



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its ninety-eighth session, 13–17 November 2023****Opinion No. 62/2023 concerning Dariel Ruiz García (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 51/8.

2. In accordance with its methods of work,¹ on 12 May 2023 the Working Group transmitted to the Government of Cuba a communication concerning Dariel Ruiz García. The Government replied to the communication on 10 August 2023. 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).

¹ [A/HRC/36/38](#).



1. Submissions**(a) Communication from the source**

4. Dariel Ruiz García is a Cuban national who was born on 9 August 1973. His habitual place of residence is the neighbourhood of Aguacate in the municipality of Madruga, Mayabeque Province. Mr. Ruiz García has a physical disability.

(i) Context

5. According to the source, Mr. Ruiz García was arrested on 17 August 2021, a few metres from his residence, by uniformed officers from the Madruga municipal unit of the National Revolutionary Police.

6. The source alleges that the arbitrary detention of Mr. Ruiz García occurred in the context of the mass demonstrations of 11 July 2021 and the following days, which took place in several areas and regions of Cuba. The source states that these were peaceful and spontaneous demonstrations by thousands of Cubans in response to the gradual accumulation of serious food and medicine shortages and the escalation of acts of repression and restrictions of fundamental freedoms.

7. The source asserts that, on 11 July 2021, the President gave a televised address in which he encouraged repressive forces and other groups to violently confront the demonstrators. The President allegedly said that “the combat order is given”. As a result, individuals in civilian clothing, who did not identify themselves, but who were actually military personnel from the Ministry of the Interior, and civilians from rapid response brigades were transported to the demonstration sites in State-owned buses and trucks in order to violently repress the demonstrators. The source adds that these individuals, whose intentions were clearly hostile, formed human barriers in the streets to block the demonstrators at all costs.

8. According to the source, on-duty officers from section 21 of the Directorate General of Counter-Intelligence were among the individuals in civilian clothing who did not identify themselves. These officers acted in concert with uniformed officers of the National Revolutionary Police, the Special National Brigade – an anti-riot unit of the Ministry of the Interior whose agents are known as the “Black Berets” – and Revolutionary Armed Forces Prevention Troops (“Red Berets”) of the Ministry of the Revolutionary Armed Forces, to attack and violently arrest participants in demonstrations throughout the country, causing public disorder and sparking public anger. According to the source, these violent arrests were accompanied by serious physical abuse, causing injuries to several protesters.

9. On 11 July 2021 and over the following days, the Government shut down Internet access in an attempt to prevent the public from learning of the reprisals against the demonstrators.

(ii) Arrest and detention

10. The source claims that Mr. Ruiz García joined the demonstrations against the Government on the afternoon of 12 July 2021, the day on which they spread to the area in which he lived.

11. According to the source, on 17 August 2021, a “pot-banging” protest took place in the neighbourhood of Suárez de Madruga, Mayabeque Province. The protest was in response to a power cut in the settlement which had lasted for about 12 hours. Mr. Ruiz García also took part in this demonstration and, on his way home, was arrested by uniformed officers of the Madruga municipal unit of the National Revolutionary Police.

12. According to the source, Mr. Ruiz García was detained in obedience to the combat order issued by the President in response to the demonstrations that began on 11 July. The legal basis for the detention, according to the source, is title IV, “Detention and confinement of the accused”, of Act No. 5 of 1977, the Criminal Procedure Act.

13. The source states that Mr. Ruiz García was placed in pretrial detention and questioned under duress by the police in the absence of his legal representative. At this time, he was

informed that he was accused of the offences of public disorder, contempt of authority and inciting criminal activity. The indictment is contained in preliminary case file No. 452/21 of the criminal investigation and operations unit of the municipality of San José de las Lajas, Mayabeque Province.

14. The source adds that, on 27 August 2021, Mr. Ruiz García's legal representative filed a motion for modification of the precautionary measure (preliminary case file No. 452/21), which was rejected. The legal representative has filed further motions to the same effect, but all have been rejected.

(iii) *Trial proceedings*

15. According to the source, Mr. Ruiz García was brought before the Criminal Chamber of the People's Municipal Court of San José de las Lajas, where he was tried on 22 July 2022. On 19 August 2022, the same court handed down judgment No. 39, sentencing him to 2 years and 6 months' imprisonment for the offences of contempt of authority, public disorder and resistance. According to the source, the principle presumption of innocence was violated during the oral proceedings, when Mr. Ruiz García was in pretrial detention. From the arrest and the preliminary phase until the trial, Mr. Ruiz García was treated and stigmatized as a common criminal for exercising his right to freedom of expression and his right to protest.

16. The source states that Mr. Ruiz García did not appeal against the conviction due to his fear and distrust of the judicial authorities.

17. According to the source, Mr. Ruiz García was first deprived of his liberty on 17 August 2021, when he was taken to the municipal unit of the National Revolutionary Police in Madruga, Mayabeque Province. The following day, 18 August 2021, he was transferred to the criminal investigation and operations unit of the municipality of San José de las Lajas, Mayabeque Province. He was later transferred to another facility in the same municipality, which had been set up after the demonstrations because the criminal investigation and operations unit did not have space for so many detainees. This facility is known as the "AIDS hospital". On 6 September 2021, he was transferred to Melena del Sur Prison in Mayabeque Province, where he stayed for one year and eight months. On 4 May 2022, he was transferred to the "Paraíso" prison camp in the municipality of Güines, where he remains deprived of his liberty.

18. Regarding the conditions of detention, the source states that Mr. Ruiz García's rights have been violated both during pretrial detention and after his conviction. According to the source, these abuses are contrary to rules 1, 13, 18, 19 (2), 22, 24 and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

19. According to the source, Mr. Ruiz García was subjected to police questioning under duress and in the absence of his legal representative in criminal proceedings that were brought against him for participating in the demonstration of 12 July 2021 and the "pot-banging" protest of 17 August 2021.

20. The source adds that, during his imprisonment, Mr. Ruiz García has been held in foul-smelling cells with deplorable conditions of hygiene, lighting and ventilation. According to the source, Mr. Ruiz García's family must obtain and provide him with personal hygiene products, since the authorities, namely the Directorate of Prisons of the Ministry of the Interior, do not provide them to detainees.

21. According to the source, the authorities are unable to provide detainees with clean bedding. Owing to this negligence, detainees frequently contract skin infections, the most common being scabies.

22. The source adds that the food Mr. Ruiz García is given is insufficient, very poor quality and cold, with little or no protein or vitamin content. The water is also of very poor quality and raises serious doubts as to its potability.

23. With respect to medical services, the source states that Mr. Ruiz García has had one of his lower limbs amputated and is visually impaired. He has not received any medication from the authorities in charge of his detention.

24. The source states that Mr. Ruiz García was not permitted to speak with his mother by telephone until 16 September 2021, one month after his arrest. It was not until 20 October 2021 – around three months after his arrest – that Mr. Ruiz García was allowed to receive a visit. Mr. Ruiz García’s legal representative was able to contact him for the first time on 22 September 2021, around one month after his arrest.

25. The source submits that the actions of the Cuban authorities are contrary to principles 11, 13, 15, 16 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

26. The source argues that the Cuban authorities failed to comply with principle 11, since Mr. Ruiz García went many months without being given an effective opportunity to be heard promptly by a judge. Mr. Ruiz García did not receive prompt or full communication of any order of detention. The source also states that the authorities responsible for Mr. Ruiz García’s arrest, detention and imprisonment failed to observe principle 13, since they did not, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, provide him with information on or an explanation of his rights and how to avail himself of such rights.

27. The source submits that principle 15 was also violated, insofar as the authorities responsible for Mr. Ruiz García’s detention subjected him, without justification, to the denial of communication with his family between 17 August 2021 and 16 September 2021, when he was able to contact his family by telephone for the first time. The source also states that, after his arrest, Mr. Ruiz García did not enjoy the right to notify or require the competent authority to notify his family of his arrest, detention or imprisonment or his transfer from one prison to another, in violation of principle 16. Finally, the source states that principle 19 was violated, since Mr. Ruiz García did not enjoy the right to be visited, in particular by members of his family, between 17 August 2021, the date of his arrest, and 20 October 2021, the date of the first visit.

(iv) *Legal analysis*

28. The source submits that Mr. Ruiz García’s detention falls under categories I, II, III and V of the Working Group.

a. Category I

29. With respect to category I, the arrest and detention of Mr. Ruiz García are regulated by title IV, “Detention and confinement of the accused”, of Act No. 5 of 1977, the Criminal Procedure Act, which was the law applicable at the time of the events and which was repealed on 1 January 2022 as it contained criminal procedure standards that were abusive against persons accused of criminal offences.

30. It is alleged that Mr. Ruiz García’s pretrial detention had inquisitorial characteristics and that he suffered psychological control, duress, degrading treatment, frequent physical abuse and isolation at the hands of the authorities responsible for his detention.

31. According to the source, pretrial detention is the most drastic step that can be taken against an accused person during the preliminary phase of oral proceedings, and in this case has prevailed over other, non-custodial, precautionary measures. The source argues that this measure is disproportionate, as Mr. Ruiz García has an amputated leg, is visually impaired and is responsible for the care and financial support of his son, a minor. In addition, he has a stable family situation, a recognized domicile and no criminal record, and there was nothing to suggest that he would attempt to evade justice.

32. The source adds that the precautionary measure of pretrial detention, far from being applied as an exceptional measure, was instead applied informally, at all costs, and without judicial oversight in accordance with the Criminal Procedure Act, against those who demonstrated against the Government on 11 July 2021 and the following days. The source mentions that this situation is compounded by the precariousness, overcrowding and very poor living conditions that prevail in the prison system, as well as its inefficiency. The source also points out that the authorities cannot meet detainees’ basic needs, such as access to personal hygiene products.

33. In the source's opinion, the events described in relation to the deprivation of liberty of Mr. Ruiz García reveal a violation of rules 1, 13, 18, 19 (2), 22, 24 and 58 of the Nelson Mandela Rules and of principles 11, 13, 15, 16 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

34. The source argues that, in relation to Mr. Ruiz García's detention, the Government has violated article 41 of the Constitution, which recognizes and guarantees the inalienable, imprescriptible, indivisible, universal and interdependent enjoyment and exercise of human rights, in accordance with the principles of progressiveness, equality and non-discrimination. It has done so by inflicting deliberate physical attacks on those who, like Mr. Ruiz García, attempted to peacefully exercise the right to protest – a universal and inalienable human right enshrined in article 56 of the Constitution.

b. Category II

35. The source alleges that Mr. Ruiz García's deprivation of liberty is a violation of his rights under articles 7, 18, 19 and 20 of the Universal Declaration of Human Rights. The source argues that the indictment against Mr. Ruiz García for allegedly committed offences while exercising his right to protest on 11 July 2021 and the following days is nothing more than a measure used by the Government to criminalize protest. According to the source, the right to protest is not accompanied by any legislation regulating its exercise; a legislative vacuum that has allowed the Government, through the law enforcement authorities, to harass, suppress, humiliate, arrest, assault, prosecute and criminalize demonstrators who are not sympathetic to the Communist Party of Cuba.

c. Category III

36. The source argues that Mr. Ruiz García's rights under articles 9 and 10 of the Universal Declaration of Human Rights have been violated, as he has been subjected to prolonged arbitrary detention, with inquisitorial characteristics, under the Criminal Procedure Act. The source alleges that the Cuban authorities violated the criminal procedural guarantees set forth in article 95 (b) and (h) of the Constitution, since they neither provided him with legal assistance from the beginning of the criminal proceedings nor allowed him to communicate immediately with his family.

37. The source adds that, during the criminal proceedings against Mr. Ruiz García, he was subjected to police questioning under psychological duress in the absence of his legal representative. The source also argues that the independent practice of law is not permitted in Cuba, since the legal profession, in the form of the National Organization of Collective Law Firms – the professional organization tasked with representing individuals in criminal proceedings – is under the control of the Communist Party of Cuba. The leadership of the Communist Party of Cuba has control over the courts, the Public Prosecution Service, investigative bodies, prosecutorial bodies, expert witnesses, pro-government lawyers and the official mass media.

38. The source argues that, during the oral proceedings, Mr. Ruiz García's right to be presumed innocent was violated, since the charges brought by the prosecution distorted the facts in order to criminalize the exercise of the inalienable rights to freedom of expression and to protest.

d. Category V

39. Finally, with regard to category V, the source alleges that Mr. Ruiz García was deprived of his liberty in reprisal for his involvement in the mass demonstrations of 11 July 2021 and the following days and the "pot-banging" protest of 17 August 2021, in opposition to the Government and the Communist Party of Cuba.

(b) Response from the Government

40. In order to be able to issue an opinion in the present case, the Working Group, in accordance with its methods of work, transmitted the source's allegations to the Government of Cuba on 12 May 2023 and requested it to submit a response by 11 July 2023. The Working Group also requested the Government to safeguard Mr. Ruiz García's physical and mental

health. On 6 July 2023, the Government requested an extension of the deadline, which was granted by the Working Group. The Government sent its response regarding the case of Mr. Ruiz García on 10 August 2023, within the deadline set.

41. In its response, the Government denies the source's allegations and states that Mr. Ruiz García's detention does not fall into any of the categories of arbitrary detention established by the Working Group.

42. The Government states that Cuba ensures the inalienable, imprescriptible and indivisible exercise of human rights and that Mr. Ruiz García's detention cannot be considered arbitrary because he was tried by a competent court and due process was guaranteed by the relevant authorities.

43. The Government asserts that the source's claim that Mr. Ruiz García's detention occurred during the peaceful mass demonstrations of 11 July 2021 and the following days is untrue. The Government states that the demonstrations could at no stage be described as peaceful, but rather were violent riots characterized by disorderly conduct and vandalism, during which people were encouraged to commit violent acts that had an extremely serious impact on the country's stability, with damage to and destruction of State property, goods and institutions.

44. The Government indicates that Mr. Ruiz García was arrested on 17 August 2021, one month after the riots of 11 July. The source's claim is therefore false and reveals an attempt to manipulate the United Nations human rights machinery in its favour.

45. The Government reports that, on 17 August 2021, under the influence of alcohol, Mr. Ruiz García caused public disorder, using the power cut as a pretext and violating health measures in place to address the coronavirus disease (COVID-19) pandemic.

46. As a result of these acts of vandalism, Mr. Ruiz García was arrested by law enforcement, but not without resistance. The Government states that when an arrest is made, a record is automatically drawn up stating the time, date and reason for the arrest, after which the authorities inform the detainee's family of the place where he or she is being held. The Government asserts that it is untrue that Mr. Ruiz García was deprived of this right.

47. In its response, the Government states that Mr. Ruiz García was charged with the crimes of contempt of authority, public disorder, inciting criminal activity, and resistance, and that on 24 August 2021, the prosecutor ordered the precautionary measure of pretrial detention. The Government adds that the precautionary measure imposed upon Mr. Ruiz García is not disproportionate in view of his unlawful conduct and the seriousness of the criminal acts committed against law and order and the public peace.

48. According to the Government, it is untrue that Mr. Ruiz García was denied legal representation, since a lawyer was appointed for him on 24 August 2021. The Government stresses that Mr. Ruiz García did not avail himself of this right until 25 January 2022.

49. The Government states that the oral trial was held on 29 July 2022, contrary to the information provided by the source. At the trial, Mr. Ruiz García was convicted of the aforementioned offences, all of which are set forth in the Criminal Code, and sentenced to 2 years and 6 months' imprisonment. The Government reports that, although Mr. Ruiz García had the right to appeal against the judgment, he did not do so either within the legal time limit or afterwards, which legally proves that he accepted the conviction.

50. The Government asserts that Mr. Ruiz García, contrary to the source's allegations, has neither been physically abused nor subjected to isolation, ill-treatment, duress or psychological control. In Cuba, prisoners may not be subjected to corporal punishment or any other measure that would humiliate them or undermine their dignity.

51. The Government contests the source's allegation of a lack of family visits. It reminds the Working Group that, for a time, health measures were in place to address the COVID-19 pandemic and that it was necessary to preserve the health of prisoners and their families. The Government adds that, since the epidemiological situation improved and the measures were lifted, Mr. Ruiz García has enjoyed regular visits from a cousin, his son, his mother and his siblings, who have travelled from the United States of America to Cuba for this purpose.

52. It is also untrue that Mr. Ruiz García has to obtain personal hygiene products for himself and that he has access to poor quality, cold food without protein or vitamin content. The Government asserts that when the Attorney General's Office held a meeting with Mr. Ruiz García to review the conditions and lawfulness of his detention, he made no complaint in this regard.

53. According to the Government, it is also untrue that Mr. Ruiz García was denied the medical assistance he requires as a person with a disability; in fact, he has been evaluated by orthopaedic specialists. When he complained of pain, a dry mouth and frequent urination, tests were carried out, all of which gave negative results, attesting to his good health.

54. Mr. Ruiz García has benefited from educational and vocational training programmes to prepare him for reintegration into society. As at 23 July 2023, he was taking a course in barbering at the prison.

55. The Government states that it complies with the Nelson Mandela Rules and that its treatment of detainees, in this case Mr. Ruiz García, is respectful of their physical and psychological health and human dignity.

(c) Additional comments from the source

56. The Working Group transmitted the Government's response to the source on 11 August 2023 and requested any final comments and observations, which were received on 21 August 2023.

57. In its additional comments, the source states that Mr. Ruiz García continues to be detained under an unjust criminal penalty for taking part in the mass demonstrations that took place throughout Cuba on 11 July 2021.

58. The source asserts that the Government fails to specifically address several of the source's claims, such as the claim that Mr. Ruiz García has been subjected to an unjust and informal precautionary measure of deprivation of liberty (pretrial detention) without judicial oversight and without taking into account his personal circumstances, including the fact that he had a recognized domicile and that there was nothing to suggest that he would attempt to evade justice; or the claim that the alleged criminal wrongdoing posed no danger to society.

59. The source adds that the Government, in its response, does not refer to Mr. Ruiz García's being detained without an arrest warrant and without being informed of his constitutional rights and guarantees. Nor does it refer to his deprivation of liberty for more than 100 days without being given an opportunity to be heard by a judge or court.

60. The source insists on the claims set forth in the initial submission and reiterates that the detention of Mr. Ruiz García is arbitrary under categories II, III and V of the Working Group.

2. Discussion

61. The Working Group thanks the source and the Government for their submissions.

62. In determining whether Mr. Ruiz García's deprivation of liberty is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international human rights law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.² Mere assertions that lawful procedures have been followed are not sufficient to rebut the source's allegations.

63. The Working Group wishes to reaffirm that States have an obligation to respect, protect and uphold all human rights and fundamental freedoms, including liberty of person, and that any national law or procedure allowing deprivation of liberty should be formulated and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights and other applicable international instruments. Consequently, even if the detention is in conformity with national legislation, regulations and

² [A/HRC/19/57](#), para. 68.

practices, the Working Group has a right and an obligation to assess the judicial proceedings and the law itself to determine whether the detention is also consistent with the relevant provisions of international human rights law.

(a) Category I

64. According to the source, on the afternoon of 12 July 2021, Mr. Ruiz García participated in a nationwide demonstration against the Government which had begun the day before and spread to the area in which he lived. On 17 August 2021, a “pot-banging” protest took place in the neighbourhood of Suárez de Madruga, Mayabeque Province. The protest was in response to a power cut which had affected the settlement for about 12 hours. Mr. Ruiz García also took part in this civic demonstration and, on his way home, was arrested by uniformed officers of the Madruga (Mayabeque Province) municipal unit of National Revolutionary Police. The source states that Mr. Ruiz García was detained without an arrest warrant and without being informed of his constitutional rights and guarantees. In its response, the Government states that Mr. Ruiz García was arrested on 17 August 2021, one month after the riots of 11 July – mention of which, according to the Government, reveals an attempt to manipulate the United Nations human rights machinery in the source’s favour. According to the Government, the arrest was made by law enforcement as a result of a disturbance that Mr. Ruiz García had caused while under the influence of alcohol, which endangered the public peace and public safety and violated the health measures in place due to the COVID-19 pandemic.

65. The Working Group recalls that a detention is considered arbitrary under category I if it lacks legal basis. As the Working Group has previously stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a national law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case,³ since a legal basis must exist and be evident at the time of the arrest. This is typically done through an arrest warrant or a court order, or an equivalent document.⁴ The reasons for the arrest must be provided immediately upon arrest and must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.⁵ This is a procedurally inherent component of the right to liberty and security of person and the prohibition of arbitrary deprivation of liberty under articles 3 and 9 of the Universal Declaration of Human Rights and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁶

66. The Government, in its response, does not mention whether or not there was an arrest warrant. The Working Group notes that the Government merely states that it is untrue that Mr. Ruiz García was deprived of this right and proceeds to make the general argument that whenever there is an arrest, a record is automatically drawn up stating the time and reason for the arrest, and the authorities inform the family where the detainee is being held. The Working Group also notes that the Government has produced nothing to support its denial, despite the fact that it bears the burden of proof. On this factual basis, the Working Group considers that the arrest of Mr. Ruiz García violated articles 3 and 9 of the Universal Declaration of Human Rights and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁷

67. The source argues that Mr. Ruiz García was subjected to an unjustified period of incommunicado detention. According to the source, Mr. Ruiz García was not permitted to speak with his mother by telephone until 16 September 2021, one month after his arrest. In addition, it was not until 20 October 2021, around three months after his arrest, that Mr. Ruiz García was allowed to receive a visit. The source also states that, after his arrest, Mr. Ruiz

³ Opinions No. 9/2019, para. 29; No. 46/2019, para. 51; and No. 59/2019, para. 46.

⁴ Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39. In cases of arrests made in flagrante delicto, the opportunity to obtain a warrant will typically not be available.

⁵ Human Rights Committee, general comment No. 35 (2014), para. 25; Opinion No. 30/2017, paras. 58 and 59; and Opinion No. 85/2021, para. 69.

⁶ Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

⁷ Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

García did not enjoy the right to notify or require the competent authority to notify his family of his arrest, detention or imprisonment or his transfer from one prison to another. Mr. Ruiz García's legal representative was able to contact him for the first time on 22 September 2021, around one month after his arrest. In its response, the Government stated that Mr. Ruiz García has had the right to appoint a lawyer since 24 August 2021 and that, although family visits had been suspended due to a resurgence of the COVID-19 pandemic, since the epidemiological situation improved and measures were lifted, Mr. Ruiz García has enjoyed regular such visits. The Working Group recalls its deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies, in which it noted that, even when in-person attendance of meetings must be restricted, alternative means, such as online communications, should be used.⁸ Communication should be facilitated to ensure that detainees remain in contact with their families and legal counsel. The Working Group also notes that the Government did not refute the source's allegation regarding the date of Mr. Ruiz García's first telephone call, which took place one month after the arrest.

68. In view of the above, the Working Group finds that Mr. Ruiz García was denied the right to contact with the outside world, contrary to rule 58 of the Nelson Mandela Rules and principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

69. The Working Group, in its deliberation No. 11, has stated that secret and/or incommunicado detention constitutes the most serious violation of the norm protecting a person's right to liberty. Arbitrariness is inherent in such forms of deprivation of liberty, since the individual is left without legal protection. Such secret and/or incommunicado detention cannot be part of the emergency public health measures put in place to combat a health crisis.⁹ The Working Group therefore also finds a violation of article 6 of the Universal Declaration of Human Rights in the present case.

70. The source states that Mr. Ruiz García was deprived of his liberty for more than 100 days without being given an opportunity to be heard by a judge or court. In its response, the Government does not provide detailed or substantial information about the date or circumstances under which Mr. Ruiz García was brought before a judge for the first time.

71. International human rights standards specify that the maximum time limit for bringing a detained person before the competent authority is 48 hours and make clear that any delay must be absolutely exceptional and justified.¹⁰ This situation constitutes a violation of articles 8 and 9 of the Universal Declaration of Human Rights and principles 11 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Similarly, the Working Group recalls that, in order to be considered as having a legal basis, the legality of a detention must be overseen by a judge and not a prosecution or security body, as has happened in this case.¹¹

72. The Working Group wishes to stress that judicial oversight of detention is a fundamental safeguard of personal liberty¹² and is essential to ensuring that detention has a legal basis. The right to bring proceedings before a court to challenge the arbitrariness and lawfulness of detention and to obtain without delay appropriate and accessible remedies is not derogable under international law.¹³

73. In the light of the information received, the Working Group considers that the Government acted in breach of international human rights law, violating articles 8 and 9 of

⁸ [A/HRC/45/16](#), annex II, paras. 20 and 21.

⁹ *Ibid.*, annex II, para. 9.

¹⁰ Opinions No. 20/2019, para. 66; No. 26/2019, para. 89; No. 36/2019, para. 36; No. 56/2019, para. 80; No. 76/2019, para. 38; and No. 37/2022, para. 58.

¹¹ Opinions No. 32/2020, para. 44; No. 33/2020, para. 75; and No. 37/2022, para. 58.

¹² [A/HRC/30/37](#), paras. 2 and 3.

¹³ *Ibid.*, annex, principle 4, paras. 4 and 5. The right to challenge the lawfulness of detention before a judicial authority is considered part of customary international law, which applies irrespective of whether a State is party to the Covenant. See, in this regard, [E/CN.4/2005/6/Add.4](#), paras. 28 and 52; and opinion No. 15/2019, para. 28.

the Universal Declaration of Human Rights, as Mr. Ruiz García was not brought before a judge within 48 hours of his arrest.

74. Taking note of the above, the Working Group concludes that the arrest and subsequent detention of Mr. Ruiz García were arbitrary under category I, as they had no legal basis.

(b) Category II

75. The source states that Mr. Ruiz García's detention is arbitrary under category II because it is the direct result of having expressed his opinion and political position in the demonstrations that took place in Cuba over several days and which have been a matter of public record. Thus the rights to freedom of expression and to freedom of peaceful assembly and association, enshrined in articles 19 and 20 of the Universal Declaration of Human Rights, have been violated. The Government, for its part, claims that the arrest occurred because Mr. Ruiz García had engaged in acts of violence, breaches of the peace and vandalism while intoxicated.

76. In this regard, the Working Group underlines Human Rights Council resolution 24/5, in which States are reminded of their obligation to respect and fully protect the rights of all individuals, including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, to assemble peacefully and associate freely.

77. As stated in Human Rights Council resolution 12/16, States are urged to refrain from imposing restrictions that are inconsistent with international human rights law, in particular restrictions on: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief.

78. The Working Group stresses that, according to article 19 of the Universal Declaration of Human Rights, everyone has the right to freedom of expression, which includes the right to impart information and ideas of all kinds, orally or otherwise. The Working Group also reiterates that the exercise of this right may be subject only to such restrictions as are expressly provided for by law and are necessary to ensure respect for the rights or reputations of others or to protect national security, law and order or public health or morals.¹⁴

79. The Working Group is of the view that freedom of opinion and freedom of expression are indispensable prerequisites for the full development of the person and constitute the cornerstone of all free and democratic societies. Both freedoms are the basis for the effective exercise of a wide range of human rights, including the right to the freedoms of assembly and association and the right to political participation, as set forth in the Universal Declaration of Human Rights.¹⁵

80. The importance of freedom of opinion is such that no Government may impair other human rights on the basis of a person's actual or perceived opinions, whether of a political, scientific, historical, moral, religious or any other nature. Consequently, criminalizing the expression of an opinion is incompatible with the Universal Declaration of Human Rights. Nor is it permissible for a person to be harassed, intimidated, stigmatized, detained or placed in pretrial detention, prosecuted or imprisoned because of his or her views.

81. The Working Group also notes that the Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that international human rights law only protects assemblies that are peaceful, i.e. those that are not violent, and where participants have peaceful intentions, which should be presumed.¹⁶

82. The Working Group specifically notes that there are no complaints that Mr. Ruiz García caused a public disturbance, using the power cut as a pretext and violating the public health measures that were in place address the COVID-19 pandemic. Similarly, the Working Group is not convinced that Mr. Ruiz García's actions can justify the loss of the protection afforded to him by articles 19 and 20 of the Universal Declaration of Human Rights.

¹⁴ Opinion No. 58/2017, para. 42.

¹⁵ See opinions No. 58/2017 and No. 63/2019.

¹⁶ [A/HRC/20/27](#), para. 25.

83. In view of the above, the Working Group finds that the arrest and detention of Mr. Ruiz García were essentially due to the peaceful exercise of his rights to freedom of assembly and association and to freedom of opinion and expression, in violation of articles 19 and 20 of the Universal Declaration of Human Rights. In view of these circumstances, the Working Group decides to refer this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and finds the detention of Mr. Ruiz García arbitrary under category II.

(c) **Category III**

84. Given its finding that the detention of Mr. Ruiz García occurred as a result of the exercise of the rights to freedom of opinion and expression and to freedom of association, which renders it arbitrary under category II, the Working Group considers that there are no proportional grounds to justify his detention or trial. However, given that criminal proceedings were instituted against him and considering the allegations of the source, the Working Group will proceed to analyse whether, in course of the ongoing judicial proceedings, the fundamental elements of a fair, independent and impartial trial have been respected, including the right of the person to be heard in public proceedings with all the guarantees necessary for his or her defence and the right to be tried by an independent criminal court.

85. With regard to category III, which refers to the right to a fair trial and due process, the Working Group recalls that the right to a fair trial has, since the proclamation of the Universal Declaration of Human Rights, become established as one of the fundamental pillars of international law to protect individuals against arbitrary treatment.

86. In the case of Mr. Ruiz García, the Working Group wishes to stress that, according to the information from the source, the precautionary measure of pretrial detention was ordered on 24 August 2021 by the prosecutor. The fact that this measure is not considered “disproportionate in view of [Mr. Ruiz García’s] unlawful conduct and the seriousness of the criminal acts committed against law and order and the public peace” – as the Government puts it – is not relevant; what is relevant is that the measure was not issued by the competent authority. The Working Group has always insisted that, in the area of criminal law, when coercive measures are imposed, the right to defend oneself must be guaranteed during all phases of the proceedings. In order to ensure this equality of arms, the legal system must provide for a separation between the authority driving the investigation and the authorities in charge of the detention and ruling on the conditions of the pretrial detention. This separation is a necessary requirement to avoid having conditions of detention be used to impair the effective exercise of the right to defend oneself, favour self-incrimination, or allow pre-trial detention to amount to a form of advance punishment.¹⁷ This separation, which guarantees the impartiality of the proceedings, has not been respected in the case of Mr. Ruiz García.

87. Moreover, the Working Group underscores the need for any form of detention or imprisonment to be ordered by a judicial or other authority in keeping with the law and to be always subject to the effective control of that authority, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This has not occurred in the case of Mr. Ruiz García.

88. In view of the foregoing, the Working Group finds that, in the present case, the aforementioned lack of separation between the authority conducting the investigation and the authorities in charge of detention and ruling on the conditions of the pretrial detention violates Mr. Ruiz García’s right to a defence as enshrined in articles 10 and 11 of the Universal Declaration of Human Rights.

89. The Working Group expresses its concern at the information received, which shows that Mr. Ruiz García was held in pretrial detention for several months and was tried on 22 July 2022 by the Criminal Chamber of the People’s Municipal Court of San José de las

¹⁷ E/CN.4/2005/6, para. 79.

Lajas, which handed down judgment No. 39 of 19 August 2022, sentencing him to 2 years and 6 months' imprisonment for the offences of contempt of authority, public disorder and resistance. According to the information provided by the source, Mr. Ruiz García's pretrial detention began on 17 August 2021 and lasted over a year, which seems wholly excessive, given that he received a sentence of 2 years and 6 months' imprisonment. The source mentions that this measure was disproportionate, as Mr. Ruiz García has an amputated leg, is visually impaired and is responsible for the care and financial support of his son, a minor. Moreover, he has a stable family situation, a recognized domicile and no criminal record or anything to suggest that he would attempt to evade justice. The Working Group notes that the Government, in order to justify the pretrial detention, merely points to domestic legal provisions and the alleged gravity of the crime, but does not explain what circumstances specifically relevant to Mr. Ruiz García justified such a measure.

90. In the view of the Working Group, Mr. Ruiz García was held prisoner in violation of international human rights law, since the pretrial detention amounted to half of the penalty imposed. Furthermore, the Working Group notes that no account was taken of the fact that pretrial detention is an *ultima ratio* measure, which means that it should be the exception rather than the rule and should be adopted only as a last resort and only exceptionally. Moreover, it should be imposed for a short duration, that is, for the shortest possible time, and must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.¹⁸

91. The Working Group considers that the length of time that Mr. Ruiz García was held in pretrial detention was excessive and in violation of international norms and guarantees against arbitrary detention, set forth in article 10 of the Universal Declaration of Human Rights and principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This violation of Mr. Ruiz García's human rights also contravenes the standard established by the Human Rights Committee, which has observed that, in order to avoid a characterization of arbitrariness, detention must not continue beyond the period for which the State party can provide an appropriate justification.¹⁹ In view of this situation, the Working Group has decided to refer the present case to the Special Rapporteur on the independence of judges and lawyers for appropriate action.

92. The Working Group notes that Mr. Ruiz García was denied communication with a lawyer immediately after his arrest, whereas such access should be provided without delay. In addition, legal consultation and all communications with lawyers must remain confidential. The lack of legal assistance during the first weeks of his detention and the subsequent restriction of such assistance prevented Mr. Ruiz García from receiving a fair trial in accordance with the principle of equality of arms and the right to adequate time and facilities to prepare a defence, in violation of articles 10 and 11 (1) of the Universal Declaration of Human Rights and principles 15, 17, 18 and 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

93. During his detention, Mr. Ruiz García was reportedly subjected to daily rounds of interrogation that could amount to psychological torture and ill-treatment. The Working Group therefore decides to refer the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

94. In the light of the foregoing, the Working Group is convinced that the authorities failed to comply with international standards relating to the right to a fair, independent and impartial trial, as set forth in articles 9, 10 and 11 of the Universal Declaration of Human Rights. Accordingly, the Working Group declares Mr. Ruiz García's detention arbitrary under category III.

¹⁸ Human Rights Committee, general comment No. 35 (2014), para. 38.

¹⁹ *Madani v. Algeria* (CCPR/C/89/D/1172/2003), para. 8.4; *C. v. Australia* (CCPR/C/76/D/900/1999), para. 8.2; and *Baban and Baban v. Australia* (CCPR/C/78/D/1014/2001), para. 7.2.

(d) Category V

95. Having examined the information submitted by the source, the Working Group is not convinced that Mr. Ruiz García has been detained in a discriminatory manner because of his status as an activist in a political movement against the Government of Cuba or because of regular activities as a human rights defender. On that premise, the Working Group concludes that in the present case of arbitrary deprivation of liberty, it is not appropriate to refer to category V.

(e) Concluding remarks

96. The source has raised concerns about the sanitary conditions in the places where Mr. Ruiz García has been detained. The source maintains that Mr. Ruiz García has been imprisoned in foul-smelling cells with deplorable conditions of hygiene, lighting and ventilation. According to the source, Mr. Ruiz García's family must obtain and provide him with personal hygiene products, since the authorities, namely the Directorate of Prisons, do not provide them to detainees; this renders the conditions deplorable, as the places of detention are lacking in minimum hygiene. All of the above results in detainees contracting skin infections, the most common being scabies.

97. In addition, according to the source, the food given to Mr. Ruiz García is insufficient, very poor quality and cold and has little or no protein or vitamin content. The water is also of very poor quality and raises serious doubts as to its potability.

98. In its response, the Government refutes these statements and maintains that the Cuban prison system has the hygiene and sanitary conditions, lighting, drinking water and ventilation necessary for prisoners to serve their sentences, in accordance with the regulations in force.

99. The Working Group is concerned about the medical services provided to Mr. Ruiz García who, despite having an amputated leg and being visually impaired, has not received any medication from the authorities responsible for his detention. The Working Group expresses concern at these allegations and reminds the Government that all persons deprived of their liberty must be treated humanely and with due respect for the inherent dignity of the human person and that endangering the health of detainees is contrary to rules 24, 25, 27 and 30 of the Nelson Mandela Rules. Accordingly, the Working Group decides to 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 and the Special Rapporteur on the rights of persons with disabilities.

100. 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.²⁰ 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.

3. Disposition

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

The deprivation of liberty of Dariel Ruiz García, being in contravention of articles 3, 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II and III.

102. The Working Group requests the Government of Cuba to take the steps necessary to remedy the situation of Mr. Ruiz García without delay and bring it into conformity with the

²⁰ Opinions No. 23/2012, No. 69/2012, No. 17/2013, No. 9/2014, No. 12/2017, No. 55/2017, No. 64/2017, No. 48/2018, No. 59/2018, No. 66/2018, No. 63/2019, No. 4/2020, No. 50/2020, No. 65/2020, No. 13/2021, No. 41/2021, No. 63/2021, No. 37/2022 and No. 52/2022.

relevant international norms, including those set out in the Universal Declaration of Human Rights.

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

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

105. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the rights of persons with disabilities.

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

4. Follow-up procedure

107. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

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

108. 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.

109. 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 of any failure to take action.

110. 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.²¹

[Adopted on 14 November 2023]

²¹ Human Rights Council resolution 51/8, paras. 6 and 9.