

Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Cuba

By Centrist Democrat International

Introduction

The government of Cuba faces many challenges towards improving its human rights record. One area of promise is the signing of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in February of 2008 but both still need to be ratified. Furthermore the observance of Conventions the government has signed and ratified falls far short. The Cuban government signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on January 27, 1986 and ratified it on the May 17, 1995. The initial report of Cuba was submitted on November 15, 1996 as per the protocols upon accession to the Convention.

Pattern of Torture

Article I of the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or *for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”¹

Acts of Repudiation

For the past few decades with an extreme example being the Mariel crisis of 1979-80 the Cuban government used acts of repudiation to both psychologically and in many cases physically intimidate Cuban nationals.² Amnesty International in their March 2007 report indicated “that acts of repudiation could amount to psychological torture given the strain they can cause on the victims and their relatives. Physical aggression has also been reported during some acts of repudiation.”³

Prison and detention conditions 2008

The normative rules for the police are not in force and the minimum standards for care of prisoners and detainees are omitted and ignored. Political prisoners are forced to live

¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987. <http://www1.umn.edu/humanrts/instree/h2catoc.htm>

² Utset, Xavier “Creating Citizens : The Birth and Growth of the Cuban Internal Pro-Democracy Movement” <http://www.maclas.vcu.edu/journal/Vol%20XV/Utset.html>

³ Amnesty International “Cuba: Amnesty International’s human rights concerns” 29 January 2007 <http://asiapacific.amnesty.org/library/Index/ENGAMR250032007?open&of=ENG-2M5>

with common criminals and in many cases become victims of the same with the consent and even on orders from the guards.⁴

The Technical Department of Investigations (DTI) located at the 3rd. Unit of the Cuban police in the Julio A. Mella Division in the city of Camagüey is described by the Cuba based "Citizens Committee against ill treatment" as a "psychological torture centre" where detainees can spend up to months under constant duress so severe that some of them get sick from nerves and end up at a psychiatric unit. According to a vast number of complaints received by the Committee daily beatings are common practice.⁵

Reports received from Cuba in July of 2008 report that government soldiers practiced methods of physical torture such as "the little seat", shackles and crucifixion consisting of hanging prisoners from the bars or chain them with their hands and feet twisted behind their back and keep them like that for up to three days.⁶

Denial of Medical Assistance: A systematic pattern

In the 2006 Inter-American Commission on Human Rights (IACHR) report on the Merits of Case 12.476 relating to the March 2003 crackdown it documented a pattern of denial of medical assistance with ten Cuban prisoners.⁷ In the Commission's 2007 annual report it documented the consequences of the systematic denial of medical assistance: "(Several) of the victims of Case 12.476 have health problems that have emerged or been aggravated during their detention, without the provision of adequate medical care. With regard to health conditions, the Commission has previously expressed its concern regarding the large number of convicts who suffer from chronic visual, renal, cardiac, and pulmonary ailments and are not given appropriate medical attention; this group includes several prisoners of advanced years."⁸

Representatives of the government of Cuba have argued that shortcomings in the Cuban prison system are due to the "unlawful and inhuman blockade imposed by the United States."⁹ Nevertheless denying relatives of prisoners from providing needed medications has nothing to do with economic sanctions. Since 2001 under what the Cuban government describes as a blockade the government of Cuba has legally purchased US\$2,053,447,921.00 worth of pharmaceutical and agricultural products from US based companies.¹⁰ The IACHR in their 2007 report documents "that prison authorities prevent

⁴ Free Expression Solidarity Movement (MOSEL) Report "Citizens Committee against abuse" (2008)

⁵ Ibid

⁶ Consejo de Relatores de Derechos Humanos de Cuba Reporte sobre la situación de Derechos Humanos en Cuba. 22 de Julio de 2008.

⁷ Inter-American Commission on Human Rights Report N° 67/06Case 12.476 Oscar Elías Biscet et al .Cuba October 21, 2006 <http://www.cidh.org/annualrep/2006eng/CUBA.12476eng.htm>

⁸ <http://www.cidh.org/annualrep/2007eng/Chap.4b.htm>

⁹ Mesa Santana (Cuba) speaking before the COMMITTEE AGAINST TORTURE Nineteenth session SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 310th MEETING Palais des Nations, Geneva, 17 November 1997Pg5-6

¹⁰ U.S.-Cuba Trade and Economic Council, Inc. 2008 & 2007 U.S. EXPORT STATISTICS FOR CUBA Economic Eye on Cuba March 2008 <http://www.cubatrade.org/>

the relatives of imprisoned political dissidents from supplying them with drugs needed to treat their illnesses that are not provided by the State.”¹¹

The IACHR in 2006 reported that they “had continued receiving information about mistreatment of political dissidents in Cuban jails by guards and other persons, with the authorities acquiescing to or condoning such mistreatment.”¹² Furthermore Cuba is one of the few countries that does not grant the International Committee of the Red Cross (ICRC) access to its political detainees. Between 1959 and the present day there was a short window of time in 1988 when the ICRC was given access. The ICRC announced that they would make another formal request on December 7, 2006.¹³ A visit has still not taken place as of September 2008. Nevertheless reports of deaths while in Custody and deaths due to harassment by the authorities of prisoners and former prisoners with serious health problems have been documented in 2007.

Background

The Committee against Torture in their concluding observations made a number of observations and recommendations for the Cuban government during its 19th session (November 10-21, 1997). For example the Committee noted the following positive aspects of the Cuban government’s report:

104. The Cuban Constitution commits the State to upholding the dignity of the individual and safeguards the inviolability of the person and his/her home.

Nevertheless the Cuban government has a track record of organizing acts of repudiation outside the homes of individuals who do not subscribe to the official ideology of the government, and on many occasions invading the home and verbally and physically assaulting those inside documented earlier in this report.

108. The Committee welcomes the criminalization of every form of complicity in crimes against humanity, human dignity and offences laid down in international treaties.

The Cuban Constitution’s Article 121 states: “The courts constitute a system of state bodies which are set up with functional independence from all other systems and they are only subordinated to the National Assembly of People’s Power and the Council of State.”¹⁴

The Inter-American Commission on Human Rights cited the above article in its 2007 annual report observing “that the subordination of the courts to the Council of State, chaired by the head of state, means that the judiciary is directly dependent on instructions

¹¹ Inter-American Commission on Human Rights Annual Report of the IACHR 2007
<http://www.cidh.org/annualrep/2007eng/Chap.4b.htm>

¹² Inter-American Commission on Human Rights Annual Report of the IACHR 2006 Cuba
<http://www.cidh.org/annualrep/2006eng/Chap.4b.htm>

¹³ Agence France Press Red Cross to seek access to Cuban prisons <http://www.caribbeanetnews.com/cgi-script/csArticles/articles/000046/004654.htm>

¹⁴ Constitution of the Republic of Cuba, 1992 <http://www.embacubalebannon.com/constite.html#Cap13>

handed down by the executive branch of government. Cuba's courts of law do not have the independence required for the performance of their duties and, consequently, individuals are guaranteed neither due legal process nor the right of recourse to the courts for obtaining a fair trial, particularly in cases of a political nature."¹⁵ A request to make to the representatives of the government of Cuba is to present copies of the sentencing documents with regards to agents of the government convicted for abusing prisoners or detainees. The report Torture in Cuba published in January of 2008 cites case after case of torture beginning with the founding of the current government 49 years ago to the present and there are recurring patterns of behavior.¹⁶ Perhaps a closer look at Cuban laws will offer an explanation.

Cuban law

The Cuban Foreign Ministry in their 2007 white book on human rights claims that:

“[D]emocracy in Cuba is based on the deepest and most genuine political participation, on the plurality of opinion –which carry weight in the conformation of the consensuses that determine the political, economic, social and cultural course of the nation –and in the condition of each Cuban as participant and beneficiary in the government. Each citizen is not only the subject of government he or she is also the beneficiary and co-proprietor of the heritage, the wealth and the basic means of production of the nation. All have access, with no discrimination, to basic services such as education, health, social assistance and security.”¹⁷

Both the government's constitution and penal code contradict the above statement. The Constitution in Article 62 specifically prohibits plurality of opinion when it does not support the “the decision of the Cuban people to build socialism and communism” and it is reflected in the penal code with laws of oral and enemy propaganda and concepts such as a predilection to social dangerousness. Christine Chanet, the Personal Representative of the High Commissioner for Human Rights in her final report made ten recommendations to improve the Government of Cuba's human rights practices.¹⁸

Many of the recommendations called for in Ms. Chanet's report were also found in the text of the Varela Project, a citizen initiative presented to Cuba's National Assembly in May of 2002 calling for the reform of the Cuban legal system within international human rights norms. The argument in support of the petition stated that this proposal did not seek to make changes in the Cuban constitution but to the laws so that they guarantee the rights and protections that the constitution proclaims.¹⁹ This modest attempt at reform

¹⁵ Inter-American Commission on Human Rights ANNUAL REPORT OF THE IACHR 2007 CHAPTER IV CUBA http://www.cidh.org/annualrep/2007eng/Chap.4b.htm#_ftnref43

¹⁶ Directorio Democrático Cubano La Tortura en Cuba Enero 2008

¹⁷ Foreign Ministry of Cuba WHITE BOOK 2007 CHAPTER 9: THE LEGAL GUARANTEES FOR CIVIL AND POLITICAL RIGHTS UNDER CUBAN NATIONAL LEGISLATION
http://www.cubaminrex.cu/CDH/62cdh/Ingles/White_Book_2007/Chapter_IX.htm

¹⁸ Chanet, Christine IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL” SITUATION OF HUMAN RIGHTS IN CUBA* A/HRC/4/12 26 January 2007

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/105/23/PDF/G0710523.pdf?OpenElement>

¹⁹ Proyecto Varela <http://www.oswaldopaya.org/es/proyecto-varela/>

was met with a counter initiative by the government of Cuba declaring the Cuban constitution untouchable and the March 2003 crackdown in which a large number of Project Varela activists were sentenced anywhere between six and 28 years in prison.²⁰

Cuba is a party to the Convention against Torture. It has not signed the Rome Statute and had not yet ratified it as of 1 September 2001.²¹ Cuba had not defined torture as a crime under national law as of November 1997, so prosecutions for torture would have to be brought for ordinary crimes, such as assault or rape.²²

Recommendations

Christine Chanet, the Personal Representative of the High Commissioner for Human Rights in her final report made a number of recommendations to the Government of Cuba of which four would assist in reducing torture and ill treatment which are:

- Reform the rules of criminal procedure to bring them into line with the requirements of articles 10 and 11 of the Universal Declaration of Human Rights;
- Establish a standing independent body with the function of receiving complaints from persons claiming that their fundamental rights have been violated;
- Authorize non-governmental organizations to enter Cuba;
- Accede to the International Covenant on Civil and Political Rights and its optional protocols and the International Covenant on Economic, Social and Cultural Rights.²³

The Centrist Democrat International would like to see all of these recommendations put into effect by the Cuban government and would ask the government to end the denial of medical attention to Cuban prisoners, and open all prisons to inspections from the International Committee of the Red Cross.



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²⁰ Ibid.

²¹ Amnesty International UNIVERSAL JURISDICTION: The duty of states to enact and implement legislation - Chapter Ten (Torture: State practice at the national level) 1 September 2001
<http://asiapacific.amnesty.org/library/Index/ENGIOR530132001?open&of=ENG-332>

²² Concluding observations of the Committee against Torture concerning the initial report of Cuba, U.N. Doc. A/53/44, 21 November 1997, para. 110 (expressing concern that “[t]he failure to establish a specific crime of torture as required by the Convention leaves a gap in the application of its provisions that is not filled by any of the existing offences directed against violations of the bodily integrity or the dignity of the individual. Moreover, the absence of the specific offence of torture renders difficult the monitoring of the application of the Convention.”) and para. 118 (a) (recommending “[t]he criminalization of torture, as defined in the Convention, by the creation of a specific crime or crimes giving effect to every aspect of it”).

²³ Chanet, Christine IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251