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Written statement* submitted by United Nations Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2019]

* Issued as received, in the language(s) of submission only.



Cuba Must Immediately Release Political Prisoner Dr. Eduardo Cardet Concepción

United Nations Watch welcomes the decision of the Working Group on Arbitrary Detention, published on February 4, 2019, calling for the Government of Cuba to immediately release the political prisoner Dr. Eduardo Cardet Concepcion.

In July 2018, United Nations Watch filed a petition with the Working Group on Dr. Cardet's behalf, arguing that his arbitrary arrest and detention violate Cuba's international human rights law obligations. The decision by the Working Group confirmed that Cuba's detention of Dr. Cardet is arbitrary under **Category I** (no possible legal basis for detention), **Category II** (detention resulted from exercise of right to freedom of speech and association), and **Category III** (failure to observe international norms related to the right to a fair trial).¹

Dr. Cardet is a democracy activist in Cuba and head of The Christian Liberation Movement (MCL), a Cuban NGO that advocates for peaceful democratic change in Cuba. The Cuban regime does not recognize MCL as a legal organization and subjects its activists to harassment, intimidation, and abuse. On a trip overseas shortly after the death of Fidel Castro, Dr. Cardet spoke critically about Fidel Castro to international media. Before Dr. Cardet returned to Cuba, Cuban security forces threatened Dr. Cardet's wife that they would imprison him because of his political activism.

On November 30, 2016, the day after Dr. Cardet returned, at least four plainclothes security officers violently arrested him in front of his wife, children and neighbors, severely beating him.² The arrest was timed to ensure that Dr. Cardet would be in police custody during the funeral procession of Fidel Castro, and unable to engage in political activism at the procession which was to pass by Dr. Cardet's home town.

Although Cuban authorities told the family that Dr. Cardet had been arrested because "he is counter-revolutionary," Cuba prosecuted Dr. Cardet on trumped-up charges of attacking a state official during the course of his arrest under Article 142 of the Cuban Penal Code.

After the arrest, Dr. Cardet was subjected to cruel, inhuman and degrading treatment at the hands of the Cuban authorities and their agents, including *inter alia*: beatings, verbal harassment, incommunicado detention, being placed in a punishment cell, deprivation of visits from, and communications with, his family, denial of medical attention, refusal of visits from a priest, and denial of bail. His trial also did not comply with international norms for fair trial, as he was denied the opportunity to present all of his witnesses, and several of the prosecution witnesses whose testimony was accepted had not been present at the scene. Several international bodies have criticized the lack of independence of Cuba's judicial system.

In its newly published opinion, the Working Group declared that Cuba's detention of Dr. Cardet is arbitrary as it "contravenes articles 9, 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights, and is registered in Categories I, II, and III."

The Working Group further called on Cuba "to immediately release Mr. Eduardo Cardet Concepción and grant him the effective right to obtain compensation and other types of reparation, in accordance with his international rights."³

The Working Group's specific findings in each of the three categories are as follows:

¹ Opinion of the Working Group of Arbitrary Detention Concerning Eduardo Cardet Concepcion (Cuba) (Nov. 19, 2018), UN Doc. A/HRC/WGAD/2018/66, https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session83/A_HRC_WGAD_2018_66.pdf.

² *URGENT ACTION: Demand Release of Human Rights Defender*, AMNESTY INTERNATIONAL (Jan. 31, 2017), <https://www.amnesty.org/download/Documents/AMR2556012017ENGLISH.pdf>.

³ A/HRC/WGAD/2018/66, paras. 62-64.

Category I

47. In the present case, State Security officials, without identifying themselves, arrested Mr. Cardet Concepción in a violent manner, without explanation. They did not show an arrest warrant, nor did they inform him of the existence of criminal charges against him.

48. In addition, Mr. Cardet Concepción was not brought promptly before a judge. There was no independent judicial control of the detention. On the contrary, he 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 phone calls, his family was unaware of his whereabouts. Despite the beatings received during his arrest, he was also denied medical attention during the first seven days of his arrest. In these circumstances, it is evident that Mr. Cardet Concepción could not, in any way, exercise his right to question the legal basis of the detention.⁴

49. In view of these considerations, in the absence of a warrant of arrest and subsequent incommunicado detention, lack of judicial control, legal, medical and family contact, the Working Group must conclude that there was no legal basis for the arrest, so that the detention is considered arbitrary under category I, being contrary to Articles 9 and 10 of the Universal Declaration of Human Rights.

Category II

52. In the present case, two days after Mr. Cardet Concepción made public statements against the former President of the Republic, in the peaceful exercise of his human rights, he was arrested on the street by officers of the State Security forces. Likewise, this detention was preceded by threats and harassment by official agents to the family of Mr. Cardet Concepción, who were told the authorities would arrest him for being counterrevolutionary. In addition, agents of 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 gives up his beliefs and opinions he will be released.

53. The Working Group was convinced that the arrest of Mr. Cardet Concepción was a result of his political and social activities in the promotion of the vote and democratic participation, individually, and through the association Movimiento Cristiano de Liberación.

54. In view of the foregoing, the Working Group considers that the Cuban authorities deprived Mr. Cardet Concepción of his freedom to exercise his rights of freedom of thought, conscience, opinion, expression, association and participation, recognized in Articles 18, 19, 20 and 21 of the Universal Declaration of Human Rights, which makes the detention arbitrary according to category II.

Category III

57. The Working Group received convincing information about the vexatious treatment that Mr. Cardet Concepción received from the Cuban authorities, including threats, beatings, insults, refusal to provide immediate medical attention, incommunicado detention, among others. In addition, this vexatious treatment was not an isolated incident, but was repeated at different times, during the initial arrest, the transfer, in the police station, during pretrial detention and in prison. In view of this, the Working Group cannot but conclude that Mr. Cardet Concepción was a victim of cruel, inhuman or degrading treatment. That treatment offered at different times by the Cuban authorities to Mr. Cardet Concepción contravenes international obligations related to a fair and impartial trial, including the presumption of innocence.

⁴ A/HRC/30/37.

58. It is difficult to accept that a person subjected to cruel, inhuman and degrading treatment during his detention and prosecution may have adequate means and tools to prepare a judicial defense. In the opinion of the Working Group, the lack of communication during the first days of the arrest and the beginning of the trial, the lack of access to a lawyer, the ill-treatment and the inhuman conditions of detention, indicate that Mr. Cardet Concepción did not receive a fair trial with the guarantees of due process.

59. The source also established that in Cuba the courts are subordinated to the executive and legislative branches, which are controlled by the Communist Party. The Working Group is aware that treaty bodies, of which Cuba is a party, have expressed concern about the lack of independence of the judiciary. For example, the Committee against Forced Disappearance “[...] is concerned that the subordination of the courts to other organs of the State may affect the guarantee of independence of the courts [...]” and recommended to the Republic of Cuba to adopt “[...] the measures necessary to guarantee the full independence of the Judiciary and other branches of government.”⁵ In this regard, the Committee against Torture “[...] considers it essential that legislative measures be adopted to guarantee the independence of the judiciary.”

60. The Working Group was convinced that the Cuban authorities seriously failed to observe international norms regarding the right to a fair, independent and impartial trial, which contravenes the provisions of Articles 9, 10 and 11 of the Universal Declaration of Rights Human, and makes the detention arbitrary according to Category III of the Methods of Work.

As a member of the Human Rights Council, Cuba is required to “uphold the highest standards in the promotion and protection of human rights” and to “fully cooperate with the Council.” (GA Resolution 60/251). Accordingly, Cuba is obliged to cease its violations of Dr. Cardet’s human rights, comply with the Working Group’s decision and release him immediately.

In the event that Cuba fails to release Dr. Cardet, Member States of the General Assembly are authorized, under Art. 8 of Resolution 60/251, to determine that Cuba is committing gross and systematic violations of human rights, and to suspend the membership of Cuba in the Human Rights Council. Based on the Libyan precedent of 2011, Member States of the Council are authorized in this session to request that the General Assembly take such action.

⁵ CED/C/CUB/CO/1, paras. 17-8.