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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April–1 May 2020

Opinion No. 4/2020, concerning Aymara Nieto, Eliecer Bandera, Humberto Rico, José Pompa, Melkis Faure, Mitzael Díaz and Silverio Portal (Cuba)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 16 December 2019 the Working Group transmitted to the Government of Cuba a communication concerning Aymara Nieto, Eliecer Bandera, Humberto Rico, José Pompa, Melkis Faure, Mitzael Díaz and Silverio Portal. The Government replied to the communication on 12 February 2020. The State is not a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation,



disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Aymara Nieto is a Cuban national born in 1976 and a resident of Boyeros. She is deprived of her liberty in El Guatao prison.

5. The source indicates that Ms. Nieto is an activist associated with the Unión Patriótica Cubana (Cuban Patriotic Union) and the Damas de Blanco (Ladies in White). She is known for her peaceful activism and opposition to the Government. Between December 2015 and May 2018, she was deprived of her liberty at least 50 times. She is said to have been subjected to threats, ill-treatment and multiple abuses.

6. Ms. Nieto was arrested by State security officers on 6 May 2018 as she left her home to take part in a march. The source reports that, when she went out to demonstrate for the release of political prisoners, the police reacted aggressively and beat her. She was left with a number of injuries, including a bruise on her right arm. After the incident, the officers told Ms. Nieto that they were going to charge her with assault.

7. The source encloses the indictment issued by the prosecutor's office, dated 15 October 2018:

The officers ... appeared in the vicinity of ..., where the defendant resides and where she was leading a demonstration against the revolutionary process ... she went out into the aforementioned street with posters and banners bearing messages of opposition to the current political system, which caused a major disturbance in the surrounding area.

8. The pretrial detention order, issued on 11 January 2019, confirms and validates all the arguments put forward in the indictment. However, the information provided therein concerning the time of arrest is inaccurate, save for the fact that Ms. Nieto was arrested while taking part in public activities in front of her house.

9. State agents reportedly keep a police patrol car parked opposite Ms. Nieto's house, especially on Sundays, when the Damas de Blanco are scheduled to meet. Such has been the modus operandi in almost all 50 occasions on which Ms. Nieto has been arrested. There is likewise a consistent pattern of harassment against Ms. Nieto in her home.

10. The source points out that the indictment shows the arbitrary character of the arrest. It mentions previous convictions against her in other cases, many of which are identical to this one, in that she was demonstrating peacefully for the release of political prisoners and for human rights.

11. On 29 March 2019, Ms. Nieto was sentenced to 4 years' deprivation of liberty for assault and criminal damage. This judicial decision shows that her arrest is arbitrary and politically motivated, since it seeks to justify the arrest by claiming that "she was leading a demonstration against the revolutionary process ... she went out into the aforementioned street with posters and banners bearing messages of opposition to the current political system". The source alleges that the judgment issued reveals that the offence was fabricated after her arrest, since the judgment states that Ms. Nieto became agitated during the arrest and struck the officer, whereas the recording of the moment of arrest shows her to have a peaceful demeanour when force is used to subdue her.

12. José Pompa is a Cuban national born in 1975 and a resident of East Havana. The source reported that he was being deprived of his liberty in prison 1580 located in San Miguel del Padrón.

13. Mr. Pompa is an activist associated with the Frente de Acción Cívica Orlando Zapata Tamayo (Orlando Zapata Tamayo Civic Action Front) and is known for his peaceful activities in defence of human rights. Since March 2012, Mr. Pompa has reportedly been arrested at least 130 times without charge, despite his having no criminal record.

14. Mr. Pompa was arrested in Havana on 25 May 2016 while demonstrating with a group of people chanting the slogan “Freedom. We want a change” and other slogans that the judgment goes on to describe as counter-revolutionary. This demonstration supposedly caused a large crowd of people to gather.

15. Following his arrest, Mr. Pompa was reportedly imprisoned for 5 months, until 25 October 2016, when he was granted bail. On 30 June 2017, he was sentenced to 2 years’ deprivation of liberty for alleged public disorder, which was commuted to forced labour without imprisonment. He performed forced labour for 10 months. This commutation was subsequently revoked, and he was sentenced to 9 months’ deprivation of liberty for failure to remain on the straight and narrow and to hold down a stable job. On 23 March 2019, he was imprisoned again.

16. The source points out that the judgment of 30 June 2017 sets out the only indictment brought by the prosecutor’s office and the judge, according to which Mr. Pompa and five other defendants “began to shout: ‘Freedom. We want a change’, while simultaneously chanting several counter-revolutionary slogans, which caused a large crowd to gather and a scene of confusion as a result”. The judgment reportedly sets out no further grounds to justify the conviction under articles 200.1 and 200.2 of the Criminal Code. The phrase “Freedom. We want change” allegedly expresses a desire, which should give neither cause for alarm nor be considered threatening.

17. The source claims that Mr. Pompa was not convicted in accordance with international law and that his right to freedom of expression, which is protected by the Universal Declaration of Human Rights, was not respected. The source claims that this therefore constitutes arbitrary detention.

18. While he was serving his sentence, the judicial authorities allegedly revoked the commuted sentence of forced labour without imprisonment and sentenced him to deprivation of liberty. The revocation order states that this was due to his “failure to honour his obligations, since he had not remained on the straight and narrow or held down a stable job, having failed to produce a letter as proof of his employment. Moreover, he was repeatedly summoned to appear in court but never complied”. As is obvious from the order, the defendant was never given the opportunity to take part in the proceedings. In other words, they took place in his absence, in violation of his right to a public hearing and to mount a proper defence.

19. Mr. Pompa also reportedly suffers from chronic gastritis and is being treated with medication supplied by his family, since such medication is lacking in his place of detention.

20. Eliécer Bandera is a Cuban national born in 1979 and a resident of Santiago de Cuba. The source reported that he was being deprived of his liberty in Mar Verde prison.

21. The source indicates that Mr. Bandera is a peaceful human rights activist. He joined the Unión Patriótica Cubana at the end of 2015. He has previously been arrested for defending human rights in a peaceful manner.

22. Mr. Bandera was arrested in Río Cauto in Granma province on 23 September 2016 on his way back from visiting the headquarters of the Unión Patriótica Cubana. He was reportedly apprehended because, months earlier, he had made a video of prisoners engaged in forced labour, which had sparked debate in Cuban society and had influenced public opinion.

23. The source indicates that, on 6 October 2016, Mr. Bandera was convicted of alleged “pre-criminal social dangerousness” and sentenced to 4 years’ imprisonment, the maximum penalty under the applicable law.

24. This sentence was reportedly suspended for 10 months in 2017 following the imposition of an additional penalty for an offence that he had allegedly committed in prison. Mr. Bandera, who did not consider himself a criminal, refused to follow the “political re-education” programme in question. Consequently, in March 2017, he received a 10-month sentence for an alleged “escape” as punishment. The facts of the alleged escape are set out in the indictment: “at approximately 10.30 a.m., he took advantage of the fact

that he was out of the officials' sight ... and, without their authorization, left the aforementioned camp, returning voluntarily at 3 p.m. the same day".

25. In the judgment, the judge reportedly stated that Mr. Bandera "wandered around the area, which was not enclosed". In fact, Mr. Bandera requested permission to leave in order to call his family and this permission was granted – the judgment even acknowledges that one of his relatives was in hospital. However, the authorities used this fact to attribute a new offence to him.

26. The source indicates that it is wrong to say that Mr. Bandera escaped. The judge acknowledges that his actions amounted to his being absent for about four hours.

27. Mr. Banderas has already served the additional 10-month prison sentence and is currently serving the suspended sentence for "pre-criminal social dangerousness". The source alleges that, in Cuba, dozens of people have been convicted of a pre-criminal offence.

28. Melkis Faure is a Cuban national born in 1978 and a resident of Old Havana. The source reported that she was in the CEIBA 4 camp in Artemisa.

29. Ms. Faure was a member of the Damas de Blanco. In 2014, she became a member of the Unión Patriótica Cubana, where she is known for her role in opposing the Government by means of non-violent activism. Between September 2012 and August 2016, Ms. Faure was reportedly arrested at least 41 times and was subjected to ill-treatment, threats and multiple abuses.

30. According to the information received, Ms. Faure was arrested on 6 August 2016 while she was taking part in an anti-government demonstration on a public thoroughfare.

31. The source encloses the indictment issued by the prosecutor's office, dated 12 December 2016. In the brief, the reasons for the indictment are set out:

In order to attract the attention and support of passers-by, they began to shout slogans against the revolutionary process and against the leaders of this country, such as "Down with Fidel and down with Raúl, down with the dictatorship, we want freedom!", all the while holding up the ends of a poster with red and blue lettering, which read: "Down with Raúl Castro and the thieving customs officers, enough already with the robberies, we Cubans are tired of seizures, enough already with Fidel and his laws!". As this was happening, people began to gather ... the aforementioned officers achieved their objective, arrested the instigators and took them to the police station while they continued to chant: "Down with the leaders of the Revolution – they are a bunch of Batista supporters!". The corresponding complaint was filed on these grounds.

32. Eight potential witnesses for Ms. Faure's defence were reportedly arrested by the police and kept in police custody for between 12 and 72 hours so that they could not attend the oral hearing of the case.

33. The judgment of 3 July 2017 states that "a considerable crowd had gathered, obstructing the normal flow of traffic on these roads", and refers to the "situation created by the obstruction of traffic" or the "bottleneck that occurred". The source claims that the video of the arrest shows that the traffic flow was not interrupted, and that people were able to move around. Ms. Faure was sentenced to 3 years' imprisonment for contempt and public disorder.

34. The source argues that the judgment does not refer to Ms. Faure's testimony. Moreover, the defence lawyers themselves were the ones who charged her with contempt. The source alleges that, in Cuba, defence lawyers act as prosecutors and do not advise detainees on the means of defence at their disposal.

35. Ms. Faure has been placed in a punishment cell on several occasions, for periods of up to six months, in response to complaints within El Guatao prison. On 13 October 2017, she was brought before a court and charged with contempt and resistance, which were added to the original charge brought against her. Consequently, once both trials had concluded, Ms. Faure received a joint sentence of an additional 5 years and 4 months'

imprisonment, without the 1 year and 3 months that she had spent in pretrial detention being recognized or deducted.

36. Her state of health is reportedly complex because she suffers from generalized osteoarthritis, a condition which requires medical treatment that is not being provided by the authorities, allegedly due to a lack of supplies in the prison unit, and which causes her persistent joint pain and general malaise.

37. Humberto Rico is a Cuban national born in 1966 and a resident of the municipality of Mella. As of 30 November 2018, he has been deprived of his liberty in Aguadores prison in Santiago de Cuba, having been sentenced to 2 years' imprisonment for disobedience and resistance.

38. The source indicates that Mr. Rico is an activist supporting the Unión Patriótica Cubana. In 2018, he was involved in a campaign to clean up neighbourhoods and to sanitize places that were a breeding ground for disease-transmitting mosquitoes.

39. Health inspectors and political police officers allegedly took note of Mr. Rico's activities and wished to intimidate him so that he would stop supporting the Unión Patriótica Cubana. The authorities went to his home on 16 May 2018 and fined him for allegedly having mosquitoes in his house, which is held to be untrue. In the subsequent trial, no mention was made of how or what analytics, or methodology, were used to detect the presence of the mosquitoes or to determine their number. Mr. Rico replied that he did not understand why he was being fined or what he had done to deserve such a penalty. He was then instructed to report to the police station.

40. Mr. Rico went to assert his rights on 19 May 2018. He was reportedly at the door of the police station when the officer in charge left the premises and, after a brief exchange, Mr. Rico said that he would like to call his family to let them know that he was being taken into custody. When he took out his mobile telephone to make the call, the officer threw him to the ground and struck him.

41. The source claims that, in doing so, the officer broke three of his ribs, sprained his ankle and reopened a wound on his arm from a recent operation. There were numerous witnesses, but the three whom Mr. Rico had subsequently asked to testify on his behalf were prevented from doing so during the trial.

42. The prosecutor charged Mr. Rico with disobedience under article 147 of the Criminal Code, for which he received the maximum sentence of 1 year's imprisonment. In addition, he was charged with serious assault, with violence, against the officer under article 142 of the Criminal Code.

43. The source points out that several pages of the judgment are devoted to describing the fine imposed on Mr. Rico for supposedly harbouring a potential source of an epidemiological outbreak in his home. However, there is no mention of how this was detected, the number of insects or how this was measured, or of whether any remedial, corrective or other public health measures were requested. The judge stated that "they could place the nation and the national territory in a severe epidemiological situation" and resolved the issue by imposing an administrative fine.

44. As for the charge of "resistance", they reportedly accused Mr. Rico of not having identified himself, even though the officials went to fine him at his home and were able to identify him without any problem. He then went to the police voluntarily, as indicated by the judge himself.

45. The source states that there are witnesses who could verify that Mr. Rico did not refuse to identify himself. However, they were not allowed to testify during the trial. Their testimony would exonerate the defendant and shed light on the beating that he received. Moreover, the judgment does not refer to the defendant's own testimony.

46. The testimonies of the prosecution are complete and include even unnecessary details. The source also asserts that even the witnesses on behalf of the prosecutor's office state that "no assault took place on that occasion", and that the judge, in his conclusion, found that "no act of aggression took place between them", all of which contradicts the charge of assault. However, the police officer's statement was fully accepted during the

trial. For the source, this makes it clear that the objective was to arbitrarily deprive Mr. Rico of his liberty.

47. As for the conviction, the source stresses that, according to the judgment, “the defendant is a person who exhibits antisocial behaviour and who, despite his being gainfully employed and not having been punished, behaved in a hostile manner”. The source indicates that the judgment recognizes that the purpose of the deprivation of liberty is to correct his “hostility” towards the prevailing political thinking in Cuba. The judgment sets out additional considerations to support this claim:

As a member of the grass-roots organizations [of the Communist Party], he did not take part in the activities that they organized, he associated with persons known for their antisocial behaviour, he did not maintain good relations with his neighbours ... he behaved in a hostile manner.

48. Mr. Rico had to go to hospital because of the injuries inflicted by the police officer, namely, three broken ribs, a sprained ankle and an injury to his arm. The relevant medical certificates were submitted to the court but were confiscated without their having been presented during the trial or returned to the defence. The judgment makes no mention of these very serious injuries. It does, however, mention an “abrasion” suffered by the police officer, for which he “did not incur expenses for the purchase of medical supplies”. The source refers to other hospital documents showing that he had broken ribs and that his right arm was injured.

49. In the judgment, the charge of assault is dismissed. Instead, Mr. Rico was charged with an additional count of disobedience to officials. The source alleges that the judge did this to compensate for the contradictory statements given by the prosecution’s witnesses. Mr. Rico is accused of having disobeyed health officials and of having refused to surrender his identity card.

50. In addition, Mr. Rico was convicted of disobedience to the police officer and was sentenced to 8 months’ imprisonment. He is also being punished for refusing to serve his 1-year prison sentence. Both convictions are based solely on the testimony of the police officer, which was disproved by his own witnesses. The source insists that the three witnesses to the events were not allowed to testify during the trial.

51. For the source, the fine imposed on Mr. Rico was meant to intimidate him because of his activism in support of the social work carried out by the Unión Patriótica Cubana. When he refused to pay and gave his reasons for doing so, he was sentenced to 2 years’ deprivation of liberty on the basis of incorrect facts.

52. The source concludes that Mr. Rico has already been released as a result of a pardon that he received on 20 July 2019. However, the source insists that his detention be declared arbitrary and that appropriate remedial measures be requested.

53. Mitzael Díaz is a Cuban national born in 1978 and a resident of Placetás, Villa Clara. He was deprived of his liberty in La Pendiente prison. Mr. Díaz is a member of the Frente Nacional de Resistencia Cívica Orlando Zapata Tamayo.

54. Mr. Díaz has reportedly led a persistent campaign against the Cuban electoral system. On 31 October 2017, he received a call from an officer threatening to arrest him. The officer allegedly threatened to punish him for “pre-criminal social dangerousness” if he continued to attend meetings and to take part in electoral campaigns.

55. The same day, two hours after the call, Mr. Díaz was arrested at his home by the officer who had allegedly threatened him. On 22 November 2017, Mr. Díaz was transferred from the police unit to the police training centre of the Department of State Security in Santa Clara. According to the source, on 28 November, without having been able to contact his family, Mr. Díaz was transferred to the People’s Municipal Court of Placetás.

56. Mr. Díaz was sentenced to 3 and a half years’ imprisonment in a trial where minimum procedural guarantees were reportedly lacking.

57. The source encloses the pretrial detention order issued by the People’s Municipal Court of Placetás, as well as the indictment issued by the prosecutor’s office. The

prosecutor's office reportedly charged Mr. Díaz and requested the application of pre-criminal security measures on the basis that "he uses his good looks to collect debts, from which he benefits, as he keeps part of the payments, an activity that he carries out by intimidating and using physical force against the debtors". The indictment also stated that:

He is not gainfully employed, he behaves in a disruptive and antisocial manner, since he associates with citizens of questionable morality and conduct ... which is why his neighbours are afraid of him – that is, because of his strong inclination towards committing crimes.

58. The source recalls that pre-criminal measures are covered by article 76 of the Criminal Code.

59. For the source, it is legally inappropriate for the indictment to be based on the premise that sentencing the individual in advance will prevent the commission of a possible crime in the future. The source stresses that all this is attributable to his meeting with members and being part of their community of human rights defenders. Mr. Díaz reportedly requires immediate care, which he cannot receive in prison.

60. Silverio Portal is a 56-year-old Cuban national living in Havana. He is being deprived of his liberty in prison 1580 located in San Miguel del Padrón.

61. The source indicates that Mr. Portal is a human rights activist who has been linked to several social initiatives, such as the Movimiento Opositores por una Nueva República (Opposition Movement for a New Republic), and has been repressed and harassed because of his political affiliation and his refusal to cease his peaceful activities in support of free elections in Cuba. Mr. Portal has been arrested more than a dozen times, arbitrarily and sometimes without charge. For example, during his arrest on 11 July 2016, he was beaten by police officers and detained for five hours in retaliation for protesting the confiscation of a citizen's agricultural products.

62. The source indicates that, on 20 June 2016, while Mr. Portal was walking through Old Havana, he encountered State security officers who were allegedly harassing some vendors. Mr. Portal shouted: "Down with Fidel Castro, down with Raúl". The officers proceeded to pin him down, which attracted the attention of multiple passers-by who had witnessed the harassment of the vendors.

63. Once he had been pinned down, without putting up any resistance, Mr. Portal was taken to the police unit so that a complaint could be filed against him, without having been informed of his rights.

64. On 10 July 2018, the People's Municipal Court of Old Havana sentenced Mr. Portal to 4 years' deprivation of liberty for public disorder and contempt, which are offences provided for under articles 144, 200 and 201 of the Criminal Code.

65. The source alleges that, in acting as he did, Mr. Portal did not commit any of those offences. The crowd of people, which did not disrupt public order in any way, was not drawn by Mr. Portal's outburst, but by the harassment being meted out by the State security officers. The intention here is to impute the consequences of this act of police abuse to a witness and complainant. Although passers-by witnessed the arrest, they did not congregate because of it.

66. With regard to the offence of contempt, the source argues that the Court's interpretation is incompatible with the right to freedom of expression enshrined in article 19 of the Universal Declaration of Human Rights, since the opinion, which was expressed in a peaceful manner, was not directed at the police officers who were on site, but at the highest level of Government. Thus, a common offence, which is used to defend officials performing their duties, is allegedly being used by the Government to silence anyone who publicly criticizes the leaders of the government system.

67. The source stresses that it has not been established that Mr. Portal committed the offence of public disorder and claims that he has also been convicted of contempt on the basis of a broad legal interpretation. Criticizing political leaders is an act protected under the right to freedom of expression and cannot be considered an attack on public officials. The fact that the judgment establishes as a crime the simple fact of criticizing the

Government confirms the arbitrary character of the arrest, the judicial proceedings and the deprivation of liberty.

68. The source reports that, while in prison, Mr. Portal suffered a stroke while he was being punished inside an isolation cell, where he was kept in handcuffs. This episode left him with visible sequelae that prevent him from taking care of himself, since he can no longer move the right side of his body.

69. Mr. Portal, who has high blood pressure, is reportedly being held in a prison unit together with 180 other prisoners in overcrowded conditions. His family has to buy the antihypertensive medication that he needs because it is not supplied inside the prison. Additionally, Mr. Portal has an ocular-nasal infection that has caused an abscess and swelling in his eye and nose.

Response from the Government

70. The Government indicates that it is wrong to say that Ms. Nieto's arrest is arbitrary. On 6 May 2018, Ms. Nieto led a demonstration that disrupted public order. In response, a police officer issued a call to order, which she resisted, as she did her subsequent arrest by using violence to prevent it. In that context, she struck the arresting police officer. During her time in custody, she destroyed several mattresses and lockers, for which she was charged under article 339 of the Criminal Code.

71. On 7 May 2018, a complaint was filed for assault and criminal damage. The prosecutor ordered her pretrial detention on account of the danger that she posed to society.

72. The People's Municipal Court of Boyeros sentenced Ms. Nieto to 4 years' imprisonment for assault and criminal damage, and acquitted her of the charge of public disorder. As she did not appoint a defence lawyer to represent her during the proceedings, the Court appointed one on her behalf. She did not appeal the sentence.

73. The Government indicates that her detention is not arbitrary, as this measure was applied in response to her involvement in criminal acts provided for in the Criminal Code.

74. The Government indicates that the allegations concerning the number of times that she was arrested, the reasons for those arrests and the form that they took are false. Ms. Nieto was arrested multiple times for causing frequent disturbances on a public thoroughfare, for her misconduct towards law enforcement officers or for not carrying an identity document. She was summoned and charged with these violations on 20 March 2015, 6 March 2016 and 24 September 2017.

75. In addition, the People's Municipal Court of Boyeros previously sentenced her to 1 year's deprivation of liberty for criminal damage, which was commuted to limited freedom of movement. The same Court also sentenced her to 1 year's deprivation of liberty for public disorder.

76. Furthermore, the Government indicates that it is wrong to say that Mr. Pompa's detention is arbitrary, that he served a sentence imposed unlawfully and that the criminal proceedings against him have violated his right to a public hearing, the principle of orality and the adversary procedure.

77. On 25 May 2016, he caused public disorder in the street by making false claims, disturbing the peace and disrupting traffic. He was arrested and taken to the police unit where a complaint was filed.

78. The People's Municipal Court of Old Havana sentenced Mr. Pompa to 2 years' deprivation of liberty for public disorder, which was commuted to correctional labour without imprisonment, and compensated him for the time that he spent in pretrial detention.

79. The Government considers the allegations that persons deprived of their liberty perform forced labour to be false. Forced labour is outlawed in Cuba. Article 28.2 (ch) of the Criminal Code provides for correctional labour without imprisonment as a primary sentence, which may serve as a substitute for deprivation of liberty when there is reason to believe that labour alone will be enough to re-educate the individuals concerned. Correctional labour must be carried out in a designated workplace and is monitored on an

ongoing basis by grass-roots and social organizations, the management of the workplace and the police.

80. Mr. Pompa's correctional labour sentence was revoked on 18 October 2018, owing to his failure to comply with his obligations. He was unable to prove that he was gainfully employed and, although he was summoned several times by the judge, he failed to appear in court.

81. It is not unlawful for the Court to have revoked the sentence in question in the absence of the person concerned. Instruction No. 223 of the Governing Council of the People's Supreme Court of 20 August 2013 establishes the discretionary power of the People's Supreme Court to hear revocation applications. It is wrong to say that his right to mount a proper defence was violated during the proceedings. He was informed of his right to apply for reconsideration but did not lodge any appeal.

82. Mr. Pompa received a caution for public disorder from the authorities on 2 June 2010, 27 July 2013, 7 January 2014, 9 August 2015 and 20 June 2016. He was fined for public disorder on 12 March and 11 December 2010, for not carrying his identity card on 31 January 2016 and for indecent exposure on 16 May 2010. He has been prosecuted for public disorder, contempt and illicit economic activity.

83. The testimonies detailing his alleged illness in prison are also false. At no time did he indicate that he had health problems requiring medical attention; the tests carried out confirmed that he was in good health.

84. The Government indicates that the allegations concerning Mr. Bandera are unfounded and are an attempt to justify his misconduct. He is currently serving a sentence imposed for pre-criminal conduct in accordance with articles 80 and 82 of the Criminal Code.

85. The judicial proceedings were prompted by his disruptive behaviour, violence against family members and neighbours, offensive and aggressive language, frequent disturbance of the peace, heavy drinking and his refusal to correct his behaviour. He was arrested on 23 September 2016 on these grounds.

86. The People's Municipal Court of Río Cauto sentenced him to 4 years' imprisonment in a specialized labour and education institution; he did not appeal this sentence. He began serving his sentence on 6 October 2016.

87. On 18 November 2016, he escaped from the institution, which led to his indictment and to his being sentenced to 10 months' deprivation of liberty on 6 April 2017, which he did not appeal.

88. The allegations concerning Mr. Bandera are an attempt to distort Cuban criminal law. It is wrong to say that these are "fabricated" crimes against human rights activists. Cuban law criminalizes overt acts intended to prevent the authorities from discharging their functions. In Cuba, human rights defenders are not harassed, repressed, intimidated or subjected to arbitrary detention. The authorities carry out their work in accordance with the law.

89. Mr. Bandera's actions constitute an escape within the meaning of article 163 of the Criminal Code. The time that he spent outside the prison or his decision to return are not elements of the offence.

90. Escape is punishable by 1 to 3 years' deprivation of liberty. The Court considered the provisions of paragraph 3, which empowers it to reduce by up to two thirds the minimum duration of the sentence. The 10-month sentence imposed is very close to the minimum duration threshold and its imposition is not due to his refusal to take part in educational activities.

91. Mr. Bandera has committed two violations: one involving disorderly conduct on a public thoroughfare and one involving speculation and hoarding. He received five official cautions for disturbing the peace, speculation and illicit economic activities. In addition, he has been prosecuted for speculation and hoarding, coercion, inflicting minor bodily injury, disobedience and resistance.

92. The Government indicates that the allegations concerning Ms. Faure, whose detention was not arbitrary but consistent with the established legal guarantees, are false.

93. Ms. Faure was prosecuted for illicit economic activities, contempt and assault. She received a joint sentence of 4 years' imprisonment, which she appealed. Her appeal was subsequently rejected.

94. On 6 August 2016, Ms. Faure committed acts of civil disobedience that hindered the flow of traffic and caused confusion for passers-by. She was arrested by police officers and taken to the police station, where a complaint was filed. The Municipal Court sentenced Ms. Faure to 3 years' deprivation of liberty for public disorder and contempt.

95. Since she was already serving a sentence, the Court sentenced her to 5 years and 4 months' deprivation of liberty. It is wrong to say that the Court did not discount the time that she had spent in detention. She was compensated for the time that she had spent in pretrial detention in connection with previous cases at the sentencing stage in both sets of proceedings.

96. Under article 56 of the Criminal Code, in cases where a person is serving two or more sentences, the court is to hand down a single, joint sentence. Consequently, the single, joint sentence of 5 years and 4 months' deprivation of liberty was handed down in accordance with the law.

97. In Cuba, legal representation by a lawyer is one of the guarantees of due process enjoyed by any person involved and by defendants in judicial proceedings. The defence counsel has the powers necessary to help clarify the truth and is not obliged to testify to any facts under investigation that the defendant brings to his or her attention. It is wrong to say that lawyers act as prosecutors, that they bring charges against defendants and that they do not advise their clients.

98. The prosecutor charged Ms. Faure with public disorder, contempt and resistance. The defendant's lawyer accepted the charge of contempt and explained why he disagreed with the rest of the indictment.

99. It is wrong to say that the witnesses for the defence have been prevented from taking part in the trial. The defence lawyer called three witnesses to give testimony. One of them did not attend while the others did. In addition, documentary evidence was collected.

100. During her time at the Western Women's Prison, she was placed in a disciplinary cell for having breached the rules of conduct by committing assault, making improper use of her uniform, showing contempt for officials and disturbing the peace. She never spent more than 10 days in a disciplinary cell.

101. In accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), disciplinary cells are used exceptionally in the case of serious offences and meet the applicable requirements in terms of size, ventilation, natural light and sanitary facilities.

102. The allegations concerning the state of Ms. Faure's health are false. She suffers from high blood pressure and gastritis and is receiving medical care. She has access to medical care facilities in prison and to the national health system.

103. Ms. Faure has received eight cautions for illicit economic activities, disturbance of the peace and prostitution. Between 2012 and 2016, she was arrested 12 times for various offences. She has also received seven fines for public disorder and speculation.

104. The Government denies that Mr. Rico's detention was arbitrary. The authorities conducted themselves in a manner that ensured full respect for due process guarantees.

105. On 16 May 2018, the municipal anti-vector inspector conducted a routine visit to Mr. Rico's home, entering the premises to perform a regular check, which includes checking water tanks. He observed that there was a pig breeding pen that did not meet the applicable hygiene and health standards, and whose water tank was a breeding ground for disease-transmitting mosquitoes. Mr. Rico subsequently refused to show his identity documents and to accept a fine.

106. On 19 May 2018, the inspector and the area supervisor went to his home and ordered him to appear at the police station. While the defendant was at the station in question, he was instructed to go inside, which he did, and when he was informed of the reason for the summons and asked for his identity document, Mr. Rico said that he did not have it with him and stated his intention to leave and to refuse the fine. Although he had been repeatedly asked to sit down, he started to leave and did not stop. Following these repeated requests, Mr. Rico stopped, turned towards the officer, picked up a mobile telephone and threw it on the ground. The officer threw himself on top of Mr. Rico to stop him and Mr. Rico threw a punch, grabbed the officer by the shirt and threw him to the ground, thereby giving the officer an abrasion that required medical attention. The Court's case file does not contain any medical certificates detailing Mr. Rico's alleged injuries.

107. Mr. Rico was sentenced to 2 years' deprivation of liberty for disobedience and resistance. The Court acquitted him of the assault charge. Although the defendant appealed the sentence, the appeal was rejected.

108. The Government refutes the allegations aimed at discrediting the monitoring and vector control programme. Anti-vector measures are the most efficient way of preventing the spread of disease and of protecting health.

109. The defence lawyer appointed by the defendant presented the evidence that he considered relevant to the Court, which it admitted and took up in accordance with the law.

110. Mr. Rico served his sentence in the designated prison. He is currently at liberty after having received a pardon on 20 July 2019.

111. The Government asserts that the allegations concerning Mr. Díaz are false. There is no law concerning "pre-criminal social dangerousness" in the Cuban legal system. He did not receive telephone calls threatening him with arrest.

112. Mr. Díaz was arrested on 22 October 2017 for public disorder and was released on 25 October. He is still behaving disruptively, as demonstrated by his insistence upon disturbing the peace. He is aggressive and provocative, and uses his strong build to force others to buy him alcoholic beverages, which he frequently consumes, and to exact payment of others' debts in exchange for money. This makes him an individual who is feared and shunned by his neighbours. Despite his having received cautions and various talks intended to re-educate him, he has continued to behave in this manner.

113. Mr. Díaz was sentenced to 2 years and 5 months' deprivation of liberty for theft and received a fine of 200 base units of 8 pesos for each threat that he made.

114. He was arrested on 22 November 2017 because of his record of posing a danger to society on account of his antisocial behaviour, and remained in custody until 28 November, when he entered the institution known as "La Pendiente" to serve a sentence of 3 years and 6 months' pre-criminal imprisonment in a labour and education centre.

115. Article 72 et seq of the Criminal Code define persons who commit flagrant violations of social norms as "dangerous". The relevant measures are applied by the courts in full compliance with legal guarantees and in consultation with the defence lawyer and the prosecutor. The right to mount a defence, the presence of independent judges and the collection of sufficient evidence are guaranteed during these proceedings.

116. Cuban law stipulates that re-educational and/or therapeutic measures are to be applied in respect of persons who are declared "dangerous". The essential purpose of these measures is to influence these persons' behaviour with a view to successfully re-educating them. Such measures are not applied for reasons other than those set out in the Criminal Code or for expressing political ideas.

117. Mr. Díaz has a number of medical conditions for which he is receiving free assistance and treatment.

118. The Government indicates that the allegations concerning Mr. Portal were fabricated. On 20 June 2016, he was arrested for causing a disturbance in a public thoroughfare while law enforcement officers confronted individuals engaging in illicit economic activities. His actions drew a crowd of passers-by, which impeded police

intervention. Proceedings were brought before the Municipal Court, which sentenced him to 4 years' deprivation of liberty for contempt and public disorder.

119. Procedural guarantees were respected during the proceedings. He was accorded the right to disagree with the Court's decision and the right to testify or to abstain. The defence submitted the evidence that it considered appropriate.

120. The allegations concerning supposed reprisals and harassment as a result of his political activism are false. In Cuba, individuals are not subjected to threats, insults, harassment or arbitrary detention for expressing opinions. Article 54 of the Constitution "recognizes, respects and guarantees the people's freedom of thought, conscience and expression".

121. On 12 September 2018, Mr. Portal was transferred to Calixto García Hospital after showing signs of having suffered a stroke. On 1 February and 29 May 2019, he was transferred to Enrique Cabrera Hospital and to Dr. Salvador Allende Hospital, respectively, after having suffered multiple strokes. He received free medical assistance, including medical care and medication, which he continued to receive in prison.

122. Mr. Portal has been sentenced on several occasions, including to 4 months' deprivation of liberty for theft with the use of force; to 2 years' deprivation of liberty, commuted to limited freedom of movement, for bodily injury and forcible entry; to 6 months' deprivation of liberty for resistance; to 1 year's deprivation of liberty for bodily injury; to 1 year's deprivation of liberty for sexual affront; to 1 year's deprivation of liberty for bodily injury; to 1 year's deprivation of liberty for contempt; and was fined 300 base units of 3 pesos for each threat that he made.

Additional comments from the source

123. The Working Group transmitted the Government's response to the source on 14 February 2020. The source submitted its observations and comments on 28 February. The source provided extensive information in response to the Government's observations. The Government, the indictment and the judgment confirm the source's allegations concerning the participation of the seven activists in social organizations, public demonstrations or in opposition activities. The Government's response also appears to confirm that the activists have been detained and have had criminal proceedings brought against them in the past. This response is reportedly general in nature, does not specify that criminal acts were perpetrated and does not provide any evidence of them. The response also appears to confirm that the detention was by decision of the police security service, that the prosecutor's office and the judicial authorities did not exercise effective oversight and that it was not possible for the defendants to mount an effective legal and judicial defence. The source describes the documents that the Government should have been produced to support its assertions, claiming that its failure to do so proves that they are false. Although the Government's response did not rebut the information provided on pro-democracy activism, it confirms that the activists were detained for defending or exercising human rights.

Discussion

124. The Working Group thanks the parties for the information provided and for their cooperation.

125. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.¹ A mere assertion that lawful procedures have been followed is not sufficient to rebut the allegations made in a particular case.

126. According to article 19 of the Universal Declaration of Human Rights, everyone has the right to freedom of expression. This includes disseminating information and ideas of all

¹ A/HRC/19/57, para. 68.

kinds, orally or otherwise. The exercise of this right may be subject only to such restrictions as are expressly established by law and necessary to ensure respect for the rights or reputations of others, or to protect national security, public order, or public health or morals.²

127. Freedom of opinion and freedom of expression are indispensable for the full development of the person and constitute the cornerstone of free and democratic societies. They are the basis for the effective exercise of a wide range of other human rights, such as freedom of assembly, association and participation.³

128. The importance of freedom of expression is such that there must be no infringement of other human rights on the basis of a person's actual or perceived opinions, whether of a political, scientific, historical, moral, religious or any other nature. Criminalizing the expression of an opinion is incompatible with the Universal Declaration of Human Rights. Nor is it permissible for a person to be harassed, intimidated, stigmatized, detained or placed in pretrial detention, prosecuted or imprisoned for expressing his or her views.⁴

129. The Working Group received information from the source, which was not rebutted by the Government, that these seven persons belong to different civil society organizations, through which they have carried out political, social or community-based activities. The information provided confirms that the detention of the seven individuals was related to those activities, and to the exercise of their human rights to freedom of expression, association and participation. In many cases, the information provided by the Government corroborates, and in others does not rebut, that provided by the source.

130. The Working Group notes that the criminal indictments brought against the seven activists were based on similar charges, such as contempt, disobedience, assault, public disorder, resistance and "pre-criminal social dangerousness". The information provided allows the Working Group to conclude that the detention of these seven persons was based on the exercise of the rights to freedom of thought, expression, assembly, or to their membership of pro-democracy and human rights associations, all of which are protected by articles 19, 20 and 21 of the Universal Declaration of Human Rights.

131. The Working Group recalls that a certain degree of disruption to ordinary life caused by peaceful demonstrations, including disruption of vehicular traffic and of pedestrian traffic or commercial activities, must be tolerated, so as to avoid rendering meaningless or nullifying the rights to freedom of assembly, association, expression and participation.⁵ A peaceful public demonstration does not justify detention. The Working Group considers that, in the cases examined, State force was used to check the expression of ideas in public spaces or to punish political, social and community-based activities by using offences provided for in the Criminal Code.

132. The Working Group was informed that Mr. Rico is at liberty. However, since his detention is related to the exercise of human rights, and in view of the number of complaints received about the criminalization of the defence of human rights in Cuba,⁶ the Working Group will determine whether the detention was arbitrary, in accordance with its methods of work.

Category I

133. The Working Group wishes to recall, as it has stated on previous occasions, that the criminal offences of contempt, public disorder, "social dangerousness" and assault contained in the Criminal Code are extremely vague and lack the precision required to provide the population with legal certainty.⁷ The Inter-American Commission on Human Rights has recommended that Cuba "eliminate the references to 'dangerousness' and

² Opinion No. 58/2017, para. 42.

³ Opinions No. 58/2017 and No. 63/2019.

⁴ Opinion No. 61/2019.

⁵ Opinion No. 79/2017, para. 56; see also A/HRC/31/66, para. 32.

⁶ Opinions No. 63/2019, No. 66/2018, No. 59/2018, No. 55/2017 and No. 64/2017.

⁷ Opinions No. 63/2019, No. 20/2017 and No. 8/2017.

‘special proclivity of a person to commit crimes’, as set forth in the Criminal Code”.⁸ It also stated that “specifically in relation to human rights defenders, it has been informed about the use of indictments for crimes such as contempt, pre-criminal social dangerousness, non-payment of fines, public disorder, and resistance or rebellion, in order to discourage their work in defending and promoting human rights”.⁹

134. The Inter-American Commission on Human Rights recognized that, in Cuba, arbitrary detention is systematically used as a method of harassment against political opposition organizations. It has also pointed out that people are charged with public disorder, pre-criminal social dangerousness and contempt, that persons deprived of their liberty in this context have been assaulted, threatened and mistreated, and that their access to care and medical treatment in prison appears to be restricted.¹⁰

135. As the Working Group has stated, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly. The Working Group considers that these types of criminal offences, being extremely vague, violate the international obligations of Cuba and are therefore invalid as a legal basis for arrest, which makes it impossible, in the present case, to invoke any legal basis to justify the detention, thereby rendering it arbitrary.¹¹

136. Therefore, the Working Group is of the opinion that the respective detentions of Ms. Nieto, Ms. Faure, Mr. Bandera, Mr. Rico, Mr. Pompa, Mr. Díaz and Mr. Portal were ordered contrary to the provisions of article 9 of the Universal Declaration of Human Rights and that they are arbitrary under category I.

Category II

137. The Working Group is aware that Ms. Nieto, Ms. Faure, Mr. Bandera, Mr. Rico, Mr. Pompa, Mr. Díaz and Mr. Portal are human rights defenders, political activists or persons who have taken part in events where they exercised their freedom of thought, expression and political participation by criticizing the Government, and that their respective detentions, indictments and prosecutions were based on common elements of their respective activities, relating to the promotion of democracy, to human rights and to expressions of a political nature, which resulted in their respective arrests and their each subsequently receiving a criminal sentence for expressions protected by the Universal Declaration of Human Rights.

138. In view of the foregoing, the Working Group finds that the authorities deprived Ms. Nieto, Ms. Faure, Mr. Bandera, Mr. Rico, Mr. Pompa, Mr. Díaz and Mr. Portal of their liberty for exercising their rights to freedom of thought, conscience, opinion, expression, association and participation, as recognized in articles 18, 19, 20 and 21 of the Universal Declaration of Human Rights, which renders the detention arbitrary under category II.

Category III

139. In the light of the findings made in relation to category II, in which it concluded that the detention is the result of the exercise of human rights, the Working Group found that there was no basis for a criminal trial. However, since the trials in question did in fact take place, and in view of the allegations made by the source and the Government’s response, the Working Group will proceed to determine whether, in the course of the judicial proceedings, due process guarantees were respected.

⁸ *Annual Report 2018*, chap. IV.B Cuba, para. 122 (6), available at <http://www.oas.org/en/iachr/docs/annual/2018/docs/IA2018cap.4b.CU-en.pdf>.

⁹ *Annual Report 2019*, chap. IV.B Special Report: Cuba, para. 22, available at <http://www.oas.org/en/iachr/docs/annual/2019/docs/IA2019cap4bCU-en.pdf>.

¹⁰ Resolution 29/19, Precautionary Measures No. 306-19, No. 307-19 and No. 326-19, 11 June 2019, para. 22, available at <https://www.oas.org/es/cidh/decisiones/pdf/2019/29-19MC306-19-307-19-326-19-CU.pdf>.

¹¹ Opinions No. 8/2017, No. 20/2017, No. 62/2018 and No. 32/2019.

140. The Working Group takes note of the allegations made by the source concerning violations of due process guarantees and the right to mount a defence. In this connection, Mr. Pompa's forced labour sentence was allegedly substituted by a term of deprivation of liberty without his being given the opportunity to take part in the proceedings. In the case of Ms. Faure, several witnesses who were to appear at the trial to testify on her behalf were arrested before the hearing and were thus unable to attend. Furthermore, the defendant's own testimony was not reflected in the judgment, and the defence lawyer appointed by the State brought charges against her, thereby negating her right to legal assistance. Mr. Rico's defence team were not allowed to call witnesses during the trial. Mr. Bandera and Mr. Díaz were sentenced for "pre-criminal social dangerousness", in violation of their fundamental right to be presumed innocent. The Government did not provide any convincing information to refute the veracity of these allegations.

141. Therefore, the Working Group finds that the respective detentions of Ms. Faure, Mr. Pompa, Mr. Rico, Mr. Bandera and Mr. Díaz, carried out in violation of articles 10 and 11 of the Universal Declaration of Human Rights, are arbitrary under category III.

Category V

142. The Working Group cannot ignore the fact that this is not the first instance of arbitrary detention against pro-democracy activists and human rights demonstrators in Cuba. Many of the cases studied by the Working Group involve individuals who have been detained on multiple occasions, including cases where individuals have reportedly been detained dozens of times for short, medium and long periods. These cases reveal a common pattern, namely: (a) the individuals deprived of their liberty are all rights defenders, critical activists and government opponents; (b) the same vague criminal offences are used in conjunction with ambiguous conduct that allows for broad discretion; (c) the individuals are deprived of their liberty for exercising their human rights; (d) the fundamental guarantees of due process and a fair trial are repeatedly violated; and (e) there are allegations of cruel, inhuman or degrading treatment or punishment, or detention conditions that do not guarantee personal dignity and integrity.

143. In the light of the foregoing considerations, the Working Group is of the opinion that, in the present case, the instances of detention analysed constitute a violation of international law, as the seven individuals concerned have been discriminated against for belonging to the group of activists who are critical of and opposed to the Government. It therefore finds the instances of discriminatory detention in the present case to be arbitrary under category V.

144. As for the allegations of torture and other cruel, inhuman or degrading treatment or punishment, violations of the right to health and of the rights to freedom of association and expression, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

145. The Working Group notes that, although the State has not ratified the Covenant, Cuba did sign it in 2008. The Working Group therefore urges the Government to respect the object and purpose of this treaty,¹² and to ratify it promptly.

146. Lastly, in order for the Working Group to establish a direct dialogue with the Government and representatives of civil society, with the aim of gaining a better understanding of the situation of deprivation of liberty in the country and the reasons why arbitrary detention occurs, the Working Group suggests that the Government consider inviting it to conduct an official country visit.

¹² 1969 Vienna Convention on the Law of Treaties, art. 18.

Disposition

147. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Aymara Nieto, Eliecer Banderas, Humberto Rico, José Pompa, Melkis Faure, Mitzael Díaz and Silverio Portal, being in contravention of articles 2, 7, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

148. The Working Group requests the Government of Cuba to take the steps necessary to remedy the situation of Ms. Nieto, Ms. Faure, Mr. Bandera, Mr. Rico, Mr. Pompa, Mr. Díaz and Mr. Portal without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

149. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release the seven activists immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

150. In the context of the current global pandemic caused by the coronavirus disease (COVID-19) and the threat that the disease poses in places of detention, the Working Group calls on the Government to take urgent action to ensure the immediate release of these seven individuals.

151. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the seven activists and to take appropriate measures against those responsible for the violation of their rights.

152. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

153. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

154. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Ms. Nieto, Ms. Faure, Mr. Bandera, Mr. Pompa, Mr. Díaz and Mr. Portal have been released;
- (b) Whether compensation or other reparations have been made to Ms. Nieto, Ms. Faure, Mr. Bandera, Mr. Rico, Mr. Pompa, Mr. Díaz and Mr. Portal;
- (c) Whether an investigation has been conducted into the violation of the rights of Ms. Nieto, Ms. Faure, Mr. Bandera, Mr. Rico, Mr. Pompa, Mr. Díaz and Mr. Portal and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Cuba with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

155. The Government is invited to inform the Working Group of any difficulties that it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

156. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

157. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps that they have taken.¹³

[Adopted on 29 April 2020]

¹³ See Human Rights Council resolution 42/22, paras. 3 and 7.