



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Consideration of reports submitted by States parties under  
article 29, paragraph 1, of the Convention**

**Reports of States parties due in 2012**

**Cuba\***

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## I. Introduction

1. The adoption by the General Assembly of the International Convention for the Protection of All Persons from Enforced Disappearance, hereinafter referred to as “the Convention”, was an important step forward in international efforts to prevent this practice around the world.

2. Cuba took an active part in the negotiations that led to the adoption of the Convention. It was one of the main sponsors of the General Assembly resolution that adopted the instrument. Cuba was among the countries that signed it at the solemn ceremony held in Paris on 6 February 2007 for that purpose. Later, on 2 February 2009, it proceeded to ratify this important legal instrument.

3. The Government of the Republic of Cuba welcomes the opportunity to brief the Committee on Enforced Disappearances on the measures it has taken pursuant to its commitments under the Convention.

4. The rights to life, liberty and security of person have always been mainstays of the Cuban Revolution, its authorities and society at large, even though Cuba has had to face over 50 years of aggression, terrorism and a harsh economic, commercial and financial embargo imposed by the Government of the United States of America.

5. In both its domestic and its foreign policy, Cuba puts into practice respect for the physical and moral integrity of the individual and, in particular, for the defence of the legitimate interests of citizens. Since the triumph of the Revolution in 1959, torture has been abolished and there has not been a single case of enforced disappearance or extrajudicial execution.

6. This report does not cover the territory illegally occupied by the naval base of the United States of America in Guantánamo against the will of the Cuban people. The Cuban Government does not exercise effective jurisdiction over that territory and therefore assumes no responsibility for the legal infractions and serious human rights violations that have taken place in this universally condemned centre of arbitrary detention and torture.

7. This report was prepared in accordance with the guidelines on the form and content of reports to be submitted by States parties to the Convention under article 29, adopted by the Committee at its second session (26-30 March 2012).<sup>1</sup>

8. The report is the result of a process involving a multidisciplinary working group made up of many government and/or State ministries and institutions, the National Assembly, NGOs and other relevant organizations. The working group conducted a careful and objective assessment of the implementation of and compliance with the provisions of the Convention, in addition to scheduling relevant events over the course of 2014. The Ministry of Foreign Affairs coordinated the multidisciplinary working group set up to manage the broad, participatory process of meetings and wide-ranging consultations that led to the adoption of this report.

## II. General legal framework prohibiting enforced disappearance

9. Cuba has a legal system that regulates and protects the rights of the individual. Consequently, Cuban legislation not only establishes the universally recognized basic legal guarantees for the protection of human rights but also offers substantive

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<sup>1</sup> CED/C/2.

guarantees for the real and effective exercise of all human rights, civil and political as well as economic, social and cultural.

10. The Constitution of the Republic of Cuba (hereinafter referred to as “the Constitution”), which was proclaimed on 24 February 1976, sets out a significant body of basic rights, duties and guarantees, which, for the first time, put into effect the ideas of equality and social justice enshrined in the Universal Declaration of Human Rights.

11. Chapter VII of the Constitution, entitled “Fundamental rights, duties and guarantees”, basically sets forth the main principles and guarantees of human rights and fundamental freedoms, which are consistent with the rights formulated in the Universal Declaration of Human Rights and the other international human rights instruments. These principles and safeguards are supplemented by other chapters of the Constitution and the provisions of ordinary law.

12. The Constitution protects human dignity as an essential constitutional value. Pursuant to article 9, the State “guarantees the liberty and full dignity of man, the enjoyment of his rights, the exercise and fulfilment of his duties and the complete development of his personality”.

13. According to article 10, “all State organs and their leaders, officials and employees act within the limits of their respective areas of competence and have the obligation to adhere strictly to socialist law and ensure that it is respected in society as a whole”.

14. Moreover, article 26 sets out the right of any person who suffers loss or harm unjustly caused by a State official or employee acting in an official capacity to claim and obtain the appropriate redress or compensation as prescribed by law.

15. Pursuant to article 42, discrimination on grounds of race, skin colour, sex, national origin or religious belief or any other discrimination detrimental to human dignity is prohibited and punishable by law.

16. According to article 58 of the Constitution: “Freedom and inviolability of the person are guaranteed to all those residing in the national territory. No one may be arrested except in the circumstances and in accordance with the manner and guarantees provided for by law. The personal integrity of persons under arrest or in detention is inviolable.”

17. Pursuant to article 59 of the Constitution:

“No one may be tried or convicted except by a competent court in accordance with laws adopted prior to the commission of the offence and with the procedures and safeguards established by such laws.

Every accused person has the right to a defence.

No violence or coercion of any kind may be used against persons to force them to testify.

Any statement obtained in violation of this provision is null and void and those responsible for the violation shall be punished in accordance with the law.”

18. The same guarantee appears in article 166 of the Criminal Procedure Act on taking statements. Article 161, for its part, grants the accused the right either to make a statement or to remain silent.

19. The system of legal protection for human rights in Cuba is not limited to what is set out in the Constitution. Human rights are duly considered and guaranteed in other substantive and procedural provisions. Acts, decree-laws, decrees, decisions of the Council of Ministers and resolutions of ministers and heads of the central organs of

State all establish benefits and supplement the principles, rights and duties established in the Constitution, which define the relationship between individual members of society and between those and the State.

20. Several provisions of the Criminal Code currently in force cover offences, such as deprivation of liberty, coercion and murder, that may be associated with acts of enforced disappearance or any of its components. The section related to article 2 of the Convention, below, provides more information in this regard.

21. The rules and procedures governing the work of the judicial investigation bodies establish the principles for dealing with detained persons and their rights, which are in keeping with the provisions of articles 58 and 59 of the Constitution.

22. In accordance with the principles for dealing with detainees and ensuring respect for their rights, interviews with detainees are to be conducted in strict compliance with constitutional guarantees.

23. No violence or coercion is used to force a detainee to make a statement; persuasion and encouragement are used at all times. Statements obtained through violence are considered null and void and offenders are punished in accordance with pre-established law. Detainees are guaranteed medical assistance and any required medication for as long as prescribed. Satisfactory conditions in places of detention are also guaranteed.

24. The concept of holding a detainee or prisoner incommunicado is alien to criminal and procedural practice in Cuba. Accused persons have the right to medical care and to be visited by their relations and their defence counsel, in accordance with established regulations; the habeas corpus procedure provides an additional guarantee.

25. Book two, section IV, of the Criminal Procedure Act sets out in detail the entire procedure for the preventive deprivation of liberty of persons who are suspected or accused of having committed or attempted to commit an offence.

26. According to article 241 of the Act, no person may be arrested except in the cases and following the procedures prescribed by law. The Act then sets forth the basic formalities required for detention; pursuant to article 244, the authority in charge of proceedings is required to report the arrest and the place where the detainee is held, as well as to facilitate communication between the detainee and the members of his or her family, within the time and in the form established by the regulations.

27. The Act also states that officials acting in legal proceedings are required, within their respective terms of reference, to keep records of proceedings, to take account in their decisions of factors in favour of and against the accused and to inform accused persons of their rights, thereby demonstrating the principle of objectivity of criminal proceedings.

28. In the Cuban legal system, the police, the judge investigating the case and the prosecutor may order personal precautionary measures, provided that they are consistent with the conditions established by law and in strict compliance with the orders issued in connection with the case concerned.

29. In accordance with international agreements and instruments, all prisons and detention facilities in Cuba are subject to a system of inspection that is independent of the authority responsible for administering them.

30. The Ministry of the Interior, the court system and, in particular, the Attorney General's Office, participate actively in upholding and ensuring the rule of law in the prison system.

31. In addition to the penalties provided for in domestic law to address these forms of conduct, Cuba has a preventive strategy based on respect for the dignity of all persons.

32. The role and the interrelated activities of society as whole — governmental organizations, NGOs (including grass-roots and social welfare NGOs), the media and programme and initiative design — are vital to this process.

33. Decree-Law No. 286/2011 assigned the Ministry of Labour and Social Security the responsibility for proposing, administering and overseeing approved policy for prevention, assistance and social work.

34. A multidisciplinary, coordinated system was set up for this purpose, composed of the Ministry of Labour and Social Security, the Ministry of Education, the Ministry of Higher Education, the Ministry of Justice, the Ministry of Public Health, the Ministry of Culture, the Ministry of the Interior, the Attorney General's Office, the National Institute for Sports, Physical Education and Recreation, the Communist Youth Union, the Federation of Cuban Women and the Committee for the Defence of the Revolution.

35. The aim is to ensure that the possible perpetrators of acts criminalized by law and deemed to have a negative social impact are prevented, identified and dealt with and that victims of offences are duly cared for.

36. Between 2010 and 2013 a yearly average of some 30,000 sessions of advice, training, and legal and educational guidance were held for parents and family members, touching on family dynamics, conflict resolution, and referrals for health, psychological and psychiatric care. Other sessions dealt with legal matters.

37. Primarily in order to prevent violations of the law, article 127 of the Constitution establishes that the Attorney General's Office is responsible for monitoring and safeguarding the rule of law by ensuring that the Constitution, laws and other legal provisions are strictly complied with by State agencies, economic and social institutions and the general public.

38. Cuba has an extensive and effective inter-institutional system, that includes the participation of grass-roots and community-based organizations, for receiving, processing and responding to any complaint or petition from an individual or group concerning the enjoyment of any human right.

39. Under article 63 of the Constitution, all citizens have the right to submit complaints or petitions to the authorities and to receive an appropriate response within an acceptable period of time, in accordance with the law.

40. The Constitution and the principles contained therein form the basis of an organizational structure comprising the set of rules that makes up substantive domestic law.

41. Various authorities, including the Attorney General's Office, the Ministry of the Interior, the court system and the Ministry of Justice, have responsibility for or a mandate to deal with matters addressed in the Convention. Further information in that regard is provided below.

42. The following acts, amongst others, supplement or establish guarantees of the enjoyment in Cuba of all human rights:

- Act No. 59 of 16 July 1987 (Civil Code);
- Act No. 116 of 20 December 2013 (Labour Code);
- Act No. 81 (Environment Act);
- Act No. 14 of 1977 (Copyright Act);

- Act No. 105 of 27 December 2008 (Social Security Act);
- Act No. 1289 of 1975 (Family Code);
- Act No. 16 of 1978 (Children and Youth Code);
- Act No. 62 of 1987 (Criminal Code);
- Act No. 7 of 1977 (Civil, Administrative, Labour and Economic Procedure Act);
- Act No. 5 of 1977 (Criminal Proceedings Act);
- Act No. 22 of 15 February 1979 (Military Offences Act, as amended by Decree-Law No. 152 of 21 August 1994);
- Act No. 6 of 8 August 1977 (Military Criminal Procedure Act).

43. With respect to the domestic implementation of the provisions of international instruments, once the Council of State has ratified the instrument concerned or decides to accede to it, the instrument acquires full legal effect in the domestic legal system, in keeping with the assumed international commitment. In addition, article 20 of the Civil Code stipulates that: “If an international agreement or treaty to which Cuba is a party contains provisions that differ from those appearing in the corresponding articles of the preliminary provisions of the Code or contains provisions which are not set forth therein, the provisions of the said agreement or treaty shall apply.”

44. The international treaties signed on behalf of the Cuban State or its Government also form part of the country’s domestic legal order. Cuba has signed and/or ratified the major legally binding international human rights instruments. It is a State party to 43 international human rights instruments.<sup>2</sup>

45. The Constitution and the Criminal Code ensure that the absolute prohibition of enforced disappearance is non-derogable. There is no Cuban legal provision that authorizes the violation of this principle on any grounds, under any special circumstance or for any offence. Nor does Act No. 93, the Act on Combating Terrorism, allow derogation from this principle. Other details concerning this subject are provided in the section on article 1 of the Convention.

46. In both its domestic and its foreign policy, the Government of Cuba puts into practice respect for the physical and moral integrity of the individual and, in particular, for the defence of the legitimate interests of citizens, which ensures that in Cuba, excluding the territory illegally occupied by the United States naval base in Guantánamo, there are no cases of disappeared or tortured persons, or secret detentions or other serious human rights violations. As a consequence, there are no complaints of enforced disappearances or any criminal cases or convictions handed down for acts of this nature.

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<sup>2</sup> Cuba is a party to many international instruments in this respect, including the Convention on the Rights of the Child; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the Convention on the Elimination of All Forms of Discrimination against Women; the UNESCO Convention against Discrimination in Education; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and the International Convention for the Protection of All Persons from Enforced Disappearance. In February 2008, Cuba signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

### **III. Information concerning each substantive article of the Convention**

#### **Article 1**

47. The non-derogability of the prohibition of acts of enforced disappearance is guaranteed in Cuba. Act No. 75 on National Defence establishes the rules governing exceptional circumstances, their effects and their termination. In accordance with the Constitution and Act No. 75, the following exceptional circumstances may be declared: a state of war or war itself; general mobilization; or a state of emergency. None of these circumstances justifies a failure to observe the principle of non-derogability.

48. Enforcement of the Act on Combating Terrorism has had no effect on the implementation of these rules. Article 1 establishes that the purpose of the Act is to anticipate and penalize all acts, described in the text, which, because of the manner in which they are carried out and the means and methods used, demonstrate an intention to cause a state of alarm, fear and terror in the population or represent an imminent danger to the lives or physical integrity of persons, international peace or the security of the Cuban State.

49. According to article 59 of the Cuban Criminal Code, expiry of the statute of limitations for criminal prosecution can extinguish criminal liability. However, article 64, paragraph 5, regarding the limitation of criminal prosecution, notes that the provisions on limitations do not apply to crimes against humanity, a category that includes the types of offences related to enforced disappearance.

50. Similarly, under article 65, paragraph 5, of the Criminal Code, the general provisions on the limitation of the penalty do not apply to crimes against humanity, as is the case with acts associated with enforced disappearance.

#### **Article 2**

51. Enforced disappearances do not occur in the State of Cuba and are not a part of Cuban society. Enforced disappearances are not explicitly addressed in the Constitution or in the law. In any event, however, protection against such acts may be found in article 58 of the Constitution, according to which no person may be arrested except in the cases, in the form and subject to the safeguards prescribed by law, within the criminal justice system. The Cuban legal system is characterized by profound respect for human beings, particularly for those who must undergo criminal proceedings.

52. That this offence does not appear explicitly in Cuban legislation has not impeded the pursuit of the objectives set out in the Convention for the protection of persons against enforced disappearance. The Cuban legislation is founded on essential ethical values. In addition, consistency with the Convention is demonstrated by the professionalism with which the criminal justice system operates and the conduct of public officials engaged in combating crime and behaviour detrimental to social order and discipline.

53. Although enforced disappearance is not explicitly defined as such, the criminal acts that correspond to such an offence are referred to in the Criminal Code currently in force, in articles 279 to 283 (offence of deprivation of liberty), 286 (offence of coercion), 116 (offence of genocide), 120 (crime of apartheid), 263 (offence of



murder) and 308 (offence of substituting one child for another). These articles provide as follows:

(i) Article 279

“1. Any person who, without authorization and outside the cases and conditions provided for by law, deprives another person of his or her personal liberty, shall be liable to between 2 and 5 years’ deprivation of liberty.

2. The penalty shall be deprivation of liberty for 4 to 10 years if:

(a) The act is committed for the purposes of profit or revenge;

(b) The act causes serious damage to the health, dignity or property of the victim;

(c) The victim of the act is a public official working in his or her official capacity;

(d) The person detained or deprived of liberty is under 16 years of age.

3. The penalty shall be deprivation of liberty for a term of 5 to 12 years if the act leads to the victim’s death, provided that this outcome could or should have been foreseen by the perpetrator.

4. If the perpetrator voluntarily releases the party detained or deprived of freedom within three days of the commission of the act, without having caused the person harm and without having achieved his or her desired end, the penalty shall be:

(a) Deprivation of liberty for a term of 6 to 2 years or a fine of 200 to 500 base units, in the case of subparagraph 1;

(b) Deprivation of liberty for a term of 2 to 5 years in the case of subparagraph 2.”

(ii) Article 280

“1. Any official or agent who does not release a detainee or hand him or her over to the competent authority within the legally established period shall be punishable by deprivation of liberty for a term of 6 months to 2 years or a fine of 200 to 500 base units.

2. The same penalty shall be incurred by any public official who, being competent, fails to annul a detention that he or she has not changed to pretrial detention within the legally established period.”

(iii) Article 281

“Any official or agent who, through inexcusable negligence, fails to release a detainee or hand him or her over to the competent authority within the legally established period shall be liable to deprivation of liberty for between 3 months and 1 year or a fine of 100 to 300 base units or both.”

(iv) Article 282

“Any official or agent who unduly delays acting on a decision to order the release of a detainee, prisoner or convict shall be liable to deprivation of liberty for a term of 3 months to 1 year or a fine of 100 to 300 base units or both.”

(v) Article 283

“A penalty of deprivation of liberty for a term of 3 months to 1 year or a fine of 100 to 300 base units shall be incurred by any prison director who:

(c) Takes into a custody a prisoner or convict, except by order issued by a competent authority or court;

(d) Fails to bring before the authority or court a detainee or prisoner when the latter has been summoned to appear under a habeas corpus or similar proceeding.”

(vi) Article 286

“1. Any person who, without legitimate reason, behaves violently towards another person or threatens the person to compel him or her immediately and unwillingly to perform a lawful or unlawful act, or allows another person to do so, or to prevent the person from performing an act that is not unlawful, shall be liable to deprivation of liberty for a term of 6 months to 2 years or a fine of 200 to 500 base units.

2. Any person who, by other means, prevents another person from performing a lawful act or from exercising his or her rights shall be liable to deprivation of liberty for a term of 3 months to 1 year or a fine of 100 to 300 base units.”

54. The offence of genocide and the crime of apartheid are addressed in the section corresponding to article 5.

55. Article 263 of the Criminal Code establishes the offence of murder, and in subparagraph (h) refers to one of the cases as “having unlawfully deprived the victim of liberty before killing him or her”.

56. Article 308 criminalizes substituting one child for another, and in paragraph 1 establishes penalties for anyone who abducts another’s child. The penalty is more severe if the offence is committed with intent to profit or other malicious intent.

57. In addition, the Criminal Procedure Act contains articles that also offer protection against such acts.

58. According to article 109, paragraph 2, the Attorney General, being responsible for socialist legality, must ensure that the dignity of citizens is respected and that in no event will their rights be unlawfully restricted.

59. Article 166 of the Criminal Procedure Act reproduces the aforementioned article 59 of the Constitution.

60. Under article 241 of the Act, no person may be arrested except in the cases and following the procedures prescribed by law.

61. Pursuant to article 242, any person has the power to make an arrest. However, only in certain circumstances established in the article, namely, any person may arrest “any other person who is attempting to commit an offence, at the moment he or she is about to commit it; any person in flagrante delicto; any person who, by escaping, violates the imprisonment or pretrial security measure to which he or she is being subjected; and any accused person convicted in absentia”.

62. The same article stipulates that “any person who arrests another in accordance with the provisions of the above paragraph above shall immediately hand him or her over to the police”.

63. Article 243, for its part, establishes the authority or police officer’s obligation in any of the following circumstances to arrest:

“1. Any person found in any of the situations described in the preceding article (242), any person who has absconded while under arrest or in pretrial detention, or anyone for whom an arrest warrant has been issued;

2. Any person accused of an offence against State security;
  3. Any person accused of an offence incurring a penalty of more than 6 years' deprivation of liberty;
  4. Any person accused of any offence in the following circumstances:
    - (a) The offence has caused alarm or is of a type frequently committed in municipality;
    - (b) There is sufficient reason to believe that the accused person will attempt to evade justice."
64. Article 244 establishes that "at the time of the arrest of a person, a report, including the time, date and grounds for arrest, as well as any other detail of interest, shall be produced immediately. The report shall be signed by the person arrested and the arresting officer".
65. In addition, and at the request of the detainee or his or her relations, the police or the authority holding the detainee is required to provide information concerning the arrest and location of the detainee, as well as to facilitate communication between them within such periods and in the manner prescribed in the relevant provisions.
66. Articles 245-248 contain provisions relating to the custody of lawfully detained persons that establish comprehensive protection, including strictly defined powers and limitations applying to the actions of the police, the investigating judge and the prosecutor.
67. Article 249 grants counsel for the defence the power to:
  1. Establish communication and meet with his or her client with all due privacy, should he or she be in detention;
  2. Review the contents of the preliminary case file, except in the case referred to in the last paragraph of article 247;
  3. Submit evidence and present papers on behalf of his or her client;
  4. Seek the revocation or revision of the precautionary measure to which his or her client is subjected."
68. Article 251 stipulates that pretrial detention or any other precautionary measure may remain in place only for so long as the original grounds for the measure persist.
69. Article 252 establishes clearly and precisely the mandatory circumstances in which the precautionary measure of pretrial detention may be ordered, as follows:
  1. The record of proceedings provides evidence of an act of a criminal nature;
  2. There is good reason to believe that the accused is criminally responsible for the offence, regardless of the extent or quality of the evidence required for the court to form an opinion when delivering a judgement."

### **Article 3**

70. Although there have been no cases of enforced disappearance, torture or extrajudicial execution in Cuba since the triumph of the Revolution, as explained in the previous section, the State has enacted domestic legal provisions that guarantee conditions such as to prevent the occurrence of the forms of criminal conduct associated with acts of enforced disappearance. These preventive provisions apply both to acts that might be committed by State agents and acts that might be committed by persons or groups of persons acting with the authorization of the State.

71. The State of Cuba complies with its obligation to investigate and prosecute the offences detailed above.

72. All State agencies, institutions, organizations and other entities, including financial entities of any kind, are under an inalienable obligation to make available to judges, prosecutors, examining magistrates and police officers, as applicable, any reports, information or background material that the latter may require in order to investigate an offence within not more than 20 working days of receiving the case file. This period may be extended only in exceptional circumstances. If the request is not satisfied, the authorities concerned will contact the chiefs of the institutions in question so that appropriate action may be taken, irrespective of any personal liability they themselves may have incurred.

73. In accordance with article 116 of the Criminal Procedure Act, any person who witnesses an offence subject to ex officio prosecution, or is for some other reason certain that such an offence has been committed, is required to bring the facts to the attention of a judge, prosecutor, examining magistrate or police unit or, in the last resort, the nearest military unit. Any person who, by virtue of his or her occupation, profession or office, receives information that an offence has been committed is subject to the same obligation. Article 116 further stipulates that, if a State official or employee fails to fulfil this obligation, his or her superior officer shall be informed so that the relevant administrative or employment-related action may be initiated. Article 98 of the Military Criminal Procedure Act establishes similar provisions for the military jurisdiction.

74. In accordance with article 119 of the Criminal Procedure Act, upon receiving information that an offence has been committed, the police are permitted to arrest the suspect, impose any one of the precautionary measures established in the Act (with the exception of pretrial detention, which may be ordered only in accordance with the procedures and subject to the authority established in the law) and immediately initiate the required formalities.

75. The Criminal Procedure Act establishes precise terms for investigating offences and bringing the perpetrators before the competent courts. These terms ensure that investigations are carried out with the necessary speed and grant equal rights to all persons involved in the criminal proceedings.

76. Articles 245 to 260 of the Criminal Procedure Act establish the authorities competent to carry out investigations. Article 92 of the Military Criminal Procedure Act establishes the authorities responsible for conducting such investigations under military jurisdiction.

77. The Office of the Attorney General of the Republic is the State body responsible for monitoring and upholding legality. In pursuing this objective, its principal duties are as follows:

(a) Ensuring compliance with the Constitution, laws and other legislation on the part of State agencies, financial and social institutions and citizens;

(b) Taking action against violations of the rights embodied in the Constitution and the guarantees established by law, and against infringements of legality in the acts and decisions of State agencies and their dependent units, the agencies of local authorities and other financial and social institutions, and demanding correction of the offences;

(c) Dealing with citizens' complaints of violation of their rights;

(d) Verifying the observance of constitutional and procedural safeguards during the investigation of complaints and other information concerning offences or

indications of dangerousness, and ensuring legality in the conduct of legal proceedings, in accordance with the law;

(e) Instituting and conducting public criminal proceedings as representative of the State;

(f) Verifying that custodial sentences and security measures are implemented in accordance with the provisions of law and the corresponding court rulings, and ensuring respect for the rights of persons who have been arrested, detained or convicted.

78. Additionally, in respect of the observance of legality during the preliminary investigations initiated after an offence is committed, article 109 of the Criminal Procedure Act stipulates that the Office of the Attorney General shall ensure that:

(a) Offences are investigated, the objective truth is established and the perpetrators are charged in court;

(b) The dignity of citizens is respected and citizen's rights are not unlawfully restricted under any circumstances;

(c) The Criminal Procedure Act and other legal provisions are observed strictly in all actions carried out by the examining magistrate during preliminary investigations.

79. In this preliminary phase, the Office of the Attorney General also oversees compliance with the Criminal Procedure Act in the conduct of proceedings, observance of safeguards and execution of formalities, and in the legal classification of the facts. It supervises the course of the investigations and, when needed, either arranges for the conduct of any actions and procedures that may be necessary to prove that an offence has been committed, identify the perpetrator and determine other essential circumstances, or carries out such actions itself. It also ensures compliance with the procedural safeguards to which the accused is entitled, and that the rights of the victim of the offence or injured party and the interests of the State and society are protected.

80. Regarding the enforcement of prison sentences and other custodial measures, article 28.1 of the Act governing the Office of the Attorney General of the Republic stipulates that the agencies of the Office are authorized to carry out inspections in order to verify compliance with the law in prison facilities and detention centres.

81. Regarding the above, the second paragraph of article 28 of the Act governing the Office of the Attorney General of the Republic establishes that the prosecutor assigned to the case has the powers:

(a) To examine the documents and records of any person who has been detained, accused, convicted or imprisoned;

(b) To inspect the facilities and premises used for that purpose;

(c) To ensure the legality of orders and provisions issued by the authority or body concerned, and compliance therewith;

(d) To interview persons who have been arrested, charged and placed in custody pending trial, convicted or imprisoned;

(e) To carry out any necessary inquiries;

(f) To make recommendations regarding how best to achieve compliance with laws and regulations, and propose measures for preventing crime and dealing with its causes and the conditions conducive to criminal behaviour;

(g) To issue orders to restore a state of legality where an offence has been committed. If the violation relates to the unlawful detention of a person, the prosecutor may order that person's immediate release, through a court order;

(h) If the violation relates to the unlawful deprivation of liberty of a person, the prosecutor shall act in accordance with established procedure, as the case dictates;

(i) To examine documentation substantiating a decision to release a person who has been arrested, charged, convicted or imprisoned and to study and determine in which cases parole may be granted, based on compliance with the requirements established in the Act, issuing appropriate statements in that regard.

82. Article 200 of the Criminal Procedure Act establishes that an expert examination may be carried out if there is a need to ascertain or assess an important material fact or if scientific, artistic, technical or practical knowledge is required. It also stipulates that, in cases of bodily injury, presentation of the certificate or opinion issued by the corresponding physician, containing the required details of the injuries sustained, shall be sufficient to initiate proceedings.

83. In cases where the competent authority decides not to institute criminal proceedings and asks the competent court to order a general or partial dismissal of the case, if the court deems this course of action inappropriate, the Act allows the victim of the offence to bring a private criminal action, whereupon the case enters oral proceedings.

#### **Article 4**

84. As mentioned above, there is no express definition of enforced disappearance in Cuban criminal law. However, even though there have been no cases of enforced disappearance in Cuba since the revolutionary triumph of 1959, criminal acts that are related to the definition of enforced disappearance established in article 2 of the Convention are criminalized in the text of the Criminal Code currently in force. The constituent elements of the offences covered in the Cuban Criminal Code related to the offence of enforced disappearance may be considered consistent with the definition contained in article 2 of the Convention.

85. Nonetheless, the Cuban authorities are considering the possibility of incorporating a definition that includes all the constituent elements of enforced disappearance, as defined in article 2 of the Convention, in the amendment of the Criminal Code currently in the drafting stage.

#### **Article 5**

86. The list of offences against international law and peace contained in the Cuban Criminal Code makes no mention of enforced disappearance as a crime against humanity. However, articles 116 and 120, dealing with the offence of genocide and the crime of apartheid respectively, expressly criminalize acts that correspond to possible acts of enforced disappearance in situations of armed conflict or attacks against civilians.

87. Article 116, paragraph 1, concerning the offence of genocide, provides that:

“A sentence of 10 to 20 years' deprivation of liberty or death shall be incurred by any person who, with the intention of destroying, in whole or in part, a national, ethnic, racial or religious group as such:

(a) Imposes on such a group conditions of existence that threaten to exterminate the group or some of its members;

(b) Takes action to prevent or obstruct births within the group;

(c) Forcibly transfers children from such a group to another;

(d) Causes the death or seriously impairs the physical or mental integrity of members of the group.

2. Similar penalties shall be incurred by any person who, in contravention of the rules of international law, bombs or machine-guns defenceless civilians or commits other atrocities against them.”

88. The crime of apartheid is also criminalized in article 120 of the Criminal Code. Paragraph 1 (a) of this article penalizes: all acts that deny the right to life and liberty by causing death; serious infringements of physical or mental integrity, liberty or dignity; torture and cruel, inhuman or degrading treatment or punishment; arbitrary detention and unlawful imprisonment.

89. Paragraph 3 of the same article 120 establishes that responsibility for the offences covered by paragraphs 1 and 2 must be ascribed, irrespective of the country in which the guilty parties act or reside, and extends, regardless of motive, to individuals, members of organizations and institutions, and representatives of the State.

## Article 6

90. Cuban criminal law establishes a regime of general criminal responsibility which is applicable to all offences, including those described in the section of this report concerning article 2.

91. Criminal responsibility may be ascribed to both individuals and legal entities. Perpetrators of criminal acts and their accomplices are subject to penalties irrespective of the form of authority they hold and their level of seniority.

92. The courts set the penalties applicable to the perpetrators subject to the limits established for the offence committed. For their accomplices, the applicable penalty is based on the penalty corresponding to the offence with a reduction of one third in the lower and upper limits.

93. Articles 12 and 13 of the Criminal Code regulate the manner in which completed offences, attempted offences and — in certain cases provided by law — preparatory acts are punished, according to the differing degrees of execution of the criminal acts.

94. Any persons who order, induce, attempt to commit, are complicit or participate in acts of enforced disappearance, or in other circumstances similar in nature to those mentioned, would be prosecuted.

95. Similarly, Acts of omission and negligent conduct are punished, as is failing to report an incident on the part of any person who is aware that an offence has been committed. For this reason, citing orders received from a superior officer in an attempt to justify unlawful detentions or enforced disappearances is inadmissible.

96. The Criminal Code establishes penalties for the offences of being an accessory after the fact (art. 160.1) and failure to report an offence (art. 161) for superior officers who knew of or consciously disregarded information that clearly indicated that subordinates under their effective authority and control were committing or about to commit an offence of enforced disappearance; exercised effective responsibility for and control over activities which were associated with enforced disappearance; and

failed to adopt all necessary and reasonable measures within their power to prevent or repress the commission of an act of enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.

97. Likewise, the exclusion from criminal responsibility on the grounds of due obedience, provided for under article 25.1 of the Criminal Code, cannot be cited as justification for an act of enforced disappearance, given the illegality of the act. In accordance with this article, a subordinate officer is permitted to oppose a superior officer's order if that order is contrary to the law or goes beyond the powers of the officer issuing it or the competencies of the subordinate receiving it. Persons who cite the order of a superior officer, including orders issued by the military authorities, in justification, are not excluded from criminal responsibility.

98. There are no legal provisions that cover situations in which complying with a superior officer's order may be invoked in relation to acts of enforced disappearances, and judicial practice in Cuba does not allow as justification for the commission of an offence the defence that the act arose as a consequence of a superior officer's order. The judicial, administrative and political authorities of the State interpret the law to mean that due obedience cannot be invoked as justification for the commission of a criminal act.

99. Penalties are also imposed upon public officials who, when required, by virtue of their position, to implement penalties or security measures, alter such penalties or measures or have them enforced in an unlawful manner. The same applies to public officials who, with the intention of causing injury to a person or obtaining unlawful benefit, perform their duties in a manner manifestly contrary to the law, or arbitrarily exceed the legal limits of their authority. Such situations are covered by article 141 and article 133 of the Criminal Code, which define the offences of wrongful execution of penalties and security measures and abuse of authority.

100. Similarly, in order to give effect to the disciplinary regulations applicable to military officers dated 19 April 2006, article 5, paragraph 1, of Order No. 2 of the Commander in Chief provides that: "any military officer who is aware that an offence is being planned, even in circumstances arising from or resulting from an order from a superior officer, is under an obligation immediately to report the facts, either orally or in writing, to the competent authorities, or to the officer's immediate superior or the latter's superior officers, and at the same time to take action to prevent the offence if it is about to be committed or is already in progress".

## **Article 7**

101. Although there have been no cases of disappearance or extrajudicial execution in Cuba since 1959, the current Criminal Code establishes custodial penalties of between 2 to 10 years for offences that could be associated with enforced disappearance.

102. The maximum penalty established in the Criminal Code for the crimes of genocide, apartheid and murder is death.

103. The Criminal Code also establishes the sentence of life imprisonment, that may be served as the principal penalty for offences for which such a sentence is expressly prescribed, as well as for offences, such as those mentioned in the foregoing paragraph, which carry the death penalty.

104. Cuban criminal law establishes a number of mitigating or aggravating circumstances that may be applied to all offences defined therein. Mitigating circumstances may be invoked when: the agent was acting under threat or coercion; the agent was acting under the direct influence of a person with whom he or she had a



close subordinate relationship; the agent proceeded, on his or her own initiative, to repair or mitigate the effects of the offence, to give satisfaction to the victim, to confess his or her involvement in the act to the authorities, or to help with clarifying the facts; the agent was acting in a state of severe psychological distress caused by unlawful actions by the injured party.

105. Aggravating circumstances include: committing the act as part of a group of three or more persons; committing the offence for profit or for other base or petty motives; causing serious repercussions through the offence; committing the offence with the involvement of minors; committing the offence with cruelty or extreme depravity; committing the offence with abuse of power, authority or trust; committing the offence at night time, in a remote or dark location, or a location with little traffic, having purposely selected such circumstances or taking advantage of them; committing the offence by taking advantage of the victim's defencelessness or dependency on or subordination to the offender.

106. Specific aggravating or mitigating circumstances are also established for offences associated with acts of enforced disappearance. For example, the offence of deprivation of liberty carries a penalty of between 5 to 12 years if the act results in the victim's death, provided that the outcome could or should have been foreseen by the perpetrator.

107. However, the penalty is reduced if the perpetrator voluntarily releases the detainee or prisoner within the first three days of having perpetrated the offence, without having caused the victim harm and without having achieved the objective pursued.

108. Similarly, in the case of the abduction of another person's child, if the offence is perpetrated for purposes of profit or with malicious intent, the penalty will be deprivation of liberty of between 2 and 5 years.

## **Article 8**

109. The statute of limitations for criminal prosecution is established in general provisions of Cuban law and depends on the penalty established for the various offences.

110. Article 64, paragraph 1 (a) of the Criminal Code stipulates that when the law establishes a custodial penalty in excess of 10 years, as is the case for the offence of unlawful imprisonment, criminal proceedings become time-barred 25 years from the date on which the offence was committed.

111. Paragraph 2 of article 64 stipulates that, where the law establishes more than one penalty for a specific offence, the penalty that is more severe in qualitative terms — at the maximum limit of this penalty which the law establishes for the offence in question — shall be used to determine the statute of limitations.

112. The provisions concerning the statute of limitations for criminal prosecution are not applicable in cases where the law provides for the death penalty and in the case of crimes against humanity.

113. Sentences handed down in a final judgement become time-barred and cannot be executed once the deadlines set in article 65 of the Criminal Code have expired. In the case of offences associated with enforced disappearance, the statute of limitations is 30 years if the penalty is death, and 25 years if the penalty is a term of imprisonment exceeding 10 years.

114. There is no statute of limitations for crimes against humanity.

## Article 9

115. Section II, chapter II, of the Criminal Code of Cuba regulates the territorial scope of criminal law. Pursuant to these provisions, Cuban criminal law is applicable to all offences committed on national territory or on board Cuban ships or aircraft, wherever they happen to be, subject to the exceptions established in those treaties to which Cuba is a party.

116. Cuban criminal law is also applicable to offences committed on board foreign ships or aircraft located in Cuban territorial waters or airspace, whether by Cubans or by foreign nationals, excluding offences perpetrated by foreign crew members among themselves, unless the Cuban authorities are expressly asked for assistance by the victim, by the ship's captain or by the consul of the country of which the victim is a national.

117. Notwithstanding the foregoing, the foreign nation may request to take over the legal proceedings initiated by the competent Cuban authorities and ask for the accused to be surrendered to its jurisdiction, in line with the relevant treaty provisions.

118. An offence is considered to have been committed in Cuban territory if the offender engages in preparatory acts, or acts which contribute to the execution of the offence, within Cuban territory, even though the outcome occurs abroad, or vice versa.

119. Matters arising in connection with offences committed in Cuban territory by diplomats or foreign nationals excluded from the jurisdiction of the Cuban courts under international treaties are resolved through diplomatic channels.

120. Cuban criminal law is applicable to Cuban nationals and stateless persons residing in Cuba who commit a crime abroad, if they are present in Cuba or have been extradited.

121. It is also applicable to Cuban nationals who commit an offence abroad and have been handed over to Cuba for trial by Cuban courts in accordance with treaties to which Cuba is a party.

122. Cuban criminal law is also applicable to foreign nationals and stateless persons not residing in Cuba who commit an offence abroad, if they are present in Cuba and have not been extradited, whether they reside in the territory of the State in which the offence was committed or in any other State and provided that the act is also punishable in the place where it was committed. The latter stipulation is not a requirement if the act constitutes an offence against the fundamental, political or economic interests of Cuba, or against humanity, human dignity or public health, or is prosecutable under international treaties.

123. Cuban nationals may not be extradited to another State. Extraditions of foreign nationals are carried out in accordance with international treaties or, in the absence of a treaty, in accordance with Cuban law. Extradition is not permitted in the case of foreign nationals who are being persecuted for having fought imperialism, colonialism, neocolonialism, fascism or racism or for having defended democratic principles or the rights of the working people.

124. The Government of Cuba has 25 bilateral agreements on mutual legal assistance in criminal matters currently in force. The agreements cover a total of 17 countries and 14 of them address the issue of extradition. The State of Cuba has signed extradition treaties with 11 different countries and is an active participant in multilateral discussions on the matter during the United Nations General Assembly, particularly in meetings of the Third Committee, and in meetings of the Human Rights Council in Geneva.

## Article 10

125. As mentioned above, Cuban criminal law is applicable to all offences committed on national territory or on board Cuban ships or aircraft, wherever they happen to be, subject to the exceptions established in those treaties to which Cuba is a party.

126. If a person suspected of an offence associated with enforced disappearance is known to be in Cuban territory, he or she will be detained by officers of the National Revolutionary Police and brought before a judge so that the judicial process may be initiated.

127. The detention of the suspect, and the possible adoption of precautionary measures such as pretrial detention, shall invariably be subject to the general domestic law applicable to all offences established in the Criminal Code, subject to full guarantee of the rights and principles set forth in the Criminal Procedure Act, including the right to defence.

128. As established in article 116 of the Criminal Procedure Act, any person who witnesses the perpetration of an offence subject to ex officio prosecution, or is for some other reason certain that such an offence has been committed, is required to bring the facts to the attention of a judge, prosecutor, examining magistrate or police unit or, failing any of those, the nearest military unit.

129. Offences under the Criminal Code associated with acts of enforced disappearance are prosecutable ex officio, and it is sufficient for the authorities to have information or knowledge about their perpetration, irrespective of the source, for the offences to be investigated and prosecuted, without any need for the victims to lodge a complaint.

130. The Criminal Procedure Act establishes a number of precautionary measures designed to secure the presence of the accused and prevent him or her from evading criminal proceedings. The principal measures are pretrial detention and house arrest. Other options include: sureties in cash; character sureties provided by the company or organization in which the accused person works or by a trade union or other collective organization to which he or she belongs; and a binding obligation on the accused to report regularly to the designated authority.

131. Whichever of the above-mentioned precautionary measures is imposed, the accused is under an obligation to report any change of address to the examining magistrate or court judge.

132. If placed under house arrest, accused persons are not permitted to leave their home without the authorization of the examining magistrate or court judge, depending on which stage of the proceedings their case has reached, except to go to work or their place of study during normal working hours, or for health reasons.

133. Accused persons who are unable to pay the surety needed to secure their release on bail must remain in pretrial detention.

134. Persons accused of offences against State security and offences for which the law prescribes the death penalty or the maximum term of imprisonment are not entitled to be released on bail. Several of the offences associated with acts of enforced disappearance fall into this category.

135. Persons who put forward character sureties undertake to ensure the appearance of the accused, and assume the obligation to bring the accused on request before either the examining magistrate or court judge, depending on the stage the proceedings have

reached, or alternatively to provide sufficient information to allow for the accused's arrest.

136. If an accused person subject to one of the above-mentioned precautionary measures breaches its terms, the measure will be replaced by a more severe alternative. Additionally, where the person's bail has been secured by a cash surety, the collateral shall be seized.

137. If foreign nationals are subject to criminal proceedings, the courts issue regular reports on their situation during all the stages of the trial. They will also respond to any request for information or any query raised by diplomatic missions accredited in Cuba concerning citizens of their respective countries.

138. Circulars No. 103/94 and No. 208/03 issued by the President of the People's Supreme Court regulate procedures for the conduct of trials in which foreign nationals or Cubans permanently resident in the country concerned are required to appear, irrespective of their migrant status. As speed is essential, immediate information is provided on the case when it is instituted and subsequently the date, time and place of the oral proceedings are notified without delay. This information facilitates the provision of consular assistance to the foreign national or Cuban permanently resident in the country concerned, lending greater efficiency to the administration of justice and allowing for greater institutional oversight of the legal proceedings.

139. Should it become clear that due to certain circumstances the relevant communications have not been issued or the Embassy or Consulate has not for some reason been provided with the required information, the judge assigned to the case will decide whether this situation constitutes grounds for cancelling or suspending the proceedings, as appropriate, and setting a new date for their resumption.

140. In order to provide all the guarantees legally required to facilitate the provision of consular assistance, the courts concerned, exercising the prerogatives established in article 305 of the Code of Criminal Procedure, may authorize the presence of consular representatives at trials that they have decided should take place in camera and in which nationals of the representatives' country are appearing.

141. Cuba abides by its commitments assumed under the Vienna Convention on Consular Relations, allowing consular officers to visit foreign nationals who have been arrested and placed in prison or custody pending trial, as well as those who have been convicted and are serving sentences, to converse with them and to arrange for their legal representation in court.

## **Article 11**

142. As previously mentioned in this report, Cuban criminal law is applicable to foreign nationals and stateless persons not residing in Cuba who commit an offence abroad, if they are in Cuba and have not been extradited, or if they reside in the territory of the State in which the offence was committed or in any other State, provided that the act is punishable in the place where it was committed. This latter stipulation is not a requirement if the act constitutes an offence against the fundamental political or economic interests of Cuba, or against humanity, human dignity or public health, or can be prosecuted under international treaties.

143. The authorities responsible for investigations and prosecutions are the same as those for any serious ordinary offence. However, where the perpetrator of this or any other offence is a member of the armed forces or the act has been committed in a military zone, the military courts may hear the case, under the terms of Act No. 6 (the Military Criminal Procedure Act), article 11, paragraph 1, which establishes that the

military courts are competent to hear criminal proceedings for any punishable act of which a member of the military is accused, even where one of the persons involved or the victim is a civilian. The military courts may also hear criminal proceedings for acts committed in military zones, irrespective of whether the persons who participated in the above acts have civilian or military status.

144. Where the Public Prosecution Services or the military court are competent to hear such offences, the same article also empowers them to refer the case to the ordinary courts when the acting authority deems it appropriate.

145. The rights and guarantees of the accused, whether they are nationals or foreigners, have constitutional status, as previously indicated in this report.

146. The Cuban courts assess evidence freely according to their conscience, without being subject to any rules. They are collegiate courts, which collectively, in conjunction with professional and lay judges, freely assess the value of evidence. All decisions are subject to appeal, by both the defendant and the prosecutor, which guarantees the reliability of decisions.

147. Any person being investigated or prosecuted is guaranteed fair treatment at all stages of the proceedings and benefits from procedural guarantees before a competent, independent and impartial court of justice established by the law.

148. Article 1 of the Criminal Procedure Act enshrines the principle of the presumption of innocence, which implies that an offence must be proved independently of the testimony of the accused, and of his or her partner or relatives, so that the accusing party is obliged to furnish the evidence required to prove the facts. This principle governs all stages of the proceedings and its violation could result in temporarily invalidating the criminal proceedings.

149. Persons accused of an offence associated with enforced disappearance, whether they are nationals or foreigners, are entitled to the same procedural guarantees and rights, including the right to defence and to present and propose evidence they consider necessary to demonstrate their innocence, to consular assistance and to translators and interpreters for both national and foreign accused persons.

150. The rules governing professional conduct stipulate the temporary or final removal from office of civil servants, employees or other persons who may be involved in the commission of criminal acts, including those associated with enforced disappearance.

151. The criminal law penalizes under the offence of Attack any persons who use violence or intimidation against the authorities, public servants or their agents, to prevent them from carrying out any kind of investigative act, or against witnesses or other persons who have helped to enforce or apply the general provisions or laws. Administrative and criminal measures are therefore in place to prevent suspects from occupying positions that allow them to influence investigations or threaten any persons engaged in investigations into cases of enforced disappearances.

## **Article 12**

152. There are legal provisions in the country that ensure that complaints can be lodged and criminal acts investigated.

153. Article 116 of the Criminal Procedure Act provides that any person who witnesses the commission of an offence prosecutable *ex officio*, or is certain for any other reason that it has been committed, has the obligation to bring it to the attention

of a court, prosecutor, examining magistrate, or police unit or, failing that, the nearest military unit.

154. The complainant shall be held liable only for the offences that he or she may have committed through the act of filing the complaint or at the time it was filed.

155. Those who, through their duties, professions or occupations, become aware that an offence prosecutable ex officio has been committed are required to report it to a court, prosecutor, examining magistrate or police unit or, failing that, the nearest military unit to their place of work.

156. If a public official or employee should fail to carry out this obligation, his or her superior officer shall be informed with a view to any necessary administrative or employment-related action.

157. It is an obligation to report an offence in Cuba and failure to do so is provided for and sanctioned as such under article 161 of the Criminal Code.

158. According to article 117 of the Criminal Procedure Act, the only persons who are not obliged to report are the ancestors or descendants of the accused, his or her spouse or relatives up to the fourth degree of consanguinity and the second degree of affinity; the lawyer of the accused with respect to any facts under investigation to which he or she may have become privy in his or her role as a defence lawyer; and any other persons who, in accordance with the provisions of the Act, are exempt from the obligation to report.

159. With respect to the military, article 98 of the Military Criminal Procedure Act establishes the obligation for all persons to report an offence prosecutable ex officio which fall within the jurisdiction of the military courts. Furthermore, article 102 of the Act establishes that whoever receives the report must accept it and immediately refer it to the appropriate recipient, taking whatever action is necessary to prevent further acts, keep the fingerprints, preserve the scene of the events and detain the alleged perpetrators, if necessary.

160. Complaints may be lodged in writing or verbally, in person or through third parties. Written complaints must be signed by the complainant or, if the complainant cannot sign, by another person at his or her request. In the case of a verbal complaint, the authority or official who receives it must produce a written report on what the complainant says about the alleged act, its circumstances and participants, to be signed by both parties. If the complainant cannot sign, his or her fingerprint is taken or, failing that, another person must sign at the complainant's request.

161. The person who receives the verbal or written complaint records the identity of the complainant and verifies it by any means he or she deems fit. If the complainant requests it, the recipient of the complaint must provide him or her with proof of having submitted it.

162. In accordance with article 119 of the Criminal Procedure Act, if the police are informed that an offence has been committed, they may arrest the suspect and take any of the requisite precautionary measures set out in this Act, except that of pretrial detention, which may be ordered only in accordance with the procedures and by the authority established by the Act, and initiate the essential procedures immediately.

163. The following procedures are considered essential: identifying the accused; seizing the objects and instruments used in the offence; inspecting the scene of the events or reconstructing it if this is considered critical for the purposes of the investigation; and taking statements from the accused and from witnesses; as well as any other action or procedure provided for under the Act to prove the commission of the offence and identify those involved.

164. If the police have not detained the presumed perpetrator of an offence within 72 hours of it being brought to their knowledge or the complaint being lodged, they must refer all procedures carried out thus far to the relevant investigator, so long as the perpetrator or perpetrators are known and active. In exceptional cases the investigator may extend this period to seven days.

165. When the complaint is filed with the investigator or when the latter receives the initial police reports, he or she has a period of 10 days to, as appropriate, initiate the preliminary procedure, dismiss the complaint or refer it to the relevant investigator if the acts reported do not fall within his or her competence.

166. The decision to dismiss the complaint taken by the investigator and confirmed by the prosecutor must be communicated by the former to the complainant.

167. Even though a complaint may have been lodged under a false name or anonymously, the investigation into the acts will still be initiated if the acts qualify as an offence prosecutable *ex officio*, such as offences associated with acts of enforced disappearance. If the reported acts do not qualify as an offence or are revealed to be manifestly false, the investigator issues a reasoned decision not to proceed, orders the dismissal of the complaint and sends a copy of the decision to the relevant prosecutor, for the latter within a period of seven days to confirm it or order the investigator to initiate a preliminary procedure if the latter considers that there are elements that indicate that an offence may have been committed.

168. The investigator, at any stage of the preliminary procedure, shall immediately close the case file and refer it up to the relevant prosecutor in the event that: the statute of limitation of criminal proceedings has expired; an amnesty has been declared for the reported offence; the accused has died, unless criminal liability still lies with other persons; or a final judgement or dismissal of proceedings has been pronounced in proceedings relating to the same event and the same persons.

169. If the prosecutor considers that there is sufficient evidence of any of the circumstances listed in the above paragraph, he or she shall submit the case to the court and request its suspension, except in the third case, where an extinction of criminal liability would be requested. If, on the other hand, the prosecutor considers that there is not sufficient evidence, he or she will return the case file to the investigator for further processing.

170. Any person who is dissatisfied with the authorities' decision not to conduct an investigation into an event they reported may lodge a complaint with the Public Prosecution Services, in which case the appointed prosecutor is bound to investigate and restore legality if it has been breached, and to provide a reply to the complainant.

171. As previously indicated, there are no cases of enforced disappearance in the country. Unlawful conducts which could be associated with this phenomenon, just like the offence of wrongful deprivation of liberty, occur very rarely in Cuba.

172. As an example of the infrequent occurrence of this kind of offence, two rulings handed down by the People's Court in Havana in 2010 are summarized below. Both refer to acts involving private persons.

173. Case No. 87/10 of the People's Court in Havana was heard for the offence of the wrongful deprivation of liberty by two persons of a third person, who was held against the person's will in order to be forced to return a sum of money. After being detained for 1 day, the victim managed to escape, incurring light injuries in the process, and lodged the complaint. The perpetrators both received a prison sentence of 5 years for the crime committed, in accordance with the Criminal Code in force, article 279, paragraphs 1 and 2.

174. In case No. 258/10, the People's Court in Havana initiated proceedings for the same offence as above, against a person who had detained a 15-year-old minor, whom he mistook for the person who had inflicted injuries on his cousin in a street fight. The minor had been an onlooker at the scene of the fight and had been held and threatened with the same consequences as those inflicted on the injured cousin. The minor's captor held him for several hours until he realised that the boy had had nothing to do with the street fight. The perpetrator, however, was sentenced as a result to 3 years' deprivation of liberty, which was commuted to corrective labour without imprisonment for the same period, in line with article 17, paragraph 1, article 18, paragraphs 1 and 2 (a), and article 279, paragraphs 1 and 2 (a) and (ch), and paragraph 4 (b) of the Criminal Code in force.

### **Article 13**

175. National legislation does not classify enforced disappearance as a political offence or as an offence related to a political offence or as an offence inspired by political motives.

176. Article 20 of the Cuban Civil Code, Act No. 59, establishes that where an agreement or an international treaty to which Cuba is a party sets out different rules from those described in the above articles of the Code or not contained in those, the rules of the agreement or treaty in question shall apply.

177. In Cuba there are currently in force 11 extradition treaties and 14 legal assistance agreements with clauses that also deal with this matter, making a total of 25 agreements covering extradition. In addition, the Bustamante Code on International Private Law is in force, article 3 of which governs extradition.

178. The Ministry of Justice is the deciding authority for extradition in Cuba and is also responsible for implementing extradition agreements.

179. With respect to offences giving rise to extradition, Cuba uses a broad formulation, which establishes that extradition shall be admissible when the request refers to willful or culpable conducts which are addressed in the legislation of both parties and constitute offences that carry custodial sentences of not less than 1 year.

180. The country has not received extradition requests for persons accused of having committed acts of enforced disappearance.

181. In 2013 and 2014, seven foreign nationals were extradited but none for having committed acts of enforced disappearance.

### **Article 14**

182. The Ministry of Foreign Affairs, through diplomatic channels processes requests for legal assistance or rogatory commissions from the Cuban or foreign judicial authorities sent through their legations. In cases where legal assistance is not guaranteed under any treaty, it is provided in accordance with the principle of international reciprocity.

183. Cuba has signed 11 extradition treaties, which are applicable to persons accused of such offences.

184. Between 2012 and 2014, Cuba received 14 requests for international cooperation, 2 of which for alleged acts of enforced disappearance, 1 in Mexico and 1 in Colombia.



## Article 15

185. As mentioned earlier, there are currently 25 bilateral agreements for mutual legal assistance in criminal matters in force in Cuba.

## Article 16

186. The Constitution, in chapter III on foreign affairs, establishes in article 34 that foreign nationals resident in Cuba are on an equal footing to Cubans as regards protection of their persons and property; the enjoyment of the rights and performance of the duties laid down in the Constitution, subject to: the conditions and limits laid down by law; the obligation to abide by the Constitution and the law; contributions to public spending in the form and amounts established by law; and the obligation to submit to the jurisdiction and decisions of the Cuban courts and authorities.

187. Article 46 of the Criminal Code establishes that the court, when judging a foreign national, may impose as a subsidiary punishment expulsion from the national territory, if the nature of the offence, the circumstances of its commission or personal characteristics of the defendant suggest that his or her continued presence in the country is detrimental. Expulsion takes place once the main sentence has been served.

188. The Ministry of Justice may, in exceptional cases, order the expulsion of a convicted foreigner before the main sentence has been served, even if the subsidiary penalty mentioned in this article has not been applied. In such cases, the criminal liability of the guilty person shall be declared annulled in accordance with article 59 (j) of the Criminal Code, which refers to the annulment of criminal liability where an order has been issued for the expulsion from the national territory of the convicted foreign national, in the case referred to in article 46, paragraph 3.

189. Decree Law No. 26, the implementing regulations of the Migration Act, empowers the Directorate of Immigration and Status of Foreigners of the Ministry of the Interior to carry out the administrative expulsion from the national territory of persons who, although they may not have committed offences, violate the regulations applicable in this matter. For example, persons committing such offences may include those who arrive in the country without having completed migration procedures, are undocumented, remain in the country for longer than the authorized period, carry out activities other than those covered in the official visa or are declared non-grata for various reasons of public order.

190. Expulsion may also be enforced in cases covered by international treaties, provided that there is no evidence that the person expelled will be subject to cruel treatment, enforced disappearance or any other degrading act harmful to his or her integrity.

191. Article 13 of the Constitution establishes that political asylum may be granted to those persecuted for their ideals or struggles for democratic rights, against imperialism, fascism, colonialism and neocolonialism, against discrimination and racism, for national liberation, for workers', peasants' and students' rights and demands, for their progressive political, scientific or literary activities, or for socialism and peace.

192. In accordance with the Constitution, substantive criminal law sets out that Cuban citizens cannot be extradited to another State.

193. Foreign nationals may be extradited in conformity with international treaties or, in their absence, Cuban legislation.

194. Foreign nationals will not be extradited if they are persecuted for having fought against imperialism, colonialism, neocolonialism fascism or racism, or for having defended the democratic principles or rights of the working people.

195. A request for extradition may only be made for an offence established by a law that is in force both at the time the offence is perpetrated and at the time the request is made.

196. Before an extradition may be requested, a substantiated ruling must have been issued stating that there are sufficient grounds for initiating criminal proceedings, or a final judgment must have been passed convicting the accused person who is the subject of the extradition request.

197. The extradition request is admitted in the specific cases covered by the treaties in force with the State where the person sought is located; in the absence of treaties, the request is processed in accordance with the principle of reciprocity.

198. Extradition may only be requested of citizens who, having committed an offence in Cuba, have escaped justice and are on foreign territory; of foreign nationals who, having committed an offence in Cuba, have escaped justice and are in a country other than their own; and of Cuban or foreign nationals who have committed an offence on foreign territory, in cases which, in accordance with substantive criminal law, fall under the purview of the Cuban courts.

199. Article 439 of the Criminal Procedure Act empowers the competent court to request the extradition, ex officio or at the request of the public prosecutor, in the form of a substantiated decision, provided that, taking into account the status of the case and the outcome, it can be implemented as laid down in the above articles.

200. Under article 440, proposals for extradition requests are submitted to the Ministry of Foreign Affairs through the President of the People's Supreme Court. Certified copies of the decision and other necessary background documents must be submitted along with the extradition proposal so that the request may be processed by the Government.

201. The Ministry of Justice is the authority with the power to order an expulsion and a transfer of convicts. It acts when there is a final ruling in both cases and the consent of the prisoner in the case of the transfer of convicts. A transfer may be made as long as there is an agreement on the enforcement of criminal sentences with the country of which the convicted person is a citizen, or when both States are parties to an international instrument that provides for the transfer of convicts and for extradition. In cases of extradition and return, neither a final ruling nor proceedings initiated against the defendant are necessary.

202. A decision turning down a request for extradition may be appealed, within three days, to the court immediately above, which will take a decision after hearing the prosecutor.

203. The officials who deal with expulsion, extradition and return of foreign nationals are qualified, highly skilled lawyers with long experience.

## **Article 17**

204. This report has already addressed the provisions of the Constitution, the Criminal Code and the Criminal Procedure Act that regulate matters of detention, by whom the precautionary measure of pretrial detention is issued, how and when notification is given, and at what stage the defendant may access legal defence and contact his or her family.

205. The Ministry of the Interior regulates the provision of medical care to detainees and maintains contact with their families. In the case of foreign nationals, it also regulates consular notification through the Ministry of Foreign Affairs.

206. The report has also addressed the responsibilities of the Public Prosecution Services and the mechanisms applied for the inspection of detention centres, with a view to preventing arbitrary and illegal detentions.

207. The prison system is designed to favour the educational development and encourage the positive behaviour of persons deprived of their liberty through the gradual relaxation of prison discipline in preparation for granting early release and ensuring their successful social reintegration, especially in the case of young persons, who are the main targets of the prison system's activities.

208. The Ministry of the Interior runs computerized records containing the data of all persons deprived of their liberty, which allows the statistical and administrative monitoring of prisoners, as well as their legal and employment records, and their educational records if they have attended school. For foreign nationals, the respective consulates are notified in good time through the Ministry of Foreign Affairs, in order to allow detainees the right to maintain contacts with the required frequency.

209. The Cuban State guarantees the right to attend religious services to all persons deprived of their liberty, in accordance with article 8 of the Constitution. That article also sets forth that the State recognizes, respects and guarantees religious freedom. Telephone communication is also ensured; the right to medical care is enforced and monitored from the moment of detention, and the United Nations Human Rights Council has been allowed access to places of detention.

210. According to article 248 of the Criminal Procedure Act, once a decision has been issued ordering any of the precautionary measures authorized by this Act, the accused becomes a party to the proceedings and may present evidence in his or her favour. The defence lawyer may from then on:

(a) Establish contact with his or her client and meet with him or her in due conditions of privacy if the client has been detained;

(b) Examine the contents of the preliminary case file, except in the case referred to the last paragraph of article 247, whereby it may be decided exceptionally that, for reasons of State Security, evidence is not submitted until the investigations have been completed. Nevertheless, the person deprived of liberty and his or her lawyer have the right to maintain constant personal contact;

(c) Furnish evidence and present documents on behalf of his or her client;

(d) Request the withdrawal or modification of the precautionary measure imposed on his or her client. If the judge refuses to consider any of the evidence presented by the defence lawyer or the request for the withdrawal or modification of the precautionary measure, the defence lawyer must be notified within five working days of the submission of the request and may file a complaint with the prosecutor.

211. The Attorney General's Office, through its law enforcement monitoring system, has access to all prisons and persons deprived of their liberty, and its staff are naturally not part of the prison administration. The Supreme Court, through the judicial division of the People's Provincial Courts, carries out an analysis and assessment of persons deprived of their liberty in order to afford them the benefits established by law.

212. The divisions of the Attorney General's Office are empowered to perform inspections with a view to ensuring that the law is enforced in prisons, detention

centres for persons at risk of delinquency, correctional facilities, units for pretrial detention and all prisons, and internment and detention centres.

213. Article 4 of the prison regulations establishes that the Directorate of Prisons, in accordance with the Constitution and other laws, court decisions and the regulations themselves, is responsible for the execution of penalties and custodial sentences, and for ensuring that they achieve their objectives. In order to ensure compliance with the regulations, the Directorate performs the following general functions:

(a) Develop and propose the implementation of the prison system while monitoring and evaluating the results of its application;

(b) Enforce and monitor strict compliance with socialist legality in the implementation of custodial sanctions and measures;

(c) Establish, implement and evaluate the application of educational programmes to promote prisoners' development of an overall general culture to prepare them for their reintegration into society;

(d) Establish, coordinate, promote and enforce in compliance with the law, the participation and involvement of other departments of the Ministry of the Interior, agencies of the central State administration, state and judicial bodies, and grass-roots organizations, to ensure that the sentence is applied and that educational programmes are duly conducted;

(e) Organize the location, designation and operation of prisons and other places of detention;

(f) Use the capacity available in the country to achieve a balance between capacity and the number of prisoners in each province;

(g) Place prisoners in their home provinces, except where it is necessary to place them in another province to ensure continuity in the judicial proceedings or adequate living and working conditions;

(h) Carry out monitoring, inspections and audits in prisons and other places of detention.

214. Articles 467 and 468 of the Criminal Procedure Act set forth the special habeas corpus procedure. According to article 467, any person who has been imprisoned without the formalities and guarantees stipulated by the Constitution and the law must be released at his or her request or that of any other person through a summary procedure of not more than 72 hours. The court system processed 64 cases of habeas corpus between 2010 and 2014, in 3 of which the request was accepted and the immediate release of the detainee was ordered. In all the proceedings, procedural guarantees were ensured for the parties and the principles of due process were observed.

215. Article 473 of the Act allows the court to report to the competent authorities to initiate investigations into an offence committed by an authority or official who has failed to act on a release order that had been issued to them. The decision to deny the request may also be appealed at the People's Supreme Court.

216. With regard to the protection of complainants, article 142 of the Criminal Code establishes the offence of "Attack" as a means of specifically protecting the complainant and sets out deprivation of liberty sentences of between 1 and 3 years in the following cases:

(a) If the violence or intimidation is exerted, with the same intent, against the person who, as a witness or in any other way, may have helped to apply or uphold the law or general provisions;

(b) If the violence or intimidation is exerted in revenge or as a reprisal against the relatives of the persons mentioned in the above paragraph.

217. Article 145 of the Criminal Code, on denial of assistance and disobedience, establishes that civil servants who do not duly cooperate in the administration of justice or the provision of a public service when required by the competent authority or who, without just cause, fail to provide assistance as required by their position, when solicited by a private person, and whose failure to act results in serious prejudice to the national interest or causes serious harm to a person, are liable to receive a sentence of deprivation of liberty of between 3 months and 1 year or a fine of between 100 and 300 accounting units, or both.

218. Article 24 (on protection of citizens' rights) of Act No. 83 of the Attorney General's Office, provides that the Office, through the appointed prosecutor, shall consider, investigate and respond within a period of 60 days, to allegations, complaints and claims lodged by citizens in accordance with the legal requirements.

219. Article 24, paragraph 2, sets out that if the abovementioned investigations reveal that a citizen's rights have been violated, the prosecutor responsible must take a decision to redress the breach.

220. If the case is deemed to be inadmissible or lacks sufficient grounds, the prosecutor's reply to the applicant must be explained in writing and a verbal reply must be documented. If the applicant disputes the way the case is handled or the reply received, he or she can turn to the chief prosecutor immediately above, or apply directly to the Attorney General within 30 days of having received the reply, explaining his or her disagreement, in order that the case be reconsidered and an appropriate reply provided.

221. These mechanisms are familiar to the public and are used by the latter to raise concerns and lodge complaints regarding a variety of problems. As an example of people's awareness and use of this mechanism, between 2010 and 2013, in the various departments of the Public Prosecution Services, a total of 358,019 persons were assisted and 54,881 different types of written claims, complaints and reports were processed, with legal grounds being found in 22.3 per cent of those. None of them, however, is related to acts of enforced disappearance.

222. Such persons receive the information they need, as well as appropriate guidance and, if necessary, the Public Prosecution Services administer whatever specialized care may be required, particularly by children and adolescents in need of medical or psychological care or other protection.

223. A very limited number of those claims, complaints and reports were related to ill treatment in prisons or detention facilities, but were not linked to enforced disappearance. Nevertheless, from 2007 to 2011, investigations conducted by the Public Prosecution Services led to 46 law enforcement officers being held criminally liable.

224. The Public Prosecution Office, pursuant to its mandate and in order to ensure greater protection of citizens, on 10 November 2014 launched a dedicated 24-hour hotline in its headquarters and in all provinces of the country to provide assistance to the public. Citizen assistance was thus expanded through the use of other communication channels. This alternative provides greater flexibility in the processing of cases and has been used by 8,532 persons since its introduction on 15 January 2015. Although most complaints are filed in person, the added use of e-mail and the Public Prosecution Services website is also planned.

225. Article 109 of the Military Criminal Procedure Act establishes the detention procedures that all members of the military must follow. Under article 110, unit chiefs

and the prosecutor also have powers of arrest, and it is the latter's responsibility to initiate the precautionary measures provided for in article 113.

226. The location officially established for the detention must correspond to the duration of the precautionary measure that is applied. Under article 116, the precautionary measure of pretrial detention is applicable only to those accused of an offence which is punishable under the Act by a custodial sentence, to be carried out in one of the disciplinary units of the Revolutionary Armed Forces within the country.

227. Order No. 14 of the Ministry of the Revolutionary Armed Forces, giving effect to the regulations of the disciplinary units of the Revolutionary Armed Forces, dated 27 May 2013, sets out the rights of detainees, including the right of detainees to receive visits from their lawyers and members of their families, and other rights such as a reduction in their sentence, probation and other benefits leading to early release.

## **Article 18**

228. The right to submit petitions or complaints to the authorities and to receive an appropriate response within a reasonable time limit, in accordance with the law, is established in article 63 of the Constitution. Thus every citizen is entitled to receive information about arrested persons and family members, as provided for in article 244 of the Criminal Procedure Act.

229. Article 26 of the Constitution provides that any person who suffers wrongful damage or injury at the hands of State officials in the performance of their duties has the right to claim and obtain appropriate redress or compensation in the form prescribed by the law.

230. In addition, article 59 provides that every defendant has the right to a defence. Under articles 250 and 251 of the Criminal Procedure Act, a defence lawyer may submit requests to the competent authorities on the defendant's behalf.

231. The Criminal Procedure Act lays down the procedure for habeas corpus and in article 467 states that any person deprived of his or her liberty outside the circumstances or in violation of the procedures and guarantees provided for in the Constitution and the law shall be released, at his or her own request or at the request of any other person, through a summary habeas corpus procedure before the relevant court.

232. The Military Criminal Procedure Act provides that a defence counsel, in the performance of his or her duties, may communicate with the defendant, familiarize themselves with the content of the trial, take notes during the trial, submit evidence, request enquiries to be conducted and institute as many administrative procedures as necessary.

233. A person may request information as to whether a family member or other person has been arrested and the reasons for their arrest at any station of the National Revolutionary Police without restriction.

234. Information may be provided on whether or not the family member in question has been deprived of their liberty and on the place of and reasons for their detention. The latter may receive visits in accordance with the provisions and regulations of the detention centre where he or she is being held.

235. The other aspects of this article are addressed by the aforementioned articles of the Criminal Procedure Act. There are no legal restrictions on or impediments to providing information.

## Article 19

236. The National Centre for Medical Genetics is the national reference centre for the Cuban Programme for the Diagnosis, Management and Prevention of Genetic Diseases and Congenital Defects. The Centre conducts basic and applied research in the field of human and medical genetics, and dispenses human resources training to meet the educational and training-related needs associated with that field of expertise and diagnostic procedures. The Centre's activities are governed by resolution No. 110 of 2004, No. 132 of 2004 and No. 219 of 2007.

237. The Centre has introduced standard operating procedures in all its laboratories for the coding of samples and the processing and delivery of results in all its diagnostic processes, in addition to safeguards to protect confidentiality and to ensure respect for the privacy of the genetic information of patients and families. Laboratory researchers have no contact with patients.

238. An advisory committee reporting to the Ministry of Public Health operates within the Centre and recommends or advises against sending samples abroad for the purpose of diagnosing genetic diseases. Samples are sent abroad in an encrypted form and are accompanied by an opinion issued by the Regulatory Office for the Protection of Health of the Ministry of Public Health. A reference sample of each sample sent abroad is stored in the Centre's DNA bank.

239. The Centre is part of the joint committee of the ministries of science, technology and the environment and public health responsible for approving projects that entail sending biological samples abroad as part of joint genetic research projects. The Centre oversees the ethical aspects of such projects, confidentiality agreements, the justification of research objectives and the cross-border transfer of samples, while advising both ministries. The institution responsible for the project is required to keep reference samples of each sample sent abroad at the National Centre for Medical Genetics.

240. The Centre guarantees the anonymity of samples in all research projects involving the cross-border transfer of biological samples by using a code that makes it impossible to trace the samples used in foreign laboratories back to the individual from whom they were taken.

241. The Centre has devised and implemented procedures to protect genetic databases generated from research and diagnoses while in storage. Data analyses are not conducted on machines with a network connection and databases are not stored on such machines.

242. Every research project must be accompanied by an opinion issued by the Ethics Committee, without which such a project cannot be initiated. Participants in research projects must sign a document in which they give their informed consent and in which the purposes for which the genetic material collected will be used are set out. The use of the genetic material for purposes other than those set out in the document in which the participant has given his or her informed consent constitutes a violation of the agreement.

## Article 20

243. There are no laws that allow for the restriction of access to information on persons deprived of their liberty. In Cuba, criminal proceedings are public.

244. As explained in the preceding articles, persons deprived of their liberty have the right to obtain information about the proceedings in which they are involved, either directly or through family members, defence lawyers or other parties.

245. Article 63 of the Constitution provides that all citizens have the right to submit complaints or petitions to the authorities and to receive an appropriate response within a reasonable time limit, even if they are not deprived of their liberty or subject to judicial proceedings.

246. In cases where no defence lawyer has been appointed, article 281 of the Criminal Procedure Act provides that, once the prosecutor or, where appropriate, the accuser, has delivered his or her concluding arguments, the court, once it considers that the pretrial proceedings are complete, shall initiate the oral proceedings and, assuming that the indictment has been brought, order the defendants and civilly liable third parties to appear, with a copy of the evidence submitted, for the purposes of appointing a defence lawyer if they have not already done so, and formally notify them that, if they fail to do so immediately or at the latest within five working days, the court shall appoint one on their behalf.

247. Article 282 provides that if, after the deadline of five working days referred to in the preceding paragraph has elapsed, the defendant or the civilly liable third parties have still not appointed a defence lawyer of their choosing or the latter fails to appear, the court shall appoint one on their behalf.

248. Article 283 stipulates that once the defendants have appointed their defence lawyers themselves or the latter have been appointed by the court on their behalf and have appeared within the established time limit, they shall be provided, in the order, with the preliminary case file to enable them to deliver their provisional concluding arguments to counter those made by the prosecutor and to submit the evidence that that they deem to be in the defendant's best interests within the non-extendable deadline of five working days.

249. The aforementioned special habeas corpus procedure guarantees a fast and effective legal remedy for obtaining information without delay.

## **Article 21**

250. In accordance with article 28 of the Act on the Office of the Attorney General of the Republic, when conducting prison inspections, the prosecutor must examine any documentation substantiating a decision to release a detained, accused or convicted person. The prosecutor must also consider and determine in which cases parole may be granted, based on compliance with the requirements established in the law, and issue appropriate statements in that regard.

251. Article 490 of the Criminal Procedure Act, which deals with the execution of sentences, provides that all acquitted defendants shall be released immediately by the court that has handed down the sentence, regardless of its status, unless there is a legal reason that necessitates the postponement of the defendants' release, which must be carried out by way of reasoned order.

252. Article 493 provides that the competent court shall adopt without delay the measures and provisions required in each case for the execution of the sentence, issuing the orders and decisions necessary to that end.

253. When the court responsible for executing the sentence is unable itself to undertake all the necessary procedures, it shall call upon the court of the locality in which they are to take effect to undertake them on its behalf.



254. Article 494 of the same Act provides that, if the final sentence is one of acquittal and some defendants in the case are being held in pretrial detention, the prison authorities shall be instructed to release the detainees with immediate effect. In the event that a defendant is convicted, within a period of 10 working days of the sentence having been declared final, he or she shall be provided with a document detailing the particulars of the sentence, which are required by the prison, along with a document attesting to the execution of the penalty prescribed.

## **Article 22**

255. Persons sentenced to deprivation of liberty, members of their family or persons with a legitimate interest, as soon as the conviction has been secured, have the right to appoint a defence lawyer of their choosing to assist them until the end of the trial and, provided that the defendant feels that he or she has grounds to challenge the court decision against him or her, the defendant has the right to enter an appeal in accordance with the Criminal Procedure Act.

256. The mechanisms for detecting instances of unlawful detention and the penalties prescribed for those responsible for such offences have been addressed earlier in the report. The right of citizens to challenge the unlawful detention of a person before the courts is enshrined in article 56 of the Constitution. Moreover, articles 249, 250 and 251 of the Criminal Procedure Act establish the right to challenge and appeal decisions relating to the deprivation of liberty of a person. A request to that effect may be submitted at any stage of the criminal proceedings.

## **Article 23**

257. No cases of enforced disappearance have been recorded and the necessary steps have been taken to ensure that such acts do not occur.

258. In the light of the above, it has not been necessary to create mechanisms to guarantee the right of victims to form associations.

259. Order No. 14 of the Ministry of the Revolutionary Armed Forces of 27 May 2013, which implements the regulations governing the disciplinary units of the Revolutionary Armed Forces, provides that prisoners must be treated in accordance with the relevant provisions of the Constitution and other laws, other legal provisions, the principles of the Cuban Revolution and military ethics.

260. Order No. 11 of the Ministry of the Revolutionary Armed Forces of 21 May 2012, which defines the organizational structure of the disciplinary units of the Revolutionary Armed Forces, states that the bodies of officers, organizational bodies and bodies of personnel of the Ministry of the Revolutionary Armed Forces and the armed forces play the fundamental role in ensuring the effective functioning of those units thanks to their highly-qualified personnel, who have been handpicked, trained and approved by the competent authorities.

261. The State guarantees the training of all personnel involved in the custody and handling of persons deprived of their liberty, through study programmes in educational establishments, where they are instructed and updated regarding the content of the regulations, decisions, orders and other rules of the legislation in force.

262. The units of the Ministry of the Interior responsible for the custody and care of persons deprived of their liberty have their own professional development system, for which study programmes covering different fields of expertise are available up to the higher level.

263. Technical professional training and career development, combined with a sound knowledge of the relevant regulations, orders, laws, and rules, constitute the constant priorities aimed at allowing every participant in the system and, in particular, the members of the National Revolutionary Police, judges and prosecutors, medical personnel and public officials working in prisons, to acquire the necessary skills and prerogatives.

264. As part of this work, the Ministry of Justice, the Ministry of the Interior, the Attorney General's Office and the People's Supreme Court have launched several programmes, including degree and postgraduate training courses for judges, prosecutors and other participants in the system. These courses provide officials of the justice system with a more complete and comprehensive professional training.

265. The training of Cuba's police forces has undergone constant improvement. These programmes have been conducted in step with the reorganization of police force operations, in order to achieve levels of response consistent with the requirements of police action. Grass-roots sociocultural and education models are emerging which, together with the improved technology used by the police, facilitate the training of a more integrated force.

266. Different study programmes have been devised for the various training levels, from basic to advanced, the purpose of which is to firmly instil behaviour demonstrating appropriate professional conduct and abiding by socialist legality and the humanist ethic of the Cuban Revolution.

267. This police training procedure takes place through advanced-level university courses taught in the higher education centres of the Ministry of the Interior, leading to the conferral of the academic degree of Bachelor of Law with programmes featuring the following specialties: public security; criminology; and forensic science and investigation; the police officer training course, the aim of which is to train officers to maintain law and order and keep the public peace, working from strictly ethical, scientific and legal principles within the scope of competency of the police force; the basic police training course, where law enforcement officials destined primarily for surveillance and patrol duties are trained.

268. Courses are also offered in ethics, personality psychology, sociology and social communication, which directly contribute to this training.

269. The training brings together the academic, work-related and investigative aspects of the study programme, taking an approach based on education in moral and humanist values as being fundamental to change and human growth.

270. The study programmes are not limited to law enforcement, but are reinforced by the study of closely linked disciplines such as law, social psychology and human sciences. Special attention is given to questions of civil, criminal and international law to ensure that officers comply with laws protecting fundamental human rights.

271. The model Cuban police officer is trained to show outstanding social and professional dedication, demonstrated primarily in his or her excellent discipline, exemplary moral conduct and professionalism in the service rendered to the community and individual citizens.

272. Both the Attorney General's Office and the People's Supreme Court provide annual degree and post-graduate training courses for judges and prosecutors. These courses provide officials of the justice system with a much more comprehensive professional training.

273. In their training courses, these officials are also taught the standards and rules set out in the main international human rights conventions, including the International

Convention for the Protection of All Persons from Enforced Disappearance, and covenants.

274. In the training of Cuba's law enforcement personnel, the ethical principle of respect for life and personal integrity, both physical and psychological, is paramount. In addition to their legal obligations, these personnel have duties corresponding to their very sensitive responsibilities, which include the strictest discipline and the obligation to report to their superior officers, colleagues and those who selected them on behalf of the Cuban people to discharge that responsibility.

275. In the State security and internal security agencies, officers responsible for the treatment of detainees, accused persons and convicted prisoners receive appropriate, in-depth professional training. These officers are required to observe the Code of Ethics and Disciplinary Rules.

276. Prison officers and examining bodies receive suitable professional training on the scope and content of criminal conduct that may be categorized as constituting offences under the present Convention.

277. In Cuba, doctors and health-care personnel in general are taught the principle of providing protection for physical and mental health, regardless of the characteristics of the patient. Thus, all persons in prison or detention receive medical assistance on the same terms as persons not deprived of their liberty. Act No. 41 on public health provides the legal basis for the training of health-care personnel.

278. The Attorney General's Office has also implemented a system of training through diplomas and courses covering its various areas of competence. These qualifications include compulsory instruction for all participants on the need to guarantee strict compliance with legality and to act at all times in accordance with the principles set forth in the Code of Conduct for State employees.

279. In accordance with this system, regular and systematic training takes place at the various levels within the organizational structure of the Attorney General's Office; this training places great importance on strengthening the Office's functions relating to the monitoring of legality in criminal proceedings and compliance with the law in prisons and detention facilities.

## **Article 24**

280. Cuban internal standards do not provide a clear definition of a victim in cases of enforced disappearance. However, substantive and procedural laws offer protection to any person who has suffered direct harm as the consequence of a wrongful act.

281. The Civil Code, the Criminal Code and procedural laws regulate the provision of compensation for harm or damage arising from unlawful conduct or acts, which has so far been disbursed by the Compensation Fund of the Ministry of Justice.

282. The provision of reparation for moral injury to victims and just satisfaction for the damage caused to their dignity and integrity are also provided for. Complainants, witnesses, victims and injured parties are characterized as victims in keeping with the definition of victims contained in the Convention. The status of these persons is recognized in articles 167 and 374 of the Criminal Procedure Act and in article 71 of the Criminal Code, which recognizes their right to be compensated for the injury and damage arising from crimes committed against their person or members of their family. These rules accord victims certain rights, duties and guarantees according to how they are able to contribute to ascertaining the facts and the damage that they have suffered as a result of criminal acts of the nature described above.

283. As explained above, in Cuba there are no cases of enforced disappearance, and have been none since 1959. However, there have been persons who have gone missing from their homes and victims of natural disasters. When a person is reported to the police as missing from their home, the search for that person begins immediately.

284. If human remains are discovered, the persons who reported the disappearance are summoned to provide information, evidence or genetic material that may allow the remains to be identified, be it by means of dermatoscopic, anthropological, orthodontic or genetic techniques.

285. Should a natural disaster occur, databases composed of ante-mortem records are created containing anthropological and anthropometric data, images, medical and dental records and all the information from blood relatives that may prove useful for the purposes of genetic identification or in its absence. The personal belongings of the missing person or the victim of a natural disaster are checked against the information that is compiled post-mortem to establish forensic identification criteria.

286. A genetic database collects information from 11 to 16 microsatellite regions on the DNA of unidentified corpses. Furthermore, biological samples are taken from the relatives of missing persons or victims of natural disasters, with their informed consent, for the purposes of confirming the identity of those persons by means of a filial genetic analysis. This information is stored indefinitely and is compartmentalized for the exclusive use of the service.

## **Article 25**

287. There are no cases of the enforced disappearance of children or of the parents of children who are the victims of such acts. The Cuban legal framework affords children equal protection and even greater priority and allows them to participate in matters concerning them.

288. The bilateral treaties on criminal matters that Cuba has signed with 24 countries cover searches for and the identification of missing persons. To date, only one letter rogatory of this type has been received, from the Counsel-General's Office of Colombia, requesting information on the Colombian citizen José Omar Olivo Brito, who went missing in his country. Once the necessary investigations had been conducted, the Colombian authorities were informed that there is no record of the aforementioned citizen in Cuba.

289. Chapter IV of Act No. 83 of the Attorney General's Office is devoted to the protection of minors and includes among its functions that of representing and defending the interests of minors who have no legal representative or whose parents are subject to conflicting interests.

290. Another of its functions is to visit institutions that take in children with no family, for the purposes of determining their legal status and protecting their property, rights and interests.

291. Article 40 of the Constitution establishes that children and young people must be afforded special protection by the State and by society.

292. In relation to the above, the Criminal Code has made the substitution of one child for another an offence, as mentioned earlier in this report.

293. The Criminal Code also addresses the offence of the sale and trafficking of minors, providing that:

“1. Any person who sells or transfers by adoption a child under 16 years of age to another person in exchange for reward or financial or other compensation

shall incur a prison sentence of between 2 and 5 years or a fine of between 300 and 1,000 accounting units or both.

2. The penalty shall be a prison term of 3 to 8 years if any of the following aggravating circumstances apply in the case of the acts referred to in the preceding paragraph:

(a) If fraudulent acts are committed with the intention of deceiving the authorities;

(b) If the offence is committed by the person or head of the institution having the child in its custody or care;

(c) If the intention is to transfer the minor out of the country.

3. The penalty shall be a prison term of 7 to 15 years in cases where the intention is to use the minor in any of the forms of international trafficking, related to acts of corruption, pornography, prostitution, organ trafficking, forced labour, activities linked to drug trafficking or the unlawful consumption of drugs.

4. The penalties provided for in this article shall be imposed as long as the acts in question do not constitute a more serious offence.”

294. There are three protection centres for children and adolescents, located in Havana, Villa Clara and Santiago de Cuba respectively, which have highly qualified multidisciplinary teams and the technology necessary to investigate cases involving minors who are the victims of an offence. These centres prevent the secondary victimization of the minor, offer psychological and therapeutic care and provide guidance to families on the best course of action to follow in respect of such minors.

295. Women sentenced to deprivation of liberty who are pregnant receive the necessary care and can give birth to their children in maternity hospitals of the national system of the Ministry of Public Health. Their children will be duly recorded in the appropriate civil registry.

296. The Prison Regulations devote a chapter to the maternity rights of female prisoners. The Prison Regulations provide that female prisoners who are pregnant or breastfeeding must be housed in accommodation that is suitable for their needs within the detention centre, where they can receive appropriate treatment and assistance and are exempt from any obligations that are incompatible with their condition during that period, in keeping with the instructions contained in the medical opinion issued.

297. The Prison Regulations also stipulate that female prisoners who are pregnant and performing work should suspend their activities in accordance with provisions of the labour legislation in force and should receive the remuneration due to them for that period.

298. In order to ensure adequate maternal care during the first year of life, the newborn infant can remain in the care of the mother in the place where she is carrying out her sentence.

299. In addition, provided that the mother gives her consent, the child may be placed in the custody and care of a family member or another person prior to or after the established age, or he or she may be placed in a day-care centre.

300. Educational programmes intended to teach prisoners how to care for and educate their children are conducted in prisons and detention centres.