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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-ninth session, 21–25 August 2017

Opinion No. 64/2017 concerning Julio Alfredo Ferrer Tamayo (Cuba)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 5 May 2017 the Working Group transmitted to the Government of Cuba a communication concerning Julio Alfredo Ferrer Tamayo. The Government replied to the communication on 30 June 2017; the reply was transmitted to the source on 7 July 2017, who in turn submitted additional comments on 21 July 2017. 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. Julio Alfredo Ferrer Tamayo is a human rights lawyer, born in Cuba in 1958.
5. According to the information received, Mr. Ferrer Tamayo was arrested on 23 September 2016 during a search at the headquarters of Cubalex legal information centre, a non-governmental organization (NGO) of which he is a member, in the town of Arroyo Naranjo, Havana province. The deprivation of liberty was at the behest of the Attorney General's Office and was carried out by the National Revolutionary Police. The source alleges that no search warrant or detention order was produced at the time of the arrest and that Mr. Ferrer Tamayo was not informed of the factual or legal basis for his deprivation of liberty. Mr. Ferrer Tamayo was allegedly forced to remove his clothes and subjected to humiliating and degrading body searches.
6. The source notes that, during the search, other members of Cubalex were also detained for some 13 hours and questioned. In addition, electronic equipment and documents related to the organization's work were confiscated. Apparently, the operation was designed to obtain information on the organization's work and members, its income, the nature of the services it provides and its users.
7. Mr. Ferrer Tamayo was allegedly transferred by the National Revolutionary Police to the police station in Zanja Street, in central Havana, where he was detained in unsanitary conditions. His admission as a detainee was not recorded at the police station, supposedly because it was a counter-intelligence case. His family was unable to locate him until after 10.30 p.m. on 23 September 2016. On 29 September 2016, he was transferred to block 12 of prison No. 1580, where he remains to this day, in a fragile state of health.
8. On 5 October 2016, members of Cubalex and relatives of Mr. Ferrer Tamayo attempted to file an application for habeas corpus before the criminal chamber of the People's Supreme Court. The application was denied on the grounds that Mr. Ferrer Tamayo had already been sentenced.
9. On 18 October 2016, 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, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment transmitted a communication to the Government of Cuba (AL CUB 3/2016), expressing their concern about harassment and reprisals against lawyers and other human rights defenders for their work defending human rights and, in particular, for their cooperation with United Nations human rights mechanisms. The harassment and reprisals dealt with in the letter of the special mandate holders includes the search of Cubalex headquarters and Mr. Ferrer Tamayo's arrest in the course of this operation.
10. The source notes that so far Mr. Ferrer Tamayo has not been brought before a judge. Nor has he been formally charged with any offence in relation to his detention or officially notified of the grounds for his continued detention.
11. It would appear that State officials casually mentioned, in front of Mr. Ferrer Tamayo, that his detention was in enforcement of decision No. 99 of 15 June 2015 in case No. 204/14 handed down by the Second Criminal Chamber of the Provincial People's Court of Havana, whereby he had been sentenced to 3 years' imprisonment for the offence of falsifying public documents. However, between his arrest and the receipt of the source's submission, Mr. Ferrer Tamayo was not brought before the Court with the aim of confirming his imprisonment.
12. The source alleges that the real reason for Mr. Ferrer Tamayo's detention was his work promoting human rights. Depriving him of his liberty was intended to hinder his work as a lawyer providing legal advice to victims of human rights violations. Mr. Ferrer Tamayo is imprisoned for demanding that the local authorities respect the law and the right to freedom of association in connection with his attempts to register an independent civil society organization. In addition, the source reports that a relative of Mr. Ferrer Tamayo

was also detained as part of the same pattern of reprisals against both individuals for their work in promoting human rights.

13. Case No. 204/2014 relates to a criminal trial. Nonetheless, it is based on administrative procedures for the legalization of a civil society organization, as well as on a set of criminal complaints lodged by and against Mr. Ferrer Tamayo, as explained below using the information received from the source.

14. Mr. Ferrer Tamayo had been attempting to register and have legalized an organization called Asociación Jurídica Cubana (Cuban Law Association) since January 2009. However, the Ministry of Justice and the people's courts alike had rejected the establishment of the association on the grounds that it was contrary to the purposes of the State.

15. On 14 January 2012, Mr. Ferrer Tamayo was summoned and later notified of a complaint against him (No. 33359). However, the complaint was seemingly closed until 2014.

16. Six days later, on 20 January 2012, the Ministry of Justice denied the official establishment of Asociación Jurídica Cubana. In response, Mr. Ferrer Tamayo filed a complaint against the Ministry on 12 June 2012.

17. On 18 June 2012, six days after the filing of the complaint, the police charged Mr. Ferrer Tamayo with fraud. The charge was later stayed and the Prosecution Service subsequently determined that the acts did not constitute the offence of fraud.

18. On 30 July 2012, Mr. Ferrer Tamayo filed another application against the Ministry of Justice before the Second Civil Chamber of the Provincial People's Court of Havana for rejecting the legalization of Asociación Jurídica Cubana.

19. The next day, on 31 July 2012, a relative of Mr. Ferrer Tamayo was detained. On 9 January 2014, the Second Criminal Chamber of the Provincial People's Court of Havana opened a case against the relative, despite the fact that Mr. Ferrer Tamayo had been denouncing violations of due process for two years since the detention took place.

20. At the end of 2013, the People's Supreme Court issued a decision definitively rejecting the legalization of Asociación Jurídica Cubana. Subsequently, on 17 March 2014, Mr. Ferrer Tamayo requested a review of the administrative procedure whereby the registration of the association had been denied.

21. On 27 March 2014, 10 days after the request for review, Mr. Ferrer Tamayo was summoned and notified that an investigation had been opened into the complaint filed against him in 2012 (No. 33359), which had remained closed for two years. He was required to pay a cash bond without any prior proceeding as an alternative to pretrial detention. This led to the opening of case No. 204/2014.

22. In response, Mr. Ferrer Tamayo lodged complaints for abuse of power and other complaints and challenges and submitted a statement of disagreement with the legal determination of the charge of fraud. None of these complaints or statements was acted on by the authorities.

23. On 7 October 2014, Mr. Ferrer Tamayo filed, with the People's Supreme Court, a complaint of coercion against the president of the Second Criminal Chamber of the Provincial People's Court of Havana for her actions during the criminal case against Mr. Ferrer Tamayo's relative.

24. On 7 November 2014, the Second Criminal Chamber of the Provincial People's Court of Havana initiated proceedings in case No. 204/2014 against Mr. Ferrer Tamayo. This is the same chamber whose judge was the subject of the complaint the month before. In response, on 24 November 2014, Mr. Ferrer Tamayo requested that the judge recuse herself out of concern that she would not be impartial. On the same day, he filed an application for reconsideration, to which he did not receive a response.

25. On 26 December 2014, the Criminal Chamber of the People's Supreme Court issued decision No. 3656, dismissing the appeals of the 6-year sentence handed down to Mr. Ferrer Tamayo's relative. On 2 February 2015, Mr. Ferrer Tamayo filed a petition of

annulment in relation to decision No. 3656 with the Civil and Administrative Chamber of the People's Supreme Court. Mr. Ferrer Tamayo lodged a number of written complaints for judicial arbitrariness on the part of the Second Criminal Chamber in both the case against him and the case against his relative.

26. On 20 February 2015, in relation to case No. 204/2014, the Second Criminal Chamber of the Provincial People's Court of Havana issued a decision changing the preventive measures from cash bond to pretrial detention. Mr. Ferrer Tamayo, who was in attendance, was deprived of his liberty and transferred to prison. On 9 March 2015, Mr. Ferrer Tamayo applied for a modification of the pretrial detention order, which was granted on 14 April 2015.

27. However, Mr. Ferrer Tamayo was not released, presumably because of the other charge against him, namely insult against a judge. He had been convicted in that connection on 9 March 2015, in case No. 35, by the summary criminal proceedings chamber of the People's Municipal Court of Plaza de la Revolución. Mr. Ferrer Tamayo was tried and sentenced to 6 months' detention. The decision was appealed and sent for review, but both remedies were rejected. He served the 6-month sentence between 20 February and 21 September 2015.

28. During his detention, Mr. Ferrer Tamayo was tried in relation to case No. 204/2014, where he was accused of falsifying public documents. In this connection, he was sentenced to 3 years' imprisonment. During the same period, Mr. Ferrer Tamayo's relative remained deprived of liberty and was sentenced to 6 years' imprisonment for the offence of influence peddling.

29. On 1 July 2015, Mr. Ferrer Tamayo lodged an appeal, which was dismissed on 11 December 2015 by the chamber on offences against State security of the People's Supreme Court. In response, Mr. Ferrer Tamayo requested the initiation of a special review procedure, but to no avail.

30. Mr. Ferrer Tamayo joined the Cubalex legal information centre on 1 October 2015. On 11 November 2015, on behalf of the organization, he undertook to register it with the competent authorities. On 19 July 2016, the Directorate for Associations of the Ministry of Justice notified Cubalex of decision No. 20 of 18 July 2016, denying its application for legal registration.

31. Following the vain attempts to register the association, Cubalex's headquarters were searched on 23 September 2016, at which time Mr. Ferrer Tamayo was deprived of his liberty, as described above. At the time of submission, he had not yet been brought before a judge.

32. The source alleges that Mr. Ferrer Tamayo's detention is arbitrary under category II of the methods of work because it resulted from the exercise of the rights to freedom of assembly, association, opinion and expression. The detention is also arbitrary under category III on account of a violation of the right to a fair trial and due process given that Mr. Ferrer Tamayo was detained without a warrant, in violation of the presumption of innocence, without being informed of the reasons for his arrest, without being brought before a judge and without any real opportunity to challenge the basis for his detention. Lastly, the source alleges that the detention is arbitrary under category V because it amounts to discrimination on grounds of Mr. Ferrer Tamayo's political views and position.

Response from the Government

33. According to the information received from the Government, Mr. Ferrer Tamayo was detained for evading justice because he had failed to report to the prison to serve a 3-year sentence handed down by the Provincial People's Court of Havana on 15 June 2015 for the offence of falsifying public documents under article 250 of the Criminal Code.

34. The Government maintains that the investigation demonstrated that Mr. Ferrer Tamayo falsified public documents in order to fraudulently gain co-ownership of a building in Cerro, Havana.

35. Mr. Ferrer Tamayo filed an appeal against the decision of the Provincial People's Court, which was dismissed by the Supreme Court in decision No. 1305 of 11 December 2015. The conviction having been upheld, Mr. Ferrer Tamayo was summoned to begin serving his sentence on 27 January 2016. As he failed to report to the prison, the National Revolutionary Police issued a warrant for his arrest on 1 February 2016.

36. On 24 March 2016, the National Revolutionary Police reissued the warrant and, on 31 May 2016, the Provincial People's Court of Havana declared Mr. Ferrer Tamayo a rebel and fugitive of the law in accordance with the legislation in force.

37. Mr. Ferrer Tamayo's lawyer filed applications for review of the decisions of the Provincial People's Court and the Supreme Court; both applications were considered and dismissed by the Supreme Court.

38. According to the information provided by the Government, Mr. Ferrer Tamayo was arrested during the search of the Cubalex premises conducted by the Attorney General's Office, the criminal investigation body, the National Tax Bureau, the Institute of Physical Planning and the Inspection and Oversight Directorate on 23 September 2016.

39. According to the Government, the arrest was not in the least violent. Mr. Ferrer Tamayo was transferred to the police station on Zapata y C in Plaza de la Revolución. The place where he was held after his arrest had appropriate sanitation and hygiene. A record was immediately drawn up, including the time, date and reasons for the detention, along with other useful details, as provided for in the Criminal Procedure Act. The detention was entered in the relevant register.

40. According to the Government, Mr. Ferrer Tamayo's relatives were informed of the detention in a timely manner. It should be noted that all detention centres in the country have computerized registers to store detainee information. The particulars of detentions are compiled in the Public Assistance and Information System, which makes it possible to know the whereabouts of any detainee anywhere in the country.

41. The Government notes that the police officers in the case fulfilled the obligation to inform the detainee of his rights and the basis for his detention. Furthermore, information on detainee rights is posted in visible places in holding areas so that they can be read by detainees at all times. Mr. Ferrer Tamayo underwent a medical examination before being placed in the cell and no health problem was detected.

42. The Government states that, since his arrest, Mr. Ferrer Tamayo has been serving the sentence that he had evaded and which will be completed on 6 September 2018.

43. On 6 December 2016, a relative of Mr. Ferrer Tamayo lodged a special habeas corpus application. The application was rejected by the Supreme Court, which found that the detention was in enforcement of a final court decision.

44. The Government notes that Mr. Ferrer Tamayo was not detained for political reasons or for defending human rights; rather, he was detained because he had been convicted of an ordinary offence and had evaded the associated penalty.

45. The Government stresses that Mr. Ferrer Tamayo has a criminal record dating back to 2004, including ordinary offences such as fraud and the falsification of public documents. In addition to these prior criminal penalties, he was temporarily barred from practising law. This auxiliary measure was adopted in 2015 for a period of four years. He does not currently meet the requirements to exercise as a lawyer, although he did graduate with a law degree.

Additional comments from the source

46. The Government's response was transmitted to the source for comment on 7 July 2017; the source submitted comments to the Working Group on 21 July 2017. In these comments, the source reiterates that Mr. Ferrer Tamayo was detained on political grounds and in reprisal for exercising his rights to freedom of peaceful assembly, association, opinion and expression by attempting to have Cubalex and the Asociación Jurídica Cubana legally registered.

47. Concerning the Government's point about the conviction for falsifying public documents in order to gain ownership of a building, the source notes that Mr. Ferrer Tamayo officially resides in the building, which has been his home for more than 19 years. In 2008, Mr. Ferrer Tamayo undertook to have his ownership of the house officially recognized on the basis that, for 10 years, he had shared the home with the former owner, who had since emigrated. Based on this information, the authorities acceded to his request and transferred ownership to him through a sale contract with the bank. Six years later, on 27 March 2014, the authorities initiated a criminal suit against Mr. Ferrer Tamayo. The source recalls that, on 17 March 2014, Mr. Ferrer Tamayo had submitted a request for review of the administrative procedure whereby the legal registration of Asociación Jurídica Cubana had been denied. Ten days later, on 27 March 2014, the Ministry of the Interior officially summoned him to inform him that the complaint against him had been reopened. The source provides the details of the trial, arguing that there were irregularities and inconsistencies, notably the fact that Mr. Ferrer Tamayo was tried in absentia. Mr. Ferrer Tamayo has filed several complaints against the authorities for abuse of power, a challenge and a statement of disagreement with the charge, but has not received a response.

48. Regarding the Government's statement about the appeal, the source stresses that the procedure does not fulfil the right to challenge a decision before a higher court. The source claims that it is not possible for a conviction or sentence to be reviewed in full given that the higher court's jurisdiction is limited to reviewing only the formal or legal aspects of a sentence and therefore excludes important aspects such as the facts and the reassessment of the evidence.

49. As to the Government's claim that Mr. Ferrer Tamayo was detained for evading justice, the source points out that Mr. Ferrer Tamayo remained free for a year, from 21 September 2015 to 23 September 2016, and that, during that year, he was never summoned to begin serving a sentence and was unaware that a warrant had been issued for his arrest. While he was free, at no time was he summoned by the competent authorities. He did not encounter any problems whatsoever in his dealings with government institutions, including the National Assembly, the Council of State and the Supreme Court, in connection with his complaints and challenges. Moreover, he made authorized visits to the prison where his relative is currently being held. The source reiterates that Mr. Ferrer Tamayo was arrested without a warrant in the course of a police search of Cubalex headquarters conducted without a warrant. The source claims that the failure to establish, via the correct legal channels, a reason for Mr. Ferrer Tamayo's deprivation of liberty violates his right to due process.

50. The source provides a thorough account of the events for the months leading up to the detention, including the attempts to register the association and the complaints against public officials, and their apparent connection with reprisals against Mr. Ferrer Tamayo which led to his deprivation of liberty. In the source's view, the authorities' intention was never to enforce the penalty for the ordinary offence; rather, their actual priority was to subdue and pressure him, with the threat of prison, in order to prevent him from exercising his fundamental rights and freedoms, specifically his efforts to ensure that the Asociación Jurídica Cubana and Cubalex was granted legal status. The source indicates that this is part of an ongoing strategy against persons who exercise, or attempt to exercise, their civil and political rights.

51. The source notes that, as a human rights lawyer, Mr. Ferrer Tamayo has spoken out against the Government and that, in Cuba, working in the field of human rights is considered as an anti-revolutionary activity. The source alleges that the law can only be practised within State institutions, that lawyers cannot act on their own initiative or that of a private individual and that the procedure to legalize an association of lawyers is such that the State has absolute control over the association. The source maintains that Mr. Ferrer Tamayo worked pro bono as an independent human rights lawyer and, as such, condemned the State for violations of its international human rights obligations and that his current detention is retaliation for this work.

52. On the day Mr. Ferrer Tamayo was detained, he was not shown an arrest warrant, his identification documents were confiscated, he was questioned, was forced to undress and, naked, was ordered to squat, which in itself is humiliating treatment. The source

recalls that, on 18 October 2016, the Special Rapporteur on Torture, along with other Special Rapporteurs, transmitted a communication to the State following the search conducted on 23 September, expressing their grave concern about the allegations of harassment, reprisals and cruel, inhuman and degrading treatment carried out against human rights defenders in Cuba on account of their legitimate work promoting and protecting human rights.

53. The source notes that, at the time of submission, the authorities had yet to bring Mr. Ferrer Tamayo before a judge to confirm the reason for his detention. The assumptions about the grounds for his deprivation of liberty are based on informal statements made by some officials regarding the enforcement of a previous sentence. However, neither Mr. Ferrer Tamayo nor his family have any official document from the State confirming this, which is another reason why it has been so difficult to challenge the legality of his detention at the domestic level. The source notes that the authorities notified Mr. Ferrer Tamayo's relatives that he would be brought before the Second Criminal Chamber of the Provincial Court of Havana, which had supposedly ordered his deprivation of liberty, but the presiding judge was someone against whom Mr. Ferrer Tamayo had lodged a number of complaints for abuse of power and she refused to hear him.

54. The source indicates that the Government mentioned that a relative of Mr. Ferrer Tamayo initiated a special habeas corpus procedure on 6 December 2016, but it omitted to provide details on the other applications that have been filed and which, at the time of submission, had for the most part yet to be acted on by the competent authorities. According to the source, the Constitution does not provide for any effective remedy to protect individuals against violations of their rights or recognize any national institution in the area of human rights protection and promotion. The only option available is an inter-institutional system for receiving complaints and individual requests, but it is completely ineffective insofar as it merely establishes the obligation to respond, but not to provide a solution or reparation in the event the complaint is upheld, or to take legal action thereon. In practice, the merits of a case are never examined in order to verify alleged violations; in some cases, no response is given at all.

55. Mr. Ferrer Tamayo filed a number of complaints and challenges which were ignored by the police and the prosecution service during the investigation and by the court before the ruling was made. Following his detention on 23 September 2016, he filed more than 26 complaints and challenges with the national authorities, who remained silent regarding 88 per cent of them. Where the authorities did respond, they did so outside the 60-day time period and always negatively.

56. The source notes that the habeas corpus procedure does not satisfy international standards on due process either and is not an appropriate or effective remedy. Under article 467 of the Criminal Procedure Act, the remedy of habeas corpus applies when a person is deprived of his or her liberty and the procedure and guarantees established in the Constitution and the law are not respected, provided that the deprivation of liberty is not in enforcement of a sentence or of a temporary detention order. The law does not provide for derogations of due process in sentencing or temporary detention orders. Furthermore, if a habeas corpus application is processed by the Supreme Court, there is no possibility of appeal since the Court is the highest jurisdiction in the country.

57. The source further notes that 12 days after Mr. Ferrer Tamayo was detained, his family filed a habeas corpus application with the Supreme People's Court, but the Court dismissed it, arguing that the application should be filed with the Provincial People's Court of Havana. However, the presiding judge of the Second Criminal Chamber of the Provincial People's Court of Havana, against whom Mr. Ferrer Tamayo had lodged complaints for abuse of power, also dismissed the application for habeas corpus. A complaint was filed against the judge for refusing to hear the application, but the complaint remains unanswered. The source provides three additional examples of attempts by Mr. Ferrer Tamayo or his relatives to file applications, complaints or challenges that proved ineffective, since thus far they have not received a response.

58. Regarding the Government's point that Mr. Ferrer Tamayo was temporarily barred from practising law, the source notes that the Second Criminal Chamber of the Provincial

People's Court of Havana explicitly and arbitrarily prevented him from defending himself on the grounds that he belonged to an association not registered with the National Organization of Collective Law Practices and therefore did not have the legal authorization to act as a lawyer. In addition, the penalty barring him from the profession is applied only in cases of abuse of power or neglect of official duties. Considering that Mr. Ferrer Tamayo was not connected with any government institution, it follows that he cannot have abused his power or neglected his duty. The source contends that the penalty was imposed in order to force him to change his behaviour.

59. The source asserts that the legal action against Mr. Ferrer Tamayo and his current deprivation of liberty are reprisals for his work as a human rights defender and independent lawyer tasked with registering two non-governmental organizations that provide legal assistance and for expressing a political opinion which, according to the Government, is at odds with the goals and interests of the socialist State. In the source's view, the fact that there is a causal relationship between the efforts to obtain legal status for the Asociación Jurídica Cubana and Cubalex and the criminal action taken against Mr. Ferrer Tamayo demonstrates that Mr. Ferrer Tamayo's detention is politically motivated.

60. In sum, the source concludes that the Cuban authorities violated a number of Mr. Ferrer Tamayo's rights, specifically his right to freedom of association, peaceful assembly, opinion and expression; his right to due process, including the right not to be arbitrarily detained or imprisoned; his right not to be detained without a warrant; his right to be informed of the reasons for his detention; his right to be brought before a judge; and the right to the opportunity to appeal the legality of his detention and to mount an appropriate defence.

Discussion

61. The Working Group acknowledges the Government and the source's commitment to cooperating with this procedure of the Human Rights Council.

62. In addition, the Working Group notes that, although Cuba has not ratified the International Covenant on Civil and Political Rights and is therefore not a party to that instrument, it did sign the Covenant in 2008 and is therefore favourable to its early ratification.

63. According to the information provided by the parties, the Working Group notes that Mr. Ferrer Tamayo was detained on 23 September 2016, without the State officials producing an arrest warrant, either when he was apprehended or at a later stage. Moreover, the individuals present during the incident in question were questioned in a degrading manner.

64. The Government indicated that the detention was carried out pursuant to an order issued by the authorities; however, it did not provide details or a copy of the order or the signed search report. In addition, the Working Group was unable to establish whether Mr. Ferrer Tamayo was informed, at the time of his arrest, of the legal grounds for his arrest or of any outstanding charges.

65. The Working Group recalls that, in accordance with applicable international law, all arrested persons have the right to be informed, at the time of arrest, of the reasons for their arrest and promptly informed of any charges against them. This implies that, when the authorities are unable to inform an individual, at the time of arrest, of the charges against him or her, including the legal basis for them, they must do so within the next few hours at the most.¹

66. In the light of the foregoing, the Working Group finds that Mr. Ferrer Tamayo's detention was arbitrary under category I of the methods of work given that the arrest was executed without a warrant and that the government officials did not justify or provide a legal basis for Mr. Ferrer Tamayo's deprivation of liberty at the time of his arrest and

¹ See A/HRC/WGAD/2016/57, para. 107. See also A/HRC/WGAD/2017/12, para. 57 and Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 35.

transfer into detention, in violation of article 9 of the Universal Declaration of Human Rights.

67. Furthermore, based on the information received by the Working Group, Mr. Ferrer Tamayo is a member of the legal information centre Cubalex and thus devotes himself to the promotion of human rights through that civil society organization in Cuba. Therefore, the Working Group is of the view that there is a direct link between Mr. Ferrer Tamayo's activities and his deprivation of liberty.

68. Given the above, the Working Group considers that Mr. Ferrer Tamayo's detention was arbitrary under category II of the methods of work insofar as it infringes his right to equality before the law and his right to freedom of thought, conscience, opinion, expression and peaceful organization and assembly, in violation of articles 7, 18, 19 and 20 of the Universal Declaration of Human Rights.

69. In the light of the allegations made by the source concerning the lack of judicial independence, violations of freedom of expression and attacks on the rights of human rights defenders, the Working Group decided to forward the information to the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, for their information and possible action.

70. 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 urges the Government to consider inviting it to conduct a visit to the country.

Disposition

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

The deprivation of liberty of Julio Alfredo Ferrer Tamayo, being in contravention of articles 7, 9, 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I and II.

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

73. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Ferrer Tamayo and accord him an enforceable right to compensation and other reparations, in accordance with international law.

74. The Working Group invites the authorities to consider ratifying the International Covenant on Civil and Political Rights.

75. In accordance with paragraph 33 (a) of its methods of work, the Working Group submits this opinion to the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, for their information and possible action.

Follow-up procedure

76. 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 Julio Alfredo Ferrer Tamayo has been released and, if so, on what date;

(b) Whether an investigation has been conducted into the violation of Mr. Ferrer Tamayo's rights and, if so, the outcome of the investigation;

(c) 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;

(d) Whether any other action has been taken to implement the present opinion.

77. 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.

78. The Working Group requests the source and the Government to provide the above information within six months of the date of the 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.

79. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.²

[Adopted on 25 August 2017]

² See Human Rights Council resolution 33/30, paras. 3 and 7.