

Proposed Draft Resolution for United Nations Human Rights Council

Forty-first session

24 June–12 July 2019

Situation of Human Rights in Cuba

The Human Rights Council,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other relevant international human rights instruments,

Reaffirming that States have the primary responsibility for the promotion and protection of human rights and fundamental freedoms, including freedom of expression and freedom of assembly, and to ensure that national legislation, policies and practices, including the national framework for the exercise of the rights to freedom of peaceful assembly, of association and of expression, are in compliance with international human rights law,

Expressing deep concern at the suppression of peaceful political dissent in Cuba, in particular restrictions on free speech, freedom of the press and freedom of assembly, harassment and intimidation of human rights defenders and members of civil society, and arbitrary arrests and detentions; and *recalling* that in its 2018 concluding observations for Cuba, the Committee on the Elimination of Racial Discrimination urged Cuba to adopt effective measures to prevent abuses against human rights defenders and members of civil society,¹

Recalling the statement of the Office of the High Commissioner for Human Rights of 11 May 2018 that it received worrying reports that officials in Cuba were engaging in intimidation and reprisals against human rights defenders and civil society representatives and preventing them from boarding flights to travel to meetings abroad, including United Nations meetings, on the pretext of requiring more detailed identity checks, and calling on the Cuban authorities to respect everyone's right to freedom of expression and freedom of movement,²

¹ Concluding observations of the Comm. on the Elimination of All Forms of Racial Discrimination: Cuba, ¶¶ 13-14, UN Doc. CERD/C/CUB/CO/19-21 (Sep. 20, 2018); *see also* recommendations by European Union member states at Cuba's Universal Periodic Review, as summarized in UN Doc. A/HRC/39/16 (July 11, 2018).

² *Press briefing note on Cuba*, OHCHR (May 11, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23071&LangID=E>.

Noting that in the annual reports of the Secretary General on intimidation and reprisals for 2017³ and 2018,⁴ the United Nations has reported allegations that the Government of Cuba had engaged in intimidation and reprisals,

Recalling the statement of the High Commissioner for Human Rights of 15 December 2015 expressing concern at the extremely high numbers of arbitrary arrests and short-term detentions of human rights activists in Cuba, urging authorities to respect everyone's right to freedom of expression, and to peaceful assembly and association, and to stop arbitrarily arresting people; and calling for the release of those still in detention,⁵

Recalling also that two United Nations treaty bodies, the Committee Against Torture and the Committee Against Enforced Disappearances have documented the absence of an independent judiciary in Cuba and recommended that Cuba adopt the measures necessary to guarantee the full independence of the judiciary, and that the Committee Against Torture also noted reports that Cuba fails to extend fundamental due process safeguards to detainees and recommended that it adopt effective measures to ensure such safeguards,⁶

Further recalling in this regard that in an opinion dated 19 November 2018, the Working Group on Arbitrary Detention found that Eduardo Cardet Concepción was being arbitrarily detained by Cuba in violation of his rights to freedom expression and assembly and of his rights to a fair, independent and impartial trial, and referring the case to the Special Rapporteur on torture and the Special Rapporteur on the right of everyone to the enjoyment of the highest possible level of physical and mental health for possible action,⁷

Deploring the lack of democracy in Cuba, including the denial of the right and opportunity of all citizens to form and join political parties, to take part at all levels in the political process, and to vote and be elected in free, fair and transparent democratic elections, guaranteeing the free expression of the will of the people,

Denouncing in particular the constitutional referendum of 24 February 2019 in which Cuba purported to adopt a new constitution in a voting process marked by fraud, lack of transparency and violence against the Government's political opponents, and *noting* that the

³ Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, Report of the Secretary-General, UN Doc. A/HRC/36/31 (2017).

⁴ Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, Report of the Secretary-General, UN Doc. A/HRC/39/41 (2018).

⁵ *UN human rights chief urges Cuba to halt harassment of civil society*, OHCHR (Dec. 15, 2015), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16882&LangID=E>.

⁶ Concluding observations of the Comm. against Torture: Cuba, ¶¶ 8, 18, UN Doc. CAT/C/CUB/CO/2 (June 25, 2012); Comm. On Enforced Disappearances, Concluding observations on the report submitted by Cuba under article 29(1) of the Convention, ¶¶ 17-18, UN Doc. CED/C/CUB/CO/1 (April 19, 2017).

⁷ *Eduardo Cardet Concepción v. Cuba*, Working Group on Arbitrary Detention, Opinion No. 66/2018 (Nov. 19, 2018).

Secretary-General of the Organization of American States said that the constitution was contrary to the principles of the Inter-American Democratic Charter,

1. *Strongly condemns* the grave human rights violations and abuses committed by the Government of Cuba, including the denial of the right to freedom of thought, conscience and religion, and of the rights to freedom of opinion, expression and association, both online and offline; the widespread use of arbitrary arrest and detention, including preemptive detention, and other forms of harassment and intimidation as tools to suppress political dissent; use of violence by Government forces to threaten and intimidate arrestees and detainees; and widespread violations of the rights to due process and to a trial before a fair, independent and impartial tribunal;⁸

2. *Calls upon* Cuba to fully grant its citizens internationally recognized civil, political, and economic rights and freedoms, including freedom of assembly, freedom of expression and free access to information;⁹

3. *Demands* that Cuba, including its judicial and security branches, create and maintain, in law and in practice, a safe and enabling environment in which an independent, diverse, and pluralistic civil society can operate free from undue hindrance and insecurity;¹⁰

4. *Urges* Cuba to end widespread and serious restrictions, in law and in practice, on the right to freedom of expression, opinion, associations and peaceful assembly, both online and offline, including by ending the harassment, intimidation and persecution of political opponents, human rights defenders, women's and minority rights activists, labour leaders, students' rights activists, journalists, bloggers, social media users, social media page administrators, media workers, religious leaders and lawyers;¹¹

⁸ This is based on recommendations by European Union member states at Cuba's Universal Periodic Review, as summarized in A/HRC/39/16 (July 11, 2018); statements by the High Commissioner's office dated 15 December 2015 and 11 May 2018; Concluding observations of the Comm. on the Elimination of All Forms of Racial Discrimination: Cuba, ¶¶ 13-14, UN Doc. CERD/C/CUB/CO/19-21 (Sep. 20, 2018); Concluding observations of the Comm. against Torture: Cuba, ¶¶ 8, 18, UN Doc. CAT/C/CUB/CO/2 (June 25, 2012); Comm. On Enforced Disappearances, Concluding observations on the report submitted by Cuba under article 29(1) of the Convention, ¶¶ 17-18, UN Doc. CED/C/CUB/CO/1 (April 19, 2017); and Opinion No. 66/2018 of the Working Group on Arbitrary Detention in the case of Eduardo Cardet Concepción.

⁹ This is based on recommendations by European Union member states at Cuba's Universal Periodic Review, as summarized in A/HRC/39/16 (July 11, 2018); statements by the High Commissioner's office dated 15 December 2015 and 11 May 2018.

¹⁰ This is based on recommendations by European Union member states at Cuba's Universal Periodic Review, as summarized in A/HRC/39/16 (July 11, 2018); statements by the High Commissioner's office dated 15 December 2015 and 11 May 2018; Concluding observations of the Comm. on the Elimination of All Forms of Racial Discrimination: Cuba, ¶¶ 13-14, UN Doc. CERD/C/CUB/CO/19-21 (Sep. 20, 2018).

¹¹ This is based on recommendations by European Union member states at Cuba's Universal Periodic Review, as summarized in A/HRC/39/16 (July 11, 2018).

5. *Strongly urges* Cuba to release persons arbitrarily detained for the legitimate exercise of their human rights, to consider rescinding unduly harsh sentences for exercising such fundamental freedoms and to end reprisals against individuals, including for cooperating with the United Nations human rights mechanisms;¹²

6. *Strongly condemns* the lack of free, fair and transparent democratic elections in Cuba, and in particular the constitutional referendum of 24 February 2019, which was marked by fraud, lack of transparency and violence against the Government's political opponents;

7. *Determines* that the new constitution has no legitimacy, and that members of the National Assembly, President Miguel Díaz-Canel and Communist Party leader Raul Castro lack any legitimacy, given that they were not elected by the people of Cuba in free, fair and multi-party elections;

8. *Calls upon* Cuba to launch a comprehensive accountability process in response to all cases of serious human rights violations, including those involving the Cuban judiciary and security branches, and calls upon the Government of Cuba to end impunity for such violations;¹³

9. *Calls upon* the Government to cooperate with the Office of the High Commissioner, the mechanisms of the Human Rights Council and the relevant treaty bodies, as well as the Organization of American States and the Inter-American Commission on Human Rights, including by facilitating visits, granting unfettered access throughout the country, including to detention facilities, and preventing and refraining from all acts of intimidation or reprisal, and to positively consider the recommendations made in their reports;¹⁴

10. *Decides* to appoint a Special Rapporteur to monitor developments and make recommendations on the situation of human rights in Cuba for a period of one year, who will submit a report to the Human Rights Council at its forty-third session;

11. *Calls upon* the Government of Cuba to cooperate fully with the Special Rapporteur, to permit access to visit the country and to provide the information necessary for the fulfilment of the mandate;

12. *Requests* the Office of the High Commissioner to provide the Special Rapporteur with the assistance and resources necessary to fulfil the mandate;

¹² This is based on recommendations by European Union member states at Cuba's Universal Periodic Review, as summarized in A/HRC/39/16 (July 11, 2018); statements by the High Commissioner's office dated 15 December 2015 and 11 May 2018; Concluding observations of the Comm. against Torture: Cuba, ¶ 20, UN Doc. CAT/C/CUB/CO/2 (June 25, 2012); Opinion No. 66/2018 of the Working Group on Arbitrary Detention in the case of Eduardo Cardet Concepción. CAT/C/CUB/CO/2 (June 25, 2012); Reports of Secretary-General on reprisals A/HRC/36/31 (2017) and A/HRC/39/41 (2018).

¹³ This is based on concluding observations of the Comm. on the Elimination of All Forms of Racial Discrimination: Cuba, ¶¶ 13-14, UN Doc. CERD/C/CUB/CO/19-21 (Sep. 20, 2018); and recommendations by European Union member states at Cuba's Universal Periodic Review, as summarized in A/HRC/39/16 (July 11, 2018).

¹⁴ This is based on recommendations by European Union member states at Cuba's Universal Periodic Review, as summarized in A/HRC/39/16 (July 11, 2018).

13. *Requests* the High Commissioner to provide an oral update on the situation of human rights in Cuba to the Council at its forty-second session, and to submit a follow-up report to the Council and to hold an Interactive Dialogue on the situation of human rights in Cuba at its forty-third session;

14. *Decides* to remain seized of the matter.