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Prison Conditions in Cuba: An Assessment of Cuba's Compliance With Basic Human Rights Standards

by Natasha Parassram Concepcion*

According to United Nations statistics, there are approximately 294 prisons and correctional labor camps in Cuba that hold anywhere between 100,000 and 200,000 prisoners at one time. The prisoners are not only common thieves, murderers, and violent criminals, sometimes including juveniles, but also political dissidents.

The Cuban Interior Ministry is in charge of the Cuban prison system. Under this system, soldiers often serve as prison guards and labor camp overseers. According to Article 31 of the Cuban Criminal Code, the basis of the penal system is "social defense," and prison staffs typically include a re-educator, who is usually a military official, assigned to direct the prison population's political indoctrination. The goal of the imprisonment, according to the Cuban government, is to protect the Cuban people from socially dangerous elements of society.

Whatever the various reasons for imprisonment, all Cuban prisoners face severe hardships. Prisoners often are denied basic rights such as adequate health care and food. Ex-prisoners and political dissidents on the island are beginning to speak out about the physical violence they endured while in Cuban prisons. These personal accounts illustrate the deficiencies of the Cuban prison system, and highlight the fact that Cuba is not in compliance with established international human rights standards.

International Law: The Sources of the Prisoner's Rights

Prison massacres, dramatic protests, and violent physical abuses by prison guards are sometimes highly publicized. Human rights organizations working to protect prisoners' rights, however, recognize that the deplorable daily living conditions prisoners in most countries endure generally go unnoticed. Conditions in many prisons around the world, including Cuban prisons, are so deficient that they constitute cruel, inhuman, or degrading treatment, violating a number of international human rights instruments designed to protect basic human rights.

The Universal Declaration of Human Rights (UDHR) maintains that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Article 5). These rights are extended to all persons, including prisoners. Furthermore, both the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibit this kind of treatment, without exception. Article 10 of the ICCPR provides that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Similarly, Article 16 of the CAT states that parties to the CAT "shall undertake to prevent . . . acts of cruel, inhuman or degrading treatment or punishment . . ."

To address the specific rights of prisoners worldwide, the UN Economic and Social Council adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) in 1957. Although not a binding treaty, the Standard Minimum Rules provide guidance for UN member states on how to more effectively bring their conduct into compliance with their international obligations. The Standard Minimum Rules cover the general management of prison facil-

ities and include provisions for prisoners' rights in terms of personal hygiene, separation of the different categories of prisoners, food, medical services, discipline, and punishment. Similar to the ICCPR, the UDHR, and the CAT, Part I, paragraph 31 of the Standard Minimum Rules also prohibits cruel, inhuman, and degrading punishment.

Other international documents relevant to prisoners' rights include the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, which includes specific provisions for juveniles; the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment; and the Basic Principles for the Treatment of Prisoners. Similar to the Standard Minimum Rules, these documents are intended to serve as guiding principles to UN member states and include provisions on general access to health services and the humane treatment of prisoners.

Along with the ICCPR, the CAT, and the Standard Minimum Rules, these documents further develop and enshrine the principle that all prisoners retain some basic human rights and fundamental freedoms guaranteed in the UDHR.

The Source of Cuba's International Obligations

Of the relevant human rights instruments outlined above, Cuba only has ratified the CAT, which it did on May 17, 1995. Therefore, the terms of the CAT that provide for the "treatment of persons subjected to any form of arrest, detention or imprisonment . . . with a view to preventing any cases of torture" (Article 11) and that aim to prevent "cruel, inhuman or degrading treatment or punishment" (Article 16) are binding on the Cuban government. As a signatory to the UN Charter, however, Cuba is subject to provisions and declarations made under UN auspices, such as the Standard Minimum Rules, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, and the Basic Principles for the Treatment of Prisoners. Although these documents are only declarations and not binding treaties, as a member of the United Nations, Cuba has an obligation to respect the fundamental rights guaranteed by these UN declarations.

Chapter IX, Article 55(c) of the UN Charter provides for the "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Article 56 states that "[a]ll Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55." Furthermore, under Article 38 of the Vienna Convention on the Law of Treaties, certain treaty provisions may become binding on third parties when they are part of customary international law. It can be argued that the prohibition of cruel, inhuman, or degrading treatment or punishment has risen to customary international law, as most states consent to this standard. For example, Article 58 of the Cuban Constitution of 1976 states that "the freedom and inviolability of persons are guaranteed to all who live in the national territory," and that "[t]he physical integrity of detainees and prisoners are inviolable." This article codifies as national law the principles outlined

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in international law prohibiting abusive treatment of detainees and prisoners.

Prison Conditions in Cuba

According to the U.S. State Department's 1999 Country Report on Human Rights Practices in Cuba, published in February 2000, the Cuban government continues to assert that prisoners' rights are respected in Cuba. The government claims that it compensates prisoners for their work; that it provides them with the appropriate food, clothing, and footwear; that it gives a rest period each day and a rest day once a week; that it provides adequate medical and hospital care when it becomes necessary; that it grants family visitation rights; and that it grants prisoners the right to request parole.

Numerous human rights organizations and former prisoners, however, tell a different tale of the prison conditions in Cuba. In an interview with the Miami Herald, on November 18, 1999,

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a former political prisoner, who served 30 years in a Cuban prison, stated that he witnessed prison authorities shoot fellow prisoners from close range and saw them beat other prisoners with bayonets. He also stated that prison guards arbitrarily harassed and punished some of the prisoners.

Despite official Cuban government reports that argue to the contrary, human rights abuses in Cuban prisons are being slowly documented. The documentation is occurring despite the Cuban government's ban on regular access to its prisons to both domestic and international human rights and humanitarian organizations. The Cuban government last permitted the International Committee for the Red Cross to visit its prisons in 1989, and the last visit for Human Rights Watch (HRW) occurred in 1995. The government has never permitted the UN Special Rapporteur on Human Rights in Cuba to enter the country. In general, human rights organizations documenting abuses in Cuba rely on political dissidents as well as ex-inmates for the specific details on Cuban prison conditions.

Through the evidence collected from these individual reports, most human rights organizations agree the Cuban prison system fails to comply with international human rights standards by exposing prisoners to substandard and unhealthy conditions. Prisoners enter institutions in good health but suffer from malnourishment while detained. In addition, prisoners often do not receive adequate medical attention. Prisoners regularly face physical and sexual abuse by guards and fellow prisoners. As part of the daily supervision, prison guards in men's facilities often choose prisoners to serve as members of *consejos de reclusos* (prisoners' councils), who aid the guards in enforcing prison discipline. In many prisons, authorities fail to separate minors from adults, and violent criminals from petty criminals and political prisoners, thereby subjecting non-violent prisoners or minors to a more violent environment.

Malnutrition. According to a June 1999 HRW report on prison conditions in Cuba, prisoners are rarely provided with an adequate diet. Many ex-prisoners claim that they measured their rations "by the spoonful, rather than by the bowl or plate."

Several former prisoners testified that they often were served foul and poorly cleaned food that was both revolting and potentially dangerous to eat. Moreover, prison authorities grant the *consejos de reclusos* the authority to control the access to food. As prisoners themselves, many of the members of the *consejos de reclusos* abuse their privileges and hoard what little food is available. Family members often attempt to leave food for the prisoners, but on many occasions the prison guards refuse to accept it.

Cuba is in violation of the Standard Minimum Rules, paragraph 20, which provides specifically for prisoners' rights to food of nutritional value adequate for health and strength, and for that food to be of wholesome quality and well-prepared. Furthermore, these prison practices fail to meet Cuba's obligations to all people, including prisoners, under Article 25 of the UDHR, which provides for the right to a standard of living adequate for the health and well being of a person, including access to food.

Health Concerns. Paragraph 20(2) of the Standard Minimum Rules provides for prisoners' rights to clean water. However, because Cuban prisons are overcrowded, HRW notes that the inmates have difficulties getting access to clean drinking water or bathing water. Toilets are usually not sanitary and often leak into the prison cells. In addition to the severe malnutrition prisoners suffer, these conditions expose the prisoners to the risk of numerous diseases. Mosquito infested, filthy cells often are the breeding grounds for skin diseases and other diseases such as tuberculosis, conjunctivitis, and scabies. Cuban prisoners often suffer from fungal infections that easily can be prevented.

Most of these ailments go untreated because prison authorities have the power to deny prisoners medical care as a punishment for anti-government views. This practice, however, is in violation of the Standard Minimum Rules, paragraph 22, which provides for a prisoner's access to medical attention. Paragraph 22 states that each prison institution must have a hospital or medical facilities, and that the staff, equipment, furnishings, and pharmaceutical supplies must be proper for the medical care and treatment of the sick prisoners. Furthermore, Principle 9 of the Basic Principles for the Treatment of Prisoners states that "[p]risoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation." Denying any prisoner access to medical attention as a form of punishment constitutes cruel, inhuman, and degrading punishment prohibited by article 5 of the UDHR.

Physical Abuse. In 1996, the UN Special Rapporteur on Human Rights in Cuba prepared a report after meeting with experts on the situation in Cuba and with people who had recently left the country after suffering human rights violations, and noted several cases in which prisoners were severely beaten. The report noted that both the guards and the members of the *consejos de reclusos* used beatings as a disciplinary measure to punish the prisoners for expressing political opinions or protesting the conditions of the prisons, to intimidate the prisoners for sex, and for other reasons, such as securing extra food or basic necessities. This method of punishing prisoners is covered by Article 1 of the CAT, which prohibits "acts by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . intimidating or coercing him" and by Article 16 of the CAT which prohibits cruel, inhuman or degrading punishments. Furthermore, Paragraph 31 of the Standard Minimum Rules and Article 5 of the UDHR prohibit cruel, inhuman, or degrading treatment of prisoners as punishments for disciplinary offenses.

Sexual Abuse. The members of the *consejos de reclusos*, and to a lesser extent the prison guards, also commit widespread sexual abuse against fellow prisoners. Incidents of rape and alleged consensual sexual relationships are prevalent. These relationships,

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however, often are forced onto prisoners in exchange for food, drugs, or other scarce goods. In the case where there is a failure to separate juveniles from adult prisoners, guards, members of the *consejos de reclusos*, as well as other adult prisoners target those juveniles for forced sexual relationships. Usually, the youngest prisoners are the most frequent victims of sexual abuse.

Recognizing that different categories of prisoners should be treated and punished differently, paragraph 8(d) of the Standard Minimum Rules specifically provides that juveniles must be separated from adult offenders. The rationale for such a provision is to protect the juveniles from physical and sexual abuse. Furthermore, separating juveniles from adults assures them equal access to food and other necessities that might be compromised by mixing them with adult prisoners. Cuba fails to meet its obligations to protect juvenile criminals when it allows juveniles to be held in the same prisons as adults.

Political Prisoners. Imprisonment is a popular punishment for political dissidents in Cuba who exercise their rights of free association, free expression, free opinion, and free movement. In addition to suffering the same effects that all prisoners suffer, HRW has noted that political prisoners also are frequently singled out for systematic psychological intimidation and physical abuse due to their status as dissidents or their speech activities while in prison. Prison guards regularly beat political prisoners and frequently put them into isolation cells to punish them for their political opinions, contrary to paragraph 31 of the Standard Minimum Rules, which prohibits isolation as a form of punishment for prisoners.

The current state of Cuban prisons shows that Cuba is in violation of its obligations under the various human rights instruments such as the CAT, the UDHR, and the Standard Minimum Rules for the Treatment of Prisoners.

Such treatment of political prisoners also violates paragraph 6(1) of the Standard Minimum Rules, which holds that protection is afforded to all prisoners without discrimination as to political opinion. Cuba violates this principle when it singles out political prisoners for harsh treatment. Moreover, the UDHR and the CAT also afford political prisoners the same freedom from cruel, inhuman, or degrading treatment or punishment as regular prisoners.

Conclusion

The current state of Cuban prisons shows that Cuba is in flagrant violation of its obligations under the various human rights instruments such as the CAT, the UDHR, and the Standard Minimum Rules for the Treatment of Prisoners. Although it is important that Cuba ratify treaties such as the ICCPR, Cuba needs to focus on its violations of current obligations under international law.

Cuba must provide prisoners with proper access to clean food and water and to medical attention when it is necessary. Furthermore, Cuba must take measures to ensure that prison violence is kept to a minimum, while protecting the special interests of juveniles and political prisoners. It is incumbent on the Cuban government, during this process, to allow human rights and humanitarian groups access to its prisons so that they can evaluate the situation and offer their cooperation to help improve prison conditions through effective reform. ☹

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accused . . . was to obtain information." The ICTY noted that "as the interrogation intensified, so did . . . the rape." Furthermore, the ICTY noted that a military officer perpetrated the rapes. Although Furundžija did not personally commit the rapes, the ICTY found that "the accused is a co-perpetrator of torture [so] he is individually responsible for torture." As such, he is "guilty of a violation of the law or customs of war (torture)," in violation of Article 3 of the ICTY Statute. For Furundžija's violations, the ICTY sentenced him to eight years in prison.

In addition to reinforcing the *Čelebići* holding on torture, the *Furundžija* opinion also advanced international jurisprudence on rape by expanding the legal definition of rape. The ICTY drew on the basic definition of rape articulated by the ICTR in *Akayesu* and the definitions of rape set forth in various penal codes. The ICTY concluded that the elements of rape common to most legal systems are: "1) sexual penetration, however slight; a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator, or b) of the mouth of the victim by the penis of the perpetrator; 2) by coercion or force or threat of force against the victim or a third person." Using this definition, the ICTY broadened the scope of rape crimes to include forced oral and anal sex.

Prospects for Jurisprudential Development in the Future

International courts have increasingly recognized the severity of rape crimes over the last 20 years and will likely continue to positively develop international jurisprudence on rape in the

coming years. In the near future, the ICTY will have the opportunity to recognize rape as a form of sexual enslavement in the pending *Foča* case. The ICTY Statute prohibits enslavement as a crime against humanity, but to date no international court has acknowledged that rape can rise to the level of sexual enslavement. The Prosecutor in the *Foča* case has asked the ICTY to expand its understanding of enslavement to include sexual enslavement. If the ICTY recognizes rape as a form of sexual enslavement, the ICTY would add momentum to the positive development of the international jurisprudence on rape.

In addition, the International Criminal Court (ICC) may be able to contribute to the international jurisprudence on rape in the coming years. Although the ICC will not be formally established until 60 signatory nations ratify the Rome Statute of the International Criminal Court (ICC Statute), the ICC will have the statutory authority to adjudicate rape cases. The ICC Statute explicitly invites the prosecution of rape as a crime against humanity, under Article 7 of the ICC Statute, and as a war crime, under Article 8 of the ICC Statute. The ICC, however, also could draw on the jurisprudence discussed above to prosecute rape as torture or genocide. Once established, the ICC could join the IACHR, ECHR, ICTR, and ICTY in promoting accountability for rape crimes internationally. ☹

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