

Report on Human Rights situation in the Republic of Cuba within the scope of the universal periodic review (upr) of the Human Rights council (hrc) of the United Nations (un).

By Durval de Noronha Goyos Jr.ⁱ

1. Introduction –

1.1.- This report, written originally in the English language, is presented by the Author in a personal capacity, but is also endorsed by the Union of Writers of the State of São Paulo, Brazil, *Sindicato dos Escritores do Estado de São Paulo*. Due to the limitations of space, this submission will deal exclusively with certain relevant aspects of constitutional law in the Republic of Cuba. The Author, in his capacity of a law professor, carried out first-hand research in Cuba with respect to the procedures of consultation and ratification of the Cuban Constitution of 2019.

1.2.- Interviews and consultations with respect thereto included some members of the public freely chosen by the Author; some officers of the Cuban Bar Association (*Unión Nacional de Juristas de Cuba*); and some leaders of the Cuban Union of Writers (*Unión Nacional de Escritores de Cuba*). Sundry documents with respect to the public consultation, including comments made by members of the public, almost all handwritten, were kindly provided by the Cuban Bar Association and duly examined by the Author.

1.3.- That work resulted in a series of lectures of the subject, including one *lectio magistralis* at the Pontifical Catholic University of São Paulo and a conference at the Casa de Portugal, also in São Paulo, both in 2020. It also

propitiated abundant material for the Author's book on the 2019 Constitution of the Republic of Cuba, launched in Brazil in 2020ⁱⁱ, written under the perspective of international comparative law, based on relevant analysis of the constitutions of the Federal Republic of Brazil; the People's Republic of China; the Republic of India; the Italian Republic; the State of Japan; the Portuguese Republic; the Republic of South Africa; of the extinct Union of the Union of the Socialist Soviet Republics; and that of the United States of America (USA).

1.4.- Because the immediate past Universal Periodic Review (UPR) of the human rights situation in the Republic of Cuba was carried out by the HRC of the United Nations in an occasion preceding the date of enactment of the 2019 Constitution, the Author found it opportune to examine how that fundamental legislation expanded the treatment of the subject under municipal lawⁱⁱⁱ for the purposes of the forthcoming periodic review. Accordingly, the Author has chosen to organise the present report in the following manner:

- 1.- This Introduction;
- 2.- The Cuban Constitution of 2019; and
- 3.- Conclusions.

2.- The Cuban Constitution of 2019 –

2.1.- The making of the Cuban Constitution of 2019 was a process started in the year 2014 by initiative of the National Assembly of People's Power, *Asamblea Nacional del Poder Popular* (ANPP), which collected the several

contributions received with a view to updating the 1976 Constitution, in a manner that would offer *inter alia* greater juridical security to the Cuban people and to those doing business in or with Cuba. A consolidation thereof was made, and the result submitted for public consultation to members of the public, as well as several institutional players, including universities and the Bar Association of Cuba.

2.1.1.- During 2018, more than 133 thousand meetings took place. During this period, approximately 800 thousand proposals were received with respect to suggested modifications, inclusions, exclusions or simply in connection with desired clarifications. A subsequent draft prepared based on the consultations had nothing less than 760 modifications with respect to the original proposal. In addition, 2 entirely new sections were included to the original 16; 5 new articles were added; 134 of the original 224 articles were altered; and 3 articles eliminated.

2.1.2.- The resulting project for a new Constitution was then submitted to a popular referendum and resulted approved by the massive majority of the Cuban population. It was then duly approved by the ANPP and a resulting new Constitution entered into force with its official enactment on April 10, 2019. Because of its ample scope and benign nature, it immediately became an international source of reference particularly in matters pertaining to human, social and individual rights.

2.2.- Article 40^{iv} of the 2019 Cuban Constitution establishes human dignity as a supreme value. The State recognises and enforces the benefits of human rights, which have a non-renounceable capacity (Article 41). The principle of isonomy (Article 42) is adopted in an ample, general and non-limited manner, independently of sex, gender identity, sexual orientation, age, ethnic origin,

skin colour, national or territorial origin on any other condition (Article 43). The same article ensures equality of rights between men and women and protect these from gender violence. Furthermore, isonomy is ensured of basic conditions including equal education to both sexes, from the same early age (Article 44).

2.3.- The individual rights warranted by the Constitution of 1976 were considerably extended or amplified in 2019. Those include the liberty of thought and religious creed; freedom of expression and press; inviolability of domicile, correspondence and communication; liberty of association, meeting and manifestation; inviolability of the individual; respect of the intellectual creation and the rights to inheritance and probate. The exercise of individual rights is only limited to those of others in the same situation, to collective security, to the general well-being and to the respect to the public order, the Constitution and law.

2.4.- In addition, new entitlements were recognized by the 2019 Constitution. Those include the rights to life, justice, personal full development and also to that of one's personality (Articles 46 and 47), as well as to privacy, image and honour (Article 48). On the other hand, the freedom of expression is ensured by Article 54, access to public records is allowed by Article 53 and to faithful information in general by Article 55.

2.5.- The right to own and use property is assured and appropriation by the State is only limited to cases of public utility or social interest, upon indemnification (Article 58), and subject to the due process of law (Article 59). Any eventual confiscation of private property by the State will occur only in the cases authorised by law and will equally be subject to the due

process of law with the right of ample defence duly ensured (Article 59 *in fine*).

2.6.- Individuals cannot be subject to forced disappearance, torture, inhumane, degrading or cruel treatment (Article 51). The carceral system will also favour the social reintegration of the prisoners (Article 60). The social and cultural rights already contemplated in the 1976 Constitution were updated and expanded in 2019. Those include the right to work; the right to a daily journey of 8 hours; the right to paid rest; the right to remunerated annual holiday; the right to social assistance and security; the right to labour safety and health; the right to education; the right to access to sports and recreation as well as that to the equality of children. Child labour is prohibited.

2.7.- Sundry matters pertaining to labour were dealt with by Articles 64, 65, 66 and 67 of the Cuban Constitution of 2019. The right to work is established as is that to a dignified remuneration. Social security is granted by Article 68. The state ensures that the worker receives adequate protection when he/she no longer can work due to age, maternity, paternity, invalidity or decease. Once dead, the pension granted to a given worker will pass on to the respective family, in the manner that is defined by relevant ordinary law.

2.8.- Ample treatment to the fundamental matter of free education is afforded by Article 73, which ensures that it is a right of all individuals and a responsibility of the Cuban State, from infancy to superior learning. New rights established by Cuba's Constitution of 2019 include those to "adequate housing" (Article 71); to live in a healthy and balanced environment (Article 75); to access to potable water and food (article 77); to the consumption of

goods and services of quality (Article 78); and to participate in the cultural and artistic life of the country.

2.9.- Ample political rights are itemised in the 2019 Cuban Constitution. They include a popular initiative for a constituent matter (Article 80, g); the right to propose and nominate candidates for public office (Article 80, b); the right to address the rendering of public account; the right to revoke the mandate of public officials (Article 80 g); and the right to be informed with respect to the management of organs of state, as well as about the performance of the respective administrators.

2.10.- The fundamental matters pertaining to family relations were not subject of specific treatment in the 1976 Constitution but were fully addressed in 2019. Article 81 declares that every person has the right to establish a family, that will be recognised and protected by the State, whatever is its form of organisation. Families are recognised by legal or *de facto* links of an affective nature and are to be structured based on equal rights, duties and opportunities. Marriages are dealt with by Article 82 in a general manner, in the sense that they are founded on the free will and equality of rights of the spouses, without a specific mention to their sex.

2.11.- Equality of rights among children is recognised by Article 83. The Constitution does not accept any distinctions as to the nature of the filiation. Parents' responsibilities with respect to children and those of children with respect to parents are regulated by Article 84. Family violence is prohibited *ex vi* of Article 85 of the 2019 Cuban Constitution. Children and adolescents are recognised as subject and active participants in the society (Articles 86 and 87). Persons with deficiencies, either physical or mental impairments, have their rights fully perceived and granted, in accordance with Article 89.

2.12.- Within the ample debate on the terms of the initial draft for the Constitution carried out during the consultations, two themes in particular caught the Author's attention, by the high number of public comments with respect thereto. The first of those was connected to the right of housing. Many members of the public suggested a qualification as "dignified housing". A compromise was reached with the term "adequate housing". The other topic that seemed of interest to the Author pertained to the demand that same sex marriages be specifically allowed. As it resulted by the terms of the 2019 Cuban Constitution, they were not prohibited, which has the same legal value as the suggested request.

3.- Conclusions –

3.1.- It is worthwhile to note at this point that, in accordance with the legal regime of socialist countries, as an objective analysis of comparative law will reveal, the conception of human rights is broader than that in capitalist ones. In socialist countries, access to public free education; to free hospital treatments; to free kindergartens; to adequate housing; to free or accessible public transportation, amongst others, constitute human rights. In socialist countries, the respect to citizen's personal dignity is a fundamental human right^v.

3.2.- Accordingly, in socialist countries such as Cuba, the existence of homeless people represents a grave violation of human rights. Similarly, the dearth of a network of public social assistance and security would be viewed in the same manner. It is within this context that the 2019 Constitution of Cuba should be interpreted. This goes in conformity with the international

conventions on human rights and very often even beyond. In addition, the policy of insertions of the substance of international conventions into municipal law should be adopted by all States.

3.3.- The Republic of Cuba's domestic human rights policies transcend the country's national frontiers and is reflected in numerous actions of solidary humanitarian assistance practiced over the years in an international level, as is widely recognised by many States, including some developed ones. These actions are carried out despite the country's economic difficulties caused by the illegal blockade it has been subjected by the USA for decades.

3.4.- In this respect, it is worth noting that the Republic of Cuba is a party to no fewer than 44 international conventions of protection to human rights^{vi}. Together with a vast element of ordinary legislation, including the recent Family Code, *Código de las Familias*, this framework ensures that the Cuban system ensures social justice, equality, human respect and humanism in dealing with its population.

3.5.- For those intellectually honest observers who are familiar with the Republic of Cuba and its citizens, any institutional difficulties affecting the population of the State are not caused by domestic measures of any sort, including on the part of its government. On the contrary, those troubles are induced by several decades of the economic blockade imposed by the USA, which has already been condemned repeatedly by the General Assembly of the UN on numerous occasions.

3.6.- Those external actions do represent, for their dire consequences and in general lines, causes for violation of human rights in Cuba and should be dealt accordingly by the worldwide community in respect to relevant international law and practice. False accusations of domestic violation of

human rights in Cuba, either by diplomatic or propaganda means, only serve to mask the true nature of the genocidal nature of the economic-financial blockade and associated measures imposed by the USA against the Cuban people.

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ⁱⁱ Goyos Jr., Durval de Noronha, “*A Constituição de Cuba de 2019*”, Observador Legal Editora Limitada, São Paulo, Brazil, 2020.

ⁱⁱⁱ When of the last UPR, the Cuban Constitution of 1976 was in force.

^{iv} All references to articles, unless otherwise indicated explicitly, pertain to the *Constitución de La República de Cuba*, *Gazeta Oficial*, April 10 2029, ISSN 1682-7511.

^v Goyos Jr., Durval de Noronha, “*A Constituição de Cuba de 2019*”, *op. cit.*, page 80 *et seq.*

^{vi} <https://www.granma.cu/mundo/2021-12-11>.