

Cuba's Compliance with the Convention on the Elimination of All Forms of Discrimination against Women

Suggested List of Issues Relating to the Death Penalty

Submitted by The Advocates for Human Rights,
a non-governmental organization in special consultative status with ECOSOC since 1996,
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Greater Caribbean for Life,
and
The World Coalition Against the Death Penalty

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

The Cornell Center on the Death Penalty Worldwide is a US-based research, advocacy, and training center focused on capital punishment and international law. It publishes reports and manuals on death penalty issues, provides transparent data on death penalty laws and practices around the world, trains capital lawyers in best practices, and engages in targeted advocacy and litigation. Its staff and faculty advisors have collectively spent more than eight decades representing hundreds of prisoners facing the death penalty. In 2019 it was awarded the World Justice Challenge Award in recognition for its work on behalf of death-sentenced prisoners in Malawi.

Greater Caribbean for Life (GCL) is an independent, not-for-profit civil society organisation, incorporated under the laws of the Commonwealth of Puerto Rico in 2014. GCL is the only regional entity in the Greater Caribbean that is devoted to working on the abolition of the death penalty. GCL was established in October 2013 following a Conference in Trinidad and Tobago, which was attended by abolitionists from 12 Greater Caribbean countries as well as abolitionists further afield. GCL's main objective is to campaign for and work towards the permanent abolition of the death penalty in the Greater Caribbean and to support Caribbean abolitionist

activists and organizations in this region. GCL has been active in raising awareness of the issues surrounding the DP since its establishment.

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

EXECUTIVE SUMMARY

1. This report suggests questions that the Committee on the Elimination of Discrimination Against Women should pose to the government of Cuba in its List of Issues, particularly with respect to the death penalty.
2. Cuba carried out its last execution in 2003.¹ Although a de facto moratorium is in place, the country has not formally abolished the death penalty, so women remain at risk of being sentenced to death. Since the Committee's last review, the Government of Cuba had two opportunities to abolish or move towards abolishing the death penalty but failed to do so on both occasions. In the new Penal Code, the number of offenses eligible for the death penalty has increased,² further demonstrating an unwillingness to commit to abolishing the death penalty. Most crimes that carry the death sentence in the new Penal Code relate to state security.³ It is important to remember the statement made by Cuban President Raul Castro, after commuting the last two death sentences in 2008: "This does not mean we have eliminated the death penalty from the penal code. It would be irresponsible and ingenuous to renounce the dissuasive power that capital punishment has on the real terrorists, the imperialist mercenaries."⁴
3. Since the Committee's last review, Cuba has implemented a new Family Code⁵ centered around remedying harmful stereotypes of women and has criminalized gender-based violence in the new Penal Code.⁶ Nonetheless, women remain at risk of being sentenced to death and Cuba's retention of the death penalty and its practices regarding the death penalty present an ongoing risk of discrimination against women. Moreover, detention conditions for women violate international human rights standards, and gender stereotypes as well as gender-based violence continue to present a threat to Cuban women.

Cuba fails to uphold its obligations under the Convention on the Elimination of All Forms of Discrimination against Women

4. Although Cuba has refrained from using the death penalty since 2003,⁷ it has abstained from every UN General Assembly resolution calling for a worldwide a moratorium on executions.⁸

¹ World Coalition against the Death Penalty, "Cuba," accessed Apr. 2, 2023, <https://worldcoalition.org/pays/cuba/>.

² Amnesty Intl., News, *Cuba: New criminal code is a chilling prospect for 2023 and beyond*, Dec. 2, 2022, <https://www.amnesty.org/en/latest/news/2022/12/cuba-el-nuevo-codigo-penal-presenta-un-panorama-aterrador-para-2023-y-anos-posteriores/>.

³ Havana Times, *Cuba's New Penal Code: Another Tool to Stifle Dissent*, Sep. 2, 2022. Available online at: <https://havanatimes.org/features/cubas-new-penal-code-another-tool-to-stifle-dissent/>

⁴ "Raúl Castro anuncia la conmutación de las penas de muerte a varios presos comunes", *rtve.es*, Apr. 29, 2008, <https://www.rtve.es/noticias/20080429/raul-castro-anuncia-conmutacion-penas-muerte-varios-presos-comunes/39410.shtml>.

⁵ Ailynn Torres Santana and Julio César Guanche, *Cuba's New Family Code is a Window into the Political Ecosystem*, The North American Congress on Latin America, Nov. 11, 2022, <https://nacla.org/cubas-new-family-code-window-political-ecosystem> (accessed Apr. 3, 2023).

⁶ Isabella Oliver and Mariakarla Nodarse Venancio, *5 Concerns About Cuba's New Penal Code*, Washington Office on Latin America, Jul. 5, 2022, <https://www.wola.org/analysis/5-concerns-about-cuba-penal-code/>.

⁷ World Coalition against the Death Penalty, "Cuba," accessed Apr. 2, 2023, <https://worldcoalition.org/pays/cuba/>.

⁸ U.N. General Assembly, 73rd Session, 55th Plenary Meeting, Dec. 17, 2018, U.N. Doc. A/73/PV.55, 31–32; U.N. General Assembly, 71st Session, 65th Plenary Meeting, Dec. 19, 2016, U.N. Doc. A/71/PV.65, 25–26; U.N. General Assembly, 69th Session, 73rd Plenary Meeting, Dec. 18, 2014, U.N. Doc. A/69/PV.73, 16–17; U.N. General Assembly, 67th Session, 60th Plenary Meeting, Dec. 20, 2012, U.N. Doc. A/67/PV.60, 16–17; U.N. General Assembly, 65th Session, 71st Plenary Meeting, Dec. 21, 2010, U.N. Doc. A/65/PV.71, 18–19; U.N. General

Further, a 2021 report by Amnesty International categories Cuba as “retentionist” with regard to the death penalty, meaning that it retains the death penalty for ordinary crimes and lacks “a policy or established practice of not carrying out executions.”⁹

5. As of the end of 2021, there is no one currently on death row.¹⁰ Because the country has not formally abolished the death penalty, however, women remain at risk of being sentenced to death.

I. Cuba does not limit the death penalty to the most serious crimes, provides for the potential use of summary proceedings in capital cases, and is at risk of resuming executions.

6. Cuba’s new Penal Code, which came into effect in December 2022, retains the death penalty for several crimes. It has been reported that the Penal Code increases the number of offences punishable by life imprisonment and death.¹¹ Some sources report that the offenses punishable by death enumerate 24 offenses,¹² while other sources report 23 offenses.¹³ Both of these numbers are more than that of the 1987 Penal Code, which contained 20 offenses punishable death.¹⁴ Cuba’s expansion of the death penalty conflicts with Article 51 of the Constitution of Cuba, which prohibits cruel, inhuman, or degrading treatment or punishment.¹⁵
7. Crimes punishable by death include, but may not be limited to: acts that threaten the independence or territorial integrity of the state; the crimes of promotion of armed action against Cuba; espionage; sedition; usurpation of political or military command; sabotage; hostile acts against a foreign state; genocide; work as a mercenary; other acts against the security of the state; acts committed with weapons or explosive or deadly devices, chemical or biological agents or other means or substances; executing an act against the life, bodily integrity, freedom or security of any person who, due to the nature of the activities carried out, enjoys relevant recognition in society, or against their closest relatives; hostage taking; acts against internationally protected persons; serious injury or death as a result of acts against the security of civil aviation and the airports; other acts that attempt against air and maritime security; causing serious injury or death as a result of acts against the safety of fixed platforms located on the continental or island shelf; other acts of terrorism; offences

Assembly, 63rd Session, 70th Plenary Meeting, Dec. 18, 2008, U.N. Doc. A/63/PV.70, 16–17; U.N. General Assembly, 62nd Session, 76th Plenary Meeting, Dec. 18, 2007, U.N. Doc. A/62/PV.76, 16–17.

⁹ Amnesty International, *Death Sentences and Executions: 2021*, (May 24, 2022), 63. Also available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

¹⁰ Amnesty International, *Death Sentences and Executions: 2021*, (May 24, 2022), 16. Also available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

¹¹ Isabella Oliver and Mariakarla Nodarse Venancio, *5 Concerns About Cuba’s New Penal Code*, Washington Office on Latin America, Jul. 5, 2022, <https://www.wola.org/analysis/5-concerns-about-cuba-penal-code/>.

¹² Havana Times, *Cuba’s New Penal Code: Another Tool to Stifle Dissent*, Sep. 2, 2022, <https://havanatimes.org/features/cubas-new-penal-code-another-tool-to-stifle-dissent/>.

¹³ Amnesty Intl., News, *Cuba: New criminal code is a chilling prospect for 2023 and beyond*, Dec. 2, 2022, <https://www.amnesty.org/en/latest/news/2022/12/cuba-el-nuevo-codigo-penal-presenta-un-panorama-aterrador-para-2023-y-anos-posteriores/>.

¹⁴ Official Gazette of the Republic of Cuba, Ministry of Justice. Law 62/1987 "Criminal Code" Book II, Title I, Chapters I-III, and Title III, Chapter V. Also available online at <https://www.wipo.int/edocs/lexdocs/laws/es/cu/cu004es.pdf>.

¹⁵ Constitute Project, *Cuba 2019*, accessed Apr. 2, 2023, https://www.constituteproject.org/constitution/Cuba_2019?lang=en.

related to illicit drugs or substances with their similar effects (if the acts referred to in the section are committed by public officials or employees, authorities or their agents or auxiliaries, or they facilitate their execution, taking advantage of that condition or using means or resources of the State); and murder.¹⁶

8. Cuba has asserted that the death penalty is “imposed only. . . in the most serious cases.”¹⁷ Despite the Cuban Government’s assertions, the Penal Code does not limit the death penalty to the most serious crimes. Most of the crimes listed in the previous paragraph do not involve the intentional killing of a person by the person at risk of being sentenced to death. Furthermore, many of these offences are related to issues of state security, which can make the death penalty a potential tool for the government to act against political dissent.
9. Cuba’s new Penal Code also increases the maximum alternative penalty to capital punishment from 20 to 30 years in prison for many of the crimes enumerated before and maintains a life sentence, approved initially in 1999, as an alternative to the death penalty.¹⁸
10. The death penalty is not mandatory for any offense. Persons under 20 years of age and women who were pregnant at the time of the crime or are pregnant during sentencing are excepted from the death penalty.¹⁹
11. The death penalty is prescribed for crimes where it could be imposed through summary proceedings.²⁰ Prosecutors may demand summary trials in “extraordinary circumstances,” as well as cases involving crimes against state security, many of which are eligible for the death penalty. After the start of the COVID-19 pandemic and the July 11, 2021 protests, the Ministry of Justice was reported to have “regularly invoked ’extraordinary circumstances’” in order to initiate summary proceedings.²¹ The Government of Cuba has not provided information on the use of summary proceedings, specifically the use of summary proceedings in crimes for which the death penalty could be imposed.

¹⁶ Official Gazette of the Republic of Cuba, Ministry of Justice. Law 151/2022 "Criminal Code" (GOC-2022-861-O93). Also available online at: <https://www.tsp.gob.cu/en/node/8362>

¹⁷ Committee Against Torture, *Third periodic report submitted by Cuba under article 19 of the Convention, due in 2016*, (Nov. 2, 2018) U.N. Doc. CAT/C/CUB/3, ¶ 200.

¹⁸ Official Gazette of the Republic of Cuba, Ministry of Justice. Law 151/2022 "Criminal Code" (GOC-2022-861-O93), Book I, Title V, Chapter III, First Section, Article 34.1. Also available online at: <https://www.tsp.gob.cu/en/node/8362>.

¹⁹ Official Gazette of the Republic of Cuba, Ministry of Justice. Law 151/2022 "Criminal Code" (GOC-2022-861-O93), Book I, Title V, Chapter III, First Section, Article 33.2. Also available online at: <https://www.tsp.gob.cu/en/node/8362>.

²⁰ Inter-American Commission on Human Rights, *Situation of Human Rights in Cuba*, (Washington, D.C.: Organization of American States, Feb. 2020), 40.

²¹ United States Department of State, *2022 Country Reports on Human Rights Practices: Cuba*, accessed Apr. 2, 2023, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/cuba/>; Press Release, Inter-American Commission on Human Rights, “IACHR and Special Rapporteurs Express Concern over Reports of Arbitrary Detentions, Incommunicado Detention, Lack of Legal Defense, and Other Violations of Due Process during the July 11 Protests in Cuba,” Aug. 12, 2021. Also available online at: https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/211.asp.

II. Detention conditions for women are inhuman, unsanitary, and abusive, and information about detentions and detention conditions is scarce (Concluding Observations paragraphs 12-13).

12. In 2013, the Committee expressed concern about “the lack of information on the number and conditions of women in detention.”²² Aside from a small number of controlled prison visits in 2013, the Government of Cuba does not allow outside organizations access to detention facilities.²³
13. In its 2022 Concluding Observations, the Committee against Torture expressed serious concern about detention conditions, having received reports of “overcrowding, unsanitary conditions and lack of ventilation, deficient medical care, malnutrition and insufficient drinking water and medicine; reports of a large number of hunger strikes; and allegations of the systematic ill-treatment and torture of inmates, including physical and verbal abuse, unjustified restrictions on visiting, transfers to prisons far from the prisoner’s family and prolonged solitary confinement.”²⁴
14. Lack of adequate health care disproportionately affects women.²⁵ Women in detention in Cuba also reported lack of access to feminine hygiene products and prenatal care.²⁶
15. Female political prisoners report experiences of systematic abuse and deprivation of rights while in detention. Xiomara Cruz Miranda, a member of the prominent activist group Ladies in White (Las Damas de Blanco), fell gravely ill in prison because doctors deliberately deprived her of adequate medical care.²⁷ Female political prisoners reported enduring physical and sexual abuse by prison officials or other inmates acting under the instructions of guards.²⁸ Gabriela Zequeira Hernández, a 17-year-old student, described being threatened by a male officer to take her and two men to an area known as the “pavilion,” where detainees were known to have conjugal visits.²⁹

²² Committee on the Elimination of All Forms of Discrimination against Women, *Concluding observations on the combined seventh and eighth period reports of Cuba, adopted by the Committee at its fifty-fifth session (8-26 July 2013)*, (Jul. 30, 2013), U.N. Doc. CEDAW/C/CUB/CO/7-8, ¶ 12.

²³ Human Rights Watch, *World Report 2021: Cuba*, accessed Apr. 2, 2023, <https://www.hrw.org/world-report/2021/country-chapters/cuba>.

²⁴ Committee Against Torture, *Third periodic report submitted by Cuba under article 19 of the Convention, due in 2016*, (Nov. 2, 2018) U.N. Doc. CAT/C/CUB/3, ¶ 22.

²⁵ K.D. Berakis et al., *Gender Differences in the Utilization of Health Care Services*, 49 *Journal of Family Practice* 147 (2000); Kenzie A. Cameron et al., *Gender Disparities in Health and Healthcare Use Among Older Adults*, 19 *Journal of Women’s Health* 1643 (2010).

²⁶ United States Department of State, *2022 Country Reports on Human Rights Practices: Cuba*, accessed Apr. 2, 2023, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/cuba/>.

²⁷ Institute on Race, Equality, and Human Rights, *Representatives from independent civil society and the IACHR Rapporteur on the Rights of Women call on Cuba to cease repression of female activists*, Oct. 27, 2020, <https://raceandequality.org/cuba/representatives-from-independent-civil-society-and-the-iachr-womens-rights-rapporteur-call-on-cuba-to-cess-repression-of-female-activists/> (accessed Apr. 3, 2023).

²⁸ United States Department of State, *2022 Country Reports on Human Rights Practices: Cuba*, accessed Apr. 2, 2023, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/cuba/>.

²⁹ Human Rights Watch, *Cuba: Peaceful Protestors Systematically Detained, Abused*, Oct. 19, 2021, accessed Apr. 2, 2023, <https://www.hrw.org/news/2021/10/19/cuba-peaceful-protesters-systematically-detained-abused>.

III. The Government of Cuba fails to properly combat gender-based violence, placing women at further risk of being sentenced to death (Concluding Observations paragraphs 22-25).

16. In its Concluding Observations, the Committee expressed concern at the “persistence of violence against women,” and the lack of concrete legislation to address it. The Committee also expressed concern about the lack of shelters for victims as well as the lack of statistical data regarding gender-based violence.³⁰
17. The Government of Cuba claims in its State Party Report that the new Penal Code provides for the criminalization of gender-based violence in all its forms.³¹ Despite this claim, the new Penal Code does not provide for the specific crime of femicide but instead includes it under the crime of murder, with gender-based violence as an aggravating circumstance.³²
18. Gender observatories and independent press reported over 30 femicides a year for 2020, 2021, and 2022, and reported 17 verified femicides in 2023 as of March 20.³³ It is very likely these numbers are underestimates, as the government does not collect or publish official statistics on femicide.³⁴ In response to this wave of violence against women, and in order to raise awareness, civil society organizations have urged the National Assembly to include femicide as a specific crime, rather than incorporating it under murder.³⁵
19. The Government of Cuba fails to take concrete steps toward the prevention and mitigation of gender-based violence. Despite urgings by civil society, there is still no comprehensive gender-based violence law addressing education, prevention, or assistance for victims.³⁶
20. Women who are victims of gender-based violence have few places to turn for help. Many women who experienced violence report that officers dismiss their testimonies, preventing victims from getting the legal recourse to remedy their situation.³⁷ A 17-year-old girl was murdered by her 50-year-old ex-partner inside of a police station while attempting to seek

³⁰ Committee on the Elimination of All Forms of Discrimination against Women, *Concluding observations on the combined seventh and eighth period reports of Cuba, adopted by the Committee at its fifty-fifth session (8-26 July 2013)*, (Jul. 30, 2013), U.N. Doc. CEDAW/C/CUB/CO/7-8, ¶ 24.

³¹ Committee on the Elimination of All Forms of Discrimination against Women, *Ninth periodic report submitted by Cuba under article 18 of the Convention, due in 2017*, (Dec. 12, 2022), U.N. Doc. CEDAW/C/CUB/9, ¶ 263.

³² find citation in penal code

³³ Yusimí Rodríguez López, *Gender Violence in Cuba: From Mariela Castro's Denial to Recognition by the Official Press*, Diario de Cuba, Mar. 20, 2023, https://diariodecuba.com/cuba/1679332764_45947.html (accessed Apr. 3, 2023).

³⁴ Observatorio de Género de Alas Tensas, *REPORT 2021: Gender Observatory of Alas Tensas (OGAT)*, Alas Tensas, Oct. 27, 2022, <https://alastensas.com/wings/report-2021-gender-observatory-of-alas-tensas-ogat/> (accessed Apr. 3, 2023).

³⁵ Yusimí Rodríguez López, *Gender Violence in Cuba: From Mariela Castro's Denial to Recognition by the Official Press*, Diario de Cuba, Mar. 20, 2023, https://diariodecuba.com/cuba/1679332764_45947.html (accessed Apr. 3, 2023); Observatorio de Género de Alas Tensas, *REPORT 2021: Gender Observatory of Alas Tensas (OGAT)*, Alas Tensas, Oct. 27, 2022, <https://alastensas.com/wings/report-2021-gender-observatory-of-alas-tensas-ogat/> (accessed Apr. 3, 2023).

³⁶ Yusimí Rodríguez López, *'The Cuban state is unwilling to address gender-based violence'*, Diario de Cuba, Mar. 14, 2023, https://diariodecuba.com/cuba/1678787888_45810.html (accessed Apr. 3, 2023); Observatorio de Género de Alas Tensas, *REPORT 2021: Gender Observatory of Alas Tensas (OGAT)*, Alas Tensas, Oct. 27, 2022, <https://alastensas.com/wings/report-2021-gender-observatory-of-alas-tensas-ogat/> (accessed Apr. 3, 2023).

³⁷ Jessica Castro Burunate, *Women Listen to Domestic Violence Survivors*, Havana Times, Dec. 24, 2022, <https://havanatimes.org/features/women-listen-to-domestic-violence-survivors/> (accessed Apr. 3, 2023).

protection.³⁸ Reports say her ex-partner had a history of violence, with multiple criminal charges and restraining orders that he repeatedly violated.³⁹ Even if women can successfully file police complaints, there are no established shelters for victims,⁴⁰ forcing victims in many cases to return to their abusers.

21. There is very little statistical data collected or published about the extent, forms, and causes of gender-based violence. In its State Party Report, the Government of Cuba continues to cite gender-based violence statistics from its National Survey on Gender Equality, carried out in 2016.⁴¹ Moreover, there are no official statistics on femicides; gender observatories and independent press outlets are the only sources of such data.⁴²
22. In a 2018 study, the Cornell Center on the Death Penalty Worldwide found that, in the global context, women are more vulnerable and most likely to be sentenced to death for criminal offenses committed within the context of gender-based violence⁴³ and manipulative or coercive relationships with male co-defendants.⁴⁴ Cornell's data indicate that most women under sentence of death have been sentenced to death for the crime of murder.⁴⁵ These women have overwhelmingly experienced prolonged domestic violence at the hands of a partner, spouse, or another family member.⁴⁶ In many cases, the abuse has occurred repeatedly. Many women under sentence of death are survivors of gender-based violence and

³⁸ Javier Herrera, *Not One More*, Havana Times, Feb. 6, 2023, <https://havanatimes.org/cuba/not-one-more/> (accessed Apr. 3, 2023); BBC News Mundo, *El asesinato de una adolescente en una comisaría a manos de su expareja de 50 años que causa conmoción en Cuba*, Feb. 7, 2023, <https://www.bbc.com/mundo/noticias-america-latina-64549134> (accessed Apr. 3, 2023).

³⁹ Javier Herrera, *Not One More*, Havana Times, Feb. 6, 2023, <https://havanatimes.org/cuba/not-one-more/> (accessed Apr. 3, 2023); BBC News Mundo, *El asesinato de una adolescente en una comisaría a manos de su expareja de 50 años que causa conmoción en Cuba*, Feb. 8, 2023, <https://elcomercio.pe/mundo/centroamerica/leidy-bacallao-cuba-el-asesinato-de-una-adolescente-en-una-comisaria-a-manos-de-su-expareja-de-50-anos-que-causa-conmocion-en-la-isla-elesvan-hidalgo-narracion-historias-ec-noticia/> (accessed Apr. 3, 2023).

⁴⁰ Observatorio de Género de Alas Tensas, *REPORT 2021: Gender Observatory of Alas Tensas (OGAT)*, Alas Tensas, Oct. 27, 2022, <https://alastensas.com/wings/report-2021-gender-observatory-of-alas-tensas-ogat/> (accessed Apr. 3, 2023).

⁴¹ Committee on the Elimination of All Forms of Discrimination against Women, *Ninth periodic report submitted by Cuba under article 18 of the Convention, due in 2017*, (Dec. 12, 2022), U.N. Doc. CEDAW/C/CUB/9, ¶ 27.

⁴² Observatorio de Género de Alas Tensas, *REPORT 2021: Gender Observatory of Alas Tensas (OGAT)*, Alas Tensas, Oct. 27, 2022, <https://alastensas.com/wings/report-2021-gender-observatory-of-alas-tensas-ogat/> (accessed Apr. 3, 2023).

⁴³ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018). Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁴⁴ Cornell Center on the Death Penalty Worldwide, *"No One Believed Me": A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 6, 2021), 6. Available online at <https://deathpenaltyworldwide.org/wp-content/uploads/2021/10/No-One-Believed-Me-A-Global-Overview-of-Women-Facing-the-Death-Penalty-for-Drug-Offenses.pdf>.

⁴⁵ Cornell Center on the Death Penalty Worldwide, *"No One Believed Me": A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 6, 2021), 11. Available online at <https://deathpenaltyworldwide.org/wp-content/uploads/2021/10/No-One-Believed-Me-A-Global-Overview-of-Women-Facing-the-Death-Penalty-for-Drug-Offenses.pdf>.

⁴⁶ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 4. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

come from disadvantaged socio-economic backgrounds.⁴⁷ At a global level, sentencing courts typically fail to take into account as a mitigating factor during sentencing a defendant's experience as a survivor of gender-based violence or a victim of a manipulative or coercive relationship (for example in cases where women are pressured or tricked into transporting drugs).⁴⁸ Research also indicates that courts fail to account for power dynamics and tactics of coercive control that may affect a woman's involvement in and culpability for a crime.

23. Cases documented by the Cornell Center on the Death Penalty Worldwide have shown violations of women's right to a fair trial. A 2021 follow-up study demonstrated that "fair trial principles dictate that courts should consider all relevant mitigating circumstances before imposing a sentence. In practice, however, many courts neglect gender-specific mitigation."⁴⁹ Since its last review, Cuba has altered its Penal Code to include gender-based violence and domestic violence as mitigating factors in sentencing.⁵⁰ The Government of Cuba also reports that it implemented a variety of training programs and modules for judges and prosecutors in the aim of sensitizing the justice system to gender violence issues.⁵¹ Despite these improvements, there is little information about how courts and prosecutors incorporate sensitivity to experiences of gender-based violence in practice.
24. Global trends show that women sentenced to death face intersectional discrimination. According to Cornell's 2018 report, most women on death row come from backgrounds of severe socio-economic deprivation and many are illiterate, which can reinforce unequal access to effective legal representation.⁵² Women who are detained are more likely to be illiterate and unaware of their legal rights.⁵³ Illiteracy and lack of education among poor women leave them more vulnerable to discrimination, coercion, and exploitation.⁵⁴ This intersectional discrimination exacerbates the risk that a woman charged with a capital crime will be subjected to an unfair trial.

⁴⁷ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 4. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁴⁸ Cornell Center on the Death Penalty Worldwide, "No One Believed Me": *A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 6, 2021). Available online at <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>.

⁴⁹ Cornell Center on the Death Penalty Worldwide, "No One Believed Me": *A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 6, 2021). Available online at <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>.

⁵⁰ Official Gazette of the Republic of Cuba, Ministry of Justice. Law 151/2022 "Criminal Code" (GOC-2022-861-O93), Book I, Title V, Chapter VII, Eighth Section, Article 79.1(i). Also available online at: <https://www.tsp.gob.cu/en/node/8362>.

⁵¹ Committee on the Elimination of All Forms of Discrimination against Women, *Ninth periodic report submitted by Cuba under article 18 of the Convention, due in 2017*, (Dec. 12, 2022), U.N. Doc. CEDAW/C/CUB/9, ¶ 17-24.

⁵² Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 3. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁵³ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 18. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁵⁴ Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 18. Available at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

IV. Suggested questions for the Government of Cuba:

- What steps has Cuba taken to abolish the death penalty and replace it with a penalty that is fair, proportionate, and consistent with international human rights standards?
- Please provide data about the number of women charged with capital crimes, sentenced to death, or under sentence of death in Cuba since 2013, disaggregated by age, race, nationality, crime of conviction, date of conviction, relationship to the victim (if any), relationship to any codefendants, number and age of minor children (if any), status of any appeals or requests for mercy, current sentence, and current location.
- To what extent do law enforcement, prosecutors, or defense counsel in capital cases receive training on gender sensitivity as it relates to criminal procedure and sentencing outcomes?
- How do authorities ensure that all women accused of capital crimes have access to free and effective legal representation by attorneys who specialize in death penalty cases, ensure access to counsel at all times, from the start of the investigation through any appeals, and ensure that the defense team has sufficient funding to conduct a thorough investigation and to secure relevant expert witnesses, particularly regarding gender-specific defenses?
- What training do authorities provide to defense counsel who take on capital cases regarding gender-specific mitigation and how to raise discrimination against clients on the basis of their gender, when appropriate?
- What steps, if any, has the State Party taken to codify gender-specific defenses and mitigation in capital cases, encompassing women's experiences of trauma, poverty, and gender-based violence?
- What measures has the State Party implemented to ensure that all judicial officers responsible for sentencing in capital cases receive comprehensive training on gender-based discrimination, domestic violence, and tactics of coercive control that may influence or prompt a woman to commit a death-eligible offense?
- Please describe the safeguards in place to ensure the safety, privacy, and health of women who are in detention, including access to adequate toilets and sanitation and feminine hygiene products. How has prison infrastructure design accommodated women's specific needs, including their need for privacy?
- How do authorities ensure that all detention facilities fully comply with Rule 5 of the Bangkok Rules and Rule 15 of the Nelson Mandela Rules, regarding personal hygiene?
- What measures has the State Party implemented to ensure that all prison authorities adopt gender-sensitive policies in relation to women's detention, based on the Bangkok Rules and the Nelson Mandela Rules, ensuring women's safety and security pre-trial, during admission to any detention facility, and while incarcerated?

- Do civil society organizations have the opportunity to conduct unannounced, independent visits to all detention facilities where women are held to monitor conditions of detention, including whether facilities comply with the Bangkok Rules and the Nelson Mandela Rules regarding hygiene and sanitation?
- What efforts has the State Party undertaken to engage civil society in discussions around abolition of the death penalty and alternatives to the death penalty?
- How have initiatives such as the inclusion of gender-based violence as a mitigating factor in the Penal Code and gender-based violence trainings for justice system officials⁵⁵ influenced the frequency and/or severity of women's punishment for crimes, including murder, that take place in a context of gender-based violence?
- How does the State Party publish and promulgate information about its use of the death penalty?
- Please describe any measures taken to eliminate intersecting forms of discrimination in the criminal legal system against women with disabilities, migrant and refugee women, women from disadvantaged socio-economic backgrounds, and women belonging to minority groups.

⁵⁵ Committee on the Elimination of All Forms of Discrimination against Women, *Ninth periodic report submitted by Cuba under article 18 of the Convention, due in 2017*, (Dec. 12, 2022), U.N. Doc. CEDAW/C/CUB/9, ¶ 17-24.