



CUBA

**Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:
The Death Penalty**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996
and

The World Coalition Against the Death Penalty

**for the 73rd Session of the Committee Against Torture
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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. Cuba has maintained a de facto moratorium on the imposition of the death penalty since its last reported execution in 2003. In 2010, Cuba's Supreme Court commuted the death sentence of Cuba's last remaining death row inmate. As of the date of this report, there is no record of an individual currently sentenced to death.¹ Although a de facto moratorium is in place, Cuba has not committed to a de jure abolition of the death penalty, citing national security concerns.²

I. The Cuban Government Refuses to Abolish the Death Penalty (List of Issues Paragraphs 20, 26).

2. Noting that there were no convicted prisoners awaiting execution, the Committee in 2012 "remain[ed] concerned about the high number of offences that carry the death penalty, including common crimes and vaguely defined categories of State security-related offences."³
3. The Cuban Government's Third Periodic Report states that "Cuba is against the application of the death penalty and favours abolishing it once the right conditions for doing so are in place. . . . However, the country has been forced, in the legitimate defence of its national security, to choose the path of adopting and enforcing severe laws against terrorist activities and crimes designed to destroy the Cuban State"⁴
4. In its List of issues, the Committee asked whether Cuba will abolish the death penalty and ratify the ICCPR and its Second Optional Protocol.⁵ Although the Cuban Government notes that a de facto moratorium on the death penalty has been in place since 2003, the Cuban government has not committed to a de jure moratorium, abolishing the death penalty, or ratifying the ICCPR or its Second Optional Protocol. The Cuban Government has tied abolishing capital punishment to "the cessation of the policy of aggression that the Government of the United States has practised against Cuba"⁶ The Cuban Government did not respond directly to the Committee's concerns about the application of the death penalty to common crimes under the Cuban penal code.

a. Cuba does not limit the death penalty to the most serious crimes (List of Issues Paragraph 26)

5. The Committee expressed concern about the number of offenses which carry the death penalty, including common crimes and vaguely defined categories of state security offenses.

¹ Amnesty Intl., *Death Sentences and Executions in 2020*, p. 16, ACT 50/3760/2021, Apr. 21, 2021.

² Committee Against Torture, 3rd periodic report. U.N. Doc. CAT. ¶ 198; State Party Response ¶ 135.

³ Committee Against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, (June 25, 2012), U.N. Doc. CAT/C/CUB/CO/2, ¶¶ 1-33 [hereinafter "2012 Concluding Observations"].

⁴ Committee Against Torture, Third periodic report submitted by Cuba under article 19 of the Convention, due in 2016, (Oct. 19, 2018), U.N. Doc. CAT/C/CUB/3, ¶¶ 1-303 [hereinafter "2018 State Party Report"].

⁵ Committee Against Torture, List of issues in relation to the submission of the third periodic report of Cuba, (Dec. 19, 2019), U.N. Doc. CAT/C/CUB/Q/3, ¶¶ 1-37 [hereinafter "2019 List of Issues"].

⁶ Committee Against Torture, Replies of Cuba to the list of issues in relation to its third period report, (Feb. 11, 2020), U.N. Doc. CAT/C/CUB/RQ/3, ¶¶ 1-171 [hereinafter "2020 State Party Response"].

6. The Cuban Penal Code authorizes capital punishment for certain crimes. Notably, there is no mandatory death penalty for any offense; alternative sentencings are available for any capital offense.⁷
7. Crimes punishable by death include: aggravated murder, terrorism-related offenses, rape, robbery, drug trafficking, treason, espionage, war crimes, crimes against humanity, genocide, working as a mercenary, piracy, apartheid, pedophilia, corruption of minors (introducing a minor into prostitution, homosexuality, or criminal behavior).⁸
8. Cuba has asserted that the death penalty is “imposed only. . . in the most serious cases.”⁹ Despite the Cuban Government’s assertions, the Cuban penal code does not limit the death penalty to the most serious crimes. Most of the crimes listed in the previous paragraph do not involve the intentional killing of a person by the person at risk of being sentenced to death.
9. A public opinion survey conducted in 2016 indicates support among Cuban citizens for abolishing the death penalty. Of those surveyed, 52% favored abolition. Only 13% of respondents supported retaining the death penalty as it exists in the Cuban penal code. The remaining respondents believed the penal code should be amended to restrict the death penalty to only the most serious of crimes.¹⁰

b. Cuba does not ensure that all individuals have access to fundamental legal safeguards in criminal proceedings (List of Issues Paragraph 20)

10. Although legally a defendant has the right to hire an attorney at any time and is legally entitled to a public defender once formal charges are filed,¹¹ the Committee has expressed concern regarding these legal safeguards available to individuals who are in detention. The Committee requested Cuba provide information on the measures adopted to eliminate any unjustified restrictions on lawyers visits to persons deprived of their liberty.¹²
11. The Cuban Government provided a generic response to the Committee, stating, “[t]he Prison System Regulations recognize the right of inmates . . . to meet with their lawyers and receive legal assistance . . . and consular visits in the case of foreigners and authorized Cubans residing abroad, upon request from diplomatic headquarters. These rights are guaranteed.”¹³ The Cuban Government failed to provide additional information regarding the measures taken to specifically guarantee these legal safeguards with respect to people in detention generally, and to people who are at risk of being sentenced to death.
12. Cuba emphasizes generally that no one has been executed since 2003. It should be noted, however, that Cuba’s last execution in 2003 drew international concern regarding the lack of legal safeguards afforded to the people the government executed. Despite a brief de facto moratorium on the death penalty at the time, the Cuban Government elected to execute three

⁷Cuba Law No. 87, art. 30, 1999; Cornell Center on the Death Penalty Worldwide, “Death Penalty Database: Cuba”, accessed March 11, 2022, <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=cuba> [hereinafter “Cornell Center on the Death Penalty”]

⁸ Cornell Center on the Death Penalty.

⁹ 2018 State Party Report, ¶ 200.

¹⁰ <https://havanatimes.org/opinion/what-do-cubans-think-about-the-death-penalty/>

¹¹ U.S. Department of State, 2009 Human Rights Report: Cuba, <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136108.htm>, Mar. 11, 2010.

¹² 2019 List of Issues, ¶ 20,

¹³ 2020 State Party Response, ¶ 110.

men convicted of terrorism. The three men reportedly hijacked a Cuban ferry carrying several dozen passengers and sought to force it go to the United States. The incident occurred without bloodshed despite an armed standoff with Cuban security forces. The three men later stood trial for terrorism and were sentenced to death by firing squad less than a week after their trial began. The international community expressed concern that death sentences pronounced after an inadequate and unfair judicial process signaled that the Cuban Government's respect for human rights was eroding.¹⁴

13. Despite the Cuban Government's assertion that certain due process rights are guaranteed to all detained individuals, there are reports of individuals, particularly political prisoners, who are denied due process guarantees.¹⁵
14. The Cuban Government punishes dissent and public criticism of the government, the judicial system, and the penal code. Reports persist of the Cuban Government's use of arbitrary detention to harass, intimidate, and torture its critics, independent activists, and political opponents. In 2016, reports of arbitrary detention reached an average of 827 detentions a month. In 2019, reports from January through August totaled 1,818.¹⁶ Since the onset of the COVID-19 pandemic, the government has broadened arbitrary arrest powers in order to target government critics and others. For example, On April 12, 2020, Keilylli de la Mora Valle, a member of the Patriotic Union of Cuba (UNPACU) political group, was arrested for lowering her mask to smoke a cigarette on the street.¹⁷ Such abuses of arrest and prosecutorial power present significant risk for the use of torture or cruel, inhuman, and degrading treatment for those arrested for capital offenses.
15. In addition, there are reports of Cuban authorities using torture and other forms of coercion to obtain evidence used to convict individuals. As civilian protests against the Cuban Government continue, Cuban authorities have increased their use of arbitrary detention and arrests, revealing systemic practices of torture, other forms of coercive interrogation, and cruel, inhuman, or degrading treatment.¹⁸

¹⁴ <https://www.amnesty.org/ar/wp-content/uploads/2021/06/amr250142003en.pdf>

¹⁵ Human Rights Watch, *World Report: 2020*, (New York, N.Y.: Human Rights Watch, 2020), 159; Prisoner Defenders, *Cuban Prisoners Defenders Report*, (Madrid, Spain, 2020), 2.

¹⁶ Human Rights Watch, *World Report: 2020*, (New York, N.Y.: Human Rights Watch, 2020), 159.

¹⁷ <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/cuba/>

¹⁸ *The Castro Regime's Repressive Racial Divide. Cuban Evangelicals Speaking Out and Suffering the Consequences*, MSNBC (Jan. 18, 2022) <https://www.cubacenter.org/archives/2022/1/18/cubabrief-msnbc-on-detentions-and-torture-in-cuba-the-castro-regimes-repressive-racial-divide-cuban-evangelicals-speaking-out-and-suffering-the-consequences>; *Cuban Political Prisoner Silverio Portal Contreras Facing Extreme Health Risk*, Institution on Race, Equality and Human Rights, May 18, 2020, <https://raceandequality.org/cuba/cuban-political-prisoner-silverio-portal-contreras-facing-extreme-health-risks>; Anthony Faiola & Ana Vanessa Herrero, *Stripped Naked, Beaten, Forced to Shout 'Viva Fidel!': Inside Cuba's Crackdown on Dissent*, WASHINGTON POST (Oct. 19, 2021) <https://www.washingtonpost.com/world/2021/10/19/cuba-protest-human-rights-watch/>; Dave Sherwood, *Cuba Defends Trials of Protesters as Fair, Rejects Accusations of Rights Violations*, REUTERS (Jan. 25, 2022) <https://www.reuters.com/world/americas/cuba-defends-trials-protesters-fair-rejects-accusations-rights-violations-2022-01-25/>; U.S. Dept. of State, Bureau of Democracy, Human rights and Labor, *2020 Country Reports on Human Rights Practices: Cuba* (March 30, 2021) <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/cuba/>.

II. Suggested Recommendations

16. The coauthors of this report offer the following suggested recommendations for Cuba:

- Abolish the death penalty and replace it with a sentence that is fair, proportionate, and respects international human rights standards.
- In the interim, establish an official moratorium on executions, effective immediately, and direct all judges to cease sentencing people to death.
- In the interim, amend the penal code to restrict applicability of the death penalty only to intentional killing.
- Bar courts from considering any evidence obtained through torture, except with respect to evidence of the crime of torture itself, and create a mechanism by which defendants may raise the issue of inadmissibility before trial. Ensure that all judicial authorities receive adequate training and support to assess such allegations and have the capacity to bar consideration of such evidence.
- Ensure that all persons charged with capital offenses are provided with legal counsel free of charge, and ensure that they have access to counsel from the time of charging through any appeals, including during any interrogations.
- Take concrete measures to improve conditions in prisons for all persons, including people on death row, in accordance with the Nelson Mandela Rules, and enact a policy prohibiting the use of solitary confinement as the standard method of detention for persons who might be sentenced to death, consistent with Rule 45 of the Nelson Mandela Rules.
- Establish a system of regular unannounced visits to all places of detention by national and international monitors, including granting entry and access to all human rights non-governmental organizations.