand of his or her right to do so or to refrain from doing so. If the defendant so wishes, he or she shall state all that he or she deems appropriate regarding the facts, after which the parties to the proceedings may question the defendant, starting with the prosecutor or prosecuting attorney. The defendant is then required either to answer or to state that he or she refrains from answering the question.”

#### **D. Recommendation contained in subparagraph (d)**

279. The paragraph relating to article 11 of the Convention (Chapter II, section K above) contains ample information on that recommendation. However, we would add the information below.

280. In accordance with international agreements and instruments all prisons and detention facilities in Cuba are subject to a system of inspection that is independent of the authority responsible for running them.

281. The Ministry of the Interior, the People’s and Military Courts, the Office of the Attorney-General and the Social Services and Prevention Committees are actively involved in upholding and ensuring legality in the prison system. The role of the Attorney-General is essential in this regard.

282. Cuba can confirm that it has a permanent system of national scope and with territorial structures, for the systematic and ongoing review, monitoring and supervision of prison and detention facilities. That system has proved to be very effective in supporting the objective of continually improving the country’s prison system.

#### **E. Recommendation contained in subparagraph (e)**

283. The judicial system, which is regulated in chapter XIII of the Constitution, on “Courts and the Prosecution Service”, plays an essential role in protecting human rights. The system meets international standards in this regard, notably the decisions of the United Nations Congresses on the Prevention of Crime and the Treatment of Offenders and the Basic Principles on the Independence of the Judiciary, which establish, among other things, the principle of the collective and individual independence of judges, who, in their role as dispensers of justice, owe allegiance only to the law.

284. The Cuban State has institutionalized a system of independent bodies, headed by the Supreme Court, which are collegial bodies with a membership appropriate to their competence and which ensures broad popular participation in the administration of justice. The Cuban judicial system is based on the following principles:

(a) The absolute independence of judges individually and of the entire court system in the administration of justice;

(b) The popular dimension of justice, achieved mainly by opening up judicial functions to non-professional judges (lay judges), who sit alongside the professional judges;

(c) All judges, professional and non-professional, are elected;

(d) The absolute equality of all persons before the law;

(e) Collegial courts for all acts of justice regardless of judicial instance or the nature of the case;

(f) The presumption of innocence. Every accused person is innocent until proved otherwise. The burden of proof lies with the prosecution;

(g) All trials are public, except where provided by law;

(h) All court decisions are appealable in accordance with the law applicable in each case;

(i) Every accused person has the right to a defence.

#### **F. Recommendation contained in subparagraph (f)**

285. The paragraph relating to article 10 of the Convention (Chapter II, section J above) contains ample information on that recommendation.

#### **G. Recommendation contained in subparagraph (h)**

286. As already stated, the Constitution guarantees that every State body and entity in Cuba has a system for dealing with the public with the necessary offices, where any complaints and/or claims that may arise regarding ill-treatment of citizens can be lodged.

287. This system had proven to be an effective means of responding to interests, complaints and claims relating to alleged human rights violations.

288. With regard to the question of compensation, the Cuban Ministry of Justice has set up the Compensation Fund as a body responsible for enforcing civil liability through the provision of redress for material damage and compensation for injury. To this end, it exacts payment from those held liable and transfers the amounts due to the victims.

#### **H. Recommendation contained in subparagraph (i)**

289. Compliance with the provisions of Cuban law has enabled the country to prevent any violation of the provisions established in the Convention against Torture and other international human rights instruments.

290. Cuba has cooperated and continues to cooperate with a range of humanitarian and human rights organizations all over the world, both within Cuba and through international cooperation missions, including emergency aid missions following natural disasters.

291. Such cooperation has been carried out with government, intergovernmental and non-governmental organizations.

292. Each year Cuba receives visits from hundreds of representatives of non-governmental organizations, many of which are intensively involved in the promotion and protection of human rights.

293. With regard to visits to Cuban prisons, such facilities are subject to ongoing strict monitoring by the Office of the Attorney-General of the Republic, in its role as a general oversight body, and the Ministry of the Interior, among other institutions. There is a system for prison visiting by relatives of prisoners and representatives of Cuban political and social organizations, law students, artists who have taken their work to the prisoners and religious organizations which provide their services to prisoners requesting them.

294. Cuba actively participates in cooperation aimed at improving the prison system, within the mandate of the Commission on Crime Prevention and Criminal Justice of the Economic and Social Council.

#### **I. Recommendation contained in subparagraph (j)**

295. With regard to the references to complaints about torture and other cruel, inhuman or degrading treatment or punishment made by non-governmental organizations and in the reports of the Special Rapporteurs, as well as urgent appeals, Cuba provided information on those cases at the time.

296. Such cases essentially related to alleged ill-treatment in prison facilities and/or detention centres, denial of medical assistance and/or access to medication, inadequate food, prohibition of contact with the family and poor conditions in prison locations. In that regard, we would highlight that none of the claims, which were duly investigated, was brought before a national court, because they alleged facts that were proved to be absolutely false.