

**COVER PAGE - PÁGINA DE PORTADA**  
**Joint presentation**  
**"Impunity of the authorities"**  
**Human Rights Council**  
**Universal Periodic Review of Cuba 4th Cycle**  
**April 2023**

**BY:**

# **PRISONERS DEFENDERS**

**ACTIVE LEGAL DEFENSE OF HUMAN RIGHTS - JURISTS - RAPORTEURS - HUMANISTS**

**Prisoners Defenders International Network (Prisoners Defenders)**

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PRISONERS DEFENDERS (Prisoners Defenders International Network) is an international institution rooted in the deepest humanism, whose mission is human rights reporting, legal action and pro-democracy advocacy in more than 10 countries in the Americas and Asia. Among the organizations that adopt our reports and explicitly refer to us are the [European Parliament](#), the [Human Rights Documentation Service of the European Parliament](#), the [Inter-American Commission on Human Rights](#), the [United Nations](#), the United [States Congress](#), the United States [Department of State](#), [Amnesty International](#), [Human Rights Watch](#), and many other organizations, governments and institutions, as well as media outlets such as [ABC](#), [Le Monde](#), [Le Point](#), [Le Figaro](#), [New York Times](#) or [Washington Post](#), among hundreds of newspapers and publications.

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## **A. EXECUTIVE SUMMARY**

1. In the third cycle of the Universal Periodic Review on Cuba, there have been few references and points regarding the **impunity of the authorities and the situation of lack of protection for the victims of human rights violations**. The situation has evolved negatively, since Cuban citizens lack legal mechanisms in any venue to protect themselves from human rights violations committed by agents in the service of the Government.

## **B. METHODOLOGY**

2. The investigation analyzed both the legal framework in force in Cuba and the practice of the authorities in the face of denunciations or notorious facts of human rights violations; the possibility that such facts be investigated by independent and impartial bodies, the protection of the victims and the possibility that the possible perpetrators do not have access to the victims or do not participate in the arrests, interrogations, prosecution, trial and in the case of conviction in their custody.

3. Both organizations have carried out a continuous and independent monitoring of the applicable legislation and the actions of the Courts, the Prosecutors, the Instructors (police in Cuba) and especially of the Department of State Security, against an increasingly majority group of Cuban society determined by their discontent, disagreement, private and public criticism, or open opposition to the Cuban Government.

4. In addition, the work consisted of identifying specific individuals, groups or collectives subjected to criminal proceedings by the Cuban courts for causes related to the exercise of the right to freedom of thought, expression, association and assembly. After the collation and verification of the cases at first hand, we proceeded to identify and obtain the legal documents of the accusing party and the courts, among others, the Orders of Imposition of Precautionary Measures, Preparatory Phase Files, Prosecutorial Petitions and Judgments in first instance, Appeal Judgments, and Cassation Judgments.

5. For each victim or potential victim, the actions of the authorities in all phases of the process were analyzed. The degree of compliance with both international and national standards, the adherence to legality, legal rationality and the general principles of law were analyzed.

6. In this way, the violation of the following international precepts has been identified: **A) United Nations - Universal Declaration of Human Rights: Arts. 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 18, 19 and 20; B) International Covenant on Civil and Political Rights: Arts.2..1,2.2,3-a),6.2,7,8.1,8.3-a),9,10.1,11,12,14,14,15,17,18,19,20.2,21,22,24.1,25-a)-b)-c),26; C) International Covenant on Economic, Social and Cultural Rights: Arts.5,6,7,8,8,11,15.1-a); D) UNICEF - Convention on the Rights of the Child: Arts.9,15,16,37,40; E) United Nations - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Arts.2.2,2.3,10,11,12,13,15,16; F) Cuba - Constitution of the Republic of Cuba Arts.40,41,42,46,48,49,50,51,52,53,54,55,56,58,58,59,60,61,64,65,65,73,79,80,95,97.**

## **C. NATIONAL CONTEXT**

### **C1. GENERAL CONTEXT**

7. Cuba signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1995. In 1998, in Supplement No. 44 (A/53/44) analyzing reports CAT/C/32/Add.2 and CAT/C/SR.309, 310/Add.1,312 and 314, the committee expressed concern in paragraph 110 of its report. and 314, the Committee expressed concern in paragraph

110 about the failure to include the crime of torture in the Penal Code; in paragraph 111, the Committee expressed "deep concern" about the reports submitted by the Special Rapporteur mandated by the Human Rights Council and others from non-governmental organizations ***"suggesting that there are serious violations of the Convention with regard to arrest, detention, criminal proceedings, communication with counsel and imprisonment, in particular with regard to persons designated in the reports as dissidents, and that serious violations committed in prisons threaten the safety, dignity and health of prisoners"***; The committee was further concerned that Cuba had not responded to the reports.

8. In paragraph 113 of Supplement No. 44 (A/53/44) analyzing reports CAT/C/32/Add.2 and CAT/C/SR.309, 310/Add.1, 312 and 314, the Committee noted its concern regarding the offences of "resisting authority", "disrespect" and "enemy propaganda" because of ***"the uncertainties surrounding the constituent elements of these offences and the possibility, by their very nature, of their misuse or abuse"***. 25 years after these remarks, such crimes are preserved intact in Law 151 of 2022, the new Penal Code, although their names and articles have changed; thus, "disrespect" is called "Disrespect" and is typified in Art. 185; "resistance to authority" is called "Resistance" and is typified in Art. 184; while "enemy propaganda" was renamed "Propaganda against the Constitutional Order" and is typified in Art. 124. Its indiscriminate use against Cuban citizens for political reasons has also been noted by the Working Group on Arbitrary Detention, which has issued opinions on the arbitrary detentions of 19 artists, intellectuals, religious and activists such as Maykel Castillo, Denis Solís, Luis Robles, Keilylli de la Mora, Roberto Quiñones, José Daniel Ferrer, Aymara Nieto, Eliecer Bandera, Humberto Rico, José Pompa, Melkis Faure, Mitzael Díaz, Silverio Portal, Josiel Guía, Marbel Mendoza, Ivan Amaro, Eduardo Cardet, Ariel Ruiz and Omar Rosabal.<sup>1</sup>

9. In paragraph 114 of Supplement No. 44 (A/53/44) analyzing reports CAT/C/32/Add.2 and CAT/C/SR.309, 310/Add.1, 312 and 314, the Committee noted its serious concern about the use of sanctions such as "internal exile" and "house arrest" which the Committee observed are used for the purpose of limiting the liberty of citizens. Such sanctions were contemplated in Arts. 34 and 42 respectively of the former Penal Code Law No. 62 of 1987, while the same are retained in Arts. 39 and 51 respectively of the new Penal Code Law No. 151 of 2022.

## **C2. SIGNIFICANT EVENTS AFTER 2018.**

10. Prisoners Defenders systematically monitors since November 2018 the list of political prisoners in Cuba. The list of political prisoners verified by both organizations has evolved, from 2018 to July 2021, stably around 140-150 political prisoners, with an average of 5 new political prisoners confirmed per month, while a similar average of releases usually due to sentence completions.

11. This situation suffered a sharp increase as of July 11, 2021, when we began to verify the political imprisonment of hundreds of people affected by the repression of the peaceful demonstrations of July 11 and 12, to reach the current figure of 1,066 political prisoners,<sup>2</sup> where

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<sup>1</sup> Link to the opinions of the Working Group on Arbitrary Detention: [Maykel Castillo](#), [Denis Solís](#), [Luis Robles](#), [Keilylli de la Mora](#), [Roberto Quiñones](#), [José Daniel Ferrer](#), [Aymara Nieto](#), [Eliecer Bandera](#), [Humberto Rico](#), [José Pompa](#), [Melkis Faure](#), [Mitzael Díaz](#), [Silverio Portal](#), [Josiel Guía](#), [Marbel Mendoza](#), [Ivan Amaro](#), [Eduardo Cardet](#), [Ariel Ruiz](#) and [Omar Rosabal](#).

<sup>2</sup> Cuba's political prisoner list totals 1,066 cases, with 11 new political prisoners in February: <https://www.prisonersdefenders.org/2023/03/13/la-lista-de-prisioneros-politicos-en-cuba-suma-1-066-casos-con-11-nuevos-presos-politicos-en-febrero/>

we have extracted those who have already served their sentences in full, that is, hundreds of additional affected people who have already been removed from the lists.

12. From 2018 to date, both organizations estimate that among the victims of arbitrary detentions range between 17, 000 (11,000 + 5000+ 1000). In paragraph 54 of the report A/77/56 of the Committee Against Enforced Disappearance,<sup>3</sup> highlights how Cuba is the country in the world in 2021 with the highest number of Urgent Actions of Enforced Disappearance. It can also be seen how cumulatively since 2012 it is the third country in the world with the highest number of enforced disappearances.

13. To date, based on a study of the legal documents of more than 1,000 political prisoners, 587 crimes of Public Disorder, 375 crimes of Disrespect, 355 crimes of Assault, 209 crimes of Sedition, 46 crimes of Resistance, 35 crimes of Disobedience, 50 crimes of Instigation to Commit Crimes, and 13 crimes of Enemy Propaganda (Propaganda against the constitutional order) have been identified. All of them are used in a systematic and generalized manner against persons belonging to groups of political opinion different from that of the Government. The serious lack of legal definition of these crimes, and others, have been pointed out by the Working Group on Arbitrary Detentions and by the Inter-American Commission on Human Rights as insufficient to justify a criminal charge, among other reasons because of their broad definitional ambiguity, which allows the authorities to use them for purposes of repression of fundamental rights.<sup>4 5</sup>

14. According to field studies conducted by Prisoners Defenders, 100% of those surveyed and investigated have suffered some form of torture. Based on the statistics of verified and cross-checked complaints, first of 101 cases and then of 99 additional cases, of which 186 have been obtained on the basis of a random sample of prisoners, and thus extrapolating the statistical results to the political prisoners currently in prison (1066), we can establish with a very limited margin of error that among the 1066 political prisoners currently in prison (1066), we can establish with a very limited margin of error that among the 1066 current political prisoners the following violating patterns have occurred, as we already indicated in our Report INT/CAT/CSS/CUB/48358/S to the Committee Against Torture at its 73rd Session (19 April 2022 - 13 May 2022):<sup>6</sup> **637** cases of intentional deprivation of medical care, **981** cases of intentional deprivation of communication with family, defense and relatives, **889** cases of humiliation, degradation and verbal abuse, **769** cases of threats to integrity, safety of self and/or loved ones, **663** cases solitary confinements of punishment, **650** cases of physical aggression, **623** cases of use of temperature as a mechanism of torture, **610** cases of driving in an abnormal manner to unknown locations against inmates and relatives; **597** cases of intentional deprivation of sleep, **570** cases of forced labor not proper to their status as a criminal defendant or conviction, **504** cases of highly uncomfortable, harmful, degrading and/or prolonged postural patterns, **438** cases of intentional subjection to anguish or uncertainty over the situation of a family member, **411** cases of deprivation of liquids and/or food, and **438** cases of intentional subjection to anguish, grief or uncertainty over a family member.

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<sup>3</sup> Report A/77/56 CED: <https://drive.google.com/file/d/1VCsuOEqqKEexDcYvHfOd6ulE5-rZbvIz>

<sup>4</sup> Cuba Opinions [63/2019 WGAD](#), [4/2020 WGAD](#), [65/2020 WGAD](#), [41/2021 WGAD](#) and [63/2021 WGAD](#)

<sup>5</sup> Report No. 27/18 of the Inter-American Commission on Human Rights:

<https://www.oas.org/es/cidh/decisiones/2018/CUPU12127ES.pdf>

<sup>6</sup> Report INT/CAT/CSS/CUB/48358/S by Prisoners Defenders to the 73rd Session of the Committee Against Torture (19 April 2022 - 13 May 2022):

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=TmEf2qU3ZBlnXcekZZTW E4uSl69nDmbr5VLoGA/6Sc9hw0YsmsQtR5NjItLaz29y4o58RmeAXgx5+c70F87kiNA==](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=TmEf2qU3ZBlnXcekZZTW E4uSl69nDmbr5VLoGA/6Sc9hw0YsmsQtR5NjItLaz29y4o58RmeAXgx5+c70F87kiNA==)

15. Prisoners Defenders has also been able to examine and validate the investigations of the INT/CAT/CSS/CUB/48357/S report submitted to the 73rd Session of the Committee Against Torture (19 April 2022 - 13 May 2022)<sup>7</sup>, which presents a sample of very serious cases of allegations of violations of the Convention Against Torture between the period 2012 to 2022, whose results show **30** extrajudicial killings (4 of them reported as suicides by the authorities and 5 reported as deaths due to medical or other accidental causes), **18** induced suicides in police custody, **14** deaths in custody in protest hunger strikes, **54** deaths in custody, for health reasons and/or without medical treatment. In total, at least **116 fatal victims** of acts allegedly in violation of the Convention against Torture.

### **C3. EVENTS ON AND AFTER JULY 11, 2021**

16. On July 11, 2021 and subsequent days, a series of peaceful demonstrations took place in practically the entire Republic of Cuba (hereinafter, the "**Demonstrations**"), which began in the municipality of San Antonio de los Baños at around 10:00 a.m. and quickly spread throughout the country. These Demonstrations had a markedly peaceful and pro-democratic character.

17. The Cuban Government's reaction to the demonstrations took place that same day: the President of the Government, Miguel Díaz-Canel, stated on public television that behind the demonstrations were hidden "*criminals*" and "*officials of the US Government*", also calling the Cuban people to "*combat*" against those who questioned the Government.<sup>8</sup> The consequences of this ordinance were the use of violence and, in specific cases, lethal force against the demonstrators, resulting in deaths, hundreds of wounded, more than 5,000 arbitrary detentions (1,500 of them documented in detail by independent organizations), forced disappearances and hundreds of cases of torture, ill-treatment, degrading, cruel and inhuman treatment.

18. For the purposes of the repression, the Government mobilized the Production and Defense Brigades (Rapid Response Brigades) and a mobilization of the forces of the Ministry of the Interior and the Ministry of the Armed Forces was decreed, including the young people doing their Compulsory Military Service, whose ages range between 17 and 19 years old; the excessive use of firearms was authorized to the police, military and paramilitary corps, and the repressive actions were directly coordinated by the Department of State Security of the Ministry of the Interior and the Military Counter Intelligence of the Ministry of the Revolutionary Armed Forces. This party has a video record of the situation referred to in the previous paragraph, which is attached to this complaint in digital format as **ANNEX I**<sup>9</sup> and **ANNEX II**<sup>10</sup>. During the arrests, the testimonies relate the massive use of torture against all the detainees in reprisal for their participation in the demonstrations.

19. Subsequently, approximately 2,000 detainees were processed, in most of the cases analyzed without criminal records, but with negative classifications for ideological reasons, that is, as a result of not participating in the activities organized by the Communist Party of Cuba.

20. During the month of September 2021 about 30 people, forming part of a civic initiative called Archipelago, made a formal request to the local and provincial authorities of the

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<sup>7</sup> report INT/CAT/CSS/CUB/48357/S submitted to the 73rd Session of the Committee Against Torture (19 April 2022 - 13 May 2022):

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FCSS%2FCUB%2F48357&Lang=sp](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FCSS%2FCUB%2F48357&Lang=sp)

<sup>8</sup> EURONEWS. Díaz-Canel calls to combat anti-government protests, 2021. Available in: [Díaz-Canel calls to combat anti-government protests](#) | Euronews.

<sup>9</sup> ANNEXI: <https://docs.google.com/document/d/19qrxT4xVe25ItIGm1HWAK7uhSRLZzKNu>

<sup>10</sup> ANNEXII: [https://docs.google.com/document/d/1AA6brMAe-LxM4BP\\_kppIvpCLruEbJhLF](https://docs.google.com/document/d/1AA6brMAe-LxM4BP_kppIvpCLruEbJhLF)



Government of the Republic of Cuba to carry out peaceful demonstrations in November with the express and written support of more than a thousand citizens. The authorities responded with media campaigns of defamation and hate speech, they again called on citizens affiliated with the Communist Party to vandalize, threaten and attack the main promoters, the police and agents of the Department of State Security carried out forced disappearances, torture, arbitrary detentions and house arrests against its members; the Ministry of the Interior and the Ministry of the Armed Forces decreed the mobilization of the population for "defense day activities" for the date of the demonstrations, training and arming the citizenry with firearms, militarizing the entire country and instructing that force be used against any demonstrator. As a consequence of the call, more than 230 people were arbitrarily subjected to deprivation of liberty or house arrest.

**D. ON THE IMPUNITY OF THE AUTHORITIES AND THE LACK OF PROTECTION FOR VICTIMS OF HUMAN RIGHTS VIOLATIONS**

21. In the report of 13 May 2022 of the Committee against Torture CAT/C/CUB/CO/3<sup>11</sup>, the Committee regrets that ***"no national human rights institution has been established in the country in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (art. 2)"***. Although Cuba claims to have a comprehensive system for the protection of human rights, none of the institutions, bodies or associations operating within the national territory of Cuba possess the independence or impartiality to formulate credible reports.

22. However, the Cuban government has created the Cuban Association of the United Nations, an organization created by the Cuban government to justify and deny the government's human rights violations. This organization is created, financed by the Cuban government and directed by Norma Goicoechea Estenoz, who until a few months ago was the Cuban Ambassador to the European Union,<sup>12</sup> still on the payroll of the Cuban government as an acting diplomat.

23. On the other hand, the absence of a public information system on those prosecuted by the government, the prohibition of Art. 143 of the current Penal Code that punishes with 10 years the collaboration with non-governmental human rights organizations on the island, the constant persecution and harassment of activist organizations, the panic that exists among the population and families to face systematic threats by the authorities so that they do not make public the violations of their rights of which they are victims, and the scarce penetration of modern, effective and free communication among the inhabitants, as well as the poor state of the internal transportation infrastructure, we estimate that cases of human rights violations are not reported except in a very small percentage, being a minority of the families those who denounce these facts.

24. In Cuba there is a generalized lack of knowledge about human rights. Unfortunately, both the authorities and the citizenry have normalized a high degree of repression internally, often being unable to identify when their rights are being seriously violated.

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<sup>11</sup> Report of the United Nations Committee Against Torture - 2022 - CAT/C/CUB/CO/3:  
<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkG1d%2FPPrICAqhKb7yhss%2BWTdysgbMA5m%2FJyJLGuMTRXorxmGi3EiJH7Om346ZxB9dJ7vjOetbwVaFtJ9M90QiTFUnjIwNuyC43CWbeSH2ZwXSOSbl6J0R5ESy8ewN>

<sup>12</sup> Euronews, Norma Goicoechea, Cuban ambassador to the EU: "We have the right to defend ourselves when attacked" :  
<https://es.euronews.com/2021/07/20/norma-goicoechea-embajadora-de-cuba-ante-la-ue-tenemos-derecho-a-defender-nos-cuando-se-nos>

25. As stated by the Committee against Torture on 13 May 2022 (CAT/C/CUB/CO/3)<sup>13</sup>, paragraph 32, **"the Committee regrets that the State party has not yet established an independent mechanism for the submission and investigation of complaints of acts of torture and ill-treatment"**, a phrase very similar to the one reproached by the same Committee in 2012: **"the Committee regrets that there is still no specific, independent and effective mechanism to receive complaints and conduct prompt and impartial investigations into allegations of torture and ill-treatment and to ensure that those responsible are duly punished."** This problem still continues to this day.

26. The Committee also indicated that **"it is striking to the Committee that the State party's delegation stated during the dialogue that there were no cases of torture recorded during the period under review"**, bearing in mind that **"the Military Prosecutor's Office investigated 2,076 complaints against internal order officials for alleged ill-treatment, applying 293 disciplinary measures, 37 criminal sanctions and three administrative measures"**.<sup>14</sup> It also indicated that **"it is also concerned about the small number of sanctions imposed for ill-treatment and that the State party has not provided detailed information in this regard"**.

All this derives from the fact that Cuba does not have specific legislation regulating the duties and limits in the actions of the National Revolutionary Police; the actions of the agents are regulated according to the instructions of the superiors of the Ministry of the Interior; therefore, the actions of its officers are not subject to principles of legality but of hierarchy and discipline to the superior command.<sup>15</sup> The Ministry of the Interior participates in the recruitment of personnel for police functions with the supervision of the process by the Ministry of the Revolutionary Armed Forces, and there is no real distinction in the training of law enforcement agents with soldiers and other military agents except in the specific functions assigned to them.

28. Of particular concern are the activities of the State Security bodies belonging to the Ministry of the Interior, the so-called political police, bodies made up of an undetermined number of agents whose identities are not public knowledge and who are involved in the harassment, detention, interrogation, custody and constant surveillance of all persons who exercise their fundamental freedoms in a manner contrary to the interests or criteria of the Government and the Communist Party. Their powers are not limited by law and it is not possible to identify them, so they enjoy a status of protection and impunity that results in serious and constant violations of all the rights recognized in the Universal Declaration of Human Rights.

29. The main attributions and functions of the Ministry of the Interior are specifically regulated in Art. 78 of Decree-Law 67 of 1983, of the "Organization of the Central Administration of the State",<sup>16</sup> where it is convenient to highlight the paragraphs **"a) prevent, neutralize and liquidate the activities that attempt within the country against the security of the State"**, and **"c)**

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<sup>13</sup> Report of the United Nations Committee Against Torture - 2022 - CAT/C/CUB/CO/3:  
<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhss%2BWTdysgbMA5m%2FJyJLJUmTRXorxmGi3EiJH7Om346ZxB9dJ7vjQctbwVaFtJ9M90QiTFUnjIwNuyC43CWbeSH2ZwXSOSbl6J0R5ESy8ewN>

<sup>14</sup> CAT/C/CUB/3, para. 174, and CAT/C/CUB/RO/3, para. 137.

<sup>15</sup> This absence of a regulatory framework makes the "exercise of the authority's functions" depend on what the authority's leadership determines, which is especially relevant in relation to the crimes of contempt, resistance, assault and disobedience, since for the application of these crimes it is a requirement that the authority be in the exercise of his or her functions.

<sup>16</sup> [https://www.asambleaciegodeavila.gob.cu/images/PDF/nuestraRegion/Empresas/Transporte/Dec.\\_Ley\\_67-83.pdf](https://www.asambleaciegodeavila.gob.cu/images/PDF/nuestraRegion/Empresas/Transporte/Dec._Ley_67-83.pdf)



***elaborate and propose the policy of crime prevention, and prevent, neutralize and clarify the criminal activities of common character, preserve the public order and collective security"***.

30. The terms "***internal security***" and "***public order***" are indeterminate legal concepts that depend on the judgment of the acting authorities as to whether or not conduct affects the interests of the State, the Government or the Party. In practice, the authorities consider that the exercise of fundamental freedoms in a manner contrary to the Government or the Communist Party represent threats to "internal security" and "public order", with the exercise of such freedoms being the object of persecution, prosecution and condemnation by the Cuban authorities, led by the Ministry of the Interior.

31. In this regard, paragraph 117 of Report No. 27/18 of the Inter-American Commission on Human Rights,<sup>17</sup> of February 24, 2018, states that: "***the argument that it is necessary to criminally convict a group of persons for expressing opinions critical of government policies and practices in order to protect 'national security' and 'public order' is inadmissible. No democratic idea of 'national security' or 'public order', whose foundations are respect for human rights and the submission of public servants to the law, can be compatible with this thesis. The intolerance of the Cuban authorities towards any form of criticism or political opposition constitutes the main limitation to the rights to freedom of expression and association***".

32. Cuba employs, in the detention and confrontation of political dissidents, bodies of civilians and paramilitaries that operate under orders from the Ministry of the Armed Forces and the Ministry of the Interior. These bodies are known as "Rapid Response Brigades", although in Law No. 75 of 1995 on National Defense<sup>18</sup>, they are regulated as "*Production and Defense Brigades*". Law No. 75 of 1995 establishes in Art. 62 that "*the Production and Defense Brigades are created in peacetime in work centers and in the places of residence of the population. They are composed of citizens who voluntarily express their desire to participate in production and defense activities during exceptional situations*". Although the Law states that these brigades are mobilized in "exceptional" situations, in practice they are permanently available to be mobilized, and have become a regular paramilitary corps of the State Security.

33. This situation is endemic, has never been corrected and has been identified as a cause for concern for decades. Paragraphs 115, 116 and 117 of the Committee against Torture's report A/53/44 noted concern with the fact that "***no specific training is provided to law enforcement, civilian, military, medical and other personnel called upon to perform the functions of arrest, custody, interrogation, detention, arrest, and imprisonment***", specifically with regard to the possible commission of torture; The Committee was also concerned at the time that there was no satisfactory information on the right of victims of torture and other inhuman and degrading treatment to obtain redress, and in particular to be adequately compensated. None of this has had any positive evolution in Cuba.

Both the previous Cuban Penal Code (Law No. 62/1987) and the new Penal Code (Law No. 151/2022) establish figures that protect and exonerate from any responsibility any agent, official or civilian who commits any violation of recognized rights "in the performance of a duty".

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<sup>17</sup> IACHR, Report No. 27/18, Case No. 12.127, Merits (Publication). Vladimiro Roca Antunez and Others. Cuba. February 24, 2018.

<sup>18</sup> Law No. 75 of 1995 on National Defense:

<https://drive.google.com/file/d/1MSOVlQVEyPsAiKyJeNqqtMbB2dCyAQcv>

35. The Criminal Code justifies the commission of crimes by agents or officials, in such a way that in its Art. 27.1 it exempts from criminal liability *"whoever commits the criminal act while acting in fulfillment of a duty or in the legitimate exercise of his right, profession, position or office"*; in its Art. 27.2 *"whoever commits the crime by virtue of the due obedience that is imposed by law on the intervener is exempt from criminal sanction"*.

In addition to this, the powers, limits and obligations of the National Revolutionary Police, its auxiliaries and the civilians mobilized in the Production and Defense Brigades are not regulated by law, but rather respond to ordinances and the established hierarchical chain, any violation committed in the exercise of an order in practice results in a criminal exemption, while **Article 27 does not establish exceptions for the crimes that can be committed, including torture and forced disappearance** provided for in the new Penal Code in Articles 368 and 367 respectively. In turn, the Penal Code punishes in its Art. 189 both civilians and police officers or their assistants if they refuse to comply with orders. As a complement, any form of protest or resistance to the actions of the police, their auxiliaries or civilians acting under their orders, is typified as a crime of Contempt (Art. 185), Resistance (Art. 184) and/or Attempt (Art. 182.1.3). This means in practice that whenever law enforcement officers, or their auxiliaries or civilian collaborators of the Ministry of the Armed Forces and the Ministry of the Interior act in compliance with orders, they have unlimited powers and their actions are unimpeachable and are not subject to criminal prosecution.

37. In January 2022, Cuba implemented the new Criminal Procedure Law, which replaced the previous Criminal Procedure Law. The new legislation, once again, provides in identical form that provisional detention is adopted by the POLICE called "Instructors" (a figure that has nothing to do with the Instructing Judge) as a precautionary measure, and by the prosecutor definitively, without any intervention or judicial protection, with total independence and without time limit, being sufficient that after 6 months in this situation the measure be ratified again by the Attorney General of the Republic. These provisions on precautionary measures of total or partial deprivation of liberty without judicial protection violate international standards, as the Working Group on Arbitrary Detention has recalled in opinions such as Opinion 63/2021. Only during the last 6 months of 2022, 179 detainees have been subjected to pre-trial detention for the exercise of fundamental rights, demonstrating that this mechanism of police action in Cuba, in violation of international law, is still in force and is currently used with more force than ever.

38. Cuba received a series of recommendations in the Report of the Working Group on the Universal Periodic Review, third cycle (24.114, Ireland, 24.151 Qatar, 24.154 United Kingdom of Great Britain and Northern Ireland, 24.148 Malaysia) related to guaranteeing access to defense for detainees; these recommendations are in line with paragraph 14 of the report CAT/C/CUB/CO/3 where the Committee expresses concern about "restrictions on the right to defence".148 Malaysia) related to guaranteeing access to defense for detainees; these recommendations are in line with the pointing out in paragraph 14 of report CAT/C/CUB/CO/3 where the Committee expresses concern about **"restrictions on the independent practice of law, since only members of the National Organization of Collective Law Firms [ONBC] may practice the profession in the State party"**, bearing in mind that the ONBC depends organically, structurally and financially on the Ministry of Justice, and recommends in paragraph 15 of the above-mentioned report that: **"It should also ensure respect for the right to free association and the independent practice of law, in accordance with the Basic Principles on the Role of Lawyers."**

39. The non-existence of the independent legal profession in Cuba is a reality that the UN WGAD has proven and denounced on numerous occasions. In particular, Opinion 63/2019 (Cuba) concludes: *"...the Working Group was able to verify that, under the Decree-Law on the Practice of Law and the National Organization of Collective Law Firms, and its Regulations (issued by the Ministry of Justice), the Ministry of Justice exercises extensive regulatory and supervisory functions over the legal profession. This includes the high inspection of the National Organization of Collective Law Firms, the determination of fees for legal services, serves as administrative instance of appeal against decisions denying admission or separating individuals from the legal profession, receives reports from the National Board of Directors, may authorize the practice of the profession, approves the creation and extinction of collective law firms, supervises the training regime of newly graduated lawyers, among many others (see Articles 3, 11, 20, 29 and First Special Provision of the Decree-Law, as well as Articles 20 and 42 of the Regulations)."*

40. Law No. 153 *"On the Process of Protection of Constitutional Rights"*, published in the Official Gazette of June 15, 2022, establishes a specialized jurisdiction for the protection of constitutional rights, with an "expeditious" and "preferential" process for their protection. It stipulates in its Article 5 that "it corresponds to the courts of this jurisdiction to hear the claims that are established for the violation of the rights enshrined in the Constitution of the Republic, which do not have their own means of defense in judicial proceedings of another matter; unless, due to the legal-social transcendence of the alleged violation, it requires urgent and preferential action", however, it excludes from its jurisdiction the knowledge of ***"the claims for non-conformity with the judicial decisions adopted in other matters; the declaration of unconstitutionality of laws and other normative acts; claims relating to defense and national security, and measures adopted in exceptional and disaster situations to safeguard the independence, peace and security of the country"***; what is more serious is that it also excludes the knowledge of claims relating to defense and national security, i.e., it cannot hear violations of rights committed by agents and officials of the Ministry of the Interior and the Ministry of the Armed Forces.

41. The same exclusion exists in administrative matters, inasmuch as article 8, paragraph b) of Law 142 of the Administrative Process establishes that matters ***"of a military nature, national defense, State security and measures adopted in exceptional situations and disasters to safeguard general interests"*** are excluded from jurisdiction in administrative matters.

42. In report CAT/C/CUB/CO/3, paragraph 16, the Committee notes with concern that, ***"in accordance with article 92 of Act No. 147/2021 on Military Criminal Proceedings, military courts are competent to try and determine the liability of accused persons and civilly responsible third parties in criminal proceedings arising out of the commission of punishable acts. 147/2021 on Military Criminal Proceedings, the military courts are competent to try and determine the liability of the accused and civilly responsible third parties in criminal proceedings arising out of the commission of punishable acts in which a military person is accused, even if one of the persons concerned is a civilian, and to hear criminal proceedings for acts committed in military zones, regardless of the civilian status of the persons concerned"***. The Committee considers that military courts do not offer the guarantees of independence and impartiality required by the Convention against Torture in Art. 2, para. 1.

43. Indeed, allegations and facts of human rights violations must be investigated and prosecuted in military courts; citizens are obliged to turn to the Military Prosecutor's Offices to file complaints against officials or agents linked to or acting under the orders of authorities of

the Ministry of the Interior and the Ministry of the Armed Forces. Despite the constant and large volume of complaints, we are not aware of any civilian or official who has even been charged to date. In other words, human rights violations committed by agents in the service of the government are excluded both in theory and in practice from ordinary constitutional, administrative and criminal jurisdiction.

**D1. RECOMMENDATIONS**

44. Introduce the necessary legislative changes to remove the jurisdiction of military courts to try civilians and ensure that ordinary courts have sole jurisdiction over serious human rights violations, including acts of torture, when committed against civilians.

45. Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

46. Ratify the Rome Statute of the International Criminal Court in its 2010 version, including the Kampala amendments on the crime of aggression, and review its national legislation in order to ensure full harmonization with the Statute.

Modify Article 27 of the Penal Code so that agents who commit crimes of torture and forced disappearance, as well as other violations of human rights, under the justification of the fulfillment of their duty, are not exempt from criminal responsibility.

48. To enact norms in line with international standards that regulate the powers, functions, duties and limits of the officials of the different bodies of the Ministry of the Interior, including the Police and especially the Department of State Security.

49. To expressly prohibit in Cuban legislation the mobilization and use of military and paramilitary bodies, especially the Production and Defense Brigades, in times of peace.

56. Provide special training in accordance with international standards of fundamental rights to law enforcement officers, civilian, military, medical personnel, and all those called upon to perform a role in arrest, pretrial detention, interrogation, detention, and imprisonment.

57. Establish an effective public complaints handling system and a fully independent Ombudsman institution that develops and complies with international standards and the Paris Principles.

61. Recognize human rights monitoring as a legitimate activity, grant legal status to local human rights groups, stop using intimidation tactics, and allow human rights defenders and civil society to engage with the UN and its mechanisms.

64. Improve transparency and due process in the justice system by ensuring that persons detained are promptly informed of the reasons for their arrest, have access to legal representation of their choice, have public hearings within a reasonable time, and are presumed innocent until proven guilty.