



# General Assembly

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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Note verbale dated 20 December 2012 from the Permanent Mission of Cuba to the United Nations Office and other international organizations in Geneva addressed to the secretariat of the Human Rights Council**

The Permanent Mission of Cuba to the United Nations Office in Geneva and other international organizations in Geneva presents its compliments to the secretariat of the Human Rights Council and has the honour to enclose herewith the responses of Cuba to opinions No. 23/2012 and No. 69/2012 adopted by the Working Group on Arbitrary Detention.

The Permanent Mission of the Republic of Cuba requests that both documents be published as official documents of the twenty-second session of the Human Rights Council under agenda item 3, in all official languages of the United Nations.

## Annex

*[Original: Spanish]*

### **Reply of the Government of Cuba to Opinion No. 69/2012 of the Working Group on Arbitrary Detention, dated 23 November 2012, concerning Mr. Alan Gross**

The Government of the Republic of Cuba wishes to express its total disagreement with Opinion No. 69/2012 of the Working Group on Arbitrary Detention of the Human Rights Council, adopted on 23 November 2012, which states that the deprivation of liberty of the United States citizen Mr. Alan Gross, in Cuba, is arbitrary.

That opinion, which was officially conveyed to the Cuban Government on 4 December 2012, reflects a biased, unbalanced and legally flawed assessment of the case.

In the spirit of transparency and cooperation that characterizes Cuba's interaction with the mechanisms of the United Nations human rights machinery, the Cuban Government has provided to the Working Group extensive information on the case to enable it to assess it objectively. It has provided broad and detailed arguments on each of the points made in the communication submitted by the source of the allegation.

In the view of the Government of Cuba, however, the Working Group has failed to lend due weight to the evidence presented and reached a biased conclusion that does not reflect the facts of the case.

Firstly, the Cuban Government categorically rejects the assertion made in the opinion that the deprivation of liberty of Mr. Gross is the result of the total or partial non-observance of the international norms relating to the right to a fair trial (Category III).

In the view of the Cuban Government, the decision taken by the Working Group rests on a fundamental error that undermines the objectivity of its analysis. The Working Group is unable to demonstrate that there has been a violation of due process or that procedural safeguards were insufficient in the conduct of the trial, and has based its views on objections raised about the Cuban legal system.

The Working Group is overstepping its mandate by setting itself up as a body with the authority to determine whether the Cuban courts are independent and impartial and seeking to bring about changes in the legislation of a sovereign State. In doing so, it disregards the limits imposed on its activities in resolution 1997/50 of the Commission on Human Rights, which establishes that deprivation of liberty is not arbitrary when it is the result of a final decision taken by a domestic court in conformity with domestic law, with the relevant international standards set forth in the Universal Declaration of Human Rights and with the relevant international instruments accepted by the States.

It is unacceptable for the Working Group to base its opinion on the assumption that the Cuban courts of first and second instance that tried Mr. Gross did not function independently and impartially. That claim is not supported by any concrete evidence available to the Working Group or by any statements or decisions issued by other United Nations bodies. It is based, rather, on a subjective appraisal of the structure and workings of the Cuban judicial system that could have been made without reference to the details of the case.

The Cuban Government categorically rejects the statement that articles 9, 10 and 11 of the Universal Declaration of Human Rights have been violated since, in this case, a

person who broke the law of a sovereign State has been tried with all the safeguards stipulated in Cuban law and in accordance with the principles on the independence of the judiciary espoused by the United Nations and has, consequently, been duly sentenced by a competent court.

The extensive information submitted by the Cuban Government has demonstrated that Mr. Gross was tried by an impartial collegiate court and that, moreover, he had the opportunity to appeal his sentence before the People's Supreme Court.

The Working Group disregarded the fact that Cuban judges hand down justice independently and owe obedience only to the law, as established in the Constitution and in Act No. 82, which governs the People's Courts. Judges are elected by the Assemblies of People's Power and may be removed only for the reasons set forth in the law, which contributes to the autonomy and independence they exercise in the performance of their duties.

The Working Group has also failed to take into account the substantive and procedural norms governing criminal proceedings in Cuba, which establish all the guarantees and principles of due process, such as the principles of legality, civil participation, the presumption of innocence, objectivity, reparation for miscarriages of justice, non-discrimination, the determination of sentence, equality between the parties, the entitlement to conduct criminal proceedings, the oral and public nature of proceedings, the immediacy and concentration of proceedings, the right of both parties to be heard, and the evaluation and admission of evidence and court decisions, as well as the right of the parties to appeal to a court of second instance to have the case re-examined if they do not accept the sentence.

The references to the observations on Cuba made by a number of special procedures and other United Nations human rights mechanisms reflect a manifestly selective compilation process. Furthermore, there is no acknowledgement of the fact that those mechanisms have merely recommended that the Cuban Government review the regulations governing the organization of its judicial system and have not issued a single opinion attesting to a grave non-observance of the international norms relating to the right to fair trial that might raise doubts about the impartiality of the Cuban judicial system and would be the sole grounds on which a case of deprivation of liberty might be considered arbitrary under Category III.

It is disturbing that the Working Group should thus compromise the objectivity, impartiality and independence that should characterize its work by basing its decisions on unfounded criticisms of the judicial system of a sovereign Member State of the United Nations that are themselves based on disputable and partial information such as that mentioned above.

The Working Group has, moreover, overstepped its mandate by questioning the courts and laws of Cuba. The Working Group's statement regarding article 91 of the Cuban Criminal Code, namely that the article fails to meet the requirement to provide a rigorous description of what constitutes punishable conduct, clearly exceeds the limits of its remit, since the Working Group does not have the authority to perform technical or legal analyses of offences set forth in a particular body of laws.

According to the discriminatory Opinion of the Working Group, all detentions in Cuba must be arbitrary, even if they meet all the requirements established by international law regarding legality and justice, since everything suggests that the starting point for the Group's analysis is a refusal to acknowledge the legitimacy of the Cuban justice system, which is unacceptable from any standpoint.

The Cuban Government is of the view that the Working Group's opinion on Cuba's domestic legislation, inasmuch as it is used as a basis for the Working Group's decision, violates the principle of due respect for the legal institutions of all States and the sovereign right of peoples to establish legal and democratic institutions that are in keeping with their interests and their sociopolitical and cultural characteristics.

In that regard, the Cuban Government would once again like to point out to the Working Group that it is not for international mechanisms to usurp or replace national authorities, but to perform their work in strict accordance with the principle of free determination upheld in international law, and free from any political influence, in order to support the actions taken by States to strengthen their domestic legal systems.

Secondly, the Cuban Government draws attention to the uncommonly expeditious assessment of the case. In its view, the Working Group's decision did not take into account the extensive information or the evidence provided by Cuba.

It is doubtful whether, in the 10 working days between the date on which the official reply of the Cuban Government was delivered (9 November 2012) and the date on which the decision was adopted by the Working Group (23 November 2012), all the members of the Group would have been able to access such a large volume of information and to have sufficient time also to study and evaluate it, given the need for it to be translated into the corresponding working languages.

According to the methods of work of the Working Group, the analysis of the case should have included: (a) the translation of a document over 30 pages long to allow the members of the Working Group to examine it; (b) a request for comments from the source of the complaint; (c) the careful evaluation of both opinions to ensure that the decision reached by the Working Group took into account all the available evidence and any other relevant information. With these considerations in mind, the Government of Cuba reserves the right to express its serious doubts as to the impartiality and objectivity with which the case in question was analysed and discussed. There is every indication of a failure to observe the procedures and deadlines that usually apply to the work of the Working Group.

In the opinion of the Cuban Government, the Working Group's action in this case has been marred by selective and politicized judgements and the objectivity that should characterize its work has been sorely lacking. In addition, the Working Group has exceeded the mandate it was granted under resolution 1997/50 of the Commission on Human Rights.

Cuba reiterates once more how important it is for the special mechanisms of the Human Rights Council to base their assessment of the cases brought before them on objective and reliable information that, to the extent possible, they have confirmed to be from pertinent and credible sources that act in good faith, without political motives, and in accordance with the principles of international cooperation in the field of human rights, and that respect the principles and aims of the United Nations Charter.

## **Reply of the Government of Cuba to Opinion No. 23/2012 of the Working Group on Arbitrary Detention, of 28 August 2012, concerning Mr. Yusmani Rafael Álvarez Esmori and Ms. Yasmín Conyedo Riverón**

The Government of Cuba wishes to express its total disagreement with Opinion No. 23/2012 (Cuba) of the Working Group on Arbitrary Detention, adopted on 28 August 2012, concerning the Cuban citizens Mr. Yusmani Rafael Álvarez Esmori and Ms. Yasmín Conyedo Riverón.

The Working Group has not made a balanced assessment of the arguments put forward by the Cuban Government and the source of the complaint. The information provided by the Cuban Government has demonstrated the real reasons for the arrest of the two aforementioned citizens. However, its arguments were not taken into account by the Working Group in its consideration of the case, and greater weight was given to the information provided by the source.

The persons to which Opinion No. 23/2012 (Cuba) refers were not arrested for exercising their fundamental rights to freedom of opinion and expression and to peaceful assembly and association. Nor were the human rights enshrined in articles 9, 19 and 20 of the Universal Declaration of Human Rights violated.

The actual offences for which the persons in question were detained, attacking a home, physically assaulting its occupants and causing injuries that required medical treatment cannot be viewed as a form of exercising fundamental rights. Violent acts of that nature cannot go unpunished, and Cuban law clearly indicates the legal action that is to be taken in such cases.

Using alleged human rights activism as a cover for committing such acts should not be endorsed by any United Nations human rights mechanism.

The detention of the two citizens was not arbitrary. They were detained by law-enforcement officers in response to a complaint by the injured parties and the evidence of the bodily harm caused, in accordance with all the corresponding procedures established in Cuban law.

Both citizens benefited from all the established procedural safeguards during their time in detention. The precautionary measure of deprivation of liberty was applied within the bounds of the law in response to the seriousness of the charges.

The Cuban Government does not consider that the pretrial detention of these persons, which was ordered by the competent authorities within the time limits established in Cuban criminal law in any way represents a violation of the human rights enshrined in the Universal Declaration of Human Rights.

The alleged political affiliation of these persons had nothing to do with the decisions taken in the case.

Human rights defenders are protected in Cuba, on an equal basis, in accordance with the provisions of the Declaration on Human Rights Defenders, adopted by the United Nations General Assembly on 9 December 1998. They enjoy broad freedoms, as guaranteed by the Constitution and laws of the Republic, which are fully compatible with international human rights instruments. However, unlawful conduct, criminal acts or acts of violence against persons or property are not permitted.

It is unacceptable to seek to use the human rights mechanisms of the United Nations to spread unfounded accusations with the sole aim of obfuscating the truth and tarnishing the reputation of Cuba in relation to the promotion and protection of universal human rights.

The Cuban Government notes with regret that selective and politicized opinions have prevailed in the Working Group's assessment of this case and hopes that in future the Working Group will exercise its mandate objectively and impartially and on the basis of objective and reliable information.

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