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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-third session, 19–23 November 2018

Opinion No. 66/2018 concerning Eduardo Cardet Concepción (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 2 August 2018, the Working Group transmitted to the Government of Cuba a communication concerning Eduardo Cardet Concepción. The Government submitted a late reply to the communication on 12 October 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. Cardet Concepción is a Cuban citizen born in October 1968. He usually resides in the province of Holguín, where he works as a family doctor in a health centre in Velasco. He is married and has two young children. He is also a member and the national coordinator of the Movimiento Cristiano Liberación (Christian Liberation Movement), an association that advocates peaceful, democratic political change in Cuba. Mr. Cardet has been arrested on several occasions because of his political activism.

5. According to the information received, Mr. Cardet was arrested outside his home at around 7 p.m. on 30 November 2016. It is reported that four plain-clothes State security officers who did not identify themselves seized him violently, without explanation and without producing an arrest warrant or informing him of any criminal charges against him. He was taken to a local police station and beaten again.

6. The source reports that the arrest took place two days after Mr. Cardet had given a public interview abroad to an international media outlet in which he had made statements criticizing the former President of Cuba, Fidel Castro, who had died a few days previously. Prior to Mr. Cardet's return to Cuba, members of his family were threatened, briefly detained and told that he would be arrested upon his return on account of his political activism and his participation in the "Un Cubano, Un Voto" ("One Cuban, One Vote") campaign. Mr. Cardet travelled back to Cuba on 29 November 2017.

7. When Mr. Cardet's family asked the authorities why he had been arrested, they were told that it was because "he is a counter-revolutionary". The following day, the security forces went to his home and informed his family that he had been charged with attacking a State official, under article 142 of the Criminal Code.

8. The "official" reason for Mr. Cardet's detention is allegedly that he attacked a police officer while being arrested, an offence for which he was prosecuted and sentenced. However, the source claims that this, in itself, cannot serve as a basis for the detention, since the alleged offence occurred only once the arrest was already being made. Moreover, given that the State security forces warned Mr. Cardet's family prior to his arrest that they intended to apprehend him on account of his political activities, the source considers that the criminal charge is merely an after-the-fact justification for his trial and continued detention, the aim of which is to prevent his activism.

9. According to the source, Mr. Cardet was held incommunicado for nine days and beaten while in custody. He was denied visits and telephone calls; his family was unaware of his whereabouts. Despite the severe beatings to which he was subjected during his arrest, once he had already been handcuffed and after arriving at the police station, Mr. Cardet, who has asthma, was also refused medical care during the first seven days of his detention.

10. After seven days, Mr. Cardet was examined by a surgeon, a general practitioner and an orthopaedic specialist. According to the medical records, he had injuries to his eyes, chest, abdomen, arms and legs, and bruising to his neck. When his family was allowed to see him, more than a week after his arrest, his eyes were still puffy. His family filed a complaint of violence. After their visit, Mr. Cardet was beaten again and placed in a punishment cell. The State security forces also harassed and threatened his family and prohibited Mr. Cardet's wife from leaving the country.

11. After nine days, Mr. Cardet was transferred to a pretrial detention facility in Holguín. The authorities decided to remand him in custody until his trial. His applications for bail were thrice denied, and the State prosecutor requested a punishment of 3 years' imprisonment.

12. According to the information provided, while in the facility in Holguín, the State security officer who had beaten Mr. Cardet continued to abuse him verbally, telling him that if he renounced his ideas, he would be freed immediately. A fellow inmate also assaulted Mr. Cardet, whose request for a visit by a priest was refused. In March 2017, as the date of his trial approached, Mr. Cardet contracted bronchitis, which left him needing the necessary medication and an inhaler.

13. The trial took place on 3 March 2017. According to the source, it was not held in a fair and impartial manner. The Attorney General's Office called six witnesses, three of whom had been among the State security officers who had arrested Mr. Cardet, while the other three had not been present at the time. The defence lawyer argued that the witness testimony from those who had not been present at the scene was not credible. For example, they were unable to describe what Mr. Cardet had been wearing or what his bicycle looked like, and stated that the incident had occurred during the day, when it had, in fact, been dark. Moreover, the court permitted only three of the witnesses proposed by the defence to testify. On 20 March 2017, Mr. Cardet was sentenced to 3 years' imprisonment, as requested by the prosecutor.

14. The source reports that Mr. Cardet's family lodged an appeal with the Provincial Court that was rejected on 18 May 2017. In addition, a parole application was submitted, but this was also denied, on the grounds that Mr. Cardet allegedly does not satisfy the condition of being able to reintegrate into society because he has not yet understood the seriousness of the consequences of his actions.

15. According to the source, the State security forces continued to threaten and harass Mr. Cardet after he had been convicted, telling him that his appeals were in vain, that his sentence would be extended and that he would be sent to another province where he would be unable to communicate with his family. He was threatened with solitary confinement and pressured to renounce his convictions.

16. On 19 December 2017, Mr. Cardet was transferred to the "Cuba Sí" maximum security prison, where he is currently detained. His family was not informed of the transfer until the day when it took place and was allowed to visit him only for a few minutes. That same day, three inmates physically attacked Mr. Cardet when he entered the prison. His family was not allowed to visit him until almost a month later, on 15 January 2018, when two circular scars were apparent on his abdomen. Mr. Cardet stated that he had received no medical attention since being attacked, and indicated that he was suffering from headaches and dizziness. His family filed a complaint about the attack, but received no response.

17. On 24 February 2018, the Inter-American Commission on Human Rights issued a resolution (No. 16/2018) in which it found that Mr. Cardet is at risk of suffering irreparable harm to his life and personal integrity in prison, given the lack of protection from the attacks and harassment to which he has been subjected. The Commission requested the State to adopt the necessary measures to protect the life and personal integrity of Mr. Cardet and guarantee his access to appropriate medical treatment, in accordance with his needs. Nevertheless, the source reports that, since Mr. Cardet's transfer to the "Cuba Sí" facility, his health has taken another downturn, and he has suffered a series of acute asthma attacks and other health problems, including influenza. On 18 May 2018, Mr. Cardet underwent a biopsy, the results of which have not yet been made known to him.

18. The source indicates that, on 26 May 2018, the "Cuba Sí" prison director notified Mr. Cardet's family that their visiting rights had been suspended for six months in retaliation for their lobbying and activism with respect to international human rights mechanisms and the international press.

19. Since Mr. Cardet's arrest, his family home has been under constant surveillance and has even been attacked with stones. The arrest and constant harassment have had a psychological impact on Mr. Cardet's family, particularly his two young children.

20. The source claims that Mr. Cardet's detention constitutes an arbitrary deprivation of his liberty under categories II and III of the Working Group, inasmuch as it results from the exercise of his human rights and is in violation of international standards related to the right to a fair trial.

Allegations concerning category II

21. The source submits that Mr. Cardet's arrest and detention fall under category II because they relate to the exercise of his right to freedom of opinion and expression, and his right to freedom of peaceful assembly and association, which are protected by articles 19 and 20, respectively, of the Universal Declaration of Human Rights.

22. According to the source, Mr. Cardet's arrest, continued detention and sentence are based solely on his political activism as the leading member of the Movimiento Cristiano Liberación, a non-governmental human rights organization that advocates peaceful, democratic change in Cuba. The activists of this organization (which has been banned by the government authorities) have, in the past, been subjected to harassment, intimidation, violence and arbitrary detention. Mr. Cardet himself has previously been arrested for his activism.

23. Prior to Mr. Cardet's current detention, the State security forces informed his family that they planned to subject him to prolonged detention on account of his activism. The day after his return to Cuba, the State security forces violently arrested him and later notified his family that he was in detention because he was a "counter-revolutionary".

24. The source also affirms that the purpose of Mr. Cardet's arrest was, in part, to prevent him from engaging in political activities with the Movimiento Cristiano Liberación and from speaking in public, against the backdrop of nine days of compulsory mourning imposed by the State following the death of former President Fidel Castro.

25. According to the source, the authorities came up with a legal justification after the event in order to continue detaining Mr. Cardet, accusing him of attacking a State official during his arrest. This despite the testimony of an eyewitness, who stated that it was Mr. Cardet who was attacked. The witness asserted that Mr. Cardet was immobilized so swiftly and violently that he had no opportunity to defend himself in any way.

26. The source indicates that, despite the bringing of criminal charges, the State security forces have repeatedly threatened and harassed Mr. Cardet during his detention, both before and after his conviction, telling him that if he renounced his beliefs, he would be freed, and threatening to extend his sentence. In the source's view, this leads to the conclusion that the criminal charges were fabricated in an effort to provide a legal basis for Mr. Cardet's arbitrary detention. It is alleged that this approach is consistent with the authorities' documented practice of laying criminal charges against critics of the regime and of citing various crimes to keep them in prison.

27. The source concludes that Mr. Cardet is therefore being arbitrarily deprived of his liberty for peacefully exercising his rights to freedom of opinion and expression, and to freedom of association, which are guaranteed under international human rights law.

Allegations concerning category III

28. The source claims that Mr. Cardet's detention constitutes an arbitrary deprivation of his liberty under category III, since it does not comply with international norms relating to minimum guarantees of due process, as established in the Universal Declaration of Human Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. It is argued that the Government denied Mr. Cardet his rights to humane treatment and to a fair and impartial trial.

29. The source makes reference to article 5 of the Universal Declaration of Human Rights, which establishes that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment", and to principles 1, 6, 10 to 13, 15, 19, 24 and 38 of the Body of Principles.

30. The source states that Mr. Cardet was arrested at his place of residence by plain-clothes State security officers who did not produce an arrest warrant or formal identification, in violation of principles 10 to 13 of the Body of Principles.

31. It is alleged that Mr. Cardet was severely beaten during his arrest and again upon arrival at the police station. Despite the severity of the beatings, the authorities did not provide him with medical attention until seven days after his arrest. According to the source, the medical assessment revealed serious injuries to the eyes, neck, abdomen, arms and legs. Mr. Cardet was held incommunicado for the first nine days of his detention. His family stated that the injuries were still visible when they saw him for the first time, more than a week after the arrest. Following the visit, Mr. Cardet was beaten again and placed in a punishment cell. He was also subjected to prolonged pretrial detention, and his bail requests were rejected.

32. The source claims that, during Mr. Cardet's continued detention, the State security forces have kept abusing him psychologically, through threats and harassment, to persuade him to renounce his views. During his imprisonment, Mr. Cardet has been physically assaulted on at least two occasions by other inmates. On 19 December 2017, after the second of these beatings in the "Cuba Sí" prison, Mr. Cardet was also denied access to his family for almost a month. His family has indicated that, when they finally saw him on 15 January 2018, scars were apparent on his abdomen, he was suffering from headaches and dizziness, and he had not received medical care since the attack. His request for a visit by a priest has also been turned down. Based on these facts, the Inter-American Commission on Human Rights considered that Mr. Cardet faces a serious threat to his well-being, and has called for him to be given urgent protection. In addition, on 26 May 2018, family visits were suspended for six months.

33. In the source's view, the treatment to which Mr. Cardet has been subjected during his arrest and detention violates article 5 of the Universal Declaration of Human Rights and principles 1 and 6 of the Body of Principles. The denial of medical care also violates principle 24. The denial of family visits during the first nine days of detention, following the beating inflicted on 19 December 2017, and currently for a period of six months, violates principles 15 and 19, and the denial of bail pending trial violates principle 38. The source adds that the Committee against Torture has expressed concern over, inter alia, the denial of family visits, the physical and verbal abuse from inmates and the use of incommunicado detention and prolonged pretrial detention in Cuba.

34. The source further argues that there has been a violation of basic guarantees of the right to a fair trial, a right protected by article 10 of the Universal Declaration of Human Rights, which establishes that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

35. The source highlights that the right to be tried by an independent and impartial tribunal is absolute and not subject to derogation. The requirement of independence includes the independence of the judiciary from political interference by the executive branch or the legislature. Article 11 (1) of the Universal Declaration of Human Rights provides that "everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

36. The source alleges that, in Cuba, the courts are subordinate to the executive and legislative branches, which are controlled by the Communist Party. The source refers to the findings of two United Nations treaty bodies on the independence of the judiciary in Cuba and to the observations of various special rapporteurs on the matter.

37. The source states that: (a) Mr. Cardet was not shown an arrest warrant; (b) following his arrest, he was not informed of the charges against him and was held incommunicado for nine days; (c) during the trial, Mr. Cardet's lawyer did not have the opportunity to present all the evidence for the defence of his client, as several defence witnesses were unable to testify; and (d) at the same time, the court accepted unreliable testimony from three prosecution witnesses who had not been present at the scene and whose testimony was discredited under questioning by a defence lawyer.

38. It is asserted that the outcome of Mr. Cardet's trial was predetermined from the start. The State security forces made threats to his family to the effect that they would imprison him even before they had arrested him, and before the alleged crime had been committed.

39. The source provides additional information on the context in which judicial independence, due process of law and the exercise of the right to personal liberty should allegedly be framed in the present case.

40. It is stated that the Communist Party of Cuba, which is the only party legally recognized in the Constitution, controls all government agencies and civil institutions. These include the National Assembly and the Council of State, through which the Party and its high-ranking officials control the judiciary. It is alleged that Cuban citizens are not free to express critical or dissenting opinions without fear of government repression, including

deprivation of personal liberty. The source indicates that political groups are prohibited and that legal recognition (registration) is systematically denied to civil society organizations, which are subjected to intimidation, raids, confiscations, physical attacks, arbitrary detention, unfair trials and the forced exile of their members.

41. The source provides statistics according to which, in 2016, there were 9,940 reported cases of alleged arbitrary detention, with a further 4,800 cases between January and November 2017. It is claimed that the authorities fail to comply with procedural laws, for example with regard to the legal time limit for filing charges. According to the source, the authorities often use pretrial detention of up to two years as a tool for controlling dissent. Moreover, they do not fulfil their obligations to inform detainees of the reasons for their arrest and to provide them with legal assistance, nor do they carry out their duty to supply a duly signed detention report.

42. The source says that, in addition to overcrowding and insufficient sanitary conditions in detention centres, political prisoners are subjected to ill-treatment, physical attacks, abuse, isolation, prolonged solitary confinement and the denial of visits and telephone calls. It is further alleged that, in such cases, the presumption of innocence is not respected, trials are held in secret or are closed to the public, and only State lawyers may provide a legal defence to the accused in criminal proceedings. Lastly, it is argued that equality of arms between the prosecution and the defence is not respected during trials.

Discussion

43. 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 (see A/HRC/19/57, para. 68). In the present case, the Government submitted a late response to the source's arguments. Although the Working Group did not receive a timely response from the Government before the deadline set, in accordance with paragraph 16 of its methods of work, it renders the present opinion on the basis of all the information available to it.

Category I

44. The Working Group will first consider whether there was a legal basis for Mr. Cardet's detention. The Working Group has repeatedly stated in its jurisprudence that 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.¹ It is not sufficient to invoke a legal norm when the case is under consideration by an international mechanism, since the legal basis must exist and be evident at the time of arrest.

45. Pursuant to international human rights law, no one is to be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law. In the view of the Working Group, this obligation requires States to notify the person of the legal basis for his or her arrest when it takes place. In addition, international standards for the protection of human rights require that anyone arrested or detained on a criminal charge be brought before a judicial authority without delay. While the time that elapses may vary, a "delay" is considered to be any period of time longer than 48 hours, as this is understood as being sufficient to transport the individual and prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.²

46. The Working Group further considers that the international norms protecting the right to liberty and security of the person require that the detainee be physically present before a judicial authority. In this regard, the Working Group has stated on various

¹ For example, opinions Nos. 59/2018, 1/2018, 79/2017 and 42/2012.

² Opinions Nos. 59/2018, paras. 80 to 83, and 48/2018, para. 63.

occasions that incommunicado detention is incompatible with international human rights law, as it violates the right to question the legality of detention before a judicial court or tribunal.³

47. In the present case, State security officers who did not identify themselves arrested Mr. Cardet violently and without explanation. They did not produce an arrest warrant or inform him of the existence of criminal charges against him.

48. Moreover, Mr. Cardet was not brought promptly before a judge. There was no independent judicial oversight of the detention. On the contrary, Mr. Cardet was taken to a local police station, where he was beaten again and held incommunicado for nine days. He did not have access to a lawyer. He was denied visits and telephone calls, and his family was unaware of his whereabouts. Despite the beatings inflicted during his arrest, he was also refused medical treatment during the first seven days of his detention. In the circumstances, it is clear that Mr. Cardet could in no way exercise his right to question the legal basis for his detention.⁴

49. In the light of these considerations, in the absence of an arrest warrant, and given the subsequent use of incommunicado detention and the lack of judicial oversight, legal or medical assistance and family contact, the Working Group must conclude that there was no legal basis for the arrest, and the detention is therefore considered arbitrary under category I, insofar as it contravenes articles 9 and 10 of the Universal Declaration of Human Rights.

Category II

50. With regard to category II, and on the basis of all the information available to it, the Working Group notes that Mr. Cardet is a well-known democratic activist within Cuban society. As well as being a family doctor, Mr. Cardet is a member and the national coordinator of the Movimiento Cristiano Liberación, an association that advocates peaceful, democratic political change in Cuba. Mr. Cardet has been arrested on several occasions in connection with his political activism.

51. The Working Group stresses that political activism, open calls to society on democratic and legal matters, and membership of civil society organizations are activities protected under international human rights law, in particular articles 19 to 21 of the Universal Declaration of Human Rights.

52. In the present case, two days after Mr. Cardet had spoken out against the former President of the Republic, in peaceful exercise of his human rights, he was arrested in the street by State security officers. Moreover, the arrest was preceded by threats and harassment directed by State agents at members of Mr. Cardet's family, who were told that he would be arrested because he was a counter-revolutionary. In addition, State security officers have repeatedly threatened and harassed Mr. Cardet during his detention, both before and after his conviction, telling him that if he renounces his beliefs and opinions, he will be freed.

53. The Working Group was persuaded that the detention of Mr. Cardet resulted from the political and social activities to promote voting and democratic participation that he undertook individually and through the Movimiento Cristiano Liberación.

54. In view of the above, the Working Group considers that the authorities deprived Mr. Cardet of his liberty for exercising his rights to freedom of thought, conscience, opinion, expression, association and participation, as recognized in articles 18 to 21 of the Universal Declaration of Human Rights, which renders the detention arbitrary under category II.

³ 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 (A/HRC/30/37), paras. 18, 75 and 93 (c).

⁴ A/HRC/30/37.

Category III

55. In the light of the findings in relation to categories I and II, under which it was concluded that the detention of Mr. Cardet is the result of the exercise of his human rights, the Working Group considers that there was no basis for a trial. Nevertheless, since one did take place, the Working Group will analyse whether, during the course of it, fundamental components of a fair, independent and impartial trial were respected.

56. International human rights law recognizes that everyone has the right not to be arbitrarily deprived of their liberty and to be presumed innocent until proved guilty. To this end, everyone has the right to be heard in a public trial at which they have all the guarantees necessary for their defence and their right to be tried by an independent criminal court is respected.⁵

57. The Working Group received credible information concerning the degrading treatment to which Mr. Cardet was subjected by the authorities, including threats, beatings, insults, the denial of urgent medical treatment, and incommunicado detention. Moreover, this treatment, far from being an isolated occurrence, was repeated on various occasions: at the time of arrest, during the transfer, at the police station, during pretrial detention and in prison. Consequently, the Working Group can only conclude that Mr. Cardet was the victim of cruel, inhuman or degrading treatment. This treatment, meted out to Mr. Cardet by the authorities at different times, contravenes international obligations pertaining to a fair and impartial trial, including the presumption of innocence.

58. It is difficult to accept that a person subjected to cruel, inhuman or degrading treatment during his or her detention and prosecution could have the means and tools needed to prepare a legal defence. In the view of the Working Group, the use of incommunicado detention in the first few days after the arrest and at the start of the trial, the lack of access to a lawyer, the ill-treatment and the inhuman conditions of detention meant that Mr. Cardet did not receive a fair trial with the necessary guarantees of due process.

59. The source also stated that, in Cuba, the courts are subordinate to the executive and legislative branches, which are controlled by the Communist Party. The Working Group is aware that bodies established under treaties to which Cuba is a party have expressed concern over the lack of independence of the judiciary. For example, the Committee on Enforced Disappearances “is concerned that the subordination of the courts to other organs of the State may affect the guarantee of the independence of the courts” and recommended that Cuba should adopt “the measures necessary to guarantee the full independence of the judiciary and other branches of government”.⁶ Similarly, the Committee against Torture “considers it essential that legislative measures be adopted to guarantee the independence of the judiciary”.⁷

60. The Working Group was convinced that the Cuban authorities committed serious breaches of international norms relating to the right to a fair, independent and impartial trial, in violation of articles 9 to 11 of the Universal Declaration of Human Rights, which renders the detention arbitrary under category III.

61. As to the allegations concerning the cruel, inhuman or degrading treatment or punishment to which Mr. Cardet was exposed from the outset of his detention, the Working Group forwards the information to the Special Rapporteur on torture for possible action. In the same vein, with regard to the claims made by the source, the Working Group refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Disposition

62. In the light of the foregoing, the Working Group issues the following opinion:

⁵ Articles 9 to 11 of the Universal Declaration of Human Rights.

⁶ CED/C/CUB/CO/1, paras. 17 and 18.

⁷ CAT/C/CUB/CO/2, para. 18.

The deprivation of liberty of Eduardo Cardet Concepción, being in contravention of articles 9, 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II and III.

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

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

65. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Cardet and to take appropriate measures against those responsible for the violation of his rights.

66. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on torture and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health for appropriate action.

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

Follow-up procedure

68. 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. Cardet has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Cardet;
- (c) Whether an investigation has been conducted into the violation of Mr. Cardet'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.

69. 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.

70. 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.

71. 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.⁸

[Adopted on 19 November 2018]

⁸ Human Rights Council resolution 33/30, paras. 3 and 7.