



# General Assembly

Distr.: General  
14 October 2020  
English  
Original: Spanish

---

## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020

#### Opinion No. 50/2020 concerning José Daniel Ferrer García (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 14 April 2020 the Working Group transmitted to the Government of Cuba a communication concerning José Daniel Ferrer García, requesting that it provide detailed information about the case by 15 June 2020. The Government replied to the communication on 26 June 2020, after the deadline. 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).

---

\* Seong-Phil Hong did not participate in the discussion of the present case.



## Submissions

### *Communication from the source*

4. José Daniel Ferrer García is a Cuban national who was born in 1970 in Santiago de Cuba, which remains his place of habitual residence. Mr. Ferrer García is a human rights activist and the general coordinator of the Unión Patriótica de Cuba (Patriotic Union of Cuba) (UNPACU), a peaceful human rights and pro-democracy organization in Cuba.

#### (a) Background and context

5. In 2003, Mr. Ferrer García was imprisoned, along with many other activists, after helping to petition for a plebiscite under article 88 (g) of the Constitution by collecting and submitting to the National Assembly the thousands of signatures required, an act for which the public prosecution service sought to have him put to death. On 7 April of that year, the Provincial Criminal Court convicted him of acts against the independence or territorial integrity of the State and sentenced him to 25 years' imprisonment. In March 2011, Mr. Ferrer García was released on extrajudicial leave, with restricted movement and the original sentence still in force. Since then, he has reportedly been arrested without charge more than a hundred times; most of those arrests were violent and involved him being beaten and threatened and having his home burst into and his personal belongings, including technology and communications equipment, food, household goods, books and furniture, taken.

6. The source notes that in February 2012, for example, he was arrested in Havana and held incommunicado for three days. Then, in April of that year, he was detained for 27 days for alleged public disorder in Santiago de Cuba and was released on the condition that he give up his political activism. In August, he was detained in Holguín for 36 hours, before being released without charge.

7. In February 2014, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders sent a communication to the Government regarding the harassment and arbitrary detention of various human rights defenders and activists (including Mr. Ferrer García) and the exercise of the rights to freedom of peaceful assembly and freedom of opinion and expression, in the context of the second Summit of Heads of State and Government of the Community of Latin American and Caribbean States, which was held in Havana on 28 and 29 January 2014. In its reply of 12 June 2014, the Government denied the allegations, without providing specific information on the detention of Mr. Ferrer García.

8. On 3 August 2018, Mr. Ferrer García was reportedly arrested again and held incommunicado for 12 days, without access to his family or his lawyers, after allegedly injuring a State security officer in a road accident. In addition, in September 2019, while representatives of the European Union and the Government of Spain were conducting a visit to Cuba, there was a violent raid on five houses belonging to UNPACU, during which property of all kinds was confiscated, while at least 188 persons were arrested in their homes, without any criminal charges being filed. The source reports that, on that occasion, Mr. Ferrer García was arrested and was subjected not only to harassment and psychological torture but also to a severe beating that left him with lasting dental injuries and severe bruising and pain all over his body.

#### (b) Raid, arrest and incommunicado detention

9. The source reports that, in the early morning of 1 October 2019, members of the Special Forces, together with auxiliary officers from the State Security Department of the Ministry of the Interior and Justice, raided Mr. Ferrer García's house, which serves as the headquarters of UNPACU, without a warrant. Two other houses nearby, in which UNPACU conducted its activities and housed its members, were also surrounded and raided.

10. During the operation, Mr. Ferrer García and six other individuals linked to UNPACU were arrested, including a member of Mr. Ferrer García's family who was 16 years old at the time. The source states that two of the arrested persons were held at the location of the raid for five hours, while Mr. Ferrer García and four other activists were transferred to an

unknown location. The source also states that the authorities did not inform the individuals of the reasons for their arrest. The source reports that, during the raid on UNPACU, an inventory of confiscated property was drawn up; the inventory included food, furniture, kitchen equipment, electronic equipment, documents of the organization and mobile telephones.

11. The source notes that Mr. Ferrer García was taken into custody before the search of his home began, while members of his family, including three minors aged 14 years, 2 years and 3 months remained in the house. The events described were witnessed by local residents, who recorded several videos of the operation; these videos show that it involved approximately 60 officers of the Special Forces, political police and State Security Department, 2 motorcycles belonging to the National Revolutionary Police and 12 belonging to the State Security Department, 2 police cars, 1 criminal investigation unit car, 2 special forces trucks and 1 unmarked truck.

12. The source adds that Mr. Ferrer García was held incommunicado, without his family knowing his whereabouts and without access to a lawyer, for 76 hours, from 7 a.m. on 1 October 2019 to 11.30 a.m. on 4 October 2019, which was when his family was reliably informed of his whereabouts for the first time and was able to visit him at the provincial criminal investigation unit in the Versalles neighbourhood of Santiago de Cuba, a detention centre that is well known among human rights activists, who report that torture is carried out there. The source reports that even though Mr. Ferrer García was suffering from an ulcer and had a serious problem with an infected tooth (caused by the beating that he had been given by police officers in September 2019), his family was not allowed to give him the medicines that he took regularly for these ailments.

(c) Charges

13. According to the source, in the early morning of 1 October 2019, after Mr. Ferrer García had been arrested, some neighbours and UNPACU activists were threatened by the State security forces. The aim was to fabricate a criminal case against Mr. Ferrer García.<sup>1</sup>

14. In this connection, the source reports that a few days previously, on the night of 21 September 2019, a person who frequently visited the UNPACU headquarters had a motorcycle accident after leaving the place. Political police officers came to the hospital where this person was being treated and urged him to claim that his injuries had been caused by Mr. Ferrer García. In addition, political police officers visited persons living near the UNPACU headquarters in an attempt to force them to attest that they had witnessed a dispute or fight between this person and Mr. Ferrer García, which they refused to do. On the contrary, several witnesses who were at or near the UNPACU headquarters on the night of 21 September said that they saw the person leave the place as usual and did not report anyone fighting, arguing or being beaten or physically harmed.

15. According to the source, one of the four persons arrested along with Mr. Ferrer García in the early morning of 1 October 2019 later reported that, during his interrogation, he was threatened in order to force him to testify to the police's false version of events, which did not correspond to what he had seen. In exchange for his release, he was forced to testify that Mr. Ferrer García had caused the injuries suffered by the person involved in the motorcycle accident, when in fact they had occurred after the person had left the UNPACU headquarters. Mr. Ferrer García and the other four activists were detained by the police in an attempt to

<sup>1</sup> The source notes that this method is nothing new, adding that, in August 2018, a false accusation made against Mr. Ferrer García led to him being arrested and held incommunicado, until the accusation was shown to be false and he had to be released without charge. The source claims that a political police officer threw himself at a vehicle that was being driven at a low speed by Mr. Ferrer García, who was learning to drive. Although Mr. Ferrer García swerved to avoid him, he made slight contact with the officer, who then got on a motorcycle and disappeared from the scene, later claiming that he had tried to carry out a traffic stop but that Mr. Ferrer García had refused to pull over. Mr. Ferrer García was detained incommunicado for 12 days. He was then released without charge and the police officer's complaint was not investigated.

force them, using threats and torture, to sign a false confession about anything that could be used to bring a malicious prosecution.

16. The source reports that, after Mr. Ferrer García was visited by his family on 4 October 2019, it became clear that the real reasons for his arrest were the pro-democracy activism of UNPACU, the public expression of support for the measures taken by the Government of the United States of America in connection with freedom in Cuba, and the need for the Government of Cuba to restrict his physical liberty and freedom of movement during the appointment of the President and Vice-President of the Republic on 10 October 2019 in order to prevent him from protesting. It is also reported that ordinary criminal charges were to be fabricated against him so that he would not be classified as a political prisoner or prisoner of conscience. After the visit on 4 October, Mr. Ferrer García's family received no information about him, and was unable to visit him, for more than a month.

(d) Incommunicado detention and alleged enforced disappearance

17. The source notes that, in the days prior to 11 October 2019, an officer who was presented as the case investigator, but who did not identify himself or show any documents, suggested that Mr. Ferrer García had been transferred to Aguadores prison in Santiago de Cuba and was being held in pretrial detention as a precautionary measure. However, the authorities refused to provide a copy of the corresponding indictment, claiming that it was not ready, even though Cuban legislation stipulates that such a document is required for pretrial detention, starting from seven days after the arrest. Some members of Mr. Ferrer García's family came to the prison on 11 October but they were turned away. Fearing for his physical integrity, since they had had no contact with him since 4 October and were unable to obtain official information about how or where he was, his family reported him missing.

18. On 15 October, a member of Mr. Ferrer García's family went to Aguadores prison, after being told there informally the previous day that it would be possible to see him. At the visitors' entrance, the family member was told by the officer on duty that he could find no record of Mr. Ferrer García. The source reports that, when the family member repeated Mr. Ferrer García's name and described him, the officer gestured that he knew who Mr. Ferrer García was after all and quickly called his superiors. After waiting for several minutes, the family member was taken into an office and told that he would not be granted a visit. When he objected, he was violently searched by soldiers who claimed to be looking for a mobile telephone hidden in his clothing but whose acts verged on intimidation and attempted sexual assault. The family member put up resistance and managed to leave the office. He tried to make a telephone call to inform someone about his situation, but his telephone was immediately seized by some other officers. Before he left the prison, he was told by the prison officers that he would be banned from visiting for one year.

19. The source reports that Mr. Ferrer García was detained incommunicado, in an unknown location and without there being any sign of him, not only from 1 to 4 October 2019 but also from 4 October onward. His family therefore applied for a writ of habeas corpus on 17 October 2019. The source adds that, in response to such an application, the detainee should be released, or the full details of his case and whereabouts should be disclosed and he should be brought before a judge. However, in its judicial response, the People's Provincial Court of Santiago de Cuba did not grant Mr. Ferrer García's release or provide any information about his whereabouts or the reasons for his detention, or any document containing this information. It provided only the number of a case that was at the preparatory stage and refused to hand over the case file itself, which in any event is not the document that is required for pretrial detention that exceeds seven days, since the only document that is valid after that period is an indictment issued by the public prosecution service. In response to the application for habeas corpus, the Court merely indicated that he was being prosecuted in case No. 135/2019, which was at the preparatory stage, and that his family could not have access to the case file.

20. The source notes that, on 28 October 2019, representatives of Mr. Ferrer García submitted a request for urgent action to the Committee on Enforced Disappearances under article 30 of the International Convention for the Protection of All Persons from Enforced Disappearance. The Committee responded by sending a note verbale to the Government, requesting that it clarify the situation of the person whose whereabouts were unknown and

provide information, by 12 November 2019, on the measures taken in relation to each of the concerns and recommendations set out in the note verbale.

(e) Allegations of torture and cruel, inhuman or degrading treatment

21. The source reports that members of Mr. Ferrer García's family were able to visit him for five minutes in the morning of 7 November 2019; the visit took place in an office in Aguadores prison, under the supervision of an officer. The visit ended when Mr. Ferrer García tore off his prison uniform to reveal marks of torture all over his body. The source claims that Mr. Ferrer García had lost half his body weight and that he was stooped over and so weak that he could barely embrace his relatives. He had also lost his sight and his voice to a significant degree and he looked like a very sick old man, with bruises on his chest, his abdomen, his upper and lower limbs and his back. He also had friction burns on his back and marks from being hit with truncheons. The source adds that, since he was being given dirty and fetid water to drink and spoiled food that gave him acute heartburn on top of the already aggravated chronic gastritis and ulcer that he had when he entered prison, Mr. Ferrer García had been on a hunger strike for 25 days, having started the strike on 6 October when he was at the provincial criminal investigation unit in Santiago de Cuba.

22. According to the source, it later emerged that Mr. Ferrer García had been transferred to Aguadores prison on 9 October and placed in a punishment cell. In that prison, he was brutally beaten and was forced to wear an ordinary prisoner's uniform as a form of humiliation, but he ripped the uniform in protest. On eight occasions, he was forced to dress like an ordinary prisoner and on every occasion, he refused, despite being beaten and forcibly dressed in the clothes in question; in the end, he was kept half-naked. In the same punishment cell, there was an aggressive prisoner with a long criminal record, who often beat him. The prisoner kept a knife in the cell, with the guards' approval, and told Mr. Ferrer García that he had been instructed by the prison authorities to kill him.

23. The source alleges that in Aguadores prison, in addition to being beaten periodically and kept half-naked in a cold, damp cell, Mr. Ferrer García was chained at the wrists and ankles, dragged across the floor in a way that gave him friction burns, and insulted and verbally abused on a daily basis. He was constantly told that he would not leave prison alive and was threatened with being tortured twice as severely if he reported what was happening. After he went on hunger strike, he was moved to an ordinary cell for four days and was able to send a letter of warning that read:

On a hunger and thirst strike. They have done everything to me. A thousand acts of torture and violence. I have been dragged around, chained hand and foot, and left in the sun for two weeks in my underwear in a cell that is full of mosquitoes and cold at dawn. Risk of pneumonia. My life is in grave danger.

24. The source reports that, after the visit on 7 November 2019, Mr. Ferrer García's family had no further access to him. In mid-November, his family learned of the existence of an indictment, dated 7 October 2019, stating that Mr. Ferrer García was charged with the offence of bodily harm and must be placed in pretrial detention.

25. On 28 November 2019 the European Parliament adopted a resolution<sup>2</sup> in which it condemned the arbitrary detention of Mr Ferrer García and urgently called for his immediate release. The European Parliament also denounced the torture and ill-treatment that Mr. Ferrer García had reportedly suffered and reiterated its great concern over "the continuous persecution, harassment, attacks against peaceful dissidents, independent journalists, human rights defenders and political opposition in Cuba".<sup>3</sup> In addition, the European Parliament:

Calls for the immediate end to these actions and for the release of all political prisoners and those arbitrarily detained solely on the grounds of exercising their freedom of expression and assembly; calls for better guarantees to the right to a fair trial and to

<sup>2</sup> P9\_TA(2019)0073.

<sup>3</sup> Ibid., para. L (3).

the independence of the judiciary and to ensure that persons deprived of their liberty have access to an independent lawyer.<sup>4</sup>

26. On 27 January 2020, the Committee on Enforced Disappearances moved forward with its urgent action procedure; having given the State the opportunity to reply and having heard all the claims through a transparent process, the Committee found that Mr. Ferrer García's family had not known where he was until 7 November 2019, that is, 37 days after his arrest. In its letter to the Government of Cuba, it highlighted the obligation to undertake without delay, "a thorough and impartial investigation into the circumstances of the disappearance of Mr. Ferrer during the period when he was detained without contact with the outside world".

27. Lastly, the source claims that in the morning of Sunday, 9 February 2020, State security officers detained two members of Mr. Ferrer García's family, including one of his sons, who is a minor, for about five hours. The source reports that they were detained in an attempt to coerce them into persuading Mr. Ferrer García to leave Cuba, in exchange for his release.

(f) Trial and conviction

28. According to the submissions, on 26 February 2020, before the first day of hearings began, the Ministry of Justice posted the following tweet: "Ferrer will be given a fair trial and guaranteed due process, unlike the man whom he kidnapped and beat severely. He is a common criminal, not a political prisoner." Although the tweet was subsequently deleted, according to the submissions, the Cuban media, which are controlled by the State, called Mr. Ferrer García a criminal and declared him guilty on multiple occasions before and during the wait for the verdict on the charge of bodily harm caused in September 2019.

29. The source reports that the trial was held in camera. The source notes that diplomatic representatives were not allowed to enter the courtroom as observers. The source claims that the lawyer who was supposed to be defending Mr. Ferrer García prevented key witnesses, who had been in the place where the offence of bodily harm had allegedly been committed at the relevant time, from testifying. Furthermore, the lawyer did not challenge the judge's refusal to hear the testimony of the alleged victim's wife, who would have declared that the victim's injuries were the result of a motorcycle accident.

30. The source reports that the oral proceedings, in which the public prosecutor requested that Mr. Ferrer García be sentenced to 9 years' imprisonment, ended on 27 February at around 11 p.m. at the stage when the verdict was to be pronounced, which was then set to happen on 12 March. However, the verdict was not made public as required by the applicable law. The Criminal Procedure Act states that rulings must be discussed and approved by vote on the day of the oral proceedings or the day after and then signed by all members of the court within six working days. The source notes that the final decision in Mr. Ferrer García's case should have been ready on 6 March; it should then have been notified to the defendants in prison within five days, before being announced on 12 March.

31. On 17 March 2020, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights expressed concern at the increased "harassment and criminalization of journalists, artists, human rights defenders and opponents in Cuba" and condemned "arbitrary arrests and prosecution that seek to silence those who exercise the right to freedom of expression". It urged Cuba to "immediately release all those detained for exercising journalism, their rights to freedom of opinion, expression, and other political rights". Noting that it had received information about the imprisonment of Mr. Ferrer García, which was reportedly due to political persecution, it stated: "In Cuba we observe a pattern of manipulation of criminal law to hinder the exercise of political rights, in a context of lack of judicial independence. This case is of particular concern to us."<sup>5</sup>

32. The source reports that on Friday, 3 April 2020, Mr. Ferrer García and his co-defendants were taken to the court to be informed verbally of their conviction. Mr. Ferrer García did not receive a copy of the ruling, which meant that he was unable to appeal. Mr.

<sup>4</sup> Ibid.

<sup>5</sup> Press release R55/20.

Ferrer García was sentenced to 4.5 years' imprisonment, which he was told was to be served in the form of house arrest or restriction of freedom.

(i) Category I

33. The source claims that the arrest and detention of Mr. Ferrer García did not conform to the applicable regulations and therefore had no legal basis. The source notes that the authorities failed to inform him of the reasons for his arrest. They did not provide him or his family with a copy of the arrest report, nor did they provide a copy of the pretrial detention order issued by the public prosecution service until 45 days after the arrest, despite the legal requirement that it be delivered within 7 days and signed by the accused or, failing that, by two witnesses who can attest that it was delivered. The source also claims that the order in question contained no explanation or justification for the use of pretrial detention.

(ii) Category II

34. The source claims that the real reason for Mr. Ferrer García's detention is his exercise of the rights and freedoms enshrined in the Universal Declaration of Human Rights and that his detention is therefore arbitrary under category II.

(iii) Category III

35. Lastly, the source claims that Mr. Ferrer García's detention is arbitrary under category III because the international norms relating to the right to a fair and impartial trial were violated. The source points out that the trial was held in camera. During the trial, Mr. Ferrer García did not receive adequate legal assistance and was unable to call witnesses who were essential to his defence. In addition, the source claims that Mr. Ferrer García was not notified of the verdict in accordance with the law; in particular, he was not given a physical copy of the reasoned judgment and was therefore unable to exercise his right of appeal.

*Response from the Government*

36. On 14 April 2020, the Working Group transmitted the allegations from the source to the Government. The Working Group requested the Government to provide, by 15 June 2020, detailed information on Mr. Ferrer García's case that would clarify the legal and factual grounds for his detention and explain how his detention was compatible with the international human rights obligations of Cuba. In addition, the Working Group requested the Government to ensure Mr. Ferrer García's physical and mental integrity.

37. The Government submitted its reply on 26 June 2020, after the deadline, without having requested an extension in accordance with the Working Group's methods of work. The Working Group cannot accept the late reply as if it were submitted within the time limit. However, since the late reply was received during the ongoing coronavirus disease (COVID-19) pandemic, the Working Group has taken into account the information contained therein, to the extent possible under its methods of work.

**Discussion**

38. The Working Group thanks the parties for the information provided, including the Government's late reply, and for their cooperation.

39. 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. Mere assertions that lawful procedures have been followed will not be sufficient to rebut the source's allegations.<sup>6</sup>

40. Firstly, the Working Group notes that Mr. Ferrer García is an opposition leader, a pro-democracy and human rights activist and the founder and national coordinator of UNPACU. The Working Group also notes that, according to the information available, Mr. Ferrer García

<sup>6</sup> A/HRC/19/57, para. 68.

has been arrested on multiple occasions and has faced several criminal trials. Mr. Ferrer García is currently serving his sentence of 4 years' imprisonment under house arrest. In accordance with paragraph 17 (a) of its methods of work and taking into consideration its deliberation No. 1 on house arrest, the Working Group will proceed to render an opinion, on a case-by-case basis, on whether or not the deprivation of liberty that has been brought to its attention is arbitrary.

(i) Category I

41. Article 3 of the Universal Declaration of Human Rights stipulates that everyone has the right to liberty and security of person, while article 9 establishes that “no one shall be subjected to arbitrary arrest”. The Working Group has indicated in its jurisprudence that anyone who is arrested must therefore be informed of the reasons for the arrest at the time of arrest and of the judicial avenue for challenging its lawfulness.<sup>7</sup> The reasons given for the arrest must include not only the legal basis but also factual specifics indicating the substance of the complaint and the wrongful act committed. The reasons concern the official basis for the arrest, not the subjective motivations of the arresting officer.<sup>8</sup>

42. Moreover, persons deprived of their liberty must be informed by the authorities, upon apprehension, of their right to legal assistance by counsel of their choice. They also have the right to be informed promptly of the charges against them.<sup>9</sup>

43. The Working Group notes with concern that Mr. Ferrer García was not arrested in flagrante delicto or on the basis of a court order. In its jurisprudence, the Working Group has consistently found that an arrest is made in flagrante delicto if the accused is either apprehended during the commission of a crime or immediately thereafter, or is arrested in hot pursuit shortly after a crime has been committed.<sup>10</sup> In the present case, Mr. Ferrer García was at home when State security officers raided his house and took him into custody. In the Working Group's view, it is clear that the arrest was not made in flagrante delicto. In its late reply, the Government acknowledged as much. Although the Government mentioned that a complaint of bodily harm had allegedly been made against Mr. Ferrer García, it did not state that an arrest warrant had been issued prior to his arrest.

44. Moreover, according to the source, the arrest was also rendered arbitrary by the actual conduct of the security forces, who burst into his home without a search warrant. The Working Group notes that 60 members of the Army Special Forces took part in the arrest operation. In the present case, the Government has not provided any explanation as to the legal basis for an operation in which the Army Special Forces arrest a citizen in connection with an ordinary offence. The Working Group further notes that a number of items that were irrelevant to the investigation were confiscated. In addition, there was no record of seizure. Nor was there any record of the time at which Mr. Ferrer García was deprived of his liberty.

45. The Working Group is also convinced by the claim that Mr. Ferrer García was held incommunicado and forcibly disappeared for an extended period after his arrest, during which he was unable to contact his family or his legal representatives, while they were seeking information on his fate and whereabouts. The Working Group considers that the incommunicado detention of Mr. Ferrer García violated his right to be brought promptly before a judge or other officer authorized to exercise judicial power and his right to take proceedings before a court in order that the court might decide without delay on the lawfulness of his detention and order his release if the detention was not lawful.<sup>11</sup> Respect for both of these rights is essential to ensuring that detention has a legal basis. The Working Group also recalls principle 6 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, which states that courts are responsible for reviewing the

<sup>7</sup> Opinion No. 72/2019, paras. 40–42.

<sup>8</sup> Opinion No. 17/2020, para. 74.

<sup>9</sup> *Ibid.*, para. 75.

<sup>10</sup> See opinions No. 36/2017, para. 85; No. 53/2014, para. 42; No. 46/2012, para. 30; No. 67/2011, para. 30; and No. 61/2011, paras. 48–49. See also E/CN.4/2003/8/Add.3, paras. 39 and 72 (a).

<sup>11</sup> See opinion No. 40/2019, para. 118.



arbitrariness and lawfulness of deprivation of liberty.<sup>12</sup> The Working Group recalls that enforced disappearances violate several procedural and substantive provisions of the Covenant and constitute an aggravated form of arbitrary detention.<sup>13</sup>

46. In view of the above considerations, namely that Mr. Ferrer García was arrested without an arrest warrant, without being told the reasons for his arrest and without having been caught in flagrante delicto and that he was subjected to enforced disappearance after his arrest, the Working Group considers that the detention of Mr. Ferrer García was contrary to article 9 of the Universal Declaration of Human Rights and was therefore arbitrary under category I.

(ii) Category II

47. The Working Group notes that Mr. Ferrer García is a high-profile opposition leader who has been arrested more than a hundred times for the opinions he has expressed and for his political participation in public affairs. Mr. Ferrer García founded, belongs to and works with the organization UNPACU in order to promote democracy in Cuba; he helped to petition for a plebiscite and has taken part in many other activities to promote human rights. According to the information available, Mr. Ferrer García has faced legal proceedings on multiple occasions and has had various encounters with the justice system, including numerous periods of detention, over many years. In the present case, he was arrested during a large-scale raid on his home, which serves as the UNPACU headquarters, for the alleged offence of bodily harm; in the course of the raid, other individuals who support the organization were arrested and property and equipment were confiscated. The Working Group also notes that Mr. Ferrer García was charged and convicted in judicial proceedings that will be discussed in the following section (concerning category III).

48. The Working Group emphasizes that, under article 19 of the Universal Declaration of Human Rights, everyone has the right to freedom of expression, which includes the right to impart information and ideas of all kinds, whether orally or in any other form. The Working Group is of the view that freedom of opinion and freedom of expression are indispensable prerequisites for the full development of the person and constitute the cornerstone of all free and democratic societies. Both freedoms are the basis for the effective exercise of a wide range of human rights, including the right to freedom of assembly and association and the right to political participation, as set forth in the Universal Declaration of Human Rights.<sup>14</sup>

49. The importance of freedom of expression is such that no Government may infringe 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. Consequently, categorizing the expression of an opinion as an offence is not compatible with the Universal Declaration of Human Rights, and nor is it permissible for persons to be harassed, intimidated or stigmatized, arrested, detained, tried or imprisoned on account of their opinions.<sup>15</sup> In addition, the Working Group reiterates that no restrictions may be placed on the exercise of this right other than those that are expressly provided for by law and that are necessary in order to ensure respect for the rights or reputation of others or to protect national security, public order or public health or morals.<sup>16</sup> The restriction on freedom of expression in this case does not meet any of these criteria and is therefore inadmissible under international law.

50. The Working Group is convinced by the claim that, in the present case, detention has been used as a tool to limit the peaceful exercise by Mr. Ferrer García of the rights to freedom of opinion, expression, assembly, association and participation and to restrict his activities as a human rights defender and pro-democracy activist. The information available does not lend credence to the claim that Mr. Ferrer García was deprived of his liberty and sentenced to 4 years' imprisonment because he had allegedly committed the offence of bodily harm, but rather suggests that he was treated in that way in order to punish him for having exercised

<sup>12</sup> A/HRC/30/37, para. 9.

<sup>13</sup> See opinions No. 20/2020, paras. 81–82; No. 16/2020, para. 82; No. 6/2020, paras. 43–44; and No. 5/2020, paras. 74–75.

<sup>14</sup> Opinions No. 58/2017 and No. 63/2019.

<sup>15</sup> Opinion No. 61/2019.

<sup>16</sup> Opinion No. 58/2017, para. 42.

his fundamental human rights by criticizing the Government and to deter him from continuing to do so in the future.

51. In the light of the above considerations, the Working Group is of the opinion that the detention of Mr. Ferrer García resulted from his exercise of the rights to freedom of opinion and expression, freedom of assembly, and political participation, which are protected by articles 19, 20 and 21 of the Universal Declaration of Human Rights, and is therefore arbitrary under category II.

52. The Working Group has decided to refer the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders.

(iii) Category III

53. In view of its findings under category II that the detention resulted from the exercise of the rights to freedom of opinion and expression, freedom of association, and political participation, the Working Group considers that the trial was unjustified. Moreover, the Working Group has already concluded that the legal basis for Mr. Ferrer García's detention was not established during the period of detention, since he was not notified of an arrest warrant at the time of arrest, his right to be informed promptly of the reasons for his arrest was not respected, he was denied access to his lawyer and he was unable to challenge the lawfulness of his detention before a court.

54. The Working Group is aware that the fact that Mr. Ferrer García was unable to communicate with his family for 37 days jeopardized his access to adequate facilities for the preparation of his defence. Although the Government points out that he was eventually granted a court-appointed lawyer, the irregularities in the way in which he was arrested and the arbitrariness of the search of his home render the proceedings themselves arbitrary from the outset and it is regrettable that these irregularities were not taken into consideration or remedied during the trial. All of the above violates articles 9, 10 and 11 of the Universal Declaration of Human Rights. Other alleged violations of due process will be discussed below.

55. The Working Group recalls that all persons charged with a criminal offence have the right to be informed promptly and in detail in a language that they understand of the nature and cause of the charge against them, as well as to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing.<sup>17</sup> The Working Group emphasizes that accused persons have the right to be assisted and defended by counsel of their choice.<sup>18</sup>

56. The Working Group considers that a person's right to be informed promptly of the nature and cause of the charges against him or her may be satisfied orally (i.e. verbally), provided that the charges are later confirmed in a written document that specifies both the applicable law and the facts on which the charges are based.

57. As regards the right to be assisted by counsel and to have adequate time and facilities for the preparation of a defence, the Working Group is of the view that accused persons must be given adequate time and facilities to this end. This means that they must be granted prompt access to counsel, the ability to communicate with their counsel privately and in conditions that ensure the confidentiality of their communications, adequate time to prepare their defence and access to the case file containing all the documents, evidence and other materials that the prosecution plans to offer in court.<sup>19</sup> The Working Group also takes the view that:

The factual and legal basis for the detention shall be disclosed to the detainee and/or his or her representative without delay so as to provide adequate time to prepare the challenge. Disclosure includes a copy of the detention order, access to and a copy of the case file, in addition to the disclosure of any material in the possession of the

<sup>17</sup> See opinions No. 76/2019, paras. 55–59; No. 72/2019, paras. 44–49; and No. 71/2019, para. 85.

<sup>18</sup> A/HRC/30/37, principle 9 and guideline 8.

<sup>19</sup> Ibid.

authorities or to which they may gain access relating to the reasons for the deprivation of liberty.<sup>20</sup>

58. The Working Group is convinced by the claim that not only was Mr. Ferrer García unable to access or contact a lawyer of his choice upon or after his arrest, but he was also coerced by threats and torture into signing a confession. In this regard, the Working Group has determined that the conviction of a person based on information extracted by means of coercion, torture or ill-treatment of the accused or another person cannot be considered reliable and therefore cannot serve as the basis for a custodial sentence.<sup>21</sup>

59. In addition, regarding the claim that Mr. Ferrer García was unable to communicate with or receive visits from members of his family, the Working Group recalls that all prisoners have the right to communicate with the outside world, in particular with their family and counsel, and that this includes the right to be visited by and to correspond with members of their family at regular intervals, in writing or through electronic means, under the necessary supervision and without discrimination.<sup>22</sup>

60. As regards the fundamental right to be presumed innocent, under article 11 of the Universal Declaration of Human Rights, the Working Group notes that the raid in which Mr. Ferrer García was arrested involved 60 officers of the State Security Department and the Army. This seems to be a disproportionate deployment of forces for the arrest of a human rights defender accused of bodily harm. Furthermore, it suggests that the operation was carried out with the preconception that Mr. Ferrer García posed a danger to State security. The information available also indicates that the State media referred to Mr. Ferrer García publicly as a criminal before and during his trial and conviction, making it difficult for there to be no preconceived opinion among the public as to his guilt. In addition, before the trial began, the Ministry of Justice stated publicly that Mr. Ferrer García was a criminal, not a political prisoner, in a message that was a clear violation of his right to be presumed innocent during the trial. This right includes protection from public accusations in which the accused person is declared guilty without his or her guilt having been established through a fair, independent, impartial trial and in accordance with due process.<sup>23</sup>

61. In this context, the Working Group also notes that Mr. Ferrer García's right to a public trial with all the guarantees necessary for his defence, which is protected by articles 10 and 11 of the Universal Declaration of Human Rights, was not respected. The source reports that the trial was held in camera. Diplomatic representatives were not allowed to enter the courtroom as observers. The lawyer who was supposed to be defending Mr. Ferrer García prevented key witnesses, who had been in the place where the offence of bodily harm had allegedly been committed at the relevant time, from testifying. Furthermore, the lawyer did not challenge the judge's refusal to hear the testimony of the alleged victim's wife, who was allegedly claiming that the victim's injuries were the result of a motorcycle accident. The source also reports that on Friday, 3 April 2020, Mr. Ferrer García and his co-defendants were taken to the court to be informed verbally of the ruling and that Mr. Ferrer García did not receive a copy of the ruling, which meant that he was unable to exercise his right of appeal.<sup>24</sup>

62. In the light of the foregoing, the Working Group concludes that the non-observance of the international norms relating to the right to a fair trial, established in articles 9, 10 and 11 of the Universal Declaration of Human Rights, is of such gravity as to give Mr. Ferrer García's detention an arbitrary character under category III.

63. In view of the information received about the enforced disappearance of Mr. Ferrer García and the allegations of torture and other cruel, inhuman or degrading treatment, the Working Group, in accordance with paragraph 33 (a) of its methods of work, refers the

<sup>20</sup> Ibid., guideline 5.

<sup>21</sup> Opinion No. 45/2019, para. 69.

<sup>22</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 15 and 19; and United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 58.

<sup>23</sup> Opinions No. 90/2017, No. 76/2018, No. 89/2018, No. 6/2019 and No. 12/2019.

<sup>24</sup> Opinion No. 83/2019, para. 76.

present case to the Working Group on Enforced or Involuntary Disappearances and to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

(iv) Category V

64. The Working Group is of the view that the detention described in the present case is one of a series of arbitrary detentions carried out by the authorities of Cuba against members of political opposition parties, human rights defenders and people who are critical of the authorities' actions or the Government.<sup>25</sup>

65. The detention of Mr. Ferrer García reflects a systematic practice of arbitrary detention, which, as this Working Group has been able to observe,<sup>26</sup> has been engaged in by the Cuban authorities for decades against people who belong to civil society organizations and citizen groups or who participate in public and community activities that are inconvenient to the government authorities.

66. Consequently, Mr. Ferrer García's detention constituted a violation of international law, because he was deprived of his liberty as a result of discrimination based on his political opinion and his status as a member of the Unión Patriótica de Cuba, in breach of articles 1 and 7 of the Universal Declaration of Human Rights. His detention is therefore arbitrary under category V.

67. Lastly, the Working Group would like to underline that this is not the first case of arbitrary deprivation of liberty in Cuba that it has examined in recent years. The conclusions reached by the Working Group in its opinions concerning Cuba show that there is systematic use of arbitrary detention.<sup>27</sup> In this context, the Working Group has requested that the Government allow it to visit the country in order to gain a better understanding, on the ground, of the issue of deprivation of liberty.<sup>28</sup> However, the Government has not responded favourably to these requests.

### Disposition

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

The deprivation of liberty of José Daniel Ferrer García (and the ongoing interference with his liberty through house arrest), being in contravention of articles 3, 9, 10 and 11 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

69. The Working Group requests the Government of Cuba to take the steps necessary to remedy the situation of Mr. Ferrer García without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

70. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to rescind the house arrest order against Mr. Ferrer García immediately, ensuring his full release, and to accord Mr. Ferrer García an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the COVID-19 pandemic and the threat that it poses in places of detention, the Working Group urges the Government to take urgent action to ensure his full and immediate release.

71. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr.

<sup>25</sup> CERD/C/CUB/CO/19-21, para. 13, and CAT/C/CUB/CO/2, para. 20.

<sup>26</sup> Opinions No. 12/2017, No. 55/2017, No. 64/2017, No. 59/2018, No. 66/2018, No. 63/2019 and No. 4/2020.

<sup>27</sup> Ibid.

<sup>28</sup> Letter sent on 31 March 2016 to the Permanent Mission of Cuba to the United Nations Office at Geneva and other international organizations in Switzerland.

Ferrer García and to take appropriate measures against those responsible for the violation of his rights.

72. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances and to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders.

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

#### **Follow-up procedure**

74. 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 the house arrest order against Mr. Ferrer García has been rescinded and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Ferrer García;
- (c) Whether an investigation has been conducted into the violation of Mr. Ferrer García's rights 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 customary international law as reflected in the Universal Declaration of Human Rights (under which a lawful arrest is one that is made either in flagrante delicto or on the basis of a court order), in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

75. The Government is invited to inform the Working Group of any difficulties 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.

76. 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.

77. 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 they have taken.<sup>29</sup>

*[Adopted on 26 August 2020]*

---

<sup>29</sup> See Human Rights Council resolution 42/22, paras. 3 and 7.