

# CUBA

## CAT A/53/44 (1998)

101. The Committee considered the initial report of Cuba (CAT/C/32/Add.2) at its 309th, 310th, 312th and 314<sup>th</sup> meetings, on 17, 18 and 19 November 1997 (CAT/C/SR.309, 310/Add.1, 312 and 314), and adopted the following conclusions and recommendations.

### Introduction

102. The report was submitted on 15 November 1996, nearly within the time limit envisaged by the Convention on the submission of the initial report by the parties following their accession to the Convention.

103. The Committee expresses its appreciation to the representatives of Cuba on the presentation of their report and the efforts made to answer most of the many questions raised by the rapporteur, the co-rapporteur and the members of the Committee.

### Positive aspects

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

105. Cuba acknowledges the universal jurisdiction for the trial of crimes against humanity, to which category, many would argue, torture belongs.

106. The provision of the Cuban labour code that persons acquitted of criminal offences are entitled to compensation for any period in which they were deprived of their liberty as a result of pre-trial detention is a salutary one.

107. The constitutional prohibition of the use of violence or pressure "against people to force them to testify" associated with the declaration that statements obtained in breach of this principle are null and void and the holding of those responsible for such violations as liable to punishment is a most welcome one.

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

### Factors and difficulties impeding the application of the Convention

109. The deteriorating economic conditions attributable, *inter alia*, to the embargo in force make it difficult for the State party to provide appropriate nutrition and essential medical supplies to prisoners.

## Subjects of concern

110. The failure to establish a specific crime of torture as required by the Convention leaves a gap in the application of its provisions that is not filled by any of the existing offences directed against violations of the bodily integrity or the dignity of the individual. Moreover, the absence of the specific offence of torture renders difficult the monitoring of the application of the Convention.

111. The report of the Special Rapporteur appointed by the Commission on Human Rights on the situation of human rights in Cuba is a matter of great concern to the Committee. Reports of NGOs raise similar concerns, a fact that intensifies our concern. The information disclosed in the above reports suggests that there occur serious violations of the Convention with regard to arrest, detention, prosecution, access to counsel and imprisonment of individuals, especially persons referred to in the reports as dissidents, and that serious violations occur in prisons affecting the safety, dignity and health of prisoners.

112. The failure of the Cuban authorities to make a response to allegations made in the above reports is an additional subject of concern.

113. Certain nebulous offences, namely "disrespect", "resisting authority" and "enemy propaganda", arouse the concern of the Committee because of the uncertainty of their constituent elements and the room they provide for misuse and abuse.

114. Certain types of punishment primarily directed at the limitation of the liberty of citizens, i.e. internal exile and confinement at home, are matters of great concern to the Committee.

115. The absence of specific training in the norms of the Convention for law enforcement personnel, of civil and military, medical personnel and personnel generally involved in the arrest, custody, interrogation, detention and imprisonment of individuals is a matter of concern, more serious still in view of the absence of the stipulation of the specific crime of torture.

116. The absence of adequate information about the investigation of complaints of torture and other inhuman and degrading treatment and the outcome of any such investigations is cause for concern. In the absence of such information, the Committee cannot make a proper assessment as to whether there is compliance on the part of the State party with the provisions of article 12 of the Convention. Our concerns in these areas are enhanced because of the many complaints made that certain categories of persons referred to in the reports as dissidents are targeted and their fundamental rights violated without having satisfactory means of redress.

117. The Committee is concerned about the absence of satisfactory information as to the rights of victims of torture and other inhuman and degrading treatment to seek redress including satisfactory compensation.

## Recommendations

118. The Committee recommends that the following actions be taken by the State Party:

- (a) The criminalization of torture, as defined in the Convention, by the creation of a specific crime or crimes giving effect to every aspect of it;
- (b) The establishment of a transparent permanent procedure for receiving complaints about torture and other inhuman and degrading treatment or punishment, the prompt examination of such complaints and bringing to justice those responsible;
- (c) The incorporation into the law of the right of the suspect or detainee to silence at all stages of investigation;
- (d) The establishment of a system of recurrent review of prisons as required by article 11 of the Convention with a view to improving conditions in prisons;
- (e) Revision of the rules to the organization of the judicial system in accordance with international instruments on the subject, namely the United Nations guidelines on the independence of the judiciary;
- (f) The setting up of a comprehensive programme, which should be kept under constant review, for educating and training law enforcement personnel, medical personnel, public officials and all those involved in the interrogation, custody or treatment of any person arrested, detained or imprisoned;
- (g) The establishment of a central register containing adequate statistical data about complaints of torture and other inhuman or degrading treatment or punishment, investigation of such complaints, the time within which the investigation is conducted and any prosecution mounted thereafter and its outcome;
- (h) The establishment of a compensation fund for the compensation of the victims of torture and other prohibited treatment;
- (i) Allowing into the country human rights NGOs and cooperating with them in the identification of cases of torture and other inhuman and degrading treatment;
- (j) Urgently addressing complaints about torture and other cruel, inhuman or degrading treatment or punishment raised in NGO reports and the reports of the Special Rapporteurs; taking such action as the obligations of the State party under the Convention warrant; and reporting to the Committee the outcome of such investigations and any action taken in the next periodic report.