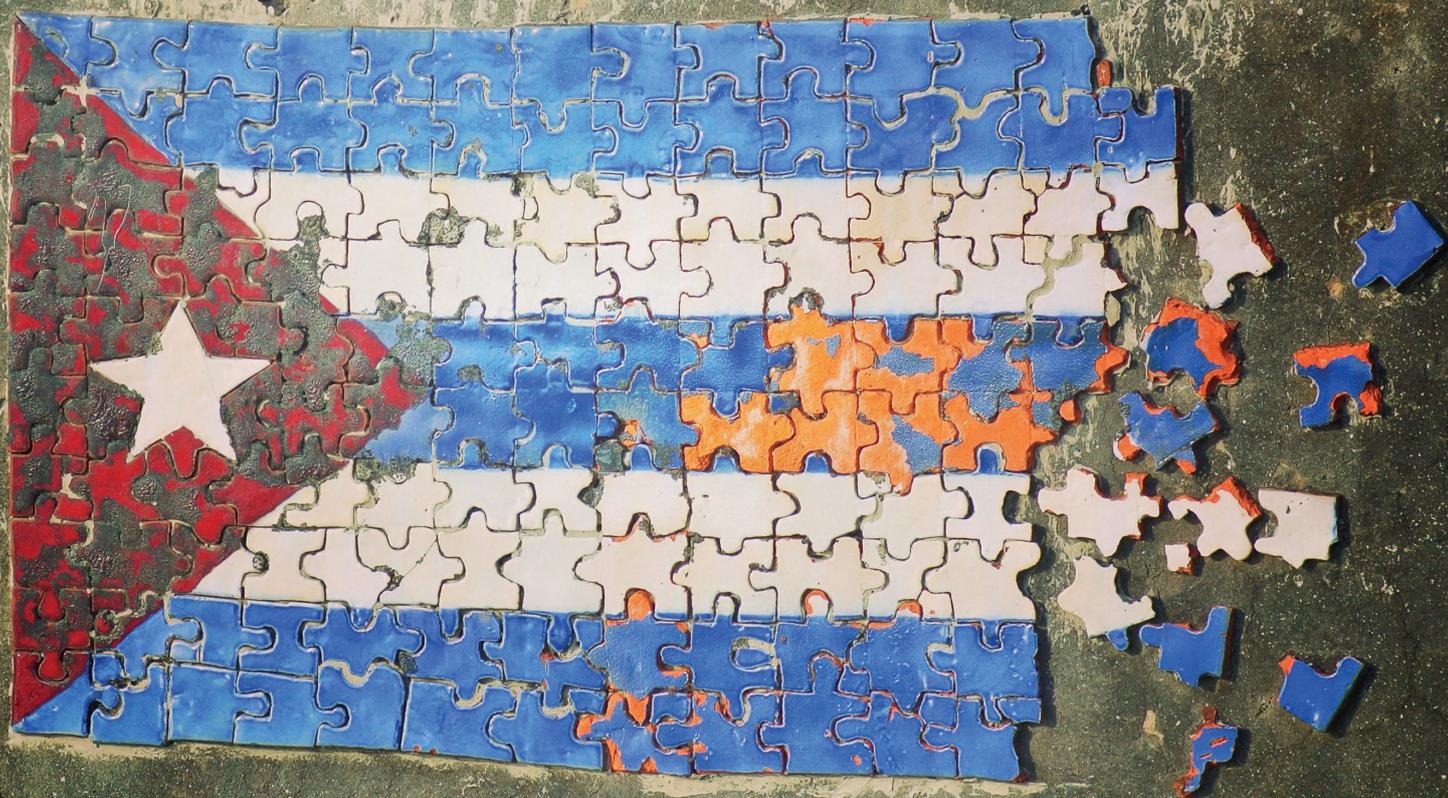


Torture in Cuba: Report of Civil Society Organizations to the United Nations Committee Against Torture



EXECUTIVE SUMMARY - CUBA 2022

TORTURE IN CUBA: REPORT OF CIVIL SOCIETY
ORGANIZATIONS TO THE UNITED NATIONS COMMITTEE
AGAINST TORTURE

EXECUTIVE SUMMARY
CUBA 2022



Presented by:

- Article 19 Office for Mexico and Central America
- Centre for Civil and Political Rights (CCPR-Centre)
 - Civil Rights Defenders
 - CUBALEX
- International Institute on Race, Equality and Human Rights
 - World Organization Against Torture (OMCT)
 - San Isidro Movement
 - Network of Human Rights Defenders in Cuba
- Working Group on Politically Motivated Detentions Justice 11J
 - Cuban Youth Dialogue Table
 - Free Society Project/Cuba Archive
- Center for the Study of Leadership and Development (CELIDE)
 - Women's Platform

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DEFINITION OF THE CRIME AND LEGISLATIVE, ADMINISTRATIVE AND JUDICIAL MEASURES TO PREVENT ACTS OF TORTURE

1.1. Definition and criminalization of the crime of torture

In its final observations of 1997 and 2012, the Committee against Torture recommended to Cuba to define the crime of torture and to ensure that this crime is punishable by appropriate penalties¹.

On January 20 2022, the Supreme People's Court made available the preliminary draft of the Criminal Code (CP)², which should enter into force in April 2022. Among the proposed amendments to the current Criminal Code - in force since 1987, with several modifications until today - is the explicit definition of the crime of torture. This inclusion also reaches the Cuban legal body in a panorama marked by strong accusations from civil society and several international human rights organizations, in relation to various allegations of torture and ill-treatment, in the context of the protests that took place in all the provinces of the country, during July 11 and 12, 2021.

In the first instance, it is noted that the draft considers torture the ill-treatment committed by public officials, their agents, or auxiliaries or if the act occurs at their instigation or with their consent. However, the draft does not include cases in which the abuse is committed by another person in the exercise of public functions but limits it to only public officials. In this sense, the cases related to the abuse being committed by another person in the exercise of public functions, at their instigation, or with their consent should be included. It also does not include the case that the abuse is committed with the acquiescence of a public official or a person exercising public functions.

As it is the definition of a crime, the principle of legality requires that it only is applied to the cases expressly included in the law. Therefore, if the proposed preliminary draft of the Criminal Code were approved, there would be acts of torture that could not be criminally persecuted, so the State would continue to violate article 4 of the Convention against Torture.

Additionally, in general terms, it is too early to know whether, in fact, this modification will transcend the final penal code that is approved.

On the other hand, it is a matter of concern that cases involving crimes of torture committed by a state law enforcement agent are known by the military criminal jurisdiction. The Ministry of the Interior is one of the two-armed institutions of the Cuban State. Its personnel, among which are police and State security agents, are military, therefore, when they engage in conducts classified as

¹ - Committee against Torture, Concluding Observations of the Committee against Torture on Cuba, CAT/C/CUB/CO/2, para. 7.

² - 2022-01-20, Supreme People's Court, [Draft Criminal Code](#)



crimes, they are investigated and judged in the military jurisdiction³.

According to Article 92 of the Law on Military Criminal Procedure⁴, the Military Courts are competent to deal with criminal proceedings for the commission of any punishable act in which a military officer is accused, even if the victim or any of the participants are civilians or are human rights violations⁵.

Additionally, the Ministry of the Interior has issued a series of legal norms that theoretically are for its internal functioning, so it is not generally known to the public⁶. Among these, we can mention the “Rules for regulating the operation of Police Stations and for the organization of persons of police interest”⁷, which establish that members of the police, regardless of the position they occupy, exercise functions throughout the territory, and in any circumstance are considered in service⁸.

In practice, the Military Prosecutor’s Office has used this rule to guarantee impunity of State agents who violate the fundamental rights of civilians. It orders the archiving of the investigation, using the

3 - Law No. 147 of December 20, 2021, Law on Criminal Procedure Military, published in the Official Gazette No. 12 of the first of February 2022. Article 95. The jurisdiction of military courts may extend, for the sole purpose of punishment, to civil, family, administrative, commercial matters, of work and social security, which appear directly related to the justiciable act, the resolution of which is essential to declare the responsibility or innocence of the accused and the civilly responsible third party, to assess an excuse or the concurrence of circumstances exempting or modifying criminal responsibility.

4 - Law No. 147 of December 20, 2021, Law on Criminal Procedure Military, published in the Official Gazette No. 12 of the first of February 2022. Article 92: (1) Military courts are responsible for judging and determining the responsibility of accused persons and third parties civilly responsible in human proceedings a person who originates by virtue of the commission of punishable acts, in which a soldier of the Revolutionary Armed Forces or of the Ministry of the Interior or a combatant of the latter institution is accused, even if one of the interveners is accuses a civilian, and the imposition of therapeutic safety measures. (2.) Military courts may also hear criminal proceedings for acts committed in military zones previously established by the authorities empowered to do so independence of the civil status of the interveners. (3.) They may also be aware of acts committed by a military officer who has caused him to be discharged from active military service, if at the time of their completion he held such status.

5 - For its part, the Law of Criminal Procedure exempts from civil jurisdiction and competence defendants whose trial corresponds to military courts, in accordance with the provisions of military criminal legislation. Both regulations order the authorities responsible for the criminal investigation to report the actions to the military prosecutor Law No. 143 of October 28, 2021, Law of Criminal Procedure, published in the Official Gazette No. 140 Ordinary of December 7, 2021 and that entered into force on January 1, 2022. Articles 97 and 99..

6 - The Ministry of the Interior issues rules for the internal functioning of the institution that are not known to the public. That standards are not published in the [Official Gazette](#), site where the legal provisions of the country must be published to acquire validity, general knowledge of the citizens and mandatory compliance for all institutions and citizens. The State has made reference in its reports for the examen periodic before the treaty bodies of the international human rights conventions to which it is a party, to internal regulations of the Ministry of the Interior as the body responsible for criminal investigations. See Committee against Torture: [Third periodic report submitted by Cuba under article 19 of the Convention, due in 2016](#) for. 22 and 24

7 - Order number 13 of April 13 of 2004 of the First Deputy Minister of the Interior.

8 - On April 30, 2019, the First Military Prosecutor Guantánamo Region, First Lieutenant José Ángel Bertrán Núñez, issued the resolution Reg. Ent. No. 289 of 2019, in which he referred to Order No. 13 dated April 13, 2004 by the First Deputy Minister of the Interior as legal protection to exculpate two State Security agents who assaulted and injured journalist Roberto de Jesús Quiñones. [See Section 5.6-c\) 2019-04-29 Military Prosecutor’s Decision On physical aggression against Quiñones, Reg. Ent. No 289](#). “The officers during that action caused injuries to the CIVIL QUIÑONES HACES consisting of contusion of the left thumb, ecchymosis in the subgenian and right lateral region of the neck and hematoma in the inner labial mucosa, which were ruled by the Department of Legal Medicine of Guantánamo as non-serious injuries that required medical treatment”

legal figure of the definitive dismissal⁹, when the military arbitrarily use violence or abuse force or firearms exempts them from responsibility, under the argument that they acted in legitimate defense¹⁰ or fulfilling a duty or in the legitimate exercise of their right, profession, position, or occupation¹¹. This extensive interpretation of the military order by the prosecution is illegal because it does not respect the normative hierarchy¹². This extensive interpretation of the military order by the prosecution is illegal because it does not respect the normative hierarchy¹³, assumes a function that corresponds exclusively to the courts to guarantee impunity for the military. It interprets and directly applies the Criminal Code, specifically the exemptions from responsibility, to justify the total closure of the investigations, on the

9 - Law No. 147 of December 20, 2021, Law on Military Criminal Procedure, published in the Official Gazette No. 12 of The First of February 2022. Article 405. The dismissal of the proceedings may be conditional, provisional, or definitive and are disposed of in whole or in part". Section 406.1. The total dismissal includes all the accused, civilly responsible third parties and facts investigated [...]" Article 414.1. The final dismissal has the effects of a judgment of acquittal. 2. A final dismissal is appropriate when: a) The act does not constitute an offence..."

10 - Article 21 of the Criminal Code (1.) Anyone who acts in self-defense of their person or rights is exempt from criminal liability. **(2.)** A person who prevents or repels an illegitimate, imminent, or current aggression and not provoked, if the following requirements are also met a) objective necessity of the defense; (b) proportionality between the aggression and the defense, determined in each case by reasonable criteria, according to the circumstances of persons, means, time and place. **(3.)** A person who defends a third party under the conditions and with the conditions laid down in paragraph 2 is also exempt from criminal liability, even if the aggression was provoked, if the defender did not participate in the provocation. **(4.)** Likewise, the one who prevents or repels in an adequate way a danger or an imminent or current damage to the public peace or to the goods or interests of society or the State works in a legitimate defense. **(5.)** If the one who repels the aggression exceeds the limits of self-defense, and especially if he uses a means of defense disproportionate to the danger aroused by the attack, the court may reduce the penalty by up to two-thirds of its minimum limit, and if this excess has been committed because of the excitement or violent emotion provoked by the aggression, it may even dispense with imposing any sanctions.

11 - Article 25 of the Criminal Code (1.) Anyone who causes harm by acting in the performance of a duty or in the legitimate exercise of his right, profession, position, or office or by virtue of due obedience is exempt from criminal liability. **(2.)** Due obedience is understood to be that which is imposed by law on the agent, provided that the act performed is between the powers of the one who orders it and its execution within the obligations of the one who has done it. **(3.)** In case of excess in the limits of obedience when facing any of the above situations, the court may apply the extraordinary mitigation of the penalty.

12 - The Penal Code is a law issued by the National Assembly (Constitution of the Republic of Cuba, Article 102: "The National Assembly of People's Power is the supreme organ of State power"), therefore, it is a superior norm in hierarchy within the national legal system. Constitution of the Republic of Cuba, Article 108: "It is the responsibility of the National Assembly of People's Power: (c) to approve, modify or repeal the laws (...) (g) revoke in whole or in part decree-laws, presidential decrees, decrees, agreements, or general provisions that contradict the Constitution or laws. Order No. 13 of 13 April 2004 by the First Deputy Minister of the Ministry of the Interior cannot contradict a law issued by the legislative body. The judicial function lies exclusively with the courts. Constitution of the Republic of Cuba, Article 147. The function of dispensing justice derives from the people and is exercised in their name by the Supreme People's Court and the other courts established by law and Article 148. The courts constitute a system of State bodies, structured with functional independence from any other. The Supreme People's Court exercises the highest judicial authority, and its decisions are final. [...]

13 - Law No. 147 of December 20, 2021, Law on Military Criminal Procedure, published in the Official Gazette No. 12 of The First of February 2022. **Article 112.** The military prosecutor directs the criminal investigation, conducts the investigation of alleged crimes committed by known and established perpetrators and, where appropriate, appoints criminal investigators for execution; in addition, it prosecutes public criminal proceedings on behalf of the State before military courts. **Article 113.** The military prosecutor has the task of ensuring: a) Strict compliance with what is endorsed in the Constitution of the Republic, [Law No. 147 of December 20, 2021](#), Law on Military Criminal Procedure, published in the Official Gazette No. 12 of The First of February 2022. Article 153.1. The military prosecutor issues a well-founded decision that there is no place to proceed and orders the closure of the complaint if: a) The act does not constitute a crime. Article 162.1. If the preparatory proceedings have been initiated, the presence of some of the cases provided for in Article 153 of this Law is noted, the military prosecutor may request the corresponding military court: a) The definitive dismissal of the proceedings, in the cases provided for in subparagraphs a), b), h) and j). laws, and other legal provisions.



grounds that no crime was committed¹⁴. Although with the new Law on Military Criminal Proceedings, they must request authorization from the military court¹⁵, these judicial bodies do not offer the guarantees of independence and impartiality required by international standards.

1.2. Legal safeguards for detainees

On January 1, 2022, Law No. 143 on Criminal Procedure (LPP/2022) entered into force, which regulates the procedure for detaining a person. The new regulations recognize that “No one may be arrested except in the cases and with the formalities established in this Law”; but authorizes any person to make an arrest¹⁶, which constitutes a violation of the guarantees of due process, which provide that the arrest must be carried out by competent officials or persons authorized for that purpose.¹⁷

Under domestic law, police officers are authorized to arrest anyone at their discretion for up to 24 hours without the need to require or file a warrant, therefore, detentions are always legal. This power is reinforced by the new Criminal Procedure Act when it authorizes the police to order the arrest of a person¹⁸ and to detain him or her for 24 hours¹⁹. In practice, this facilitates the indiscriminate detention of independent activists during public demonstrations and judges to deny habeas corpus remedies for arbitrary detention, on the grounds that the authorities are authorized to detain a person for up to 24 hours. This can be seen in the statements made by the same State in response to the preliminary questions where it is admitted having only declared six Habeas Corpus before the 94 proceedings filed between January 2016 and December 2019.

Likewise, judges never rule on the grounds for detention, violence, or use of force in arrests, incommunicado detention, enforced disappearances and the right of access to defense and rarely report on transfers and places of detention where the person is held.

One of the main problems presented by the new regulations is the determination of the moment from which the first 24 hours of detention begin to be counted, which does not specify if it is the moment in which the arrest occurs or when the detention of the arrested person is recorded at the headquarters of

14 - [Law No. 147 of December 20, 2021](#), Law on Military Criminal Procedure, published in the Official Gazette No. 12 of The First of February 2022. Article 153.1. The military prosecutor issues a well-founded decision that there is no place to proceed and orders the closure of the complaint if: a) The act does not constitute a crime. Article 162.1. If the preparatory proceedings have been initiated, the presence of some of the cases provided for in Article 153 of this Law is noted, the military prosecutor may request the corresponding military court: a) The definitive dismissal of the proceedings, in the cases provided for in subparagraphs a), b), h) and j).

15 - [Law No. 147 of December 20, 2021](#), Law on Military Criminal Procedure, published in the Official Gazette No. 12 of The First of February 2022. Article 403. If the military prosecutor considers that the preparatory phase file is complete, within ten days he takes one of the following decisions: 3. Submit the file to the competent military court for the corresponding decisions to be taken, requesting: b) the definitive dismissal. “Article 415.1. When the military prosecutor requests the magistrate or military judge to dismiss the final, total, or partial dismissal, and the latter considers it unjustified, he issues an order stating the evidence and the grounds of law on which he does not accept the request and returns the file to the prosecutor in case he reconsiders his request, in view of those reasons. 2. However, if the magistrate or military judge considers that formalities of the process have been breached that may be grounds for nullity or that the investigations are incomplete, he may return the military prosecutor in accordance with the provisions of Article 445 of this Law. 3. If the military prosecutor insists on the dismissal requested, the magistrate or military judge accepts it or, otherwise, communicates it to the victim or injured party if any, so that within a period not exceeding ten days, he may exercise the criminal action through the private accusation, after the period, without appearing, the dismissal is ordered.

16 - Art. 341 and 343 of the LPP/2022

17 - Principle 2 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

18 - Art. 94. 2 of the LPP/2022

19 - Articles 94.2, 129.3, 157-a and 342. 1 of Law No. 143 on Criminal Procedure (LPP/2022)

the police or investigation station. According to the law “Whoever detains a person (...) it immediately surrenders them to the Police or to any other authority recognized in this Law²⁰. The agents responsible for the arrest are obliged to issue “immediately a record stating the time, date, place and reason for the arrest, circumstances in which it occurs, particular features and signs that allow its identification, and any other particular that is of interest”²¹.

However, the law does not specify whether the time or place is where the arrest occurs or where the record is raised, which is usually the police station. The determination of this time is important for the enjoyment of the due process guarantees provided for in the constitution, especially the right to communicate immediately and the time when the person can request legal assistance. It is also important to prevent State agents from using torture techniques during the transfer of the detained person to the police station.

The organizations presenting this report, have documented the practice of police and State security officers forcibly transferring activists and human rights defenders and leaving them abandoned in lonely places far from urban centers, with little influx of people and little to no traffic of transport vehicles, where it is difficult to ask for help in case of dangers of attacks by individuals that may affect their personal safety. This act poses a greater risk to women because it exposes them to sexual violence and abuse. Another of the acts carried out by state agents during transfers to police stations is to expose them to high temperatures under the sun locked in police vehicles before leaving them abandoned in unpopulated places or in the parking lots of police stations.

On the other hand, the beginning of the criminal process is marked by the instruction of charges. The fact that the police have up to 24 hours to do so means that the accused person cannot have access to legal aid until then²².

Finally, article 130.2 (a) of the law recognizes the exclusive right of persons under 18 years of age to be represented by one or more defenders of their choice or by one ex officio from the moment they are arrested. However, in practice this is not possible for this population group because without the instructional data it is not possible to hire a lawyer before a collective firm. Which means that children and / or adolescents suffer the same fate as any detained adult, having to wait more than 24 hours to hire a lawyer.

1.3. The role of lawyers and the National Organization of Collective Law Firms

The National Organization of Collective Law Firms, by virtue of Decree-Law No. 81 of June 1984, is the organization empowered to practice law in Cuba. As stated by the State, in the practice of law, it is required to have a degree issued by the corresponding higher education center in the country, or abroad prior to its recognition or validation, and to be admitted to the practice of law by the National

²⁰ - Article 345 of the Law No. 143 on Criminal Procedure (LPP/2022)

²¹ - First paragraph of Article 346 of Law No. 143 on Criminal Procedure (LPP/2022)

²² - Article 12 of Law 143: “Every accused person has the right to a defense and to appoint a defense counsel once he has been brought into office, an act that defines the commencement of the proceedings.”



Organization of Collective Law Firms (ONBC).²³

With some exceptions²⁴, only the lawyers of this organization²⁵ are authorized to carry out acts of consultation, defense, direction and representation of the rights and legitimate interests of natural or legal persons²⁶. They also assume the criminal defense ex officio before the people's and military courts²⁷.

According to the law, the practice of law has the character of a social service of guidance and legal assistance, and technical decisions cannot suffer interference, provided that they are within the scope of socialist legality and the methodological norms agreed by the National Board of Directors²⁸. The law recognizes that the practice of law is free, and the lawyer is independent and only owes obedience to the Law²⁹. However, legally the lawyers who make up the ONBC are required to observe and strengthen the socialist legality; have moral conditions in accordance with the principles of "our society" (although the legal norms do not define what is meant by such) and exercise with the greatest diligence the defense of the interest they represent, within the framework of laws and socialist ethics³⁰.

In other words, the lawyers who make up the ONBC are obliged, in the performance of their work, to be loyal to the ideological conditioning of the political group in power, which ultimately determines which of their actions correspond to their ideological values. Such conditions may affect the obligations of lawyers to their clients and their professional responsibilities as key agents in the administration of justice, as provided for in paragraphs 12 to 15 of the Basic Principles on the Role of Lawyers.

In short, the ONBC is not an autonomous organization, it was created by the legislature and cannot exercise its functions without external and direct interference from the executive power that also controls the activity of its lawyers, which constitutes a violation of paragraph 24 of the Basic Principles on the Role of Lawyers.

23 - Article 3 of Decree-Law No. 81 and its regulations, respectively

24 - Article 4 subparagraphs a), c), ch) and d) of Decree Law No. 81: Lawyers linked to civil societies of services recognized by current legislation may practice law without being part of the ONBC; those who represent or direct procedures to which the state, cooperative, social and mass organization where they provide their services is a party; or its leaders in the case of facts relating to the functions of their office, which have been exceptionally authorized by the Minister of Justice to act in a given procedure; those who teach in law schools. This exercise will be carried out with the aim of linking teachers with professional practice and will be regulated by the higher education center where the teacher works.

25 - Article 1 of Decree-Law No. 81 and its regulations, respectively

26 - Article 1 of the Regulations of Decree-Law No. 81

27 - Articles 52 to 58 of the Rules of Procedure

28 - Article 2 of the Regulations of Decree-Law No. 81

29 - Article 2 (a) of Decree-Law No. 81

30 - Article 2 (c), Article 16 (a) of the Decree-Law and Article 34 (b) of the Regulations

1.3.1. Social impact of the lack of dependence on ONBC lawyers

The lack of independence of the ONBC and its lawyers has an impact on the exercise of the human rights of persons subjected to the jurisdiction of the Cuban State. Users of the services of collective law firms have the right to freely choose and appoint the lawyer of their choice, as well as their eventual substitutes, to direct the procedure or advise them on matters of their interest. However, the impossibility for lawyers to associate freely affects the exercise of rights related to due process guarantees, since persons subjected to the jurisdiction of the State, especially those who are discriminated against because of their way of thinking and opinion, are obliged to hire lawyers who are not independent and have the obligation to comply with ideological requirements³¹.

PHuman rights defenders have reported that ONBC lawyers have declined to accept their cases for fear of pressure from intelligence agencies. Other complaints are the lack of due diligence in the defense or the refusal to appoint a counselor in the criminal cases brought against them, due to the close relationship and dependence of this Organization with the State.

The lack of independence of ONBC lawyers also violates the guarantees of due process and guarantees for protection against torture, cruel and degrading treatment, due to the influence, pressure or undue interference by the authorities involved in the criminal process, which prevents ONBC lawyers from acting diligently and without fear, and against the interests of its clients, especially when individual interests are opposed to state interests.

ONBC lawyers who have handled criminal cases of human rights defenders have been involved in criminal proceedings against them to justify a definitive separation from the organization, for diligently defending the rights of their clients. In addition, they have been imposed the accessory sanction prohibiting the exercise of the profession or have had their title disqualified, a very frequent threat used by the intelligence organs of the State against independent lawyers. These actions have an exemplary effect on the rest of the lawyers of the ONBC and accentuate further the lack of autonomy of the guild and prevents all people from having effective and equal access to legal services, because lawyers are not in a position to advise their clients without undue interference, in accordance with the law and with the ethical rules and standards accorded to their profession, as set out in paragraph 25 of the Basic Principles on the Role of Lawyers.

The State must adopt effective legislative, administrative, judicial, or other measures to bring its legislation into line with established human rights standards and to comply with its obligations under the International Convention against Torture. So far, the ONBC has not ruled on the lack of due process guarantees related to the right to defense in which lawyers are involved, nor has it advocated with the government for the compatibility of its internal norms with its international obligations.

³¹ - Article 22 of Decree-Law No. 81 and Article 45 and 47 of the Regulation

1.3.2. Independent practice of the profession of lawyer

Lawyers who aspire to join the ONBC must be accepted by the National Board of Directors of the organization, whose decisions can only be appealed in complaint to the Minister of Justice, in case of refusal of the application for entry or definitive separation from the organization. The minister's decision cannot be appealed³².

Lawyers who do not wish to be part of the ONBC due to the ideological requirements and obligations demanded by this organization, or those who are not admitted or are definitively separated from it, do not have the possibility of practicing their profession, which constitutes a violation of paragraph 16 (a) of the Basic Principles on the Role of Lawyers.

Exceptionally, they are only allowed to assume the direction or representation of matters relating to their own rights, those of their spouse or those of their relatives up to the fourth degree of consanguinity or second degree of affinity³³. However, the courts require them to prove their representation with a certificate of their registration in the Register of Jurists, hindering the exercise of the profession and access to justice. This requirement is not provided for in Decree-Law No. 81/19984 or its regulations, therefore, it is an excess of the courts.

1.3.3. Procedures for the official recognition of a lawyers' association

The Cuban legislative framework for the registration of associations³⁴ does not comply with international standards and best practices related to the right to freedom of association³⁵. The current framework requires organizations to be composed by a minimum of 30 members and expressly prevents certain civil society groups from registering under its regulations, such as religious groups, political groups, and trade unions.

The registration procedure needs prior authorization. The approval of the authorities is a condition for the legal existence of the organization. Its processing is cumbersome and lengthy. The formal procedures continue with the request to a state body related to the activities that the group³⁶ will develop, which carries out an investigation of legality and convenience, to subsequently recommend to the Ministry of Justice the authorization or denial of the registration of the association that determines its legal personality³⁷.

Domestic legislation also does not protect unregistered organizations, despite the fact that the requirements demand people who intend to create an organization to operate without registering. The Law requires for the legalization of an association that the group has the resources to carry out its purposes, which implies that its founders meet and seek material and financial assets under the identity

³² - Articles 17 and 29 of Decree-Law No. 81

³³ - Article 4 (b) of Decree-Law No. 81

³⁴ - The procedure established in Law No. 54 of 27 December 1985 on Associations and its Regulations, and Resolution No. 53 of the Ministry of Justice of 14 July 1986 for

³⁵ - Paragraph 2, p.15-17 of the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (A/HRC/20/27)

³⁶ - Article 13 of Resolution No. 53 of 14 July 1986 "Regulations of the Law on Associations"

³⁷ - Last paragraph of Article 15, and Articles 16 and 17 of Resolution No. 53 of 14 July 1986 «Regulations of the Law on Associations»

of the organization they intend to legalize³⁸.

However, operating without legal registration is considered a crime against public order in the current Criminal Code, under the figure of illicit association that prohibits nonregistered organizations in the corresponding registry from functioning. The criminal sanction provided for this crime is deprivation of liberty of 1 to 3 months or a fine of up to 5 thousand pesos in national currency for its associates or affiliates, and for its promoters or directors, imprisonment of 3 months to 1 year or fine between 100 and 15 thousand Cuban pesos³⁹.

This criminal offence is maintained in the Preliminary Draft Criminal Code to be submitted by the Supreme Court to the National Assembly at its next session⁴⁰. The criminal figure focuses on the organizers or directors of an association not authorized to be constituted for whom the penalty of deprivation of liberty disproportionately increases.⁴¹

Another registration requirement is to have headquarters, but in the system, it is impossible to lease a premise as the headquarters of an organization⁴², since the State owns the appropriate properties and can only be leased by organizations with legal personality, that is, those that have registration. Individuals are only authorized to rent rooms in their homes as accommodation, and it is difficult for them to risk renting part of their property to a group of people who would be carrying out normatively illegal activities.

Registration officials act in bad faith and selectively towards organizations applying for registration: they monitor the activities of NGOs and filter out groups that criticize government policies; they significantly delay paperwork and, in most cases, do not respond to requests for legalization. The registration process becomes more complex when founders have to make an application for certification to one institution and submit the application for registration to another. The institutions of the State take advantage of this procedural complexity and the ignorance that exists about it so that the promoters desist. The Cubalex organization was able to verify that several groups submitted their application to the institutions that were supposed to be their direct link body, without first requesting certification. They generally omit one of the steps and desist from their effort considering it useless, in the absence of response and information from the authorities, who deny or hide it, to discourage the continuity of the process, an attitude that in itself is a negative response and can be

38 - Article 12 (ch) of Resolution No. 53 of 14 July 1986 "Regulations of the Law on Associations"

39 - Article 208 of Law No. 62 of 29 December 1987 on the Criminal Code

40 - [Preliminary draft of the Criminal Code](#) published by the Supreme People's Court. See also the [Official Gazette No. 5, Extraordinary of January 12, 2022](#), with the legislative schedule approved by the National Assembly of People's Power for 2022.

41 - See Article 208 of the current Criminal Code and compare with Article 274 of the [Preliminary draft of the Criminal Code](#) which the Supreme Court shall propose to the National Assembly.

42 - Subsection b) of Article 12 of Resolution No. 53 of 14 July 1986 "Regulations of the Law on Associations"



appealed in a judicial court⁴³.

In 2016, Cubalex surveyed 106 activists from at least 20 unregistered organizations on the island. More than 61% of respondents claimed to belong to organizations that met the requirements related to the size of their membership, to submit legalization according to national legislation, and at least 60% confirmed the submission of the registration application, although none of them received a response from the authorities⁴⁴. In practice, only organizations that are of interest to the government, which controls which must be created to act in the public life, are legalized, and prevents the development of a civil society independent and autonomous from the State.

Within the legislative schedule agreed by the National Assembly of People's Power, the adoption of a Law on Associative Forms is foreseen, which will be prepared by the Ministry of Justice and approved by the legislative body at its fourth session scheduled to be held in December 2022. This new norm will regulate the requirements for the authorization of the creation of the associative forms in Cuba and its operation. So far, the draft law prepared by the Ministry of Justice is unknown.⁴⁵

43 - 2017-02-5, Association For The Study of the Cuban Economy, Laritza Diversent, [Strengthened civil society, an essential need in Cuba's democratic future](#): "In relation to legalization, 60% of the people surveyed claimed that the organization had presented its legalization. We did not inquire about the procedures they carried out due to the limitations of the surveys. Based on our experience in legal advice, several groups submitted their application to the authorities and never they gave him an answer. Nor did they insist or establish corresponding legal remedies, due to lack of advice or because they considered the effort useless. We also heard of cases that submitted a request to the relationship body directly without first requesting the certification."

44 - See joint contribution of Robert F. Kennedy Human Rights (United States of America) and Cubalex (United States of America), for the third cycle of the Universal Periodic Review (UPR) of the Cuban State before the Human Rights Council of 2018, called [Joint submission](#) 17, second paragraph of page 4.

45 - See also the [Official Gazette No. 5, Extraordinary of January 12, 2022](#), with the legislative schedule approved by the National Assembly of People's Power for 2022, page 168.





NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

In the Constitution that entered into force in 2019, no national institution or independent commission for the protection of human rights was established in accordance with the Paris Principles, as recommended by several international treaty bodies⁴⁶. However, in the UPR of 2009, 2013 and 2018, Cuba took note of the recommendations that suggested the establishment of a National Human Rights Institution (NHRI), arguing that such an institution did not constitute a need identified by the Cuban people based on their willingness to continue building a society that guarantees all justice⁴⁷.

Within the legislative schedule agreed by the National Assembly of People's Power, the adoption of a Law on Attention to the Population is foreseen, which will be prepared by the Ministry of Justice and will be approved by the legislative body at its third session scheduled to be held in October 2022. This new rule will regulate the procedures related to the care of the population. So far, the draft law prepared by MINJUS is unknown and therefore whether a National Institution for the Protection of Human Rights (NHRI) will be established in accordance with the Paris Principles⁴⁸.

At the domestic level, the State faces problems in having an inter-institutional system for the reception of individual complaints or petitions, constitutionally supported⁴⁹ and integrated by all State institutions, in which social and mass organizations also participate⁵⁰. The State affirms that this system evaluates the effectiveness of the mechanisms, policies, and programs in force for the promotion and protection of human rights and presents and follows up on the recommendations it deems appropriate to continue

⁴⁶ - All the treaty bodies that for decades have examined the Cuban state, namely the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Rights of the Child (CRC), the Committee against Torture (CAT), the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Committee on Enforced Disappearances (CED) have urged it to consider establishing, by law, a national institution or independent commission for protection. Human rights commission in accordance with the Paris Principles Beach council, Working Group on the Universal Periodic Review. (2008). Compilation prepared by the Office of the High Commissioner for Human Rights. Cuba (Reports of treaty bodies, special procedures, and other official documents of the United Nations) (A/HRC/WG.6/4/CUB/2). Geneva. Para. 3 p.3 and Human Rights Council, Working Group on the Universal Periodic Review. (2013). Recompilation prepared by the Office of the High Commissioner for Human Rights. Cuba (Reports of treaty bodies, special procedures, and other official documents of the United Nations) (A/HRC/WG.6/16/CUB/2). Geneva. Para. 12 p.4. See also Human Rights Council. (2009). Report of the Working Group on the Universal Periodic Review, Cuba (A/HRC/11/22). Geneva. Para. 131.6 p.31 by Mexico; Human Rights Council. (2013). Report of the Working Group on the Universal Periodic Review, Cuba (A/HRC/24/16). Geneva. Para. 170.33 p.15 by México, Sierra Leone, Uruguay, France, CRC/C/OPAC/CUB/CO/1, paras. 11–12, and CRC/C/OPSC/CUB/CO/1, paras. 15–16, See CEDAW/C/CUB/CO/7-8, paras. 14–15 (b), See CED/C/CUB/CO/1, paras. 9–10

⁴⁷ - Human Rights Council. (2009). Report of the Working Group on the Universal Periodic Review, Cuba. Addendum (Views on conclusions and/or recommendations, voluntary commitments and responses submitted by the State examined). Geneva. Para. 6 p.5-6; Human Rights Council, Working Group on the Universal Periodic Review. (2008). Cuba: National Report submitted to the Human Rights Council (A/HRC/WG.6/4/CUB/1). Geneva. Item VII "The protection system of Human Rights", For. 80-87 p. 15-16 and Human Rights Council. (2013). Report of the Working Group on the Universal Periodic Review, Cuba. (A/HRC/24/16/Add.1) Addendum (Views on conclusions and/or recommendations, commitments volunteers and replies submitted by the State under review). Geneva, Point 4 of Para. 9 p.3

⁴⁸ - See also the [Official Gazette No. 5, Extraordinary Gazette of 12 January, 2022](#), with the legislative schedule approved by the National Assembly of People's Power for 2022, page 168.

⁴⁹ - The Cuban Constitution of 2019, Article 61, that "Persons have the right to address complaints and petitions to the authorities, which are obliged to process them and give timely, pertinent and substantiated responses within the deadline and according to the procedure established by law."

⁵⁰ - The Office of the Attorney General of the Republic and the Supreme People's Court, the National Organization of Collective Law Firms, the Organs of People's Power and their Council of Administration, and the Agencies of the Central State Administration.



improving the enjoyment of human rights in Cuba⁵¹. The right to complain and petition is the only remedy, which in domestic law allows the denunciation of human rights violations in the light of the international treaties to which Cuba is a participant, but it is a dysfunctional, inadequate, and ineffective remedy for the protection of human rights.

The citizen or a group of them can present their individual or collective complaint at any level of political-administrative direction. Collective complaints must be signed by each of those affected or victims. State institutions do not accept petitions or complaints on behalf of an organization that is not registered. Therefore, these institutions do not act as a bridge between government and civil society, as an NHRI would.

Unfortunately, the system is designed and focused on responding, regardless of the solution. In its processing, the supervision of the actions of the authorities and public officials in the legislative, judicial or administrative practices field is not foreseen. Nor do they link the responsibilities of the State or apply international human rights standards, nor do they conduct studies on the compatibility of national laws with regional and international human rights systems, as an NHRI would. It means that they never criticize the government's actions on human rights, nor with the responsibility to create a national culture of human rights focused on tolerance, equality, and mutual respect. Nor do they participate in the investigation of human rights violations, to bring to justice those who commit human rights damages and to provide remedies and reparation to victims. They do not issue opinions, make recommendations, or seek compensation in court as an NHRI would.

These institutions in their interaction with citizens do not have a normative basis or specific legal competences as required by NHRIs as part of the State organization. They do not advise the Government and parliament, they do not cooperate with national stakeholders, civil society, NHRIs in other countries and regional bodies⁵². They do not submit independent documentation and reports to treaty bodies, special procedures and the Human Rights Council and its processes, in particular the universal periodic review. They fail to protect and promote the rights of specific groups, including groups vulnerable on the basis of sex, age, disability, sexual orientation, migrant status, or other minority characteristics, nor do they promote development initiatives through human rights-based approaches and, in particular, through economic, social, and cultural rights.

The system established by the State provides for mandatory responses; but not the solution or restitution in case the complaint is verified, or its processing in court. The 60-day deadline for responding is too long and provides no exception for urgent cases or irreparable harm. In practice it is done in written form through postal correspondence, the responses of the institutions are standardized and can take from several months to more than a year.

51 - Human Rights Council, Working Group on the Universal Periodic Review. (2008). Cuba: Summary prepared by the Office of the High Commissioner for Human Rights (summary of communications submitted by 326 interlocutors for the universal periodic review) A/HRC/WG.6/4/CUB/3. Geneva. Para. 3 p.2 and Human Rights Council, Working Group on the Universal Periodic Review. (2013). Cuba: Summary prepared by the Office of the High Commissioner for Human Rights (summary of communications submitted by 454 interlocutors for the universal periodic review) A/HRC/WG.6/16/CUB/3. Geneva. Para. 12 p.3

52 - Cuba does not cooperate with the inter-American system, however, it is a co-founding state of the OAS and a member, because its exclusion in 1962 did not mean losing that status, and Cuba never exercised the right to denounce the Constitutive Charter. The State signed the American Declaration of the Rights and Duties of Man. In 1959, at the Fifth Meeting of Consultation of OAS Ministers of Foreign Affairs, held in Santiago, Chile, Cuba approved the resolution creating the Inter-American Commission on Human Rights, in charge of promoting them in the member countries. Since its inception, the IACHR has declared itself competent to consider the human rights situation in Cuba, having issued various reports over the years to the present.

III

GENDER-BASED VIOLENCE

One of the problems faced in Cuba today is gender violence. Systematic violence against women includes a number of violations of fundamental rights and freedoms, including the safe and secure physical integrity and security; as well as not to suffer cruel and inhuman treatment, the right to the preservation of life and peaceful coexistence. Violence against women in Cuba occurs in various forms and spaces.

According to the records of the Network for the Defense of Human Rights in 2021, of the 1225 incidents that affected 1448 victims, 607 were women, a 41.9%.

The phenomenon of violence against Cuban women is further complicated by the fact that the State does not have a national strategic plan that can provide for violence against women; as well as the punishment of those who commit acts of gender-based violence and the lack of protection for victims of violence against women is a painful reality in the country. Men who violate women's rights and those who commit intimate gender-based violence do not receive exemplary punishments. In addition, when women report, they are often not heard and even receive fines, which discourages the existence of a culture of reporting gender-based violence.

A new Constitution, but without complementary laws, still makes social sectors such as women more vulnerable, exposing them to violations of their rights of all kinds, especially that of domestic violence. Cuba's independent civil society continues to demand the incorporation of a Law on Violence against Women into domestic regulations; however, this remains a pending issue in Cuba. It is important to note that the draft of the Criminal Code includes the issue of gender violence as an aggravating factor for certain crimes; but the specific requests from the independent civil society such as the inclusion of femicide as an autonomous crime has been left aside, this despite the fact that so far in 2022 there were registered at least four femicides.

IV

ASYLUM-SEEKERS AND REFUGEES

The State affirms that the treatment of asylum-seekers and refugees is based on the humanitarian and solidarity tradition of the Cuban people and on the respect for the basic principles of refugee protection, particularly that of non-refoulement. Cuba's policy in this area has constitutional status, as reflected in article 17 of the Constitution, which refers specifically to the right to asylum. The State considers that this guarantees the protection of refugees, asylum-seekers, and stateless persons. In addition, it claims that it accepts and complies with the diplomatic assurances that are requested or offered in cases of extradition, expulsion, or transfer⁵³. However, the aforementioned constitutional precept indicates

⁵³ - See paragraph 59, CAT/C/CUB/RQ/3.



that those persecuted for their ideals or struggles for national liberation, for progressive activities, for socialism and peace, for democratic rights and their demands, as well as those who fight against imperialism, fascism, colonialism, neocolonialism, and any other form of domination, may apply for asylum, discrimination, and racism⁵⁴. This means that the exercise of the right to asylum is made dependent on the full ideological and political identification, constitutionally formulated on the basis of vague and ambiguous extreme terms, between the asylum seeker and the Cuban State. Therefore, the flow of necessary information on the right to request it and the possibility of having a resource to fight a decision in this regard, will depend on the authorities establishing that political and ideological identification.

In addition, article 17 of the Constitution stipulates that asylum is granted in accordance with the provisions of the law⁵⁵. However, to this day Cuba does not have a law on the subject, and it is not planned to adopt one during the remainder of the current legislature of the National Assembly of People's Power, which will last until April 2023. Similarly, there is no provision for the adoption of a decree-law on the subject by the Council of State. It can therefore be said that there are not all the legal guarantees necessary for the protection of refugees, asylum-seekers, and stateless persons⁵⁶.

On the other hand, the State itself accepts that against the return or "re-embarkation" of a person there is no recourse⁵⁷, which suggests that those affected by these measures are not provided with information on the right to asylum. This poses a risk of legal uncertainty for those affected by refoulement or "re-embarkation", particularly in the case of citizens of States not part of the Convention. On the other hand, it is impossible to determine the procedure followed by the authorities for granting it to a particular person. This means that it is not possible to verify whether asylum seekers are provided with free legal aid and interpretation services during the procedure that this application entails. Beyond the aforementioned article 17 of the 2019 Constitution, it is not possible to find procedural guidelines for its granting. All this highlights the extreme discretionary nature of the granting of asylum by the Cuban authorities, as well as the fact that its authorization has more political than humanitarian purposes.

National legislation does not expressly prohibit expulsion, refoulement, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to torture. Nor is it provided for in national legislation as an obligation of the authorities to inform persons subject to extradition of their right to apply for asylum⁵⁸.

54 - Vid. Constitution of the Republic of Cuba of February 24, 2019. *Extraordinary Official Gazette No5, of April 10, 2019.*

55 - *Ibidem.*

56 - Vid. Legislative schedule approved by the National Assembly of People's Power at its December 2019 session, through Agreement IX-49. Vid. *Ordinary Official Gazette No2, of January 13, 2020.* The Cuban State recognizes that it has not considered it necessary to assume obligations with procedures and instances of supranational jurisdiction for the processing of individual petitions; nor to resort to the assistance of international investigations to ensure that persons residing in its territory the fullest protection and enjoyment of the rights and remedies established by international human rights instruments.

57 - Vid. paragraph 67, CAT/C/CUB/RQ/3.

58 - The procedural guidelines on extradition are established in articles 435 to 441 of the Criminal Procedure Law of the Republic of Cuba. See Act No. 5 of 13 August 1977, Criminal Procedure Act. *Extraordinary Official Gazette No. 18 of 25 June 2013.* In this edition of the Official Gazette, the changes made to the content of this normative provision can be verified with Decree-Law No. 310 of May 29, 2013. The full text of the law can be found in Rivero García, Danilo, *Criminal Procedure Act. Dispositions of the Governing Council of the Supreme People's Court (CGTSP) (Comments)*, 2nd Edition, Edition ONBC, Havana, Cuba, 2012. On the amendments introduced by Decree-Law No. 310 of May 29, 2013, see Fernández Romo, Rodolfo, *The Modifications to the Cuban Criminal Procedure Law by Decree-Law No. 310 of May 29, 2013*, in Medina Cuenca, Arnel, *Commentary on criminal Cuban laws*, Ed. UNIJURIS, Havana, Cuba, 2014, pp. 377-404.

V

EXTRADITIONS AND EXPULSIONS

In accordance with the State's indications, Cuba accepts and complies with the diplomatic assurances requested or offered in cases of extradition, expulsion, or transfer, and does not take for granted the "security" of a particular State, but in all cases evaluates the risk faced by the person, and on that basis makes its decisions regarding the transfer, expulsion, and extradition⁵⁹. However, the current criminal legislation does not lay down rules obliging national authorities to comply with equivalent diplomatic or security assurances requested or offered in cases of extradition, expulsion, or transfer. The only principle on extradition that is established in criminal legislation is that of reciprocity⁶⁰, según lo indicado en los artículos 437 y 441.7 de la Ley de Procedimiento Penal, reconocido como as indicated in articles 437 and 441.7 of the Criminal Procedure Law, recognized as a supplementary rule on the pertinence of extradition, when there is no treaty on the matter⁶¹. In this way, priority is given to these legal instruments as the main sources for regulating the particularities of extradition. This reinforces the discretionary character that the Cuban State maintains around these issues.

In the case of extradition, it is legally stipulated that no citizen of the Republic of Cuba may be extradited. In accordance with Article 6.1 of the current Criminal Code, a Cuban citizen may not be extradited to another State. The extradition of foreigners who commit crimes within the national territory is permitted, which must be carried out in accordance with international treaties, or, in the absence of these, in accordance with Cuban law (article 6.2 CP)⁶². The extradition of foreigners persecuted for having fought imperialism, colonialism, neocolonialism, fascism, or racism, or for having defended democratic principles or the rights of the working people (article 6.3 CP)⁶³ is not appropriate. Note that the Cuban State is a party to the Bustamante Code on Private International Law of 1928, which includes rules on extradition⁶⁴.

In addition, the Single Special Provision of the Law against Acts of Terrorism entrusts the Government of the Republic of Cuba with the subscription of agreements and treaties with States willing to promote international cooperation with regard to the exchange of information, judicial and police assistance, investigations, the taking of evidence and the possible extradition of alleged offenders,

⁵⁹ - Vid. Replies of Cuba to the list of issues relating to the third periodic report, CAT/C/CUB/RQ/3, paras. 71 and 73.

⁶⁰ - Reciprocity conditions cooperation on the correspondence of the other State, for political purposes. The principle of reciprocity could be formulated as follows: the requested State shall have the right to require the requesting State, as a condition for the granting of extradition, to make a commitment to reciprocity. Such a commitment to reciprocity will entail a future obligation on the part of the requesting State to cooperate with the requested State in similar cases. Vid. Benincasa Varnier, Lucila M. et al., international standards for the protection of human rights applicable to the Institute of Extradition: their impact on Argentine practice, Faculty of Law, University of Buenos Aires, Argentina, 2018, p. 72

⁶¹ - Vid. RIVERO GARCÍA, *op. cit.*, pp. 317 y 320.

⁶² - Vid. MEDINA CUENCA, *op. cit.*, p. 25.

⁶³ - *Idem*, pp. 25 y 26. This precept corresponds to the content of the 1976 Constitution, which has already been repealed. Article 13 stated that the Republic of Cuba granted asylum to those persecuted for their ideals or struggles for democratic rights, against imperialism, fascism, colonialism, and neocolonialism; against discrimination and racism; for national liberation; for the rights and demands of workers, peasants, and students; for his progressive political, scientific, artistic, and literary activities, for socialism and peace. See Constitution of the Republic of Cuba of February 24, 1976, amended in 1978, 1992 and 2002. Ordinary Official Gazette No. 3 of 31 January 2003.

⁶⁴ - Vid. paragraph 69, CAT/C/CUB/3.



for the purpose of preventing, suppressing and eradicating terrorism⁶⁵. The objective of the provisions of this legal precept is clear: to hold the Cuban government responsible for, among other issues, everything related to extradition for the target of combating terrorism. Therefore, it can be said that the political-legal practice regarding extradition is nuanced by what has been agreed between the Cuban government authorities and those of other States.

Related to the latter, the Cuban State does not provide exact information on the countries with which it has signed extradition treaties, and only sets out the number of treaties signed in this area, as well as the number of legal assistance agreements that encompass that institution. Therefore, it is impossible to determine whether the extraditions carried out since 2012 to date have been carried out on the basis of the provisions of treaties signed by the Cuban State or on the basis of the principle of reciprocity⁶⁶.

The expulsion of foreigners from the national territory is one of the accessory sanctions provided for in the Criminal Code. According to the provisions of article 46.1 of this law, when punishing a foreigner, the court may impose on them, as an accessory sanction, their expulsion from the national territory if, due to the nature of the crime, the circumstances of its commission or the personal characteristics of the accused, it is evident that their stay in the Republic is harmful. According to the second paragraph of the article, the expulsion is carried out after the termination of the main sanction. Finally, the third paragraph of article 46 states that the Minister of Justice may, in exceptional cases, order the expulsion of the sanctioned foreigner, before they have completed the main sanction imposed, even if the accessory referred to in this article has not been applied to the outsider. In these cases, the criminal responsibility of the person penalized shall be declared extinguished in accordance with the provisions of article 59 (j) of the Criminal Code⁶⁷.

5.1. Expulsions of Cuban journalists

So far, Article 19 has recorded 5 cases of journalists who have been forced into exile from the country, without the government acknowledging that they have been expelled, but given the harassment and systematic violations of their human rights, they have been forced to leave Cuba.

⁶⁵ - Vid. Law No. 93 of 20 December 2001, Law against Acts of Terrorism. Extraordinary Official Gazette No. 14 of 24 December 2001, as amended by Decree-Law No. 316 of 2013 Amending the Criminal Code and the Law against Acts of Terrorism. Extraordinary Official Gazette No44 of 19 December 2013.

⁶⁶ - Vid. Paragraphs 52 y 69, CAT/C/CUB/RQ/3.

⁶⁷ - Paragraph 3 was initially amended by Article 1 of Decree-Law No. 150 of 6 June 1994, in order to delegate to the Minister of Justice this exceptional power, which until the entry into force of this Decree-Law was the power of the Council of Ministers (*Extraordinary Official Gazette No. 6 of 10 June 1994, p. 13*), and then by article 11 of Decree-Law No. 175 of 17 June 1997, which specifies that this exceptional power of the Minister of Justice may be exercised, even if the Court has not applied to the foreigner, the ancillary sanction provided for in this article (*Extraordinary Official Gazette No. 6 of 26 June 1997, p. 39*). Vine. MEDINA CUENCA, *op. cit.*, footnote No38, p. 39.

VI

EDUCATION AND TRAINING ON THE PROHIBITION OF TORTURE

The characterization of the crime of torture is a very recent contribution to the Cuban legal body; its inclusion is part of a new Criminal Code that has not yet entered into force. To date, at least no information has been made public on the development of training programs on human rights and the prohibition of torture developed by the State to ensure that all public servants, in particular members of the security forces and the Armed Forces, prison officials and justice operators, be fully aware of the provisions of the Convention and the absolute prohibition of torture, and be aware that violations will not be tolerated, but will be investigated and their perpetrators brought to justice.

VII

VIOLATIONS OF THE DUE PROCESS AND CONDITIONS DETENTION

7.1. Pre-criminal social hazard

The Preliminary Draft of the Criminal Code, which should enter into force soon, eliminates the so-called “dangerousness indices” and forced internment for re-education due to the application of pre-criminal social dangerous measures⁶⁸, and the therapeutic measures and official warnings, historically used by State agents to repress human rights defenders and independent journalists, are maintained.

7.2. Official warning minutes

In the Preliminary Draft Criminal Code, State agents belonging to the Ministry of the Interior (MININT), including police and State security agents, would be empowered⁶⁹ to officially warn anyone who repeatedly carries out actions that make them prone to commit crimes or to violate the social and constitutional order. These official warnings are made by the annotation of a record in which the causes that determine it, the forecasts that are formulated and what the person warned expresses in this regard, being signed by them and by the person who writes the report. Failure to comply may constitute the commission of a crime of disobedience in the preliminary draft of the Criminal Code, which provides for sanctions between 6 months and one year of deprivation of liberty or a fine between 1000 and 60 thousand Cuban pesos to persons who disobey or fail to comply with the measures that have been

⁶⁸ - This criminal figure, which allows the authorities to categorize and punish people for what they are and not for what they do, as well as the importance of this in the establishment of prejudices and personal stereotypes of a racial nature, gender, socioeconomic extraction, marginality, lifestyle, ideology, and political opinion. The State conceived these measures of pre-criminal dangerousness as a treatment to rehabilitate, re-educate, adapt, and coercively modify personal identity and individual will.

⁶⁹ - [Law No. 143 of October 28, 2021](#), Law on Criminal Procedure, published in the Ordinary Official Gazette No. 140 of December 7, 2021 and which entered into force on January 1, 2022. Article 126 (I): The Police, for the purposes of investigating the alleged criminal acts of which they are aware and of the processes for the imposition of therapeutic measures, have the power to issue official warnings.



legally imposed by the competent authorities, or warnings made as a result of non-compliance with those adopted by the body or entity responsible for social prevention. The court may impose both sanctions⁷⁰.

The ambiguity of imprecise, subjective, and extremely vague concepts such as the phrase “perform actions that make it prone to commit a crime or to violate the social and constitutional order” is maintained, especially when the official warning acts are used to repress criticism and force the person to stop performing a conduct that is not punishable by law; but that the authorities are interested in repressing. The imposition of official warning acts and the criminalization of their non-compliance violate the principle of legality constitutionally recognized in domestic law⁷¹ and which establishes that no one shall be convicted of acts or omissions that at the time of their commission were not criminal under national or international law⁷². It is expected that these norms will be applied in place of pre-criminal dangerousness by antisocial behavior and used to harass, threaten and prosecute human rights defenders⁷³, who are stigmatized as subversives, as well as girls between 16 (minimum age to acquire criminal responsibility) and 18 years, adult women and members of the LGBTI community, who offer sexual services or engage in prostitution, an activity considered by the authorities as a socially reprehensible vice. Discretionarily without judicial oversight facilitates the abuse of power and politically motivated repression.

70 - 2022-01-20, Supreme People's Court, [Draft Criminal Code](#). **Article 434.1.** The competent authority of the Ministry of the Interior may officially warn anyone who repeatedly carries out actions that make them prone to commit crimes or to violate the social and constitutional order. (2.) The official warning is made, by means of a record in which the causes that determine it are expressly stated, the provisions that are formulated and what the person warned expresses in this regard, being signed by this and by the acting. (3.) The official warning only produces the effects determined by law. **Article 189 (1.)** Anyone who disobeys the decisions of the authorities or public officials, or the orders of their agents or auxiliaries, issued in the exercise of their functions, incurs a penalty of deprivation of liberty from six months to one year or a fine of one hundred to three hundred quotas or both. [...] **(3.)** Anyone who repeatedly disobeys or fails to comply with the measures that have been legally imposed by the competent authorities, or the warnings made as a result of non-compliance with those adopted by the body or entity in charge of social prevention, incurs the same sanction as that provided for in the previous section. See also Article 40. (1.) The penalty of a fine consists of the obligation of the sanctioned person to pay the amount of money determined by the judgment. (2.) The fine consists of quotas, and the amount of each quota may not be less than ten pesos or more than two hundred. [...]

71 - Constitution of the Republic of 2019. Article 95. In criminal proceedings, persons also have the following guarantees: (...) **(g)** be tried (...) under laws prior to the offence (...). [Law No. 143 of October 28, 2021](#), Law on Criminal Procedure, published in the Ordinary Official Gazette No. 140 of December 7, 2021 and which entered into force on January 1, 2022. Article 3. No one may be tried under laws prior to the crime (...).

72 - Article 11(second) of the UDHR and Article 15(1) of the ICCPR

73 - To the journalist Iliana Hernández Cardosa, a reporter for CiberCuba, the authorities opened a dangerous file and warned her that she should get a job with the State. In addition, he has been issued warning minutes for meeting and interviewing government opponents and human rights activists. In the interrogations, she has been offended and defamed in relation to her sexuality and relationships. They have also issued several warning acts in which the authorities require him to maintain good moral and social conduct in his community and outside the territory, and not to provoke public scandals, not to make more videos or publish them on social networks. Faced with his refusal, they forcibly took his hand and passed it on a paper that did not have his name; she was then tested for the smell of her private parts and forced to sign a document. She was summoned at least seven times to allegedly perform prophylactic work; at least three of them on the occasion of the application of the measure of pre-criminal dangerousness for antisocial behavior. Faced with the threat of being prosecuted for “pre-criminal dangerousness” she obtained a license as a “self-employed” (form of self-employment) that allowed her to carry out economic activities as a photographer. However, her permit was withdrawn, and she was fined for using her means of work in the realization of videos of social content with criticism of the government’s management.

7.3. Therapeutic measures

Therapeutic measures are applied by the court if in the criminal procedure against a person, they declare them not criminally responsible for the crime committed⁷⁴ because they suffer from mental illness, provided that they are prevented from understanding the illicit nature of the act and directing their conduct, or have a problematic consumption of alcohol or other drugs or substances of similar effects; or any of these situations occur, before or during the execution of the criminal sanction, whether it is deprivation of liberty or that does not entail internment, if their condition is incompatible with their stay in the penitentiary establishment or with the execution of the alternative sanction. In the case of those punished, it is fulfilled with before the sanction is complied with, provided that their status makes it necessary, the nature of the crime committed allows it, or the law so provides. In any case, its duration is paid to the fulfillment of the sanction, unless the person has refused or has repeatedly failed to comply or hindered compliance with the security measure. They are fulfilled in psychiatric or dishabitation hospital centers, although people can also receive external medical treatment⁷⁵.

This measure can be reinforced with surveillance, guidance, and control of the conduct of the person by officials of the organs of the National Revolutionary Police (PNR). The reinforcement measure lasts as long as the person is complying with the therapeutic safety measure and can be extended by decision of the court up to one year after it is completed. The court may also decide to set it aside during its execution⁷⁶.

In its definition in the preliminary draft of the Criminal Code that had been scheduled to be approved in April, terms such as “security of others, the community, the family, citizen tranquility and public and social order” are used, which stand out for their abstraction or ambiguity, and which could be used to apply measures of this type to political opponents, independent journalists, or activists⁷⁷.

The prosecutor requests the competent court, by means of a well-founded document, a psychiatric examination to determine the situation they present. The law prohibits keeping a person with a mental disability in a penitentiary or similar institution.⁷⁸

The court requests a psychiatric evaluation of the alleged insured to the hospital or health entity destined, and if necessary, orders his admission for up to 30 days⁷⁹. If in the results of medical observation

⁷⁴ - 2022-01-20, Supreme People's Court, Draft Criminal Code. See Article 22 that refers to people with a situation of mental disability that invalidates it to understand the illicit nature of their action or omission and to direct their conduct, for suffering from a transient or permanent mental disorder, or delayed mental development. In addition, subparagraph (c) provides that an alternative sanction to the custodial sentence may be used against anyone who is serving a custodial sentence, if the alternative does not involve internment. Finally, subsection (d) allows its use for those who are sanctioned and become addicts.

⁷⁵ - 2022-01-20, Supreme People's Court, [Draft Criminal Code](#). Articles 106, 107, 108, 110 and 111.

⁷⁶ - 2022-01-20, Supreme People's Court, [Draft Criminal Code](#). Article 109.

⁷⁷ - 2022-01-20, Supreme People's Court, [Draft Criminal Code](#). Article 106. therapeutic safety measures are applied by the court in the relevant criminal proceedings, to the person who, after committing an offence, constitutes a *risk* for the *safety* of the others, the *community*, the family, the *tranquil Citizen entity* and the *public and social order*; demonstrating with that conduct that there is a possibility that he will commit new criminal actions, when any of the following situations concur in it: (a) Addiction to the consumption of alcohol or other drugs or substances having similar effects; and (b) mental illness, provided that it prevents him from understanding the unlawful nature of the act and from directing his conduct. See also Article 107.

⁷⁸ - [Law No. 143 of October 28, 2021](#), Law on Criminal Procedure, published in the Official Gazette No. 140 Ordinary of December 7, 2021 and which entered into force on January 1, 2022. **Article 680**

⁷⁹ - [Law No. 143 of October 28, 2021](#), Law on Criminal Procedure, published in the Official Gazette No. 140 Ordinary of December 7, 2021 and which entered into force on January 1, 2022. **Article 681**.



it is determined that there is no need to impose a therapeutic measure, the director of health informs the court, which on the same day or the next, pronounces on the request of the director of the care center and notifies the prosecutor with the decision⁸⁰, which in three days must express its disagreement, otherwise, the court orders the cessation of hospital admission and the continuation of the attestation, file or cause, opened for the investigation of the crime, or the execution of the sanction, if applicable.⁸¹

If the medical institution decides to continue with the observation, it asks the court for another 20 days for the psychiatric evaluation in which it must recommend or not to the court therapeutic assurance⁸². Once the medical report on the mental appraisal has been received, the court rules on the permanence of the hospital admission until the completion of the insurance procedure. If they have an externally compliant therapeutic safety measure, the prosecutor may request the subjection to surveillance by the PNR (reinforcement measure) for the duration of the measure, and if necessary up to one year after its execution⁸³.

In cases of minor offences⁸⁴ judged by the summary procedure, the prosecutor may request the imposition of the post-criminal security measure, in the case that the person has a problematic consumption of alcohol or other drugs or substances of similar effects, and requests at the same time the filing of the attestation for crime and the imposition of the post-criminal security measure, unless it is demonstrated that they have been in a state of transient mental alienation during the execution of the criminal conduct⁸⁵.

In any case, if the court considers that there is sufficient evidence on the state of the alleged insured and completed the investigation of their criminal conduct, they order the initiation of the process of applying the therapeutic measure and the appointment of a lawyer for the **private hearing**⁸⁶. In the case of imputable addicts, the summary procedure is also initiated by attestation and the sentence also provides for the therapeutic security measure⁸⁷. The day after the hearing, the court provides the post-criminal security measure by emitting an order to dismiss the proceedings⁸⁸. The court decision may be

80 - [Law No. 143 of October 28, 2021](#) Law on Criminal Procedure, published in the Official Gazette No. 140 Ordinary of December 7, 2021 and which entered effective January 1, 2022. **Article 682** See the similarity of this Article with Article 409 of the previous one [Criminal Procedure Act](#)

81 - [Law No. 143 of October 28, 2021](#), Law No. 143 of October 28, 2021, Law on Criminal Procedure, published in the Official Gazette No. 140 Ordinary of December 7, 2021 and which entered effective January 1, 2022. **Article 682** See the similarity of this Article with Article 409 of the previous one [Criminal Procedure Act](#)

82 - [Law No. 143 of October 28, 2021](#), Law on Criminal Procedure, published in the Official Gazette No. 140 Ordinary of December 7, 2021 and which entered into force on January 1, 2022. **Article 684.**

83 - [Law No. 143 of October 28, 2021](#), Law on Criminal Procedure, published in the Official Gazette No. 140 Ordinary of December 7, 2021 and which entered into force on January 1, 2022. **Article 684.**

84 - Offences up to three years' deprivation of liberty or fines up to a thousand installments or both

85 - [Law No. 143 of October 28, 2021](#), Law on Criminal Procedure, published in the Ordinary Official Gazette No. 140 of December 7, 2021 and which entered into force on January 1, 2022. **Article 686.**

86 - [Law No. 143 of October 28, 2021](#), Law on Criminal Procedure, published in the Official Gazette No. 140 Ordinary of December 7, 2021 and that entered into force on 1 January 2022. **Article 689.**

87 - [Law No. 143 of October 28, 2021](#), Law on Criminal Procedure, published in the Ordinary Official Gazette No. 140 of December 7, 2021 and which entered into force on January 1, 2022. **Articles 687 and 687.**

88 - [Law No. 143 of October 28, 2021](#), Law on Criminal Procedure, published in the Ordinary Official Gazette No. 140 of December 7, 2021 and which entered into force on January 1, 2022. **Articles 687 and 687.**

appealed to the court that issued it within 5 days of being notified⁸⁹, but is decided by the higher court⁹⁰.

In the ordinary proceedings, after the conclusion of the investigations, the prosecutor asks the court to definitively dismiss the proceedings as to the unimputable and proposes the security measure that he considers should be applied to it. In the case of a defendant with addiction, they request the opening of an oral trial and the imposition of a therapeutic measure if the case requires it⁹¹.

Unlike social hazard measures, therapeutic measures would not have a fixed limit of duration, these are extended for the necessary time until the situation that gave rise to it disappears in the person. This discretion in the duration of therapeutic measures may lead to arbitrary detention⁹², with the consequent damage that involuntary hospitalization can cause, taking into account that only the court can change forced hospital internment for external medical treatment, as an alternative to confinement.

The authorities responsible for requesting and imposing such measure are not required to justify the necessity and proportionality of the measure, in order to ensure that it is applied as a last resort and for the shortest appropriate period of time. Nor are adequate procedural and substantive guarantees of supervision established during the execution of the therapeutic security measure for the protection of the fundamental rights of insured persons. No procedure is established for the periodic assessment of the necessity and proportionality of its application. The law does not provide for any remedy for initial or periodic judicial review of the lawfulness of detention or reinforcement measures, as well as a procedure for requesting the change of this measure at the request of the insured person or their relatives. There is concern about the lack of independence of the courts and regarding the State's obligation to ensure respect for the opinions of the insured persons, and of the lawyers of the ONBC, regarding the defense of their interests and will⁹³. Another cause for concern is the application of this type of measure to persons deprived of their liberty during execution, if mental illness or addiction to the consumption of alcohol or other drugs or substances with similar effects occurs, taking into account the current conditions of the penitentiary system explained below.

7.4. Situation of persons deprived of their liberty

The Cuban penitentiary system continues to face a critical situation of overpopulation as a result of the overcrowding and the lack of an adequate infrastructure, a situation that has serious repercussions on the enjoyment of the fundamental rights of the prison population, which are not restricted or suspended as a result of their penal situation, such as dignity, health, food, specifically violating human dignity, responsibility of the administration of penitentiary centers and the State in particular,

⁸⁹ - [Law No. 143 of October 28, 2021](#), Law on Criminal Procedure, published in the Ordinary Official Gazette No. 140 of December 7, 2021 and which entered into force on January 1, 2022. **Article 691.**

⁹⁰ - [Law No. 143 of October 28, 2021](#), Law on Criminal Procedure, published in the Ordinary Official Gazette No. 140 of December 7, 2021 and which entered into force on January 1, 2022. **Articles 692, 693, 694 and 695.**

⁹¹ - [Law No. 143 of October 28, 2021](#), Law on Criminal Procedure, published in the Official Gazette No. 140 Ordinary of December 7, 2021 and which entered into force on December 1, 2021 January 2022. **Article 696**

⁹² - Article 9 of the International Covenant on Civil and Political Rights

⁹³ - See General [Comment No. 35 of the Human Rights Committee \(2014\)](#), paragraph 19. The United Nations Human Rights Committee noted that "arbitrary detention and the communication regime create risks and may amount to acts of torture and ill-treatment. See paragraph 56.



derived from their obligation to guarantee physical integrity, not to use cruel and inhuman treatment and to respect the inherent dignity of the human being, when it deprives a person of their freedom, an obligation that extends to guaranteeing adequate living conditions⁹⁴.

Between 2013 and 2020, the Inter-American Commission on Human Rights received information regarding sanitary and hygienic conditions and the lack of appropriate medical care in Cuba's prisons. During this time, it continued to lack up-to-date information on the number of people who would be in Cuba's prisons. The last official figure dates from 2012 and registers 57,337 people imprisoned, ranking sixth on the list of countries with the largest private population. According to the Report⁹⁵, there are 510 people deprived of their liberty on the island for every 100,000 inhabitants. It denounced that the main problems within Cuban prisons continued to be overcrowding; the subhuman conditions of detention to which prisoners are subjected. It indicated that persons deprived of their liberty were continuously subjected to torture and cruel, inhuman, and degrading treatment, including beatings; hanging and applying uncomfortable postures (such as "the Shakira"⁹⁶ and "the crab"); excessive use of force. It added that the prison authorities arbitrarily and abusively applied solitary confinement in punishment cells in subhuman conditions, as well as the deprivation of water and food as a method of punishment and a deterrent to inmates who use the hunger strike as a protest. It also referred to the harassment of persons deprived of their liberty who denounce the conditions in which they find themselves; deliberate transfer to places distant from the institution; the isolation, denial, cancellation or arbitrary postponement of visits; forced labor; the lack and often neglect of basic medical care and derogatory treatment by medical personnel⁹⁷; the provision of food in a state of decomposition and even the theft of food by the prison authorities themselves; the lack of supply of drinking water and water for sanitation; severe overcrowding in some prisons; psychological pressure. Other problems raised by the IACHR included corruption and lack of transparency in prison management; the lack of judicial control over arrests and the wide margin of discretion of the police; and the absolute lack of independent monitoring mechanisms, and mechanisms for inmates or their families to submit petitions and complaints to the administration. It warned that hunger strikes continue to be a method of exerting pressure on the Cuban government, in demand of their freedom and improvement of detention conditions, as well as the generalized situation of repression, aggressions and arbitrariness against prisoners, and the lack of judicial protection and complaint mechanisms, which has led to

⁹⁴ - 2012-06-25, Committee against Torture (CAT), [Concluding Observations \(CAT/C/CUB/CO/2\)](#), paragraph 22. In 2012 the CAT expressed concern about reports denouncing the use of coercive methods in interrogations, in particular sleep deprivation, and solitary confinement and exposure to sudden changes in temperature and recommended that the State adopt effective measures to ensure in practice the inadmissibility of confessions obtained under duress, as well as to ensure that confessions obtained under duress are provide training to law enforcement officials, judges and lawyers on methods of detecting and investigating cases of confessions obtained under duress

⁹⁵ - 2013-12-31, CIDH, [Informe Anual 2013, Capítulo IV-Cuba](#).

⁹⁶ - It consists of handcuffing inmates on both sides of the hip in some cases; in others front and back, joined by a chain that surrounds the entire waist, according to [a note](#) from the Cuban Democratic Directorate.

⁹⁷ - See joint contribution of Cuba Archive / Free Society Project, Cubalex and The Human Rights Foundation Center for Law and Democracy for the third cycle of the Universal Periodic Review (UPR) of the Cuban State before the Human Rights Council of 2018, called JS9 - [Joint Submission 9](#). Paragraph 40.

frequent suicides⁹⁸ and self-inflicted aggressions by the inmates themselves, such as mutilations, castrations, wounds and even the injection fecal matter⁹⁹.

Between 2013 and 2014, the Cubalex organization was able to record the testimony of people deprived of liberty who reported incidents of violence for demanding or requiring rights, involving several officers of the Ministry of the Interior who served as guards in the penitentiary center¹⁰⁰. Several organizations have also denounced the conditions in Cuban prisons¹⁰¹.

During 2017, the Committee on Enforced Disappearances, regarding the inspection of places of deprivation of liberty, took note of the information provided by the Cuban State in indicating that State and non-State actors can visit such centers. In turn, it referred to the periodic inspection visits to be carried out by the Persecutors General's Office, most of them without prior notice, although it noted that no specific and independent mechanism has been established to carry out periodic visits to all places where persons may be deprived of their liberty¹⁰².

98 - See joint contribution of Cuba Archive / Free Society Project, Cubalex and The Human Rights Foundation Center for Law and Democracy for the third cycle of the Universal Periodic Review (UPR) of the Cuban State before the Human Rights Council of 2018, called JS9 - [Joint Submission 9](#). Paragraph 40.

99 - See joint contribution of Cuba Archive / Free Society Project, Cubalex and The Human Rights Foundation Center for Law and Democracy for the third cycle of the Universal Periodic Review (UPR) of the Cuban State before the Human Rights Council of 2018, called JS9 - [Joint Submission 9](#). Paragraph 40.

100 - 2014-10-27, 14ymedio, [The voice of Cuban prisoners reaches the Inter-American Commission on Human Rights, Report on the situation of persons deprived of liberty in Cuba, prepared by Cubalex](#), Page 20-26. 2014-10-27, 14ymedio, [The voice of Cuban prisoners reaches the Inter-American Commission on Human Rights, Report on the situation of persons deprived of liberty in Cuba, prepared by Cubalex, Page 20-26](#).

101 - Human Rights Watch, [World Report 2016](#), 2016, p. 205. Human Rights Watch (HRW) in its 2016 World Report, reported that prisoners still do not have an effective mechanism to file complaints, and those who criticize the government or resort to hunger strikes or other forms of protest are subjected to solitary confinement for prolonged periods, family visits are restricted, and are denied medical care. That same year Cuba Archive / Free Society Project, Cubalex and The Human Rights Foundation Center for Law and Democracy referred in a joint contribution to the general poor conditions of prisons, in particular insufficient levels of nutrition and hygiene, mistreatment by the authorities and denial of medical care, which had led to some cases of death and suicide. See joint contribution of Cuba Archive / Free Society Project, Cubalex and The Human Rights Foundation Center for Law and Democracy for the third cycle of the Universal Periodic Review (UPR) of the Cuban State before the Human Rights Council of 2018, called JS9- [Joint Submission 9](#). Paragraph 39, Paragraph 40, Paragraph 42. See also JS13 - [Joint Submission 13](#), Foundation for Human Rights in Cuba (United States of America); Center for the Opening and Development of Latin America – CADAL (Argentina); United Antitotalitarian Forum – FANTU (Cuba), pp. 1-6; JS16 - [Joint Submission 16](#), Cubalex (United States of America); Foundation for Human Rights in Cuba (United States of America), pp. 1-2, 4-9; JS21 - [Joint Submission 21](#), Corriente Martiana (Cuba); Patmos Institute (Cuba); Center for Culture and Democracy (Cuba); Asociación Pro Libertad de Prensa (Cuba); Cuban Foundation for LGBTI Rights (Cuba); Cuban Movement Reflection – MCR (Cuba); Agencia de Prensa Libre Avileña - APLA (Cuba); Latin American Federation of Rural Women – FLAMUR (Cuba); Alianza Democrática Piñarena Vueltabajo por Cuba (Cuba); Independent Trade Union Association of Cuba – ASIC (Cuba), paras. 65-66; DDC - [Directorio Democrático Cubano](#), p. 1; and UNPACU - [Unión Patriótica de Cuba](#), p. 1. Report of the Office of the United Nations High Commissioner for Human Rights, Summary of communications from interested parties on Cuba, [A/HRC/WG.6/30/CUB/3](#), A/HRC/WG.6/30/CUB/3, Paragraph 27. In a joint communication, the Foundation for Human Rights in Cuba, the Center for the Opening and Development of Latin America and the United Anti-Totalitarian Forum (FANTU) expressed concern about the reprisals to which persons deprived of liberty and their families were exposed for filing complaints. According to these organizations, inmates reported that soldiers working in prisons were trained to maintain order and discipline through “terror, fear and by force of blows” and use searches to harass, humiliate and interfere unnecessarily in their privacy, as well as serve as acts of provocation and pretext to find a reason to punish and physically assault them. See the joint report of the Foundation for Human Rights in Cuba (United States of America); Center for the Opening and Development of Latin America – CADAL (Argentina); United Anti-Totalitarian Forum – FANTU (Cuba) for the third cycle of the Universal Periodic Review of the Cuban State before the Human Rights Council of 2018, called JS13 - [Joint Submission 13](#), Paragraphs 4, 5, 6 and 27. Human Rights Watch, [World Report 2022, Cuba](#), Cuba, Conditions in Detention Centers, 2022. HRW in its 2022 World Report reported that the country's prisons in general are overcrowded. There is no mechanism in practice through which detainees can file complaints of abuse. Those who criticize the government start hunger strikes or resort to other forms of protest are often locked in solitary confinement for extended periods and suffer beatings, restrictions on family visits and denial of medical care.

102 - UN, Committee on Enforced Disappearances, Concluding Observations on the report submitted by Cuba under article 29, paragraph 1, of the Convention, CED/C/CUB/CO/1, 14 March 2017



Cubalex has interviewed and received the testimony of human rights defenders and independent journalists who have been deprived of their liberty¹⁰³ in relation to the conditions of overcrowding and impossibility of having basic conditions of hygiene and food, and different practices consisting of inflicting physical pain and psychological pressure on prisoners to desist from exercising the rights that assist them, many times the right committed is that of access to health.

7.4.1. Restrictions, disciplines, sanctions, and instruments of physical coercion

Cubalex has interviewed and received the testimony of people who have been deprived of liberty, in relation to the conditions of overcrowding and impossibility of having basic conditions of hygiene and food, as well as different practices consisting of inflicting physical pain and psychological pressure on prisoners to desist from exercising the rights that assist them, many times the right committed is that of access to health.

103 - Cubalex was able to verify that, during 2017, at least 25 people were prosecuted for political reasons and 24 people were forced into exile. In June 2018, the CCDHRN issued a [list](#) of approximately 140 defenders deprived of their liberty for political reasons. That same year, the Patriotic Union of Cuba (UNPACU) reported that activists in prisons were victims of beatings, physical and psychological torture, and other cruel, inhuman, and degrading treatment. See report of the [Patriotic Union of Cuba](#) (UNPACU) for the third cycle of the Universal Periodic Review of the Cuban State before the Human Rights Council of 2018, p. 1. [Amnesty International](#) para el tercer ciclo del Examen Periódico Universal del Estado cubano ante el Consejo de Derechos Humanos de 2018, segundo y tercer received reports of ill-treatment of prisoners of conscience and other short-term detainees, which could constitute a violation of the Standard Minimum Rules for the Treatment of Prisoners. See Amnesty International's report for the third cycle of the Universal Periodic Review of the Cuban State before the Human Rights Council of 2018, second and third paragraph of page 3. See also the Report of the Cuban Democratic Directorate (DDC) for the third cycle of the Universal Periodic Review (UPR) of the Cuban State before the Human Rights Council of 2018, p. 3; and the report of the [Ladies in White Movement](#) (MDB) for the third cycle of the Universal Periodic Review of the Cuban State before the Human Rights Council of 2018, p. 3. The government has consistently refused to comply with recommendations to allow independent human rights monitors access to prisons and other places of deprivation of liberty. See [Amnesty International's report](#) for the third cycle of the Universal Periodic Review of the Cuban State before the 2018 Human Rights Council, page 6; the joint report The Advocates for Human Rights (United States of America) and World Coalition Against Death Penalty (France) for the third cycle of the Universal Periodic Review of the Cuban State before the Human Rights Council of 2018, called JS4 - [Joint submission 4](#), p. 2; p. 2; the joint contribution of Cuba Archive / Free Society Project, Cubalex and The Human Rights Foundation Center for Law and Democracy for the third cycle of the Universal Periodic Review of the Cuban State before the Human Rights Council of 2018, called JS9 - [Joint Submission 9](#) paragraphs 43 and 56. See also the report of the Foundation for Human Rights in Cuba (United States of America); Center for the Opening and Development of Latin America – CADAL (Argentina); United Anti-Totalitarian Forum – FANTU (Cuba) for the third cycle of the Universal Periodic Review of the Cuban State before the Human Rights Council of 2018, called JS13 - [Joint Submission 13](#), paragraph 43, paragraph 3 and the joint report of Cubalex (United States of America); Foundation for Human Rights in Cuba (United States of America), for the third cycle of the Universal Periodic Review of the Cuban State before the Human Rights Council of 2018, called JS16 - [Joint Submission 16](#), p. 10. 2019-10-01, Prisoners Defenders, Cuba: 4 new Convicts of Conscience. According to the reports of the Cuban prisoner defenders (CPD) on October 1, 2019, there were 125 political prisoners in Cuba. According to the organization, in the last 12 months, counted from October 2020, 525 prisoners and convicts have been part of its list. These data indicate that Cuba's imprisonment of dissidents is a strategy with an exemplary and inhibitory effect for the rest of society.

7.4.2. Isolation

Also known as punishment cells, the Regulations of the Cuban Penitentiary System¹⁰⁴, in its article 20.1 establishes that this type of premises are intended for “the isolation of inmates by disciplinary measures, or those who, due to their personal characteristics and conduct, cannot coexist in the collectives and for the need to preserve their physical integrity, that of third parties and the internal order”.

However, the reasons for an inmate to be taken to a punishment cell can be very varied and arbitrary. Several political prisoners interviewed described being taken to punishment cells as soon as they entered the prison. Hunger strikes, the demand for rights within the prison, political activism, making telephone complaints to independent media, family members or prosecutors who visit the premises, especially those of Control of Legality in Penitentiary Establishments (CLEP), are also reasons for the confinement of a person deprived of liberty. After the beatings, it is also common for prisoners to be taken to these premises until the marks of the blows disappear.

VIII

ARBITRARY DETENTIONS, TORTURE AND CRUEL TREATMENT IN THE CONTEXT OF HUMAN RIGHTS ADVOCACY AND SOCIAL PROTEST

In order to identify, and subsequently describe, the torture techniques exercised by Cuban state agents against detainees, Cubalex conducted 21 interviews with citizens who suffered detentions during 2021. This report involved 14 men and 7 women who have suffered what can be called inhuman and degrading treatment for their dissident activity. All offered their testimonies about incidents of harassment suffered as political punishment.

In all cases, the perpetrators have been agents of the State, military members of several units of the Ministry of the Interior (MININT), including the Department of State Security (DSE) and the National Revolutionary Police (PNR).

From the processing of their testimonies, we managed to point out 14 different patterns of cruel treatment that violate international human rights standards in the moments before, during and after short-term detentions.

These torture techniques were: 1 acts of repudiation, 2 physical violence and threats during arrests, 3 use of pepper spray, 4 hands behind the back with tight handcuffs, 5 exposure to high temperatures inside the patrols, 6 abandonment in unpopulated places, 7 exposure to low temperatures during interrogations, 8 intimidation, blackmail and threats in interrogations, 9 offences due to skin color,

¹⁰⁴ - Order of the First Deputy Minister of the Interior (2016, 1 December). Regulations of the Penitentiary System. Available in [Cuba: Regulations of the Penitentiary System - Cubalex](#)



physical appearance and sexual orientation, 10 precarious conditions in police station cells, 11 forced nudity for body checks, 12 denial of access to health pads, 13 refusal of medical assistance and 14 beatings in detention centers.

Below, we describe them based on the testimonies of the victims and the similarities found. We divide these techniques for greater understanding in chronological order into five fundamental moments: 1 moment prior to arrest, 2 arrest, 3 transfers, 4 interrogations, 5 short-term deprivation of liberty. Each of the identified patterns was corroborated by more than one victim.

8.1. Acts of repudiation

The acts of repudiation consist of a group of supporters of the Cuban Government, guided by agents of state security (dressed in civilian clothes), meeting to shout political slogans, moral disqualifications, and personal offenses against a disaffected, a dissident or an opponent. In these cases, the violence can not only be verbal, but pass to physical aggressions that go from throwing of food, stones and blows with the hands or cables wrapped in newspapers. They occur mostly on the outskirts of the homes of those attacked, in the vicinity of the headquarters of some opposition movements and on the public roads where dissidents are gathered.

Although in most of the cases we have recorded, the acts of repudiation occur mostly during the day, it is striking that these mobs sent by government agents have also attacked the activists in the early morning while they rest with their relatives.

8.2. Physical violence and threats during arrests

In public spaces, police and state security agents usually beat activists in the abdomen and face, and sloop their knees into the neck of the victims. They also apply immobilization keys and even throw the detainees to the ground, kick them, or squeeze their throats. Such aggressions can be inflicted with open hands, fists or tonfas (canes used by police agents). As a result, the victims suffer fractures, lacerations, and bruises.

8.3. Transfers and exposure to high temperatures

Cubalex has monitored the use of patrols as mobile prisons, where detainees (activists, artists, opponents, and independent journalist) are exposed to the sun, while officers take refuge outside the car, under the shade.

Several of the testimonies (Maykel Castillo, Jackelin Boni, José Rolando Cásares, Annia Zamora) that we have collected agree that the authorities hold them for hours in hermetically closed vehicles, under the sun. There the heat, the lack of water and food affects the detainees.

The activists, locked up by uniformed police authorities or State Security, are at risk of first suffering dehydration, as well as dry mouth, headaches, gagging, fainting or even cardiac arrest. To them is added that they can contract contagious diseases or viruses, for example covid-19, being so close and without ventilation.

8.4. Acts of harassment, attacks, arbitrary arrests and imprisonment of human rights defenders and journalists

Between 2010 and 2018, the Cuban Commission for Human Rights and National Reconciliation (CCDHRN)¹⁰⁵ recorded 54 million 706 incidents of harassment against human rights defenders, with an average of 4558 per year, data that demonstrates the systematicity and generalization of repression¹⁰⁶.

Cubalex carried out an analysis and disaggregation of the information contained in the reports issued by the CCDHRN between 2016 and 2018 and counted 18,769 acts of harassment against 2192 activists, journalists, and human rights defenders: of them 732 are women and 1460 men. 75% of the acts of harassment were to prevent the exercise of the rights of association, assembly, demonstration, expression, and opinion, and 25% in retaliation for having exercised them.

In 2016 an activist was at risk of being repressed 1.75 times during a month, in 2017 the risk increased to 2.08 times in a month and in 2018 to 2.61 times. Persecution and incidents of harassment took place in a variety of approximately 20 acts, including arbitrary arrests, raids, seizures, surveillance operations to prevent mobility, imprisonment, etc.

Between 2016 and 2018, arbitrary detentions were the most reported acts. 96.64% of the total reported in 2016, 96.32% in 2017 and 86.98% in 2018. In 2016, at least 1452 activists reported 9968 arbitrary detentions, indicating that on average defenders suffered an average of 7 arrests per year. 84% of the detentions were of short duration (less than 24 hours), 11% between 2 and 4 days, 3.51% more than 5 days and 0.22% were deprived of liberty and prosecuted. Short-term detention prevents the victim from challenging the lawfulness of their detention in court and from obtaining adequate reparation following a satisfactory challenge, which is despite a violation of this right.

60% of these arrests were to prevent activists from attending religious ceremonies and 20% for holding protests in public, 9% to avoid meetings both in public or private places to hold events of interest to the organization or of relevance to independent society such as the Human Rights Day and 2% to prevent them from attending activities or relief events for the national authorities. It means that the greatest risk of detention occurs when leaving the house and/or carrying out or participating in activities convened or of significance for the independent civil society. During its execution, the state agents carry out other acts, such as abandonment in an unpopulated place, deportation to another province, interrogations, and threats.

According to the Cuban Observatory of Human Rights (OCDH), at least 3,157 arbitrary detentions occurred in Cuba in 2019, a figure higher than the previous year¹⁰⁷. During 2020, even with the mobility restrictions imposed due to the risk of contagion by COVID-19, the OCDH documented 1,798 arbitrary detentions, of which 216 were with the use of violence by the authorities¹⁰⁸. In the first half of 2021,

105 - [CCDHRN](#)

106 - [CCDHRN Reports](#)

107 - 2020-01-06, Cuban Observatory of Human Rights, [OCDH: "Cuba enters a new year without abandoning the long cycle of repression and backwardness that has been going on for six decades"](#)

108 - 2021-01-13, Cuban Observatory of Human Rights, [Cuba, 2020: Between the repression against civil society and the violation of social rights, says the OCDH in its annual report](#)



the organization registered 927 repressive actions against artists and supporters of the San Isidro and 27N Movements¹⁰⁹.

Article 19 recorded in 2021, 815 attacks against freedom of expression, of which 353 were perpetrated against defenders and artists: and 462 against journalists.

Of the 353 attacks registered, there is a clear trend towards people active within the San Isidro Movement and the 27N collective, who concentrated 194 and 122 respectively, within the framework of protests carried out in the physical and digital sphere. The most recurrent types of aggression were house arrests and arbitrary detentions were the most commonly used in 158 and 149 cases respectively.

In the case of journalists, Article 19 has been able to record 462 attacks directed at 98 people, of which 35 were women, who concentrated 227 attacks. On the part of the men, they were 63 assaulted on 233 occasions. There were also 2 events of direct aggressions to 2 different media outlets.

The attacked people come from 20 different media outlets, although there are also independent journalists who do not work for a single media outlet. In this list the number of attacks against ADN Cuba with 118 attacks, CiberCuba with 80 events and Cubanet with 65 are highlighted. It is necessary to note that all the registered media have a critical vocation towards the situation of human rights on the island, however there are initiatives such as the ICLEP with a constant journalistic work and the defense of rights associated with this work.

In addition, it was possible to detect 25 different types of aggressions, among which House Arrest and Arbitrary Detentions stood out, with 253 and 106 incidents respectively. These types of attacks are often the most used by the authorities due to their ability to demobilize, in the case of human rights defenders and in the case of journalists, prevent them from covering protests, shortages of food or medicine, police abuses and failures in public services, among other topics. The aggressions that were counted by dozens and stood out from the group of 25, were the smear campaigns and the official subpoenas to be interrogated with 21 and 30 events. In smear campaigns, various ways have been used to hit the reputation of journalists, both the digital sphere with social networks and the official media, (which also have a presence on video platforms) have been a vehicle for the intentions of the authorities of the island to affect the public image of journalists, accusing them of being paid by the United States to destroy Cuba's reputation internationally.

It is observed that in the case of journalists and human rights defenders, members of the State Security Department and the National Revolutionary Police persist as the main aggressors.

During 2019, Article 19 had documented that a journalist on average could be assaulted up to five times in a year. In 2020, the average increased to six times, and in 2021, it rose to eight times. In the case of women, this situation is aggravated, since on average one journalist was assaulted eight times in 2020 and up to 11 in the first half of 2021¹¹⁰.

¹⁰⁹ - 2021-07-05, Cuban Observatory of Human Rights, [OCDH: 713 repressive actions in Cuba in June, of which 114 were arbitrary detentions](#)

¹¹⁰ - ARTICLE 19, "Paper Democracy", January 2022, in <https://articulo19.org/wp-content/uploads/2022/01/Democracia-de-papel.pdf>

8.5. The criminalization of social protest

The State repressed citizen protest and used the exemplary effect of criminal sanctions and deprivation of liberty to inhibit citizens from exercising their right to freedom of expression, especially with respect to public policies that generate social unrest. The protests in this context were characterized by being broadcast on social media networks. State agents used the criminal figure of “public disorder” to deprive protesters of their liberty. The cases were investigated by the Specialized Confrontation Body for Crimes Against State Security despite the fact that the crimes charged with during the investigation are common. The courts continued to deny habeas corpus petitions. The right to privacy of these persons was violated when the State exposed their personal data and private communications through the official media.

One of the most repressed organizations in this context was the San Isidro Movement (MSI), its members and the people who are linked or related to them and increased in the context of the pandemic.

On June 17, 2020, the organization launched a campaign against police violence¹¹¹. On June 25, MSI artists filed a complaint about the police violence unleashed by the police authorities in the context of the pandemic against two of its members¹¹². From social media they called for peaceful demonstrations throughout the island from June 30, against the police abuse sustained in Cuba by activists and independent civil society organizations including the MSI¹¹³. Since June 29, 2020, officers of the State Security (SE) and the National Revolutionary Police (PNR) began surveillance operations¹¹⁴. At the end of that day, at least 132 people, including artists, journalists, and activists, were victims of arrests, restrictions on leaving their homes and cuts to internet service when they participated and covered the protests against police violence¹¹⁵.

On September 28, 2020, rapper MC, a member of the organization, was violently detained. Members of the MSI and people linked to it showed up at the police station located in Cuba and Chacón to demand her release. Authorities in response organized a police operation and arrested all those who protested at the scene.¹¹⁶

111 - 2020-06-17, San Isidro Movement, [Official Declaration of the San Isidro Movement](#). The first activity that the group tried that day was to establish a formal complaint in the police offices against the agents who beat and imprisoned Luis Manuel Otero Alcántara and Maykel Osorbo on June 11 in the Cuba and Chacón station, in Old Havana. However, those who tried to file the complaint were detained. Rapper Maykel Osorbo has been missing for more than 12 hours. Luis Manuel Otero Alcántara was arrested after police patrols seized his home; and producer Michel Matos was threatened by telephone by the agent known as Santos. For her part, the art curator Anamely Ramo was intercepted by a State Security agent in the middle of the street as soon as she left her home. See also 2020-06-17, Cubanet, [“No to police violence”: new MSI campaign begins with repression](#) and 2020-06-18, Front Line Defender, [Urgent appeal: Arbitrary detention, judicial harassment, physical attacks and surveillance against defenders Luis Manuel Otero, Maykel Castillo and human rights defender Anamely Ramos](#).

112 - 2020-06-25, Radio Martí, [Artists call for justice in Cuban state entity after acts of police violence](#), 2020-06-25, Radio Martí, [Artists victims of police violence file a complaint with the Military Prosecutor’s Office](#)

113 - 2020-06-29, Facebook Video, [Manifest your annoyance tomorrow Tuesday 30, 11am](#) (call for protest). The Cuba’s Government acknowledged through their Ministry of the Interior the death of HEHG by the shooting of a policeman. [“The Ministry of the Interior mourns the death of a citizen](#) during a police confrontation in the municipality of Guanabacoa,” reads a press release published on June 27 in the digital edition of the official newspaper Granma.

114 - 2020-06-30, ADNcuba, [Alert on military movement on the eve of protest in Havana](#). Several people, denounced in networks the presence of riot trucks and the transfer of military personnel from other provinces to Havana.

115 - 2020-07-01, Ifex, [Organizations denounce numerous arbitrary detentions, restrictions and cuts of internet service to prevent demonstrations against police violence in Cuba](#).

116 - 2020-09-28, Radio Martí, [Maykel Osorbo was arrested and released after activists protested](#).



On October 7, a group of MEMBERS OF THE MSI and people linked to the organization of a protest that was launched on social networks on September 22, 2020, promoting the initiative “Imagine together the public protest that we want so much¹¹⁷”. The State security department organized surveillance operations with the police and the State security personnel from both departments of the Ministry of the Interior in the vicinity and the rapid response brigades. When the activists began to paint posters¹¹⁸, people sent by the regime took advantage of it in order to place posters with the image of Fidel Castro, shout slogans and sing the national anthem¹¹⁹.

On October 10¹²⁰ they summoned to a “Concert for Freedom¹²¹”. “From the day before, on October 9, the police operation was maintained¹²² throughout the day. On the day of the call, at 9:30 am on the 10th, several members of the MSI and people linked to the organization reported cuts in the mobile data service and police surveillance operations in the vicinity of their homes. At 10:20 a.m., the authorities organized an operation in front of the organization’s headquarters, in which approximately 50 people who were apparently carrying out a cultural activity participated. These people were later found to be part of a rapid response brigade organized by the government that protested against the people who approached the MSI headquarters on the occasion of the concert. At 1:00 P.M.¹²³, approximately 10 and 7 state security personnel in civilian clothes respectively¹²⁴, arbitrarily identified and detained all persons approaching the venue to attend the concert. As of 11:59 p.m. on Oct. 10, authorities detained 21 people. The majority of arrests occurred from 4:20 in the afternoon and were released in the early hours of the morning of October 11. In the morning, at least 7 of the detainees reported surveillance operations in the vicinity of their homes¹²⁵.”

On November 9, 2020, several members of the MSI were arrested to prevent them from gathering and protesting peacefully in front of the police station in Cuba and Chacón. Between the 12 and 15 of the same month, several activists were arrested as they tried to reach various police stations to inquire about their whereabouts. In most cases, the activists were transferred to police stations in outlying municipalities far from the city center and far from their homes. On November 16, at least 14 people decided to lock themselves up as a form of protest at the headquarters of the San Isidro

117 - 2020-09-22, Diario de Cuba, [The San Isidro Movement invites to paint a poster for change in Cuba.](#)

118 - On the posters they wrote phrases like “A flower to cultivate and a system to change” or “We have a life to lose and a country to gain.” See [2020-10-08 Activists paint posters on the street](#)

119 - 2020-10-08, Diario de Cuba, [The regime mobilizes its mobs to thwart a peaceful action of the San Isidro Movement](#)

120 - October 10 is National Independence Day. On these dates the authorities are accustomed they plan to carry out operations to prevent social and political activists, journalists, and human rights defenders from leaving their homes or carrying out activities related to the days of national celebration.

121 - It was planned to be held in Ladies and San Isidro, Old Havana against the normalization of police and political harassment of artists and activists, especially against the siege of Barrio San Isidro the previous days. The organizers also intended to close the work of Luis Manuel Otero and the inauguration of the headquarters of the Museum of Dissidence and Movement San Isidro.

122 - In the headquarters of the MSI and in the homes of [Maykel Castillo](#) and Iliana Hernández. That day, Anamely, Luis Manuel, Iliana and Maykel were arrested. They were released around midnight, except for Maykel Castillo, until the afternoon hours of the next day. In the wake of the surveillance and harassment against members of the group and people linked to it, issued a statement against the ongoing police violence in Cuba, especially that of Maikel Castillo who had been detained since the previous day. See also, 2020-10-10, Diario from Cuba, [A score of activists declare their rejection of police violence in Cuba](#)

123 - At the corner they form at the perpendicular intersection of Damas Street with Avenida del Puerto and San Isidro Street.

124 - Among whom were the Interior Ministry officers who call themselves Kenya and Jaime who regularly represses artists especially MSI members

125 - 2020-10-11, Diario de Cuba, [More than 20 activists detained Saturday in Cuba have already been released](#)

Movement demanding the release of the rapper. Of these, nine went on hunger strike and three went on hunger and thirst strike. On November 26, 2020 at approximately 8:30 p.m., Cuban state forces forcibly entered the MSI headquarters and took all the people inside into custody, who appeared as alleged health authorities with the intention of forcing the occupants of the headquarters to take a PCR test to rule out a diagnosis of COVID-19. In addition, they reported that in the vicinity of the house the authorities had an operation in which more than 60 troops were participating. According to the testimonies of the detainees, state security agents disguised themselves as doctors to break into the headquarters. They allege that after putting them in police vehicles (cage cart) they took off their gowns¹²⁶.

On November 27, 2020, around 15 young artists gathered outside the Ministry of Culture (MINCULT). They demanded to meet with the Minister of Culture; their intention was to repudiate what happened with the MSI and demand a pronouncement, also to advocate for respect for freedom of expression and the cessation of censorship. Although after several hours they managed to meet with state officials, people who tried to arrive reported that at night there was a power cut, the police surrounded the corners of the place and fired tear gas at some people who tried to join the protest.

The repressive actions with the highest incidence in this period were house arrests. There were 339, or 27.6%. This repressive action is recognized in the adjective criminal legislation as “home confinement”¹²⁷, but the way in which they are carried out does not meet the requirements provided for in the law making this action illegal and they are not judicially supervised¹²⁸. State agents set up surveillance operations to prevent the mobility¹²⁹ of activists and human rights defenders verbally prohibiting them from leaving their home under threats of arrest if they do so¹³⁰. This action violates the privacy of the person, their family and those close to them. These home confinements are usually accompanied by illegal or unjustified surveillance or follow-up operations. In the registry, 250 of these acts were counted, the fourth with the highest incidence and which represents 20.4% of the total registered actions.

Illegal house arrests may be considered arbitrary detentions since the person remains detained at home without having committed any crime and without the authority complying with the provisions of the law

¹²⁶ - 2020-11-27, Diario de Cuba, [This was the raid on the headquarters of the San Isidro Movement in Cuba](#)

¹²⁷ - Article 256 of the LPP. This is one of the precautionary measures regulated by the Criminal Procedure Law (LPP) for the seizure and bat the end of the process. This measure is reserved for persons who are subject to an investigation process of a criminal nature and who have opened a Preparatory Phase File (VET), after having been denounced for the alleged commission of a criminal act. However, people who are under this precautionary measure can leave their home to attend their work or study center, or to attend to their health, at the usual time, without the need for the authorization of the instructor or the court. Well, the authorization is exclusively for other activities. Currently this rule is repealed by Law No. 143/2022, but home confinement is maintained as a security measure that can be imposed by the police within de the first 24 hours after a person’s arrest, at which point they become charged **Article 366. (1.)** Home confinement consists of the obligation of the accused or accused person not to leave their home or the place where they are in. Temporarily without the authorization of the criminal investigator, the prosecutor, or the court, depending on the stage of the process, except to attend to their place of work or studies, in the usual hours, or to attend to their health or continue their educational improvement. (2.) It is fulfilled under the control of the National Revolutionary Police of the temporary or permanent domicile where the measure was imposed on the accused or accused.

¹²⁸ - Article 94 (e) of the Constitution of the Republic of Cuba: “Every person has the guarantee of their legal certainty, they enjoy due process in both the judicial and administrative spheres and, consequently, enjoy the following rights: not to be deprived of its rights except by a well-founded decision of a judicial and administrative authority. Petition or final judgment of the court”.

¹²⁹ - Article 52 of the Constitution of the Republic of Cuba: “Persons are free to enter, stay, transit and leave the national territory, change their domicile or residence, without limitations other than the established by law.

¹³⁰ - In order to ensure the severity and effectiveness of the harassment, they assign a State Security agent who is always monitoring the victim’s home.



for the restriction of the right to freedom of movement. In addition, this situation is used to subject people to acts of repudiation that promote hatred, violence, and discrimination, prohibited by international law¹³¹. The illegality of home confinement prevents victims from having legal representation, since without an EFP number, without a crime and without a legally imposed precautionary measure, they cannot hire a lawyer and, therefore, they are in a complete state of defenselessness, excluded from due process¹³².

The second most frequently affected repressive action during the past year was arbitrary detentions. In 2021, with the isolation and restrictions on mobility due to COVID, the incidence decreased. There were 318 incidents related to this act, 25.9% of the total.

Threats¹³³ were the third most prevalent repression action, with 292, or 23.8% of the total. Discrimination on the grounds of orientation and/or political affiliation with 229 registered actions was the sixth and illegal official subpoenas the seventh. 176 were counted, 14.3% of the total registered actions¹³⁴.

The interrogations were the eighth most highly incidence of repression. Representing the 75, 6.1% of the total. Interrogations are an investigative measure. Usually, this interrogation is preceded by illegal summonses where they tell people that they are only in an interview and there they exert coercion and threats to extract confessions and information about them and about third parties¹³⁵.

The increase in repressive actions occurred within the context in which the epidemiological situation and the restriction of human rights increased the number of social protests demanding freedoms and better living conditions. In general, the Cuban State used the health crisis as a justification for suspending human rights without having declared a State of Emergency, as required by international

131 - Article 20.2 of the International Covenant on Civil and Political Rights: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

132 - Article 249 LPP: "From the moment the resolution is issued decreeing any of the precautionary measures authorized by this Law, the accused will be a party to the process and may propose evidence in his favor. The Ombudsman, from the procedural moment referred to in the previous paragraph, may: 1. Establish communication with his representative and interview him with due privacy, if he is detained; 2. examine the proceedings relating to the preparatory phase file, except in the case referred to in the last paragraph of Article 247; 3. propose evidence and present documents in favor of its representative; 4. request the revocation or modification of the precautionary measure imposed on his representative. (...)"

133 - This action committed by agents of the State constitutes an offence under domestic law. Articles 284 and 285.2 of the Criminal Code: "The penalty is deprivation of liberty for three to eight years if the crime is carried out by one or more individuals acting as members of an organized group or the execution of a serious prejudice."

134 - These summonses are illegal because the authorities make them outside the provisions of the Criminal Procedure Law. Article 86 of the LPP. They usually deliver a piece of paper without any of these requirements, signed and without the identification of the person who delivers it, who is a policeman who is not empowered to do so. In addition, they never put the object of the summons and the person cited does not know the reason why he should go to the place they indicate and, in many cases, do it via telephone without any legal justification. Everything that violates the right to legal certainty, maximum because most of the time it coincides with people who do not have open any Preparatory Phase File, therefore, therefore, they are not subject to any criminal proceedings that justify the reason for the summons.

135 - Article 166 of the LPP: "No violence or coercion of any kind shall be exercised on persons to force them to testify. Any statement obtained in breach of this precept shall be null and void, without prejudice to the corresponding criminal liability."

law. It increased disproportionate and discriminatory actions against human rights defenders¹³⁶, such as: deprivation of liberty and arbitrary house arrests¹³⁷. The economic context worsened due to high unemployment rates and was aggravated by the implementation of the “ordering task”. It increased repressive measures against non-state sectors to control the high prices of food and basic necessities. The State applied excessively severe fines for carrying out economic activities, especially those related to sale and resale.

In 2021, the most representative violations were due to the continuous demonstrations made by artists in demand of the protection and guarantee of their rights.

On January 27, 2021, young artists try again to meet with authorities of the Ministry of Culture. State Security detains several of them and besieges others to prevent them from leaving their home. The young people in front of MINCULT were assaulted by MINCULT officials, including the minister and two deputy ministers. They were then violently detained, severely beaten, held, and interrogated for several hours. Two of the women were stripped naked and touched. In the following days several artists called for a peaceful protest at the Capitol, seat of the legislative body demanding the resignation of the Minister of Culture¹³⁸.

Between 19 and 20 February, repression of state agents increased when a group of animal rights activists peacefully stood in front of the Ministry of Agriculture, arbitrary arrests were carried out and surveillance operations were organized against other activists who the authorities suspected might join the demonstrators¹³⁹.

On February 16, Cuban artists released the theme song “Patria y Vida” that went viral on social media. The song was considered a provocation to the communist government. Activists painted the phrase on the facades of their homes and on their torsos. Between the first days of March, the government organized demonstrators related to the political group in power and organized repudiation rallies in front of the homes of activists who shared photos on social media in which they used the phrase

136 - Activists, artists, and independent journalists are the people who suffer the most from the measures of harassment and repression by State Security.

137 - In compliance of the educational function, Cubalex [disseminate advice](#) so that people know what arbitrary home confinement is and the need to report it.

138 - 2021-01-27, El Toque, [What happened on January 27 in front of the Ministry of Culture?](#); 2021-01-28, CiberCuba, [What happened on January 27 at the headquarters of the Ministry of Culture of Cuba?](#); 2021-02-03, Diario de Cuba, [Violence against 27N: 'A phone does not hurt, it only collects the truth of what is happening'](#); 2021-01-27, Rialta, [27N activists insist on demanding Alpidi's resignation or dismissal of Alonso, Minister of Culture of Cuba](#); 2021-01-27, [Radio Martí, Police operation tries to prevent another protest in front of the Ministry of Culture; vice minister Rojas intervenes \(VIDEOS\)](#); 2021-01-27, Granma, [Ministry culture workers faced media provocation \(+ Videos and tweets\)](#); 2021-01-27, CREART: Ministerio de Cultura de Cuba, [The Real One background of the provocations at the headquarters of the Ministry of Culture](#)

139 - 2021-02-19, CiberCuba, [Cuban animalists protest at the Ministry of Agriculture](#); 2021-02-19, Radio Martí, [Animal Welfare Law will be passed by February 28, government tells animalists after protest \(VIDEOS\)](#); 2021-02-19, OnCuba, [Cuban Animalists talk with representatives of the Ministry of Agriculture after protest](#); 2021-02-19, SWI, [Cuba to approve an animal welfare decree law before February 28](#); 2021-02-19, 14ymedio, [Dressed in mourning, Cuban animalists are received by the agriculture authorities](#); 2021-02-19, Diario de Cuba, [Where is the Animal Welfare Act? Cuban activists enter the Ministry of the Agriculture and force the authorities to listen to them](#); 2021-02-21, CiberCuba, [Animalist recounts details of the protest against the law of Animal wellbeing in Cuba](#);

“Patria y Vida” in their bodies and homes¹⁴⁰.

On March 8, “International Women’s Day, more than a dozen mostly female activists were subjected to surveillance and home confinement. Those who tried to leave were arrested, some of them violently¹⁴¹. Between the 12 and 15, repression increased to prevent activists of the San Isidro Movement (MSI) from leaving their homes, under the suspicion that they would participate in an alleged secretly organized protest, as reported in the stellar broadcast of the national news on the night of March 11. The journalist of that newscast exposed the faces of 6 activists while discrediting them¹⁴².

On July 11, 2021, a series of protests began in which thousands of Cubans demonstrated peacefully in different cities of the country denouncing the human rights crisis¹⁴³ facing Cuba, aggravated by the COVID-19 pandemic¹⁴⁴, and shortages¹⁴⁵. The government’s response to the protests included the deployment of the elite military group of the Revolutionary Armed Forces (FAR)—known as “black berets”¹⁴⁶— and civilian groups that responded to President Díaz Canel’s call to take the streets to “defend the Revolution”¹⁴⁷. In this context of repression, civil society organizations have been able to document patterns of arbitrary detentions, forced disappearances, detention of minors, police brutality, massive judicial procedures without the minimum guarantees of due process, restrictions on mobility, torture, ill-treatment and limitations on internet access as well as the approval of decrees that criminalize protest under the threat of serious accusations of terrorism. On July 13, the Ministry of the Interior confirmed the death of the afrodescendant citizen Diubis Laurencio Tejeda after being shot in the back¹⁴⁸.

Cubalex and the Working Group on Political Prisoners, Justice 11J, at the time of writing this report had registered 1142 arrests in all the provinces of the country, including the municipality of Isla de la

140 - 2021-02-20, BBC News, [“Patria y Vida”: the controversy over the song of a group of Cuban artists that was harshly criticized by the government of Havana](#); 2021-02-22, El País, [‘Homeland and life’: the rap song that irritates the Cuban regime](#); 2021-03-18, Civicus, [Cuba: Quick Reaction Against Song Criticizing Revolution](#); 2021-05-27, La Tercera, [“Homeland and Life”: Human Rights Organizations Denounce the Detention in Cuba of Three Anti-Castro Rap Performers](#);

141 - 2021-03-08, 14ymedio, [Locked up on March 8th in my house by the Cuban political police](#), CiberCuba, [State Security forcibly detains Maykel Osorbo leaving his home in Havana](#); Diario de Cuba, [Women activists in Cuba: between demands for a comprehensive gender law and political discrimination](#); ADN Cuba, [MININT congratulates its workers as it represses activists](#)

142 - 2021-03-11, Canal Caribe, [Cuba: dismantle “secret action” of the counterrevolution scheduled for this Friday](#); 2021-03-12, Radio Martí, [Humberto López lies again on national television, this time for an alleged protest in José Martí Square](#); Diario de Cuba, [The regime threatens Cuban activists for an alleged peaceful protest in the Plaza de la Revolution](#); 2021-03-19, BBC News, [Who is Luis Robles, the young man who has been imprisoned for almost four months in Cuba for standing on a street with a sign](#)

143 - Comisión Interamericana de Derechos Humanos, [Human Rights Situation in Cuba](#) parag. 22, 3 February 2020.

144 - Swiss Info (EFE) [The Cuban health system is “overwhelmed” by covid, according to Díaz-Canel](#), La Havana, 12 August 2021.

145 - El País, Mauricio Vicent [Queues, viruses and shortages in the Cuba of the VIII Congress](#), Havana – April 19, 2021

146 - Infobae, [Who are the Black Berets](#), July 12, 2021.

147 - Communist Party of Cuba, [Díaz-Canel: We call on all revolutionaries to take to the streets to defender the Revolution](#), July 12, 2021.

148 - BBC News World, [Protests in Cuba: the government confirms a killed in new riots on the outskirts of Havana](#), July 13, 2021.

Juventud¹⁴⁹, associated with the protests of July 11 and 12. Although several activists were arrested and are being held in detention¹⁵⁰, most of the detainees are ordinary citizens who spontaneously joined the protests. A total of 756 persons are still deprived of their liberty, 56 per cent of the total number of persons detained. The data is an under-registration. The Cuban state has not reported the number of people arrested during the protests.

Several released persons reported acts of torture and ill-treatment, including beatings¹⁵¹, power passes, verbal offenses, threats of sexual abuse¹⁵², use of dogs to intimidate, sleep disruption, isolation in dark cells. According to the organizations' registry, at least 33 people were infected with COVID-19 during their time in prison, due to deplorable hygienic conditions and overcrowding in cells.

Many of those released significantly lost weight due to insufficient food and drinking water. According to their testimonies, the lack of hygiene in the preparation of meals and storage for the distribution of this seemed intentional. Among the humiliating treatments they described being forced to be naked and squatting to look for objects on their genitals and were forced to shout slogans in favor of the "revolution" such as "Viva Fidel" and "Viva Díaz Canel".

During the first few days after 11 July, several of the protesters were temporarily subjected to enforced disappearances. In official media, judicial authorities acknowledged that 61 habeas corpus had been received and 59 denied for considering that there were no violations of the law. Cubalex assisted relatives of the detainees in the preparation of 55 habeas corpus petitions. At least 25 of them reported the enforced disappearance of 40 people about whom the authorities refused to give information about the place where they were detained. Cubalex was aware of 12 responses from the judicial authorities in which they never ruled on this serious violation.

149 - The protests that took place in more than 60 cities and towns of the national territory, according to the mapping and audiovisual record of the protests of the Inventory Project

150 - Among them are the leader of the Patriotic Union of Cuba (UNPACU), José Daniel Ferrer, who was held incommunicado for three months after his deprivation of liberty on 11 July, is currently in detention. See OMTC, Urgent Interventions, [Arbitrary detention of human rights defender José Daniel Ferrer](#), August 27, 2021. The activist, rapper, and member of the Citizens Committee for Racial Integration (CIR), Richard Adrián Zamora Brito who was released after 42 days of incommunicado detention. See OMTC, Urgent Interventions, Cuba: [Arbitrary arrests and harassment of members of the City Committee for Racial Integration](#), July 30, 2021. Independent journalists Camila Acosta, Orelvys Cabrera, Rolando Rodríguez, Niober García, Henry Constantín, Iris Mariño, Niefe Rigau and Alberto Corzo. Article 19 and Cubalex [demand the immediate release of journalists detained in the context of protests in Cuba](#), July 20, 2021; Amnesty International [Cuba: Amnesty International names prisoners of conscience in the context repression of protests](#), August 19, 2021.

151 - See [Testimony in letters from Mailene Noguera Santiesteban](#)

152 - 2021-07-30, The Touch, [Gabriela Zequeira's testimony describes an act of torture](#): "Gabriela Zequeira Hernández was told to "stick her finger in to see if she had anything inside." Before, she had been ordered to strip naked and squat and cough and squeeze her lower belly. She was in the locker room of the police station of 100 and Aldabó, in Havana, where she had been transferred from the unit of San Miguel del Padrón after assuring her, and that she would be released. Gabriela is 17 years old and was arrested on July 11, 2021 (11J). She was returning home from the hairdresser when she found the demonstration. Those who arrested her told her that they were doing it because she could not demonstrate she wasn't against the revolution. Major Abel entered the cell where Gabriela was and, laughing, told her that he would take her to the pavilion along with "Manguera" and "Mandarria". It was "one of the most unpleasant moments I ever experienced," says the teenager. "Hose" was a strong mulatto with a mandarria, says Gabriela while with her hands symbolizes the size of a penis, not so big; and "Mandarria" was a black, strong and big, who did have it big."

8.5.1. Summary judgments related to the 11J protests

Approximately 9 days later, the Cuban government began bringing groups of individuals to summary trials without respecting international due process standards¹⁵³. Supreme Court officials acknowledged that they had filed 23 cases to summarily prosecute 67 people, 58 of whom were punished for the crime of public disorder and only 23 had legal assistance for their defense. According to the judicial official's statements to the official press, "as these are processes handled by the municipal courts, whose sanctioning framework is up to one year of deprivation of liberty, the decision to appear at the oral trial with a lawyer corresponds to the accused themselves". He added that only one person was acquitted, while 45 filed an appeal¹⁵⁴. Most appeals before the provincial courts upheld the first instance sanction.

We are concerned about the invisibility situation of afrodescendants, people with disabilities and members of the LGBTIQ+ community. According to the data obtained, of the cases registered as afrodescendants, 24% were released, compared to 40% of people with white skin. In a similar situation there are 5 people who have a real or perceived sexual orientation and /or a diverse gender identity, identified in our monitoring work.

Internet blocking was recorded more frequently and more widely than usual in order to prevent the call for protests and denunciations of abuses committed by the security forces¹⁵⁵. The approval of Decree Law 35¹⁵⁶ and Resolution 105 of the Ministry of Communications¹⁵⁷ that seek to limit the exercise of freedom of expression and criminalize the call for protests through social media, as well as the publication of messages that are considered offensive¹⁵⁸. Decree Law 35 regulates the issue of telecommunications, information technologies, communication, and use of the radio spectrum, and is complemented by Resolution 105 that seeks to respond to "cybersecurity incidents" attributing

153 - 2021-07-22, BBC News World, [Protests in Cuba: Prison sentences handed down for 12 detainees in recent demonstrations on the island](#)

154 - 2021-08-18, Cuba debate, [Criminal investigations into the events of July 11 in Cuba are progressing](#), 2021-08-19, Ministry of Foreign Affairs, [Press release](#)

155 - Internet service cuts are common practice of the Government to try to prevent the outflow of information and the coordination of the civil society organizations. To make their complaints through social networks, activists and organizations must resort to virtual private networks (VPNs) that are outside the control of the Government, however, the access to these and their operation is not regular. Swiss Info (Efe Agency), [Cubans still without internet and turn to VPNs to circumvent censorship](#), on July 14, 2021; The Country, [The internet blackout cools the mobilizations in Cuba](#), July 14, 2021; IACHR, [The IACHR and its Rapporteurships Specials condemn state repression and the use of force in the framework of peaceful social protests in Cuba, calling for dialogue on citizen demands](#), July 15, 2021.

156 - Official Gazette of the Republic of Cuba No. 92 Ordinary, [Decree Law 35](#), August 17, 2021. Decree Law 35 was promulgated in the Gazette on the 17th of August, but it was actually approved by the National Assembly in April 2021.

157 - Official Gazette of the Republic of Cuba No. 92 Ordinary, [Resolution 105](#), August 17, 2021

158 - France News, Pedro Vaca Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, [The rule Cuban Cybersecurity Ment Could Criminalize Legitimate Expressions](#) August 19, 2021. BBC news world, Lioman Lima, [Decree Law 35: The new regulations in Cuba to condemn those who speak badly of the government on social networks](#), August 19, 2021.

low, medium, high, and very high levels of danger¹⁵⁹. The annexes to this resolution categorize the dangerousness of various behaviors, for example, it is considered that “actions through the use of ICTs whose purpose is to subvert the constitutional order” or “seriously alter the peace” are of very high danger¹⁶⁰. These norms have already been the subject of a communication from several Special Procedures expressing their concern to the State of Cuba about the possibility that these norms could undermine the freedoms of expression and peaceful assembly and association, as well as the activities of human rights defenders and citizens in general¹⁶¹.

Given the gravity of the situation, the Inter-American Commission on Human Rights (IACHR) and its Special Rapporteurships have condemned state repression and the use of force in the context of peaceful social protests in Cuba, calling for citizen dialogue¹⁶². On October 21, 2021, the IACHR also held a thematic hearing on the “Human Rights Situation in the Context of protest in Cuba,” where civil society organizations were able to refer extensively to the patterns that violate human rights that they have identified since the beginning of the protests on July 11, 2021. For her part, the United Nations High Commissioner for Human Rights has urged dialogue and called for the release of the detained protesters¹⁶³. The Special Rapporteur on the right to freedom of peaceful assembly and of association, to whom the present letter is addressed, has also demanded respect for peaceful protest and the release of detainees through their social networks¹⁶⁴. In addition, several MEPs have spoken out on the situation demanding compliance with the agreement between Cuba and the European Union¹⁶⁵. For their part, civil society organizations have also expressed their concern in different calls¹⁶⁶.

¹⁵⁹ - Swissinfo.ch, [Regulation or more censorship? The new and controversial Cuban cybersecurity law](#), August 18, 2021.

¹⁶⁰ - Official Gazette of the Republic of Cuba No. 92 Ordinary, [Resolution 105](#), August 17, 2021.

¹⁶¹ - Special Procedures, [communication](#), October 20, 2021

¹⁶² - IACHR [The IACHR and its Special Rapporteurships condemned ancillary to state repression and the use of force in the context of peaceful social protests in Cuba, calling for dialogue on citizen grievances](#), Washington July 15, 2021.

¹⁶³ - OACNUDH Cuba: [Bachelet urges dialogue and calls for the release of detained protesters](#), Geneva July 16, 2021.

¹⁶⁴ - UN Special Rapporteur Freedom of Association, [tweet](#) July 13, 2021.

¹⁶⁵ - Dita Charanzová, [tweet](#), July 14 de 2021.

¹⁶⁶ - Race and Equality, [#SOSCuba: Race and Equality demands respect for life and the right to protest](#), July 12, 2021; [International Organizations Reiterate Concern over Repressive Response by The Cuban State, one month after the protests of July 11](#), August 11, 2021.

On the basis of the information submitted, the signatory organizations request the Committee against Torture to approach the State of Cuba to make the following recommendations:

A. Regulatory adequacy

1. Ratify the International Covenant on Civil and Political Rights and its protocols; as well as the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.
2. Review and adapt the Draft Criminal Code to international standards of human rights, including the elimination of criminal types that restrict the exercise of fundamental rights such as freedom of expression, peaceful assembly and association.
3. To adapt the definition of the criminal type of torture included in the Preliminary Draft Criminal Code to the standards set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
4. Eliminate the death penalty from Cuban law.
5. Allow the participation of independent civil society in the processes of formulating laws and public policies, in accordance with international human rights standards.
6. Accept the competence of the Committee referred to in articles 21 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to hear complaints of non-compliance by the State with the Convention by other States and the submission of individual cases to the Committee.
7. Sign and ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

B. Repression, criminalization, and deprivation of liberty

1. Respect, protect and guarantee the human rights of all inhabitants, including freedom of peaceful expression, assembly, and association.

2. Demand an end to the repression, criminalization and arbitrary detention of human rights defenders, activists, independent journalists, and artists.
3. Ensure that those charged and in need of legal representation have access to independent and impartial legal professionals.
4. Eliminate the figures of “dangerousness” and “special proclivity in which a person finds himself to commit crimes”, contained in the Criminal Code.
5. Refrain from arbitrarily depriving human rights defenders and journalists who exercise their legitimate work of defending human rights in the country and freedom of expression through journalistic work.

C. Gender-based violence

1. Adopt a general legal definition of all forms of discrimination against women, covering discrimination, gender-based violence and including effective mechanisms for access to justice.
2. Incorporate into domestic legislation a Law on Violence against Women to classify in the Criminal Code the crime of femicide as an autonomous crime.

D. Persons deprived of their liberty

1. Establish an up-to-date, public, and easily accessible register of persons deprived of their liberty. This register shall contain information reflecting: (a) the number of persons in detention; (b) procedural status or situation; (c) gender, age, ethnicity, sexual orientation, gender identity and expression, disability status.
2. Release persons deprived of their liberty for political reasons.
3. Ensure judicial guarantees and due process for persons deprived of their liberty.
4. Allow the constant and fluid communication of persons deprived of liberty with their technical defense and relatives.
5. Guarantee the right to personal integrity of all persons deprived of liberty, eliminating the use of torture tactics and prolonged isolation.
6. Initiate expeditious and immediate criminal investigations to identify, prosecute and punish those responsible for acts of torture and cruel treatment.

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