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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its ninetieth session, 3–12 May 2021****Opinion No. 13/2021 concerning Keilylli de la Mora Valle (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 42/22.

2. In accordance with its methods of work,<sup>1</sup> on 14 December 2020, the Working Group transmitted to the Government of Cuba a communication concerning Keilylli de la Mora Valle. The Government replied to the communication on 12 February 2021. 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).

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<sup>1</sup> A/HRC/36/38.



## Submissions

### *Communication from the source*

4. Keilylli de la Mora Valle is a Cuban citizen who was born on 31 January 1993 and lives in the province of Cienfuegos. She is a human rights activist and a member of the Unión Patriótica de Cuba (Patriotic Union of Cuba) and the Movimiento Consenso Ciudadano (Citizens Consensus Movement).

5. The source states that Ms. de la Mora Valle was arrested in 2019 for her participation in the Movimiento Consenso Ciudadano and was accused of possessing and carrying weapons and explosives. Ms. de la Mora Valle has been arrested on several occasions for her anti-Government activism. On another occasion, and as a result of this activity, she was arrested on 28 January 2020 on charges of public disorder and fined 1,000 Cuban pesos. The source states that after she was released, Ms. de la Mora Valle continued her work as an activist with the Unión Patriótica de Cuba and the Cuba Decide (Cuba Decides) movement, leading protests against the ill-treatment of political prisoners.

6. According to the source, on 12 April 2020, when she briefly removed her mask in public a few metres away from her home in order to smoke, Ms. de la Mora Valle was arrested on the newly-created charge of “spreading an epidemic”. The source further asserts that the police took advantage of the situation to accuse her of “antisocial behaviour”, claiming that her actions contributed to public disorder and the spread of coronavirus disease (COVID-19). She was arrested on these grounds and taken to a nearby police station where she was beaten for shouting slogans denouncing the Cuban regime. The police then placed her in a cell with another detainee who was thought to have COVID-19. After being detained for several hours, Ms. de la Mora Valle was provisionally released.

7. While she was at liberty, she received a telephone call informing her that she was required to report to the municipal police station. At the police station, for the first time, officers read to her the list of charges that had resulted in her arrest, including “spreading an epidemic, contempt, resistance and disobedience as a result of her pro-democracy activism in Cuba”.

8. The source adds that Ms. de la Mora Valle was tried by the People’s Provincial Court of Cienfuegos on 7 May 2020 at a closed hearing in a summary trial and was sentenced to 18 months in prison for contempt, resistance and disobedience and for her pro-democracy activism. The source alleges that she was denied the right to have a defence lawyer to assist her in the proceedings. The evidence presented was reportedly falsified, which prevented her from exercising her rights to a defence and a fair trial.

9. The source reports that Ms. de la Mora Valle was sentenced to 10 months of corrective labour and denied the right to parole. The source alleges that the trial had been rigged in advance. An appeal was filed on the day the sentence was handed down but was rejected on 30 May 2020, and Ms. de la Mora Valle was ordered to serve her sentence in the Sabana Miguel prison in Cienfuegos, beginning on 4 June 2020.

10. On 4 June 2020, Ms. de la Mora Valle began a hunger strike in protest against her detention and was transferred to an isolation cell in the prison. As a consequence of the hunger strike, her health deteriorated and she was left in a critical condition, with kidney failure, severe dehydration and weight loss of more than 5 kilograms. The source reports that, as a result, on 11 June 2020 she was transferred to the hospital in Cienfuegos, where she remained until 13 June. She ended her hunger strike on 16 June after allegedly receiving threats to her safety and that of her family from the authorities and State security agents.

11. Despite everything that had happened, a few days later she was confined to a punishment cell and isolated from the other prisoners. The prison guards justified their decision to place her in solitary confinement by stating that she might have contracted COVID-19. She was subsequently detained with other prisoners who had committed criminal offences and who continued to put her safety and well-being at risk. On 28 June 2020, Ms. de la Mora Valle was threatened by a State security official, who warned her that her sentence would be increased if she contacted anyone outside the prison and discussed her condition and state of health.

12. She was also threatened, according to the source, with the withholding of access to telephone calls and some meals, which are considered prisoner benefits, if she insisted on continuing to speak out about her case and her cause. Furthermore, the source alleges that Ms. de la Mora Valle was beaten by two prison guards and harassed and threatened by both the Director of Corrections, whose role consists solely of political indoctrination, and the Prison Director. This drove her to begin a new hunger strike on 29 June 2020 in protest against the inhuman treatment she was receiving. The source states that Ms. de la Mora Valle was admitted to the hospital in Cienfuegos, reportedly as a result of three attempts to take her own life. The source states that imprisonment appeared to be affecting her mental health, leading to a prolonged psychological crisis.

13. After her second hospital stay, Ms. de la Mora Valle was confined to the psychiatric ward, where she was held incommunicado, restrained on more than one occasion, beaten by prison officers and injected with an unidentified substance.

14. The source states that there is a risk that Ms. de la Mora Valle may have been infected with a disease or virus such as HIV. This claim is based on the case of a former political prisoner who was allegedly deliberately infected with HIV in 2018 while in prison serving a sentence for contempt, one of the charges brought against Ms. de la Mora Valle.

15. On 14 July 2020, Ms. de la Mora Valle ended her second hunger strike; her kidneys have continued to fail, and her condition has worsened as she has begun to suffer from chronic anaemia. Moreover, her poor state of health has deteriorated further as a result of restrictions on access to water in the prison.

16. The source reports that Ms. de la Mora Valle remains incarcerated in the Sabana Miguel prison in Cienfuegos, where she continues to be denied her rights to a defence and proper legal representation, as well as her right to receive visits from her relatives and colleagues, preventing her from communicating with people outside the prison. Meanwhile, according to the source, Ms. de la Mora Valle continues to be subjected to physical and verbal abuse by the authorities. If she is not released, the source claims that the situation described above will place her in imminent danger of suffering immeasurable and irreversible damage which could put her life in danger.

17. The source states that Ms. de la Mora Valle has been granted precautionary measures by the Inter-American Commission on Human Rights. The regional body has determined that her situation is serious and urgent, as her right to life and personal integrity are at serious risk.<sup>2</sup> The Commission has received no response from Cuba regarding its resolution.

18. Given the events described, the source considers that Ms. de la Mora Valle's detention is arbitrary under categories I, II, III and V of the Working Group.

i. Category I

19. The source alleges that, in violation of Ms. de la Mora Valle's legal rights, no arrest warrant was produced when she was deprived of her liberty on 12 April 2020. In addition, in violation of article 95 (d) of the Cuban Constitution, her rights to moral, physical and mental integrity were violated when she was beaten by the police before being taken into custody. There is no legal basis for her arrest because she was accused of the newly invented charge of "spreading an epidemic". The source claims that the authorities are using the pandemic as a pretext for arresting and silencing dissidents.

ii. Category II

20. The source notes that a detention is arbitrary under category II when it is imposed in response to the legitimate exercise of a human right protected by articles 7, 13, 14 and 18–21 of the Universal Declaration of Human Rights. The source alleges that Ms. de la Mora Valle has been deprived of her liberty because of her membership of and participation in opposition groups in Cuba, and that her detention therefore constitutes a violation of articles 9, 19, 20 and 21 of the Universal Declaration of Human Rights.

<sup>2</sup> See [www.oas.org/es/cidh/decisiones/pdf/2020/37-20MC578-20-CU.pdf](http://www.oas.org/es/cidh/decisiones/pdf/2020/37-20MC578-20-CU.pdf).

21. Ms. de la Mora Valle is a human rights advocate who has spoken out against the Government and the single-party regime in Cuba and promoted democratic reforms. In particular, as an activist with Cuba Decide, she is working to build a democratic future in which citizens are free to run for public office and can elect their representatives. Ms. de la Mora Valle campaigns for her own and her compatriots' fundamental right to participate in the governance of their country, either directly or by electing representatives, as guaranteed by article 21 of the Universal Declaration of Human Rights.

22. The source claims that Ms. de la Mora Valle is also known for her involvement in campaigns for the release of political prisoners and has been recognized in her community for her support for peaceful change. As a result, according to the source, she has been targeted for exercising the right to freedom of expression guaranteed by article 19 of the Universal Declaration of Human Rights.

23. The source adds that Ms. de la Mora Valle has been viciously attacked for her anti-Government political views and her association with important Cuban opposition groups. The source notes that the Government arrested a large number of people and accused some of them of "spreading an epidemic" to prevent them from protesting peacefully. The source points out that Ms. de la Mora Valle is one of those peaceful demonstrators and is now prevented from exercising her right to freedom of assembly and association under article 20 of the Universal Declaration of Human Rights.

iii. Category III

24. The source indicates that the Government has failed to uphold its own Constitution, which guarantees due process in its article 94.

25. According to the information received, Ms. de la Mora Valle has not had access to a lawyer at any time during the legal proceedings against her and continues to be denied her right to a defence. She was not even allowed to present evidence to demonstrate her innocence at the summary trial. On the contrary, it is alleged that she was aggressively silenced by the prosecutor every time she attempted to defend herself in court.

26. In addition, it is reported that the authorities ordered a trial behind closed doors, which only two members of Ms. de la Mora Valle's family were allowed to attend. Therefore, there was no one present to testify on her behalf. The only witnesses present were officials from the Ministry of the Interior and the director of a municipal unit; that is to say, State agents. The source claims that hearings must be transparent in order to ensure public trust in the integrity of the judicial system and the administration of justice.

27. The source maintains that Ms. de la Mora Valle's detention is arbitrary under category III, claiming a violation of the right to a fair trial, including the right to a defence and the right to be heard by an independent and impartial tribunal, and a violation of the prohibition of inhuman and degrading treatment. Furthermore, there is no legal basis for depriving Ms. de la Mora Valle of her procedural right to a public trial, as there can be no concerns about morals, public order or national security when the person on trial is being prosecuted on account of her peaceful activities. The closed hearing was allegedly intended to enhance the State's credibility and consolidate its control over society, as well as to delegitimize Ms. de la Mora Valle's participation in civil society organizations.

iv. Category V

28. Detention is arbitrary under category V when the deprivation of liberty constitutes a violation of international law because it is motivated by discrimination. In the case presented here, the source claims that Ms. de la Mora Valle is being discriminated against because of her political views on the socialist regime in Cuba.

29. Ms. de la Mora Valle has, in the past, been charged with "posing a danger to society", under a law designed to imprison citizens before they commit an offence, because of her participation in a campaign for peaceful political reform. She has also received a number of fines and served a 10-month prison sentence in 2019. The State uses the above-mentioned law to repress various forms of political dissent and has used it as a tool to systematically

attack and punish Ms. de la Mora Valle for her activism. Her arrest in April 2020 is part of a pattern of continuing persecution for her political activism.

*Response from the Government*

30. On 14 December 2020, the Working Group transmitted the allegations from the source to the Government. It requested the Government to provide detailed information clarifying the legal and factual basis for Ms. de la Mora Valle's detention by no later than 12 February 2021. The Government submitted its response on 12 February 2021.

31. The Government indicates that the information brought to the attention of the Working Group is politically motivated and reflects an underlying interest in discrediting the promotion and protection of human rights for all in Cuba.

32. With regard to the allegations that Ms. de la Mora Valle was arrested in 2019 because of her participation in the so-called Movimiento Consenso Ciudadano and the illegal possession and carrying of firearms or explosives, the Government reports that a review of the events has proven these allegations to be false.

33. According to the Government, the right to freedom of association for lawful and peaceful purposes is upheld by the Cuban Constitution, provided that it is exercised with respect for public order and in compliance with the law.

34. The Government indicates that the real reason for the charges stems from events that occurred on 8 July 2018. On that date, Ms. de la Mora Valle, who was under the influence of alcohol, went to the outpatient clinic on Calle 61 in the municipality of Cienfuegos and attempted to gain entry in order to find her husband, who works there. She was refused access by the security guard and proceeded to shout and disrupt public order; she evaded hospital security and climbed over the perimeter fence. As she did so, an orange object made of plastic rope and measuring 17 centimetres long and 9 millimetres wide, which had been hidden in her hair, fell to the ground. As a result, officers from the National Revolutionary Police filed complaint No. 4493/2018, which gave rise to case No. 153/2018, with the People's Municipal Court of Cienfuegos. The proceedings were conducted in strict compliance with the provisions of articles 359 et seq. of the Criminal Procedure Act.

35. It is untrue that Ms. de la Mora Valle was denied the right to a fair trial. The hearing took place on 18 July 2018 and was attended by the defendant, who was accompanied by a defence lawyer of her own choosing. During the trial, all guarantees of due process were respected. She was accorded the right to disagree with any member of the tribunal; the complainant and witnesses were informed of their legal obligation to tell the truth; the defendant was informed of her right to testify or to refrain from doing so, and agreed to be heard by the court; her lawyer presented documentary and testimonial evidence, which was admitted and duly examined; and the defendant was allowed to have the last word.

36. Taking into account the facts reported by the prosecution, the evidence produced at the trial, the defence presented and the defendant's statements, the court handed Ms. de la Mora Valle a sentence of 10 months' imprisonment, reduced to correctional labour with custody. The defendant filed an appeal against this sentence, which was rejected by the People's Provincial Court of Cienfuegos on 7 August 2018. The sentence was successfully completed in July 2019.

37. With regard to the alleged arbitrary detention on 12 April 2020, the Government notes that it has been established that the preparatory file opened after complaint No. 2471/2020 was lodged contains statements given by Ms. de la Mora Valle on 13 and 16 April. They were signed by Ms. de la Mora Valle herself and do not indicate that she was beaten during her detention; on the contrary, in the statements, she admits having smoked and consumed alcohol in the street and used her mask incorrectly, contrary to the instructions of the health authorities and in violation of the epidemiological regulations adopted to contain and eradicate the COVID-19 pandemic in Cuba, specifically those set out in Decree No. 14/2020.

38. The Government explains that after she was taken to the police station, Ms. de la Mora Valle ran to the inner courtyard of the facility and removed her clothing while insulting the police officers at the top of her voice. As she is a woman, a female State security official came to assist the officer on duty and took Ms. de la Mora Valle inside the station to get

dressed. Once she was dressed, she again became disruptive and removed her clothing in the presence of the local Chief of the National Revolutionary Police. When asked by the officer to refrain from engaging in provocative acts, she did not comply, and so the officer took her to a cell. The Government states that it is untrue that she was placed with other detainees who had or were thought to have COVID-19.

39. The file contains Ms. de la Mora Valle's detention record; the order of 13 April imposing the precautionary measure of pretrial detention, of which she was notified personally; the document modifying this measure to house arrest; and the act ordering her release. The file also records that, on 5 May, Ms. de la Mora Valle was notified in person and not by telephone, as the source erroneously alleges, of the date on which the oral hearing was to be held. She was instructed that she could attend the hearing with a lawyer of her choosing and present any evidence she considered relevant.

40. On 7 May, the oral hearing in case No. 46/20 was held at the People's Municipal Court of Cienfuegos. Ms. de la Mora Valle was represented by a court-appointed lawyer. After examining the facts and evidence presented, the accused was convicted of the offences of spreading an epidemic, under article 187 (1) of the Cuban Criminal Code, and contempt, resistance and disobedience, under articles 144 (1), 143 (1) and 147 (1), in conjunction with article 10 (1) (b). She was given a single combined sentence of 18 months' imprisonment, with the corresponding additional penalty of deprivation of rights for the same period of time.

41. Dissatisfied with the sentence, the lawyer filed an appeal with the Criminal Chamber of the People's Provincial Court of Cienfuegos, but the appeal was declared inadmissible. The court's conviction became final and Ms. de la Mora Valle began serving her sentence on 4 June at the mixed women's prison in Sabana Miguel.

42. Since she was dissatisfied with the investigation and her conviction, Ms. de la Mora Valle voluntarily stopped eating on 5 June, 30 June and 14 July 2020.

43. The Government emphasizes that the allegations concerning her state of health are false. Despite deliberately starving herself, Ms. de la Mora Valle was never refused medical care. Her check-ups showed that she did not have a fever and was sufficiently hydrated, with normal vital signs. She remained conscious and was speaking clearly and coherently. She was brought before the medical committee of the Dr. Gustavo Aldereguía Lima General University Hospital, which determined that she did not have any psychiatric disorders that would preclude her from remaining in the prison system.

44. The prosecutor from the Department for Legal Compliance in Prisons of the Cienfuegos Provincial Prosecutor's Office interviewed her on 8 June, in accordance with resolution No. 6/20 of the Attorney General's Office. After the interview, all the procedures provided for in the resolution were carried out and the case was followed up exhaustively until 12 June, when Ms. de la Mora Valle decided to begin eating again of her own accord, not because of any threats made against her family members.

45. On 11 June, pursuant to paragraph 7 of the resolution, the case was referred to the Directorate of Family Welfare and Jurisdictional Matters of the Provincial Prosecutor's Office so that it could assess whether it was appropriate to initiate a special review procedure. After examining the matter, it was determined that there were no grounds for the Attorney General's Office to initiate a review, since there was no new evidence beyond that already evaluated and adjudged by the court of first instance. On 30 July, Ms. de la Mora Valle was notified of the decision in person at the facility where she is serving her prison sentence.

46. The Government states that, on the morning of 19 August, Ms. de la Mora Valle went to the medical centre and assaulted the doctor, causing injuries which, although they did not require medical treatment, gave rise to complaint No. 5669/20 of 21 August. Her actions were examined by the Directorate of Criminal Proceedings of the Attorney General's Office in September 2020 and found not to constitute criminal offences. The complaint was therefore closed, and notification of the decision was issued on 21 December 2020.

47. The Government rejects the claims that a lack of transparency and non-compliance with the judicial system and the administration of justice deprived Ms. de la Mora Valle of her procedural rights. Summary trials are provided for under the Criminal Procedure Act for offences punishable by up to 1 year of imprisonment. They are governed by the same

guarantees as ordinary trials. The only difference lies in the time frame for the conduct of the investigation and the oral hearing. While ordinary trials can last up to 20 days, summary trials are conducted in no more than 10 days. Moreover, by the nature of such trials, the presence of the defence lawyer and the prosecutor is not strictly obligatory, though this does not imply any violation of procedural rights and guarantees.

48. The Government rejects the source's account as inconsistent. The source claims that Ms. de la Mora Valle was threatened with having her prisoner benefits withdrawn, that she has been denied the right to visits from her family and colleagues and that she has still not been able to communicate with anyone outside the prison. In stating that her rights were withdrawn, the source acknowledges that the defendant has been accorded them, since rights cannot be withdrawn, withheld or modified unless they have been accorded in the first place. It is clear that Ms. de la Mora Valle's communication and visiting entitlements have not been infringed during her detention; on the contrary, her communication with the outside world has made it possible for the source to bring a detailed account to the attention of the Working Group. Currently, Ms. de la Mora Valle receives all the benefits available to her in the context of the ongoing epidemiological situation caused by COVID-19.

49. The Government reports that, in accordance with the recommendations of the World Health Organization on the response to COVID-19 in places of detention, and on the basis of the State's strategic plan for managing the pandemic, the Ministry of the Interior has instituted preventive hygiene and epidemiological measures in such facilities. As a result, the incidence of the disease in them has been lower than in the population as a whole.

50. At every entry point in all detention centres in the country, persons seeking access must disinfect their hands. Workers with flu-like symptoms are not permitted to enter. New inmates arriving from the community are kept in isolation for 15 days. Checks are carried out twice a day; any person requiring hospitalization is transferred to a centre designated for that purpose. Special treatment is provided for prisoners with HIV/AIDS, including in women's prisons and maternity homes. Isolation areas have been set up for prisoners with symptoms, and arrangements are in place for the transfer of patients as necessary.

51. The Government reiterates that Cuba is not a member of the Organization of American States or of any of its mechanisms and therefore does not recognize the legitimacy of the inter-American system.

52. It also reiterates its rejection of attempts to portray as human rights defenders persons who receive funding from a foreign power to subvert the constitutional order freely chosen by the people. Under the legislation in force in most parts of the world, including the most advanced countries, such persons are viewed as foreign agents. Their activities violate the 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular articles 4 and 20, by violating the Cuban people's right to self-determination.

## **Discussion**

53. The Working Group thanks the parties for the information provided and for their cooperation.

54. In the present case, the Working Group takes note of the Government's various claims that the proceedings were conducted in compliance with Cuban law. However, even when detention is carried out in conformity with domestic legislation, the Working Group must assess whether it was consistent with international human rights law.

55. In determining whether Ms. de la Mora Valle's detention was arbitrary, the Working Group takes account of the principles established in its jurisprudence on evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if

it wishes to refute the allegations.<sup>3</sup> The Working Group affirms that mere assertions that lawful procedures have been followed will not be sufficient to rebut the source's allegations.

*i. Category I*

56. The Working Group will first consider whether there was a legal basis for Ms. de la Mora Valle's deprivation of liberty, with a view to determining whether it was arbitrary. 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, as an international protection mechanism, must ensure that the detention is also consistent with the relevant provisions of international law.<sup>4</sup> 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.

57. 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. 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 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 specific circumstances.<sup>5</sup>

58. The Working Group 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 regard, the Working Group has stated on various 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.<sup>6</sup>

59. The source has stated that, at the time of her arrest, on 12 April 2020, Ms. de la Mora Valle, who was only a few steps away from her home, was detained by police officers who did not identify themselves or show a warrant or other type of order issued by an authority for her arrest, in violation of articles 3 and 9 of the Universal Declaration of Human Rights. When she was arrested, Ms. de la Mora Valle was not informed of the reasons for her arrest, an omission that reportedly prevented her from exercising her right to challenge its legality before a court, thus violating this right, which is established as a preemptory norm of general international law (*jus cogens*) and applies to all forms of arbitrary deprivation of liberty.<sup>7</sup> Adding to the arbitrary nature of Ms. de la Mora Valle's arrest, there was no legal basis for it at the time because the charge that was subsequently applied, namely "spreading an epidemic" (in the context of the COVID-19 pandemic), was based on a very broad, vague and recently adopted decree.

60. In addition, the source states that Ms. de la Mora Valle was taken to a nearby police station and beaten for shouting slogans denouncing the Cuban regime, which, as discussed below, violated her rights to freedom of opinion and expression and to freedom from cruel, inhuman or degrading treatment.<sup>8</sup> Furthermore, until she was provisionally released, the police reportedly locked her in a cell with a person who was thought to have coronavirus disease. These actions violated article 9 of the Universal Declaration of Human Rights and principle 10 of the Body of Principles for the Protection of All Persons under Any Form of

<sup>3</sup> Opinion No. 74/2017, para. 49.

<sup>4</sup> Opinions No. 59/2018, para. 82; No. 1/2018, para. 60; No. 79/2017, para. 51; and No. 42/2012, para. 29.

<sup>5</sup> Opinions No. 59/2018, paras. 80–83, and No. 48/2018, para. 63.

<sup>6</sup> 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, paras. 18, 75 and 93 (c), Annex.

<sup>7</sup> *Ibid.*, para. 47 (a).

<sup>8</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 1.



Detention or Imprisonment and rendered her arrest and detention arbitrary and without legal basis.<sup>9</sup>

61. The Working Group also considers that Ms. de la Mora Valle was arbitrarily detained when she received a telephone call a month later, on 5 May 2020, and was informed that she was required to report to the municipal police station, where she was first read the list of charges against her, including “spreading an epidemic, contempt, resistance and disobedience”. The Working Group has established that failure to promptly provide details of criminal charges so that an individual can challenge them judicially as soon as possible and in an effective manner constitutes a violation of his or her rights under the Universal Declaration of Human Rights.<sup>10</sup>

62. The source reports that on 7 May 2020, Ms. de la Mora Valle was sentenced by the People’s Provincial Court of Cienfuegos in a closed hearing during an irregular summary trial and was denied the right to a defence lawyer, which is a fundamental safeguard for challenging the lack of legal basis and the detention procedure.<sup>11</sup> Having been charged with contempt, resistance and disobedience<sup>12</sup> for her pro-democracy activism in Cuba, she was sentenced to 18 months in prison. The sentence was appealed on the same day it was handed down, but the appeal was rejected and she was ordered to serve her sentence, beginning on 4 June 2020, in Sabana Miguel prison in Cienfuegos, where she has been denied access to her lawyers and her family. She has been placed in isolation and incommunicado detention several times, under the pretext of the COVID-19 pandemic.

63. The Working Group also notes that, during her detention, Ms. de la Mora Valle was not afforded the right to bring proceedings before a court so that it could decide without delay on the lawfulness of her detention in accordance with articles 3 and 9 of the Universal Declaration of Human Rights and principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

64. Judicial oversight of deprivation of liberty is also a fundamental safeguard of personal liberty and is essential to ensuring that detention has a legal basis.<sup>13</sup> Given that Ms. de la Mora Valle has been prevented from challenging her detention since her initial arrest and from having her lawyers present in court, her right to an effective remedy under article 8 of the Universal Declaration of Human Rights has also been violated. She has been placed outside the protection of the law, in clear violation of articles 6, 7 and 8 of the Universal Declaration of Human Rights. The Working Group reiterates that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation. Given that she was unable to challenge her detention, her right to an effective remedy under article 8 of the Universal Declaration of Human Rights was also violated.

65. The Working Group also notes that Ms. de la Mora Valle was deprived of her liberty on the basis of the alleged commission of the offences of contempt, resistance and disobedience, which it has had the opportunity to analyse in the past in other cases concerning Cuba.<sup>14</sup> The definitions of these and similar offences are vague and overly broad, as they do not clearly specify the type of criminal activity that may be punishable. The principle of legality requires laws to be formulated with sufficient precision to give individuals access to and an understanding of the law and enable them to regulate their conduct accordingly. The application of vague and overly broad provisions in the present case made it impossible to invoke a legal basis to justify Ms. de la Mora Valle’s detention and conviction.

66. Based on the events described, 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 Ms. de la Mora Valle’s arrest, and the detention is therefore considered

<sup>9</sup> Deliberation No. 10 (A/HRC/45/16, annex I), paras. 5, 18 and 19.

<sup>10</sup> Opinion No. 65/2020, paras. 76 and 77.

<sup>11</sup> Opinion No. 40/2020, para. 29.

<sup>12</sup> Opinion No. 65/2020, para. 78.

<sup>13</sup> *Ibid.*, para. 77.

<sup>14</sup> Opinions No. 65/2020, para. 78, and No. 4/2020, paras. 133 and 135.

arbitrary under category I, insofar as it contravenes articles 8, 9 and 10 of the Universal Declaration of Human Rights.

ii. *Category II*

67. With regard to category II, and on the basis of all the information available to it, the Working Group notes that Ms. de la Mora Valle is known as a democracy activist in Cuban society. 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, 20 and 21 of the Universal Declaration of Human Rights. Ms. de la Mora Valle's detention gave rise to violations of the rights enshrined in articles 19, 20 and 21 of the Universal Declaration of Human Rights, as her detention is the result of her activities, through her membership of, and participation in, opposition groups in Cuba. Furthermore, the source claims that the authorities have used the COVID-19 pandemic to justify arresting dissidents and silencing them.

68. The Working Group, having examined the case, is convinced that, at the time of her arrest, Ms. de la Mora Valle was a human rights activist in Cuba, a supporter of Cuba Decide, an activist member of the Unión Patriótica de Cuba and a member of the Movimiento Consenso Ciudadano. The Working Group has heard that all these organizations are part of civil society and maintain peaceful and critical opposition to the Government, with a focus on seeking a transition to democracy.

69. The source bases these claims on the fact that Ms. de la Mora Valle had previously been arrested in 2019 due to her involvement in the Movimiento Consenso Ciudadano and charged with possessing and carrying weapons and explosives. On that occasion, she was also denied a fair trial and served a sentence of 10 months of corrective labour.

70. The source states that Ms. de la Mora Valle campaigns for her own and her compatriots' fundamental right to participate in the governance of their country, either directly or by electing representatives, as guaranteed by article 21 of the Universal Declaration of Human Rights. It is clear to the Working Group that Ms. de la Mora Valle is being persecuted in flagrant violation of the exercise of her right to freedom of expression, which is guaranteed by article 19 of the Universal Declaration of Human Rights.

71. It should be noted that, in the present case, it has not been claimed or demonstrated that the restriction of the exercise of the aforementioned rights was a limitation determined by law for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the requirements of morality, public order and the general welfare in a democratic society, as established by article 29 (2) of the Universal Declaration of Human Rights.

72. This background leads the Working Group to the view that the arrest and detention of Ms. de la Mora Valle were the result of an intensification of the harassment to which she has been subjected because of her civic and political activities. In view of the foregoing, the Working Group considers that the authorities deprived Ms. de la Mora Valle of her liberty for exercising her rights to freedom of thought, conscience, opinion, expression, association and participation, as recognized in articles 18–21 of the Universal Declaration of Human Rights, which renders the detention arbitrary under category II.

iii. *Category III*

73. The Working Group adheres to international human rights law, which recognizes that everyone has the right not to be arbitrarily deprived of their liberty and to be presumed innocent until proven 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 where their right to be tried by an independent criminal court is respected.<sup>15</sup> Furthermore, the right to due process and to a fair and impartial trial is applicable to all judicial proceedings related to the guarantees of the right to equality before the courts and tribunals, the right of persons to a

<sup>15</sup> Universal Declaration of Human Rights, arts. 9–11.

public hearing and equality of arms; States parties must respect all these guarantees, irrespective of their legal traditions and domestic legislation.<sup>16</sup>

74. The Working Group received credible information concerning the degrading treatment to which Ms. de la Mora Valle 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 the source has established that Ms. de la Mora Valle was the victim of cruel, inhuman or degrading treatment. This treatment, meted out to Ms. de la Mora Valle by the authorities at different times, contravenes international obligations pertaining to a fair and impartial trial, including the presumption of innocence and the principle of equality of arms.

75. In the opinion of the Working Group, incommunicado detention, lack of access to a lawyer, ill-treatment and inhuman conditions of detention made it impossible for Ms. de la Mora Valle to receive a fair trial with guarantees of due process and the right to a defence. The information submitted by the source reveals violations of the right to a fair trial during the proceedings against Ms. de la Mora Valle, who was a victim of the violation of her rights under instruments considered to be fundamental by the Working Group, namely the Universal Declaration of Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other norms and principles of international human rights law.

76. The Working Group is 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, 10 and 11 of the Universal Declaration of Human Rights, rendering the detention arbitrary under category III.

77. In the light of the allegations concerning the cruel, inhuman or degrading treatment or punishment to which Ms. de la Mora Valle was exposed from the outset of her detention, the Working Group will forward the information to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for possible action. Similarly, in view of the claims made by the source, the Working Group will refer 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.

*iv. Category V*

78. The source has demonstrated that Ms. de la Mora Valle is the victim of discrimination and the target of serious violations of the protection afforded by the Universal Declaration of Human Rights, solely on the basis of her political views. The source notes with concern that Ms. de la Mora Valle has, in the past, been charged with “posing a danger to society”, under a law designed to persecute and imprison citizens before they commit an offence, for her participation in a campaign for peaceful political reform. She has also received fines and has previously been jailed, serving her first 10-month prison sentence in 2019.

79. The Working Group also notes that the case and the claims of discrimination against Ms. de la Mora Valle, based on her status as a pro-democracy activist and human rights defender and membership of the Unión Patriótica Cubana, reflect a situation that has already been examined in previous Opinions.<sup>17</sup> Therefore, Ms. de la Mora Valle’s detention is not an isolated occurrence, but takes place in a context of persecution of individuals belonging to pro-democracy civil society associations and persons sympathetic to their activities.

80. In the light of these circumstances, the Working Group is convinced that the source has presented a case in which there can be no objective doubt that Ms. de la Mora Valle is being subjected to repression on account of her political dissent, and that to this end the law has been used as a tool to systematically discriminate against her and limit her political activism. Her most recent arrest is part of a systematic pattern of persecution and

<sup>16</sup> Opinions No. 65/2020, paras. 89–97; No. 78/2020, paras. 53–64; No. 82/2020, paras. 62–71; and No. 86/2020, paras. 76–86.

<sup>17</sup> Opinions No. 50/2020, No. 4/2020 and No. 63/2019.

discrimination aimed at curbing her activism; arbitrary detention is being used to punish her for these activities, in violation of articles 2 and 7 of the Universal Declaration of Human Rights.

v. *Final considerations*

81. The source has indicated that Ms. de la Mora Valle's health has been compromised and that she requires specialized psychological treatment. Furthermore, given the state of her health, Ms. de la Mora Valle needs medical treatment, and the relevant hygiene measures must be put in place to prevent her contracting COVID-19. Ms. de la Mora Valle's current situation constitutes a violation of rule 27 (1) and (2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

82. Currently, Ms. de la Mora Valle remains incarcerated in the Sabana Miguel prison in Cienfuegos, where she continues to be denied the right to a defence and adequate legal representation. In addition, she has been denied visits from her family and colleagues and has not been able to communicate with anyone outside the prison. The source alleges that she continues to be subjected to physical and verbal abuse by the authorities and that, unless she is released, her unjust detention will continue to put her at imminent risk of immeasurable and irreversible harm, and her life will potentially be in danger.

83. The Working Group wishes to stress that this is not the first case of arbitrary deprivation of liberty in Cuba that it has examined in recent years. The conclusions reached by the Working Group in its Opinions on Cuba show that arbitrary detention is used systematically.<sup>18</sup>

84. In the light of the foregoing, the Working Group would welcome the opportunity to undertake a visit to Cuba in order to assist the Government in addressing the concerns relating to arbitrary detention. As a member of the Human Rights Council, Cuba is in a unique position to demonstrate its commitment to human rights by inviting the Working Group to undertake a visit.

### **Disposition**

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

The deprivation of liberty of Keilylli de la Mora Valle is arbitrary, as it contravenes articles 3, 8, 9, 10 and 11 of the Universal Declaration of Human Rights, as well as the 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, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and falls under categories I, II, III and V.

86. The Working Group requests the Government of Cuba to take the steps necessary to remedy the situation of Ms. de la Mora Valle without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the other international instruments listed above.

87. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. de la Mora Valle immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law.

88. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. de

<sup>18</sup> Opinions No. 65/2020, No. 50/2020, No. 4/2020, No. 63/2019, No. 66/2018, No. 59/2018, No. 48/2018, No. 64/2017, No. 55/2017, No. 12/2017, No. 9/2014, No. 17/2013, No. 69/2012 and No. 23/2012.

la Mora Valle and to take appropriate measures against those responsible for the violation of her rights.

89. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case for appropriate action to: (a) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; (b) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; (c) the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and (d) the Special Rapporteur on the rights to freedom of peaceful assembly.

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

#### **Follow-up procedure**

91. 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 Ms. de la Mora Valle has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. de la Mora Valle;
- (c) Whether an investigation has been conducted into the violation of Ms. de la Mora Valle'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.

92. 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. The Working Group would welcome the opportunity to undertake a visit to Cuba in order to assist the Government in addressing concerns related to arbitrary detention. As an elected member of the Human Rights Council from 2021 to 2023, Cuba is in a good position to demonstrate its commitment to human rights by inviting the Working Group to undertake a visit.

93. 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.

94. The Working Group encourages the Government of Cuba to ratify the International Covenant on Civil and Political Rights.

95. 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.<sup>19</sup>

*[Adopted on 7 May 2021]*

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<sup>19</sup> Human Rights Council resolution 42/22, paras. 3 and 7.