

UPR MONITOR

International Service for Human Rights



Human Rights Monitor Series

UNIVERSAL PERIODIC REVIEW, 4TH SESSION CUBA REVIEWED ON 5 FEBRUARY 2009, AFTERNOON

Overview

The large delegation of Cuba was headed by the Minister of Justice, Mrs Maria Reus Gonzales with 19 other representatives of ministries, and of the Cuban Permanent Mission in Geneva. Her presentation of the national report roughly followed the structure of the report itself and she answered to the questions submitted prior to the review in an exhaustive way. She pointed out the coincidence between the UPR of Cuba and the 50th anniversary of the Cuban revolution and highlighted Cuba's commitments to human rights and its openness to dialogue, but asked for 'full objectivity' from the Working Group.

Despite these assurances, the interactive dialogue remained relatively vague, as the delegation denied all allegations of human rights violations taking place in Cuba and it did not answer to critical questions put forward by a few States. More than one hundred states inscribed themselves on the speakers list. Members of the non-aligned movement (NAM) and African states were particularly active in supporting Cuba's efforts at protecting human rights. Most of them praised Cuba for its achievements in the field of economic, social and cultural rights and its important role in the field of international solidarity. The discussion was therefore somehow 'hijacked' by political statements and traditional friendships with the intervention of Sri Lanka being rewarded by a standing ovation when the delegation quoted Che Guevara's famous dictum 'Hasta la victoria siempre!'. Despite these mostly political statements, some human rights concerns were raised, mostly by Western States.

The recommendations, despite a few exceptions, were also mostly used to commend Cuba, and the majority of recommendations asked the State to continue its efforts in ensuring the high quality of education and the high level of health in the country and in promoting the enforcement of human rights in Cuba and worldwide. Notably, Cuba was also commended for contributing to the 'depoliticisation' of the UN human rights machinery.¹

General information on Cuba

- Cuba is a member of the Human Rights Council until 2009. Its first term will expire on 18 June 2009, and it is eligible to run for a second term.

¹ Cuba was very active during the institution-building period of the Human Rights Council, particularly in lobbying for the removal of the special procedures mandate of the Personal Representative of the High Commissioner for Human Rights on the situation of human rights in Cuba, and in opposing country specific special procedures mandates in general. It is not new that this role of restricting the Council's action in relation to specific situations of human rights violations is being construed by some as 'depoliticising' its work.

- The members of the troika for the examination of Cuba were Gabon, Bosnia and Herzegovina and Uruguay.²
- Cuba held a national consultation involving a large number of ministries and State institutions as well as ‘more than 200 NGOs’.

Information submitted to the Working Group

The **national report** of Cuba³ is very general, and is not self-critical at all. It gives an overview of the history of the State since 1959 and its political and judicial systems. It then mainly emphasises on legal provisions protecting civil and political rights as well as economic, social and cultural rights and on important achievements accomplished in that field. It also focuses on policies that are said to have led to a high representation of women in the political life, education for all, full employment and comprehensive health services free of charge. Cuba expressed a strong position in relation to the ‘illegitimate mandate of the so-called Personal Representative of the High Commissioner for Human Rights on the situation of human rights in Cuba’ and the policy of hostility, embargo and aggression applied by successive US Governments and the human rights campaign against Cuba at the United Nations. While the State report touched on similar issues as the OHCHR compilation and the stakeholder’s summary, Cuba did not admit any challenges in relation to these issues.

The OHCHR **compilation of UN information**⁴ pointed out positive aspects but also contained significant shortcomings in the implementation of human rights. The Committee on the Elimination of Discrimination against Women (CEDAW) commended Cuba for its efforts in evaluating and updating the National Action Plan for follow up to the fourth World Conference on Women. The Special Rapporteur on the right to food commended the substantial steps Cuba has taken to meet its international commitments in promoting the implementation of the right to food. UNESCO noted that Cuba has achieved a high standard of education. Several UN agencies also stressed the negative impact of the US-embargo, joining Cuba in its concern on that particular issue.⁵ Regarding the right to life, liberty and security many UN institutions⁶ expressed concern on the absence of progress and cooperation in the field of torture, ill treatment in detention and the permissive culture of violence against women. The High Commissioner, the Working Group on Arbitrary detention and the former Personal Representative of the High Commissioner shared concerns on arbitrary detentions targeting human rights defenders and journalists, and all those expressing dissident opinions. The Personal Representative of the High Commissioner, the Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Rights of the Child asked for the establishment of a standing independent body mandated to receive individual complaints at the domestic level. This concern is closely linked to concern about the lack of independence of the judiciary raised by the Special Rapporteur on violence against women and the Committee against Torture (CAT). Some special procedures mandate holders urged Cuba to issue a standing invitation to all special procedures.

326 other stakeholders, including local non-governmental organisations (NGOs) and international NGOs, submitted information for the OHCHR **summary of stakeholders’ information**.⁷ This is quite a large number of organisations compared to other reviews. NGO submissions focused on restrictions to human

² Cuba requested that a member of its regional group be among its troika. There were no objections by Cuba or by the members of the troika to the selection. For a full summary of the selection of troikas, ISHR’s *Daily Update* of 8 September 2008, available at www.ishr.ch.

³ A/HRC/WG.6/4/CUB/1, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/CUSession4.aspx>

⁴ A/HRC/WG.6/4/CUB/2, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/CUSession4.aspx>

⁵ Page 13 of the concerned document.

⁶ Committee Against Torture (CAT) and the Personal Representative of the High Commissioner for Human Rights.

⁷ A/HRC/WG.6/4/CUB/3, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/CUSession4.aspx>

rights monitoring in Cuba,⁸ with international independent human rights institutions being prevented from accessing the island, the persistence of death penalty in domestic legislation and sub-standard prison conditions.⁹ Much of the information also focused on violations committed against human rights defenders.¹⁰ Human Rights Watch criticised the subordination of the judicial branch to the executive and legislative as stipulated in Cuba's Constitution. It also questioned lack of independence of lawyers. Restrictions on freedom of movement, violations of religious liberty¹¹, State control over media¹², severe obstacles to the enjoyment of the rights to freedom of expression and the State control over civil society are concerns that were repeated many times in the report. Human Rights Watch mentioned numerous laws explicitly penalising the exercise of fundamental freedoms such as the existence of offenses of 'dangerousness', 'enemy propaganda' and 'contempt for authority', which were reported to be regularly used.

Discrepancies between the State report and both the OHCHR compilation and the NGO summary are obvious, as the State affirms that all rights are respected in Cuba. However, there are also significant inconsistencies within the NGO summary. It for instance contains a long list of improvements made in the prison system, while other NGOs deplore the same situation. It seems that some NGOs were quite partial in their judgment of the situation, and the influence of the Government on these positions was apparent.

Interactive dialogue¹³

Presentation by the State

The starting point of the 30-minute long presentation, the triumph of the 1959 revolution which saw the people accede to 'true independence and [...] full enjoyment of human rights'¹⁴ determined the tone of the introductory remarks. Cuba focused mainly on the considerable progress made on gender equality, in achieving social, economic and cultural rights and this despite the 'constant hostility and economic constraints' from the United States. It highlighted the quality of the legal system protecting human rights in the country, and emphasised that Cuba is part to most international conventions on human rights. Cuba also recalled its commitments to share the benefits of its own achievements in the field of education and development with other countries.

The general tone of the presentation was quite defensive as demonstrated by the answers to the advance questions. Particularly that of the United Kingdom, relating to the time frame for the ratification of the two Covenants was answered dismissively by the assertion that Cuba will ratify 'whenever it wishes to'. Cuba also completely denied allegations of poor prison conditions. The minister closed by reinforcing Cuba's determination to build a society ever more 'just, free, independent, equitable, democratic, solid and participative'.

Themes and issues

Cuba's **achievements in the field of economic, social and cultural rights** dominated the review. A high number of States commended Cuba for eradicating illiteracy, providing people with a quality access to

⁸ Amnesty International

⁹ El Consejo de Relatores de Derechos Humanos de Cuba.

¹⁰ Human Rights Watch.

¹¹ Christian Solidarity Worldwide.

¹² Reporter sans frontier.

¹³ Most statements made at the UPR Working Group can be found at <http://portal.ohchr.org/portal/page/portal/UPR>. Fill in the form at www.ohchr.org/english/bodies/hrcouncil/form.htm to receive username and password. Audiovisual archives of the meetings of the Working Group 'webcast' are available at www.un.org/webcast/unhrc/index.asp.

¹⁴ State report, paragraph 3.

healthcare services, for ensuring access to the right to food for all, for guaranteeing full employment and for meeting the millennium goals.¹⁵ They also thanked Cuba for its technical assistance in the field of education, development its overall fight for human rights,¹⁶ including the struggle against apartheid in South Africa or the reconstruction in Sri Lanka after the tsunami. The same States recommended that Cuba continue its efforts in reaching even more social justice and enjoyment of economic, social and cultural rights and asked Cuba to share sharing with them good practices in these fields. The US embargo against the country was also raised many times, particularly by States from the NAM, and the Organisation of the Islamic Conference (OIC) who described it as ‘unjustified’.¹⁷

Some states noted the **positive steps taken** by Cuba with the signing of the *International Convention for the Protection of All Persons from Enforced Disappearance* (ICPPED) and of the two international Covenants,¹⁸ and for accepting the visit of the Special Rapporteurs on the right to food and on violence against women.

While States seemed to appreciate Cuba’s **more open approach towards some parts of the UN machinery**, as exemplified by agreeing to the visits of some special procedures, they visibly wished to see more cooperation. Accordingly, several States recommended that Cuba issue a standing invitation to all special procedures of the Council.¹⁹ There were also specific recommendations to extend invitations to the Special Rapporteur on torture, the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on human rights defenders, and the Special Rapporteur on the independence of judges and lawyers. During the adoption of the report, Cuba said it would examine these requests. Some States also recommended that Cuba ratifies and implements as soon as possible the two covenants,²⁰ the Optional Protocol to the *Convention against Torture* (CAT),²¹ and the *Rome Statute of the International Criminal Court* (ICC).²²

Some States, mostly developed countries, also pointed out more controversial issues. Many of these issues had also been highlighted by NGOs and in the compilation of information provided UN mechanisms..

In relation to the **death penalty**, Italy highlighted that it is still included in the Cuban penal code. Some States asked for its complete abolition²³ while others took a less principled position by calling for the gradual reduction of offenses punished by death penalty and recommending a move towards its complete abolition.²⁴ It was noteworthy that Cuba accepted to examine this recommendation.

Even though Cuba affirmed during the presentation of the report that no single case of arbitrary detention was recorded since 1959, the United Kingdom and Canada stressed that some political dissidents are still unlawfully detained. States that raised this issue recommended that Cuba release them.²⁵

¹⁵ Algeria, The Democratic People’s Republic of Korea, the United Arab Emirates, Russia, Ghana, Saudi Arabia, the Lao People’s Democratic Republic, Venezuela, Bolivia, China, Bhutan, Indonesia, South Africa, Malaysia, Islamic Republic of Iran, Libyan Arab Jamahiriya, Qatar, India, Ecuador, Pakistan, Zimbabwe, Tunisia, France, the Philippines, Jamaica, Bahrain, Yemen, Trinidad and Tobago, Uzbekistan, Mexico, Azerbaijan, Djibouti, Sudan, Bangladesh, Senegal, Thailand, Cote d’Ivoire, Ukraine.

¹⁶ Algeria, Nicaragua, the Lao People’s Democratic Republic, Bolivia, South Africa, Sri Lanka, The Dominican Republic, Belarus, Syria, Djibouti, Bangladesh, Honduras, Ukraine.

¹⁷ Algeria, the Lao People’s Democratic Republic, Venezuela, Malaysia, Islamic Republic of Iran, Brazil, Ecuador, Pakistan, Zimbabwe, Belarus, Syria, Cote d’Ivoire,

¹⁸ UK, India, Jordan, and France.

¹⁹ United Kingdom, France,

²⁰ France, Canada.

²¹ UK, Switzerland.

²² Brazil.

²³ Switzerland.

²⁴ Italy.

²⁵ Israel, Canada, Italy, Czech Republic, Netherlands.

Many States²⁶ were very preoccupied by the existence of severe restrictions on fundamental freedoms, including factual and legal constraints to freedom of expression, association and movement, particularly the criminalisation of illegal entry and exit, restrictive laws on the registration of NGOs, and State control over media. They therefore urged the state to put its legislation in line with article 18, 19, 20 and 21 of the UDHR, which embedded everyone's rights to fundamental freedom and ensure an effective protection of these rights.

Finally, a number of States referred to the lack of independence of the judiciary as noted by treaty bodies and special procedures and asked Cuba to address this.²⁷

Overall, it was notable that most interventions remained very uncritical of the Government, and the recommendations made often encouraged Cuba to 'continue its efforts' in various domains. Only a fraction of the comments were actually worthy of a 'review' of the human rights situation in the country.

Adoption of the report

The report was presented by Uruguay on behalf of the troika. The Ambassador commended Cuba for its well-structured report and introduced some oral amendments. Bhutan then took the floor to ask for its own recommendation to be modified. The report was adopted *ad referendum*, giving delegations two weeks to submit editorial changes to OHCHR.

Among the 87 recommendations, Cuba accepted 60. It kept 15 clusters of recommendations pending, and rejected 12. Noteworthy was Cuba's acceptance of the recommendation to 'to take all measures to [...] avoid violations of the 'Standard Minimum Rules for the Treatment of Prisoners'.²⁸ The rejected recommendations dealt mainly with the release of unlawfully imprisoned human rights defenders, journalists and the right to freedom of expression and association. Recommendations on the sexual exploitation of women through prostitution and of children were also rejected. The head of the delegation in her final remarks justified these rejections by saying that 'no people can accept that its right to self determination and its sovereign right to chose its political, economic, juridical, cultural and social system is questioned'. She however repeated Cuba's readiness to cooperate with the UN machinery.

²⁶ Slovakia, Canada, Austria, Chile, Italy, Czech Republic, Netherlands.

²⁷ Chile, Austria.

²⁸ Recommendation number 45 from the Netherlands.

