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**Joint presentation
"Torture in Cuba"
Human Rights Council
Universal Periodic Review on Cuba 4th Cycle
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BY:

PRISONERS DEFENDERS

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

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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 direct references to the **Prohibition of Torture**. Cuba ratified the Convention against Torture in 2009, incorporating torture and enforced disappearance as a crime in its Penal Code in 2022. However, despite the fact that Cuba claims that torture has been eradicated in Cuba, there are constant national and international complaints, as well as communications before special procedures and Working Groups of the United Nations, which indicate the habitual and very numerous existence of facts that have the characteristics of torture, cruel and inhuman treatment that are not investigated, and to date there are no effective mechanisms in Cuba to proceed against those possibly involved or to guarantee the protection of the victims of the same.

B. METHODOLOGY

2. On March 7, 2022, the United Nations High Commissioner for Human Rights issued a request to civil society organizations to submit reports on cases of torture in Cuba. **Prisoners Defenders** responded to the request by calling on 300 families of political prisoners to fill out a form, of which 101 responded by filling out the full declaration. The 101 individual cases received spontaneously presented severe torture by Cuban state authorities against political prisoners, human rights activists and their families. This report was made public in its entirety.¹ At a later date, the two organizations collaborated to expand the study to 200 individual cases.

3. Quantitative (questionnaires with closed questions) and qualitative (open questions, in-depth interviews and research) methods have been combined on the legal, physical and psychological status of the political prisoners studied, including information on acts of torture and inhuman and degrading treatment against the defendants. In the first batch of the study, a total of 101 cases of torture/maltreatment have been studied and documented. In addition, tabulated statements were obtained from 87 of them through a form with 38 response fields, which allows for the presentation of statistics and their extrapolation. The second part of the study analyzes another 99 cases of a similar nature, all of them with tabulated statements through a form with 38 response fields.

4. From the study of the concept provided by the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the *Istanbul Protocol*, as well as the *Special Rapporteur of the Human Rights Council on Torture, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*,² *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*,³ and the *United Nations Standard Minimum Rules for the Treatment of Prisoners*,⁴ 15 patterns of conduct that can be qualified as torture according to international standards were made and evaluated: 1) **deprivation of medical care**; 2) **forced labor and tasks not proper to their status as a criminal defendant or convict**; 3) **highly uncomfortable**,

¹ Prisoners Defenders denounces to the UN more than 100 victims of torture in Cuba:

<https://www.prisonersdefenders.org/2022/03/29/prisoners-defenders-denuncia-ante-la-onu-mas-de-100-victimas-de-tortura-en-cuba/>

²

<https://www.ohchr.org/es/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement>

³

<https://www.ohchr.org/es/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention#:~:text=Principle%206,penalties%20cruel%2C%20inhuman%20or%20degrading%20punishment>

⁴ https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-S-ebook.pdf

harmful, degrading and prolonged postural patterns; 4) solitary punishment confinements; 5) use of temperature as a torture mechanism; 6) physical assaults; 7) abnormally conducted to locations unknown to inmates and family members; 8) intentional disorientation; 9) deprivation of liquids and/or food; 10) intentional sleep deprivation; 11) deprivation of communication with family, defense and relatives; 12) threats to themselves, their integrity, their safety and that of their loved ones; 13) threatening display or exhibition of weapons or elements of torture; 14) intentional subjection to anguish, grief or uncertainty about the situation of a family member; 15) humiliation, degradation and verbal abuse.

5. The information and data obtained by both organizations were collated and classified according to the corresponding pattern of torture; the testimonies were analyzed to identify whether the suffering caused was inflicted by a public official, or another person at his instigation, as a means to obtain a confession or information, to punish for some act, or to intimidate the victim or third parties. From the results obtained, *modus operandi*, statistics and trends were identified that could be extrapolated to other political prisoners, activists and family members whose access has been impossible.

6. As a complement to the investigation, both the legal framework in force in Cuba and the practice of the authorities were analyzed, the possibility of investigating allegations of acts of torture, the framework for such acts to be investigated by independent and impartial bodies, the framework for the protection of the victims so that, among other circumstances, the perpetrators of torture do not have access to the victims and do not participate in the arrests, interrogations, prosecution, trial and, in the event of conviction, in their custody.

7. In this way, the violation of the following international precepts has been identified: **A) United Nations - Universal Declaration of Human Rights: Arts. 2,3,4,5,7,8,9,10,11,12,13,18,19,20; 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 CubaArts.40,41,42,46,48,49,50,51,52,53,54,55,56,58,59,60,61,64,65,73,79,80,95,97.**

C. NATIONAL CONTEXT

C1. GENERAL CONTEXT

8. Cuba signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1995. As early as 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 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.

9. The committee also noted its concern regarding the crimes of "resistance to authority," "disrespect" [Desacato] and "enemy propaganda" because of ***"the uncertainties surrounding the constituent elements of these offenses and the possibility that they offer, 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 for Arbitrary Detention, which has issued opinions on the arbitrary detentions of 19 artists, intellectuals, religious and activists from 2018 to 2022 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.⁵

10. 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 they are retained in Arts. 39 and 51 respectively of the new Penal Code Law No. 151 of 2022.

11. In the area of the Third Cycle, the recommendations made to Cuba that we have considered for this review are: 24.18 (Liechtenstein), 24.4 (Costa Rica), 24.1 (Austria, Japan, Liechtenstein, Niger, Cyprus, El Salvador, Chile, Mexico, Nepal, Paraguay, Slovakia, France, Portugal, Australia, Poland, Germany, Peru and Spain), 24.17 (France, Portugal, Ghana and Spain), 24.23 (Greece), 24.24 (Bosnia and Herzegovina), 24.25 (Estonia), 24.26 (Georgia), 24.59 (France), 24.59 (Greece) and 24.59 (Spain).¹⁷ (France, Portugal, Ghana and Spain), 24.23 (Greece), 24.24 (Bosnia and Herzegovina), 24.25 (Estonia), 24.26 (Georgia), 24.59 (France), 24.152 (Spain), 24.68 (Costa Rica), 24.67 (Botswana), 24.69 (Mongolia), 24.70 (Montenegro), 24.71 (Mexico, Nepal, Togo, Portugal, Uruguay, Niger and France), 24.72 (Poland) and 24.73 (Zambia).

C2. SIGNIFICANT EVENTS AFTER 2018

12 Prisoners Defenders systematically monitors since November 2018 the list of political prisoners in Cuba. The list of verified political prisoners has evolved, from 2018 to July 2021, steadily 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.

13. 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,⁶ where

⁵ 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](#).

⁶ 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.

14. 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 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.

15. 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.^{7 8}

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.⁹ 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 who were fulfilling the Compulsory Military Service, whose ages ranged 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.

⁷ Cuba Opinions [63/2019 WGAD](#), [4/2020 WGAD](#), [65/2020 WGAD](#), [41/2021 WGAD](#) and [63/2021 WGAD](#)

⁸ Report No. 27/18 of the Inter-American Commission on Human Rights:

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

⁹ EURONEWS. Díaz-Canel calls to combat anti-government protests, 2021. Available in: [Diaz-Canel calls to combat anti-government protests | Euronews](#).

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**¹⁰ and **ANNEX II**¹¹. 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 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 TORTURE IN CUBA

21. In the report of 13 May 2022 of the Committee against Torture CAT/C/CUB/CO/3¹², 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)"***. In 2012, the Committee Against Torture in its paragraph 16 of the report CAT/C/CUB/CO/2 also indicated that ***"the Committee regrets that there is still no specific, independent and effective mechanism in place to receive complaints, conduct prompt and impartial investigations into allegations of torture and ill-treatment and ensure that those responsible are duly punished."*** This has been systemic in Cuba since 1959.

22. 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.

¹⁰ ANNEXI: <https://docs.google.com/document/d/19qrxT4xVe25ItIGm1HWAK7uhSRLZzKNu>

¹¹ ANNEXII: https://docs.google.com/document/d/1AA6brMAe-LxM4BP_kppJvpCLruEbJhLF

¹² 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%2FJyJLGuMTRXorxmGi3EiJH7Om346ZxB9dJ7vjQctbwVaFtJ9M90QITFUnjlwNuyC43CWbeSH2ZwXSOSbl6J0R5ESy8ewN>

23. In Cuba there is a generalized lack of knowledge about human rights and specifically about torture; 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. For its part, the Government only refers to torture as an eradicated fact that does not occur in the national territory.

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 an additional 99 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):¹³ **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.

25. Prisoners Defenders has also been able to examine and validate the investigations of the report INT/CAT/CSS/CUB/48357/S submitted to the Committee Against Torture at its 73rd Session (19 April 2022 - 13 May 2022)¹⁴, 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.

26. The functioning of the Ministry of the Interior is specifically regulated in Article 78 of Decree-Law No. 67 "On the Organization of the Central Administration of the State" in force since

¹³ 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=TmEf2qU3ZBlnXcekZZTWE4uSl69nDmbr5VLoGA/6Sc9hw0YsmsQtR5NJtLaz29y4o58RmeAXgx5+c70F87kiNA==

¹⁴ 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

its publication in the Official Gazette of Cuba on April 19, 1983¹⁵ In this regard (citing Law 75¹⁶), thus, it establishes among its functions in paragraph **a)** of Article 78 "to prevent, neutralize and liquidate activities that threaten the security of the State within the country" and in paragraph **c)** "to elaborate and propose a crime prevention policy, and to prevent, neutralize and liquidate activities that threaten the security of the State within the country". 78 "to **prevent, neutralize and liquidate activities within the country that threaten the security of the State**", and in paragraph **c)** "to **elaborate and propose the crime prevention policy, and to prevent, neutralize and clarify criminal activities of a common nature, preserve public order and collective security**".

27. 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", and the exercise of such freedoms is subject to persecution, prosecution and condemnation by the Cuban authorities. In this regard, paragraph 117 of Report No. 27/18 of the Inter-American Commission on Human Rights 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**".

28. Cuba employs in the detention and confrontation of political dissidents civilian bodies 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", while in Law No. 75 of National Defense, published in the Official Gazette of the Republic of Cuba on January 13, 1995, they are regulated as Production and Defense Brigades. Law No. 75 of 1995 establishes in Article 62 that "the Production and Defense Brigades are created in times of peace in the work centers and places of residence of the population. They are composed of citizens who voluntarily express a 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, neither the Government of the Republic nor any of its local hierarchical bodies require a prior declaration of a state of emergency for them to be mobilized.

29. In paragraphs 115, 116 and 117 of report A/53/44, the Committee noted its concern that "**no specific training is provided to law enforcement, civilian, military, medical and medical personnel and anyone called upon to perform a function of arrest, custody, interrogation, detention, arrest and imprisonment**", specifically with regard to the possible commission of torture; The committee was also concerned 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.

¹⁵

https://www.asambleaciegodeavila.gob.cu/images/PDF/nuestraRegion/Empresas/Transporte/Dec._Ley_67-83.pdf

¹⁶ https://www.parlamentocubano.gob.cu/sites/default/files/documento/2022-01/GO_O_001_1995.pdf

30. 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".

31. 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 Assault (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.

33. In report CAT/C/CUB/CO/3, paragraph 16, the Committee against Torture notes with concern that, *"in accordance with the provisions of 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 responsibility 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 the military courts do not offer the guarantees of independence and impartiality required by the Convention against Torture in Art. 2, para. 1. In effect, complaints and acts of human rights violations must be investigated and prosecuted in military courts; citizens are obliged to turn to the military prosecutors' offices to file complaints against officials or agents linked to or acting under orders from authorities of the Ministry of the Interior and the Ministry of the Armed Forces.

34. Despite the constant and large volume of complaints, 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"*.¹⁷

¹⁷ [CAT/C/CUB/3](#) para. 174, and [CAT/C/CUB/RO/3](#), para. 137.

35. 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

36. 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, committed against civilians.

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

38. 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.

39. Review and amend Article 109 of the Constitution, as well as legislation concerning the system of courts of justice, and implement measures to ensure the independence and impartiality of the judiciary.

Modify Article 27 of the Penal Code so that agents who commit crimes of torture and forced disappearance in the alleged fulfillment of their duty are not exempt from criminal responsibility.

41. 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.

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

43. Repeal the crime of Contempt and Resistance and modify the crime of Assault, all in accordance with international standards so that they do not justify human rights violations, including torture, by police personnel.

44. Create specific, independent and effective mechanisms to receive complaints, conduct prompt and impartial investigations into allegations of torture and ill-treatment and ensure that those responsible are duly punished.

45. Reopen archived investigations and/or review known complaints of alleged police excesses, torture, forced disappearances, deaths, suicides and homicides in police custody or during detention or interrogation.

46. Create awareness campaigns among the population on what torture is, how to identify it and mechanisms to denounce it.

47. Review all cases of sentenced persons in whose proceedings agents who participated as witnesses, experts, instructors, or interrogators were involved in the detention and denunciation of the convicted persons, with special emphasis on cases in which there are allegations or reasons to believe that the human rights and due process rights of those convicted persons were violated.

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