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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-second session, 20–24 August 2018

Opinion No. 59/2018 concerning Ariel Ruiz Urquiola (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 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 25 May 2018 the Working Group transmitted to the Government of Cuba a communication concerning Ariel Ruiz Urquiola. The Government replied to the communication on 3 August 2018; the reply was transmitted to the source on 6 August 2018 and the source submitted further comments on 14 August 2018. 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. Mr. Ruiz Urquiola is a Cuban national. By profession, he was a scientific researcher and university professor until 2016; he is now a farmer with usufruct rights.
5. The source provides information on Mr. Ruiz Urquiola's scientific research activities as a marine biologist at the University of Havana, including research projects on the protection of the sea turtles of the Caribbean, undertaken jointly with academics from countries such as Germany, Mexico and the Netherlands.
6. The source also submits comprehensive information on Mr. Ruiz Urquiola's temporary expulsion from the University of Havana in 2003 for not signing a statement by intellectuals that allegedly justified the execution by firing squad of three young Cubans. Furthermore, in 2008, the administration of the Centre for Marine Research expelled him from the university for a second time, accusing him of being a "counter-revolutionary" because work undertaken on his doctoral thesis had led him to express disagreement with the Government's fisheries policy, his disclosure of information about the negative consequences of sea turtle hunting at an international congress held in Mexico posing a threat to the moral standing and integrity of that policy, which would cause economic damage to Cuba.
7. The source provides extensive information about a labour and disciplinary procedure that was brought against Mr. Ruiz Urquiola in 2015. This concluded in 2016 when Mr. Ruiz Urquiola was dismissed from the Centre for Marine Research while he was co-leading a project on biodiversity in the Sierra de Los Órganos highlands, Pinar del Río province, in cooperation with the German Museum für Naturkunde – Leibniz Institute for Evolution and Biodiversity Science and the Humboldt University of Berlin. The reason reportedly given for his dismissal was that of unjustified absence from work.
8. The source reports that on 2 May 2018, two individuals in civilian clothing appeared at the farm leased in usufruct by Mr. Ruiz Urquiola, supposedly to conduct an official inspection. Mr. Ruiz Urquiola, surprised by their presence, verbally identified himself and asked the purported officials to do the same in order to clearly ascertain who they were and to which public body they belonged. The procedural laxity of the purported officials led to an exchange of words in which Mr. Ruiz Urquiola continued to insist that they identify themselves, to which one of the officials replied: "*averígüelo*" (find out for yourself).
9. After nightfall on the same day, the two officials returned to Mr. Ruiz Urquiola's home and served him with a summons to appear at the police station the following day. It is contended that this summons did not give any reason or explanation for its issuance, other than stating he should appear in respect of "legal matters".
10. On 3 May 2018, Mr. Ruiz Urquiola went to the police station, where he was immediately arrested, without being officially informed at the outset of the reason for his detention. Through vague references, he was given to understand that the charge was one of contempt of authority (*desacato*), although he was not informed of the nature of the acts he was accused of committing.
11. The source states that Mr. Ruiz Urquiola was then held incommunicado in the detention facility until the evening of 7 May 2018, the night before his trial, when he was permitted to call a family member; this was the result of his having gone on hunger strike.
12. The source states that Mr. Ruiz Urquiola was not granted access to a lawyer until the day of his trial, while the defence counsel was able to access the documents pertaining to the case only on the morning of the trial, 8 May 2018, and was unable to have any prior contact with Mr. Ruiz Urquiola; this occurred only at the moment of the trial.
13. According to the information provided, the trial took place under the "summary procedure". It is alleged that under Cuban legislation, this involves the severe limitation of procedural safeguards for defendants, as happened in this case.
14. After the trial, described by the source as "rigged" and full of subjective testimony by the complainants, the Municipal Court of Viñales handed down an oral judgment

whereby Mr. Ruiz Urquiola was convicted and sentenced to 1 year's imprisonment for the offence of contempt of authority, as provided for in article 144.1 of the Criminal Code. The source indicates that the defence counsel filed an appeal, but regrets that there is no hope of justice being done in this case.

15. The source highlights that contempt of authority is one of the offences that prosecutors and judges in Cuba commonly apply to dissidents and opponents. The courts usually interpret the law broadly, so that what is technically known as the "hypothesis" may include any response given to the authorities or to those acting on their behalf, including when such persons receive orders to interpret the response as an offence.

16. The source indicates that, given Mr. Ruiz Urquiola's experiences of political and police harassment before, during and after his detention, there is clear political intent and desire to repress a person who openly disagrees with the Government's views.

17. According to the information received, the conditions of detention, including the place of confinement and the food provided, are poor. According to the source, Mr. Ruiz Urquiola is in extremely poor physical condition: "one cannot see any muscles in his face, he is only skin and bones. As well as the food being putrid ..., it is brought out uncovered and then thrown into a rat-infested yard. The prisoners are given two minutes to eat and even though the food is rotten he eats it, but he doesn't have enough time."

18. The source indicates that "30 men are crowded together in a space measuring less than 50 square metres, with one shower and two toilets, without sunlight or the possibility to exercise or go outside. Mr. Ruiz Urquiola has not been assaulted, but other prisoners have been assaulted 'for fun'; for example, a prisoner had an aerosol sprayed in his eyes."

19. In addition, as a result of the criminal proceedings, it appears that an administrative procedure has been initiated against Mr. Ruiz Urquiola, again without written notice, with the aim of cancelling the concession to use the agricultural land which now constitutes his livelihood.

20. The source argues that the case falls under at least two of the categories of arbitrary deprivation of liberty outlined in the methods of work, specifically categories II and III.

Category II

21. The deprivation of liberty resulted from the exercise of human rights. The source indicates that the present case is one of arbitrary detention as a result of the exercise of the right to freedom of expression, as set out in article 19 of the Universal Declaration of Human Rights, which provides that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". It is contended that the case consists in retaliation by the Government against a person who, although not part of the opposition, is openly a dissident.

22. In this regard, the source wishes to highlight that Mr. Ruiz Urquiola has faced reprimands for exercising his rights since 2003, when he was expelled from the University of Havana for the first time for not signing a statement. Since that time, Mr. Ruiz Urquiola has experienced the consequences of his thinking and of the exercise of his right to freely express his scientific and political opinions.

23. In 2008, the administration of the Centre for Marine Research of the University of Havana expelled him for a second time, accusing him of being a "counter-revolutionary" for disagreeing with the policy of the Ministry of Fisheries and disclosing information about the negative consequences of sea turtle hunting in Cuba at an international congress, which endangered the moral standing and integrity of the fisheries policy and allegedly caused economic damage to the country.

Category III

24. The trial was biased and lacking in procedural safeguards. The source emphasizes that information and testimony gathered in respect of the trial suggest that it was characterized by the absence of due process guarantees, as exemplified by the delay in

granting access to defence counsel; the failure to inform the defendant of the charges brought by the prosecution; the difficulties encountered by the defence in accessing the case file; the little time allowed for the preparation of the defence given that the summary procedure had been decreed; the total lack of evidence; and the non-existence of a criminal offence covering the facts of the case; all within a judicial system controlled by the Government itself, often by State security agents who instruct judges how to proceed.

25. The source cites the manner in which the proceedings were conducted and the severity of the sentence – 1 year’s imprisonment – as evidence that judges did not act impartially and that they were sending a strong political message to the victim and to any other person who disagreed with the Government.

Response from the Government

26. On 25 May 2018, the Working Group transmitted the allegations from the source to the Government, requesting detailed information on Mr. Ruiz Urquiola’s case to shed light on the factual and legal grounds for his detention and explain how his detention was compatible with the international human rights obligations of Cuba. The Government replied to the communication on 3 August 2018.

27. In its response, the Government states that it is untrue that Mr. Ruiz Urquiola has been detained arbitrarily, but that he was arrested and punished under criminal law as provided for in applicable legislation, as a result of an investigation and a judicial process in which all the guarantees set forth in national laws were respected.

28. As to the current status of the case, the Government reports that Mr. Ruiz Urquiola has been freed on extra-penitentiary leave owing to incompatibility with the prison regime.

29. In its response, the Government submits that the Municipal Court of Viñales, in case No. 8 of 2018, sentenced Mr. Ruiz Urquiola to 1 year of imprisonment for the offence of contempt of authority, provided for in article 144 (1) of Act No. 62 of 1987 (Criminal Code). A person is liable for this offence when he or she threatens, slanders, defames, insults, offends or in any way outrages or affronts the dignity or decorum of an authority, public official or the agents thereof, during or as a result of the performance of their duties.

30. As a result of the investigations conducted and evidence given during the trial, it was reliably proved that Mr. Ruiz Urquiola insulted two officers of the Forest Guard Corps in the performance of their duties.

31. The Government indicates that on 3 May 2018, officers of the Forest Guard Corps were making a routine round in Pinar del Río province to prevent the indiscriminate felling of trees when they heard the sound of a chainsaw. On approaching, they found that Mr. Ruiz Urquiola was using the machine and had cut down six healthy Cuban royal palm trees.

32. The Government stresses that, in accordance with the single special provision of Act No. 85 of 1998 (Forestry Act), members of the Forest Guard Corps are agents of the forestry authority. Article 4 of this Act provides that the Cuban royal palm is part of the forest heritage and its preservation warrants special attention, while article 50 stipulates that all persons have a duty to prevent acts of depredation in wooded areas.

33. On that legal basis, the two officers of the Forest Guard Corps, identifying themselves as such while wearing correct and complete uniform, requested that Mr. Ruiz Urquiola show them his felling permit. Not being in possession of such a permit, Mr. Ruiz Urquiola began to loudly insult the two officers. To avoid an escalation of the argument, the officers left and, on the same day, filed complaint No. 3726, for the offence of contempt of authority, at the National Revolutionary Police station in the municipality of Viñales. Therefore, the Government refutes the claim that the officers concerned did not follow the correct procedure and that they did not properly identify themselves.

34. The Government considers it significant that Mr. Ruiz Urquiola had previously been caught felling Cuban royal palms without a permit, in 2015, for which he had been given the appropriate warning.

35. Upon learning of the alleged criminal conduct, the competent authorities proceeded to detain Mr. Ruiz Urquiola in strict adherence to Act No. 5 of 1977 (Criminal Procedure

Act), complying with the broad guarantees set forth in the legislation, especially during the arrest. His dignity was respected at all times. The Government submits that it is not true that he was held incommunicado and not permitted to contact his family; and that holding a detainee or prisoner incommunicado is totally alien to criminal and procedural practice in Cuba.

36. The Government indicates that Mr. Ruiz Urquiola was informed of the charges against him and the authority in charge of proceedings ordered that he be detained, in accordance with the law, until an investigation had been conducted. A trial was then held, in compliance with broad criminal law guarantees, at which it was proved that Mr. Ruiz Urquiola was criminally responsible for conduct defined as an offence in the Criminal Code.

37. The Government indicates that the case was dealt with under the summary procedure not as a result of a discretionary decision taken by a court or prosecutor, but because criminal procedure legislation establishes that all cases involving offences punishable by up to 1 year's imprisonment, including contempt of authority, shall be heard by municipal courts under the summary procedure.

38. The Government contends that summary proceedings in Cuba observe all due process guarantees, including the right to a defence, the right to legal representation and the right to a fair and impartial trial, the independence of judges, collegial courts, and the public oral nature of proceedings. It is therefore untrue that the summary procedure entails the limitation of procedural safeguards.

39. In accordance with articles 359 to 383 of Act No. 5 of 1977 (Criminal Procedure Act), a public oral hearing was held on 8 May 2018. At the hearing, the defendant made a statement and the furnished evidence was presented. There were no restrictions on the conduct of the defence, which was entrusted to a member of the Pinar del Río collective law practice. The Government indicates that the criminal responsibility of the defendant was proved at the hearing and the Court therefore imposed the appropriate penalty. Thus, it is not true that the trial was "rigged and full of subjective testimony" or that the conduct of the defence was obstructed.

40. The defence filed an appeal against the conviction before the People's Provincial Court of Pinar del Río. Upon completing all the prescribed formalities, having performed the usual evaluations and checked the diligence and legality of the actions of the Municipal Court, the Criminal Division of the Provincial Court rejected the appeal on 22 May 2018.

41. For the enforcement of the sentence, Mr. Ruiz Urquiola was transferred to the Cayo Largo penitentiary centre for work and study in Pinar del Río province. The Government states that this is an open, minimum security facility with decent conditions of food, hygiene and sanitation.

42. The Government considers that living conditions in Cuban prisons and the treatment afforded to detainees and prisoners fully comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). It therefore refutes the claim that Mr. Ruiz Urquiola has been subjected to poor conditions of detention or overcrowding and that he has been given food that was spoiled or served in unhygienic conditions. It is untrue that the prison staff mistreat or assault prisoners. The treatment afforded to the prison population is in full conformity with the Nelson Mandela Rules and the lawfulness of that treatment is subject to strict supervision by the Attorney General's Office.

43. The Government reports that in response to complaints from Mr. Ruiz Urquiola's family about the alleged beatings and poor treatment he received in the prison system, which he subsequently denied, rigorous investigations were conducted that yielded no evidence that any of his rights had been violated. A response was provided to the family, detailing these investigations and their findings.

44. According to the Government, Mr. Ruiz Urquiola's alleged physical deterioration was not caused by the treatment he received in prison, but by his personal decision to undergo voluntary starvation from 20 June 2018. Once he had declared this course of action, he was interviewed by a prosecutor responsible for supervising lawfulness in prisons and transferred to the Abel Santamaría provincial hospital to ensure that he received adequate

health care. During the period in which he remained in voluntary starvation, Mr. Ruiz Urquiola received treatment, in accordance with the World Medical Association Declaration of Malta on Hunger Strikers, that was rational, persuasive and humane. Communication was maintained between the medical staff, Mr. Ruiz Urquiola and his family and his clinical condition was continuously monitored to ensure the preservation of life.

45. Currently, Mr. Ruiz Urquiola is neither detained nor imprisoned. On 3 July 2018, the Provincial Court of Pinar del Río granted him extra-penitentiary leave owing to incompatibility with the prison regime, a medical commission having certified that he had a psychiatric disorder. On the same day, after being notified of the decision, Mr. Ruiz Urquiola discharged himself and went to the home of a relative.

46. The Government also reports that in view of Mr. Ruiz Urquiola's record of forest depredation and his repeated violations of the rules established by the Ministry of Agriculture for the management of land in usufruct, including failing to use the land for a productive purpose, the Ministry decided to launch a process to terminate the usufruct that had been granted to him. This administrative decision, which is provided for in applicable legislation on the transfer of land in usufruct, is not derived from or connected in any way to the criminal penalty that was imposed.

47. According to the Government, it is not true that the measures taken are the result of political and police harassment against Mr. Ruiz Urquiola and that contempt of authority is an offence that is "commonly applied to dissidents and opponents". In Cuba, criminal investigations and procedure function independently of the political opinions of parties to proceedings. Acts which are defined as offences are investigated, tried and punished on the basis of criminal law, not people's political ideas. In the specific case of Mr. Ruiz Urquiola, the offence of contempt of authority is invoked to punish the objective and clearly demonstrated act of having offended the dignity and decorum of two agents of an authority in the performance of their duties.

48. The allegation that Mr. Ruiz Urquiola was temporarily expelled from the University of Havana in 2003 and 2008, because of his political opinions, is equally false. According to the Government, the truth is that he repeatedly threatened and disrespected work colleagues. Such actions are categorized as violations of labour discipline under the Labour Code, and for that reason, on 18 June 2015, Mr. Ruiz Urquiola was temporarily demoted to a lower paid or lower ranking position for a period of six months. He did not comply with this disciplinary measure, nor did he return to work, which constitutes a serious violation of labour discipline. As a result, on 25 April 2016, a further disciplinary measure, consisting in definitive dismissal, was imposed. Mr. Ruiz Urquiola appealed against this measure to the labour justice board of the University of Havana, which rejected his appeal on 31 May 2016.

49. Mr. Ruiz Urquiola lodged an appeal against that decision before the courts. The Municipal Court of La Habana Vieja, in judgment No. 73 of 7 July (case No. 89 of 2016), having examined the documents pertaining to the case, dismissed the appeal.

50. The Government submits that the information provided demonstrates that the detention and criminal prosecution of Mr. Ruiz Urquiola bear no relation whatsoever to his political opinions or to the exercise of human rights. He was detained as a consequence of a reported offence, while all the safeguards laid down in criminal legislation were respected. Criminal liability was proved in a fair trial in which the accused had access to legal representation and to a defence. He also had access to legally established remedies for challenging the court's decision. All the guarantees set forth in legislation were respected during his arrest and detention.

51. Based on this information, the Government hopes that the allegations will be dismissed on the grounds that they are based on false premises and are the result of fabrications intended solely to discredit the Government in the area of human rights.

Further comments from the source

52. On 6 August 2018, the Working Group transmitted the reply from the Government to the source for any further comments. In response, the source submitted its final comments on 14 August 2018.

53. Before responding to the Government's comments on the procedural and substantive issues, the source considers it necessary to submit some brief remarks on Mr. Ruiz Urquiola's legal status.

54. The source clarifies that it is not technically accurate that Mr. Ruiz Urquiola has been "freed", since in fact he is currently on extra-penitentiary leave, which was granted on 2 July 2018 pursuant to article 31 (3) (b) of the Criminal Code. This legal status may be revoked by the authorities at any time and on any grounds, which would result in his return to prison. Unlike time spent on parole, which is counted as time spent serving the sentence, time spent on extra-penitentiary leave is only taken into account at the end of the sentence, provided that the convicted person has shown good conduct while under the measure. Good conduct is understood as not exercising rights and obeying the dictates of the Communist Party of Cuba and the principles of "socialist society", and it is endorsed or evaluated by the very organizations, sectors and officials controlled by the Communist Party. For that reason, although Mr. Ruiz Urquiola is not in prison, it is contradictory to speak about "freedom" while it is threatened by his current legal situation.

55. The source maintains that the legal proceedings against Mr. Ruiz Urquiola were arbitrary because they did not fulfil the guarantees of a fair trial, including the presumption of innocence, the right to be made aware of the charges with sufficient time to prepare a defence, the right to timely legal assistance, the right to challenge evidence, and the right to an impartial tribunal. The case of Mr. Ruiz Urquiola was heard under the summary procedure set forth in the Criminal Procedure Act.

56. According to the source, the "direct statement" (*atestado directo*) procedure, which basically consists in the immediate detention of the accused in a cell of the National Revolutionary Police, without access to defence counsel until the day of the trial, was selectively applied in this case.

57. This procedure has been strongly questioned owing to its lack of safeguards. The Governing Council of the People's Supreme Court itself stated that the procedure "needs to have its regulations updated as part of the process of improving judicial activity, based on the quality of investigations, and strengthening respect for the guarantees and rights of defendants". It also noted that "in no circumstances may this procedure be used in cases of complex crimes or crimes of particular importance".

58. The source recalls that after his arrest on 3 May 2018, Mr. Ruiz Urquiola was held incommunicado, without knowing the reason for that measure, and was unable to contact his relatives until the evening of 7 May. Even then, he was not granted access to a lawyer.

59. Family members were only able to hire a lawyer on 8 May 2018, the day of the trial. Consequently, the professional defence counsel only had a short time, moments before the hearing, to study the charge and the documents pertaining to the case, and to have brief contact with Mr. Ruiz Urquiola. As a result, Mr. Ruiz Urquiola did not enjoy due process guarantees, while, in the absence of a prior written indictment, the defence was unable to properly prepare a rebuttal.

60. The source alleges that the judges of the People's Municipal Court of Viñales (the court of first instance) and of the First Criminal Division of the People's Provincial Court of Pinar del Río (the appellate court), were completely biased against Mr. Ruiz Urquiola, only accepting the testimony of the forest guards as valid.

61. It claims that the judges excluded from the proceedings a video reliably documenting what happened on the day of the incident; at no stage did the courts admit this evidence, leaving Mr. Ruiz Urquiola totally without a defence and at the mercy of the version and interpretation of events put forward by the forest guards, or agents of the authority.

62. The source reiterates that judges accepted, without admitting any challenge or evidence to the contrary, the testimony that the two officers were in uniform, which, as the video proves, is false. They also accepted that the forest guards had identified themselves, which the video shows is also untrue, as the officers were vague in identifying themselves and one of them, on being asked his name, replied “find out for yourself”.

63. According to the source, admitting the video evidence or demanding honesty from the officials who were supposedly insulted would have prevented the miscarriage of justice that ensued as a result of presenting Mr. Ruiz Urquiola’s words, uttered at a time when he felt harassed and was anxious to identify the purported officials, as contempt of authority. The video does not show any offences being committed; only a person in despair at an injustice.

64. The source contends that if there had been no repressive intent on the part of the authorities, Mr. Ruiz Urquiola’s words would not have been characterized as criminal conduct, and still less used to justify the imposition of a penalty. It recalls that article 8 (2) of the Criminal Code states that “offences shall not be deemed to include those actions or omissions which, although having the constituent elements of an offence, do not represent a danger to society owing to the minor nature of their consequences and the personal circumstances of their author”.

65. The source points out that the appeal court ruling handed down on 22 May 2018 placed emphasis on the accused being “known for not taking part in the activities of social and grass-roots organizations in his area of residence, interacting with persons of poor conduct”, the latter being understood as persons not affiliated with the ruling party and the organizations controlled by it.

66. In any case, according to the source, the fact that proceedings might be legal does not mean that they are fair. Normativism is not the sole reference point when analysing, interpreting or applying the law. The source refers to the occasions on which the Working Group has examined and ruled on the concept of “pre-criminal danger to society”.

67. The source notes that the emphasis on normativism masks the political conditioning underlying the decisions taken by officials, especially judges, who are said to be constantly reminded by members of the political police that “jurisprudence is but the will of the dominant class made into a law”.

68. According to the source, the Government’s response goes into the merits of the legal case, adding elements that are not only unproved, but which were never adduced before the courts, such as the allegation that Mr. Ruiz Urquiola cut down six Cuban royal palms. The judgment makes no reference whatsoever to the felling of palm trees.

69. The source alleges that the Government’s intention is to discredit the victims of its repressive actions, even going so far as to mention the supposed ill-health of the victim, a circumstance that was never taken into account in what it claims was a rights-based process.

70. Finally, the source highlights that there is a wealth of evidence attesting to Mr. Ruiz Urquiola’s status as an environmental activist. His record includes, in 2003, in the exercise of his freedom of conscience, the refusal to sign a statement in favour of the administration of the death penalty to three young Cubans. The source alleges that Mr. Ruiz Urquiola has a history of being harassed by governmental institutions, dating from that time.

71. Most of Mr. Ruiz Urquiola’s activities have focused on the protection of nature and endangered species. However, because his complaints have touched on matters in which the Government has its own interests, his environmental calling has taken the form of a defence of his individual rights.

72. Based on the foregoing, the source reiterates its request that: (a) Mr. Ruiz Urquiola’s detention be declared arbitrary; (b) the Government be condemned for this repressive measure; and (c) appropriate compensation be ordered for the harm caused to the detainee and his family. Bearing in mind Mr. Ruiz Urquiola’s current legal situation, the source contends that it would be fair to grant his complete and unconditional freedom.

Discussion

73. The Working Group acknowledges the Government's willingness to cooperate with the bodies of the Human Rights Council, and with the Working Group in particular, as expressed in its reply to the original communication from the source. The Working Group is also grateful to the source for its contributions.

74. The Government reports that on 3 July 2018, Mr. Ruiz Urquiola was granted extra-penitentiary leave owing to incompatibility with the prison regime, having been certified as having a medical disorder. Therefore, in accordance with paragraph 17 (a) of its methods of work, the Working Group decided to address the communication through its regular procedure and to issue this opinion.

75. 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

76. Mr. Ruiz Urquiola is a Cuban citizen, a renowned researcher in biology and a university professor.

77. On the basis of the contributions by the parties, the Working Group noted that in 2003, Mr. Ruiz Urquiola objected to signing a statement by intellectuals that justified the execution by firing squad of three youths. In 2008, while working on his doctoral thesis, he criticized the Government's fisheries policy. The source alleges that Mr. Ruiz Urquiola's detention in May 2018 was the result of him exercising freedom of expression by refusing to sign the aforementioned statement and by criticizing the fisheries policy. The Working Group, in the absence of information establishing a link between the facts of 2003 and 2008 and Mr. Ruiz Urquiola's detention in May 2018, was unable to conclude that this was an arbitrary detention under category II.

Category I

78. However, the Working Group noted that on 2 May 2018, Mr. Ruiz Urquiola had an altercation with two individuals who were not identified as State officials and who tried to enter his property. Those individuals withdrew and later returned with a summons requiring him to go to the police station to address "legal matters". The following day, having complied with the summons, Mr. Ruiz Urquiola was deprived of his liberty.

79. In the light of the facts and allegations submitted by the parties, the Working Group first examined whether there was a legal basis for Mr. Ruiz Urquiola's detention. The source and the Government agree that the deprivation of liberty occurred on 3 May 2018 after Mr. Ruiz Urquiola voluntarily appeared at the police station, having received a summons requesting his presence to clarify legal matters. The source indicated, and the Government was unable to prove otherwise, that this summons did not contain sufficiently clear information about the reasons for the appearance, thus preventing the preparation of a possible preliminary defence. Mr. Ruiz Urquiola was not informed of any criminal charges against him.

80. In addition, the source submitted that Mr. Ruiz Urquiola was held in incommunicado detention and was unable to contact his lawyer or his family during the first four or five days of his detention. The Government failed to establish the falsity of these arguments, nor did it demonstrate that Mr. Ruiz Urquiola was presented before a judge during the first 48 hours of his detention or that within that period he was given an effective opportunity to challenge the lawfulness of his deprivation of liberty. The Government also failed to disprove the source's allegation that Mr. Ruiz Urquiola only had access to the documents pertaining to the case, and thus to information on the charges, moments before the hearing, five days after his arrest.

81. In view of the failure to provide relevant legal information to the detainee, and of the incommunicado detention to which he was subjected, the Working Group concludes that

¹ See A/HRC/19/57, para. 68.

Mr. Ruiz Urquiola was denied the right to challenge the lawfulness of his detention, at the outset, before a judicial authority.

82. As the Working Group has repeatedly stated in its jurisprudence, even when the detention of a person is carried out in conformity with national legislation, the Working Group must ensure that the detention is also consistent with the relevant provisions of international law.² Under international human rights law, no one may be deprived of his or her liberty except for the reasons established by law and following due process. In the view of the Working Group, this obligation requires that States inform the person of the legal basis for his or her detention at such time as it occurs.

83. Similarly, international standards for the protection of human rights require that anyone arrested or detained on a criminal charge should be brought before a judicial authority without delay. While the time that this takes may vary, a “delay” is considered to be any amount of time in excess of 48 hours, on the understanding that this is sufficient time to transport the individual and to prepare the court hearing; longer periods must be absolutely exceptional and justified by specific circumstances. The Working Group considers that a judicial review of detention is essential for establishing a legal basis. It is not satisfactory that Mr. Ruiz Urquiola received a summons to go to the police station to clarify legal matters and was then subjected to incommunicado detention from the time of his arrest on 3 May until 7 May 2018, hours before the trial hearing. The Working Group also considers that international norms protecting the right to liberty and security of person require the detainee’s physical presence before a judicial authority. In this case, such guarantees were not respected, strengthening the Working Group’s conclusion that there was no legal basis for the detention of Mr. Ruiz Urquiola.

84. The Working Group has consistently argued that holding persons incommunicado is not permitted under international human rights law, because it breaches the right to challenge the lawfulness of detention before a judge.³ The Working Group therefore concludes that Mr. Ruiz Urquiola’s detention lacked a legal basis and was contrary to articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights. Accordingly, it deems it to be arbitrary under category I.

Category III

85. With regard to international due process and fair trial standards, the Working Group has already been persuaded that Mr. Ruiz Urquiola was held incommunicado from 3 to 7 May and prevented from contacting a lawyer of his choice. In addition to preventing any challenge to the legal basis for detention, this situation also made it impossible to adequately prepare a defence for the trial which took place on 8 May. In fact, it was only moments before the trial that Mr. Ruiz Urquiola learned of the proceedings and met his defence counsel, which clearly impaired the exercise of his right to an adequate defence. Given that – as the Government reported – the trial was held under the summary procedure owing to the nature of the offence and the punishment, the defendant did not have sufficient time to prepare his defence. Moreover, the source alleged that while the court considered evidence for the prosecution, the defendant was prevented from presenting relevant evidence for the defence, even though this was the subject of public debate in the country. Mr. Ruiz Urquiola was sentenced to 1 year’s imprisonment for contempt of authority.

86. In that context, the Working Group recalls that under customary international law, everyone has the right not to be arbitrarily deprived of liberty,⁴ and persons accused of a criminal offence are entitled in full equality to a fair hearing by an independent and impartial tribunal for the examination of any charges against them.⁵ It also recalls that in accordance with the applicable international law, persons charged with a penal offence have

² For example, see opinions No. 1/2018, No. 79/2017 and No. 42/2012.

³ For example, see opinions No. 45/2017, No. 56/2016 and No. 53/2016.

⁴ Universal Declaration of Human Rights, art. 9. See also A/HRC/22/44, paras. 37 to 75 (deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law).

⁵ Universal Declaration of Human Rights, art. 10.

the right to be presumed innocent and to have a public trial with all due process guarantees.⁶ One aspect of this right is that national judicial authorities must ensure that the parties to the proceedings in question have “the right to equal access to present their full case, and equality of arms”.⁷ Similarly, detained persons have the right to adequate time and facilities to prepare their defence and to communicate with legal counsel of their choice.

87. The Working Group considers that legal assistance must be provided in an appropriate space in order to respect the confidentiality and privacy of legal counsel-detainee communications.⁸ The Working Group has consistently indicated in its jurisprudence that persons deprived of their liberty should be informed and assured of the right to legal assistance by counsel from the moment of apprehension.⁹

88. The Working Group has also indicated that to preserve the equality of arms, every individual deprived of liberty should be guaranteed the right to have access to all material related to the detention or presented to the court by State authorities. The requirement that the same procedural rights be provided to all parties is subject only to distinctions that are based on law and can be justified on objective, reasonable grounds not entailing actual disadvantage or other unfairness to the detained person.¹⁰

89. The foregoing implies that accused persons have the right to present relevant evidence and testimony for their defence and that evidence and witnesses alike shall be examined by the parties to the trial. Once the evidence has been produced, the court shall weigh it in an objective and reasoned manner and shall rule in accordance with the legislative provisions of the State.¹¹

90. In the present case, the Working Group received neither sufficient nor convincing information from the Government proving that Mr. Ruiz Urquiola was duly informed of the reasons for his detention, that he was informed without delay of the charges against him, that he was granted access to counsel and to the documents pertaining to the case, with sufficient time to adequately prepare his defence, and that he was able to present all of the exculpatory evidence that was furnished. In view of the above, the Working Group concludes that the violation of due process rights is of such gravity as to give the detention of Mr. Ruiz Urquiola an arbitrary character under category III, being contrary to articles 9, 10 and 11 of the Universal Declaration of Human Rights.

91. Having been informed of Mr. Ruiz Urquiola’s health problems and the poor quality of the food at the facility where he was deprived of his liberty (the Cayo Largo penitentiary centre for work and study, located in the municipality of Consolación del Sur, Pinar del Río province), the Working Group refers the case to the Special Rapporteur on the right to food and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for their consideration and possible action.

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

93. 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 a visit to the country.

⁶ Ibid., art. 11.

⁷ 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, principle 12, para. 19.

⁸ Ibid., principle 9, paras. 12–15.

⁹ Ibid., para. 12.

¹⁰ Ibid., principle 12, para. 20.

¹¹ See opinions No. 1/2015, No. 14/2017 and No. 15/2017.

Disposition

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

The deprivation of liberty of Ariel Ruiz Urquiola, being contrary to articles 9, 10 and 11 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I and III.

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

96. The Working Group considers that, taking into account all the circumstances of the case and under applicable international law, victims of arbitrary detention have the right to seek and receive reparation from the State, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Accordingly, the Working Group requests the Government to grant appropriate reparation to Mr. Ruiz Urquiola, including his immediate unconditional release.

97. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the right to food and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for their information and possible action.

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

Follow-up procedure

99. 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 Mr. Ruiz Urquiola has been granted unconditional release and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Ruiz Urquiola;

(c) Whether an investigation has been conducted into the violation of Mr. Ruiz Urquiola'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 its international obligations in line with the present opinion;

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

100. 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.

101. 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.

102. The Government should disseminate the present opinion among all stakeholders through all available means.

103. 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.¹²

[Adopted on 24 August 2018]

¹² See Human Rights Council resolution 33/30, paras. 3 and 7.