



# General Assembly

Distr.: General  
16 February 2024  
English  
Original: Spanish

---

## 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. 73/2023, concerning Lorenzo Rosales Fajardo (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, the Working Group transmitted a communication concerning Lorenzo Rosales Fajardo to the Government of Cuba on 16 June 2023.<sup>1</sup> The Government responded on 18 September 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).

---

<sup>1</sup> [A/HRC/36/38](#).



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

4. Lorenzo Rosales Fajardo is a Cuban national, born on 26 October 1971. He was arrested when he was 49 years old. He is pastor of Mount Zion (Monte de Sion) Church in Palma Soriano.

*i. Context*

5. According to the source, Mr. Rosales Fajardo is the head of the Monte de Sion Church in Palma Soriano. This church is independent and is not registered or affiliated with any religious denomination or association. Approximately 80 to 100 people attended the church prior to Mr. Rosales Fajardo's arrest and met on private property belonging to Mr. Rosales Fajardo's family.

6. Mr. Rosales Fajardo grew up in the Eastern Cuba Baptist Convention and attended the Eastern Cuba Baptist Seminary in Santiago de Cuba. He joined the Open Bible denomination, which is a member of the Government-approved Council of Churches of Cuba, and entered full-time ministry in 2001.

7. In 2009, the Cuban government arbitrarily expropriated the property of his church. Disappointed by the lack of support from the denominational leadership of the Open Bible, Mr. Rosales Fajardo and his family decided to formally leave the denomination and established Monte de Sion Church on their own.

8. The source states that, in Cuba, religious groups can be divided into those that are registered and those that are not. Most of the religious groups that existed before the revolution are registered and as such have legal recognition. This includes the Roman Catholic Church and large Protestant denominations such as the Presbyterians, Episcopalians, Methodists, Assemblies of God and most Baptists.

9. Some groups, such as Jehovah's Witnesses and Berean Baptists, had their registration arbitrarily rescinded in the 1970s and have been unable to re-register, making them technically illegal. Some groups, such as the Asociación Afrocubana Yorubas Libres, are not registered because they wish to remain independent of government influence or control.

10. Other groups – which were not present before 1959 but have a growing presence on the island, notably the Protestant Apostolic Movement – have been denied the right to register. The source states that Pastor Rosales Fajardo's church would fall into this category, since it tried unsuccessfully to register several times.

11. While all religious groups experience violations of their rights, unregistered groups are the most vulnerable and suffer some of the most egregious violations, as their unregistered status means that their very existence is illegal.

*ii. Arrest, detention and legal proceedings*

12. The arrest of Mr. Rosales Fajardo occurred in the context of the spontaneous mass demonstrations of 11 July 2021 and the following days, which took place in several areas and regions of Cuba. The source adds that these demonstrations were a response to Cuba's current severe economic crisis and the record increase in cases of coronavirus disease (COVID-19).

13. The source emphasizes that the purpose of the demonstrations was to criticize the Cuban Communist Party for its mishandling of the COVID-19 pandemic, and for the repression of independent civil society, including human rights and democracy movements.

14. Mr. Rosales Fajardo and his 17-year-old son joined the peaceful protests in Palma Soriano, where they live, and were detained on Martí Street (Palma Soriano) after police and military officers attempted to block the protesters' path. The source alleges that they were deprived of their liberty without a warrant from a competent authority by agents of the National Revolutionary Police and by members of the "Black Berets", a Cuban State brigade responsible for serious human rights violations. Mr. Rosales Fajardo's son was released after being held incommunicado in an unknown location for a week.

15. According to the source, a witness photographed the moment when Mr. Rosales Fajardo was detained and choked by a uniformed member of the “Black Berets”.

16. For three days, the authorities refused to give the family of the detainees any information about the whereabouts or condition of Mr. Rosales Fajardo and his son. The place of detention where they were held from 11 to 14 July 2021 is unknown. Finally, on 14 July 2021, the family was informed that Mr. Rosales Fajardo was being held in a State security facility of the Cuban Ministry of the Interior in Versalles (Santiago de Cuba). Church leaders in Santiago de Cuba obtained confirmation from the Provincial Director of the Ministry of the Interior that Mr. Rosales Fajardo was being held there.

17. During the transfer of Mr. Rosales Fajardo from the unknown location to the security facility of the Ministry of the Interior, he was severely beaten. Mr. Rosales Fajardo was handcuffed, thrown to the ground and kicked repeatedly in the abdomen and face, resulting in the loss of a tooth. A guard who was present during the assault later stated that the guards took turns urinating on Mr. Rosales Fajardo’s head and said that the beating was in retaliation for Cuban pastors’ posts on social media about Mr. Rosales Fajardo’s detention.

18. According to the source, neither Mr. Rosales Fajardo nor his family nor his lawyer were provided with the complete documents describing the charges against him and justifying his detention. They found inconsistencies in the charge sheets they received, which were incomplete.

19. The source alleges that Mr. Rosales Fajardo and his lawyer only learned of some of the charges against him through documents issued during his habeas corpus appeals. In a judgment of the People’s Provincial Court of Santiago de Cuba, it was falsely stated that Mr. Rosales Fajardo had been informed of the charges against him on 12 July 2021, the day after his arrest.

20. On 17 July 2021, following the preliminary investigation by a criminal investigation unit in Palma Soriano, a precautionary measure of pretrial detention was ordered – that is, according to the source, arbitrary detention without trial – on charges of aggression, breaches of the peace, resistance and moral and material damage.

21. According to the decision of the Provincial People’s Court of Santiago de Cuba, the judge stated that “convincing evidence” in the case of Mr. Rosales Fajardo justified his detention without trial as a precautionary measure, citing article 56 of the Cuban Constitution. The judge stated that, while article 56 protects the rights of assembly, demonstration and association for lawful and peaceful purposes, Mr. Rosales Fajardo had failed to consider that restrictions applied to these individual rights specifically in cases where they offend the supreme leader of the revolution and/or are not of a lawful or peaceful nature.

22. On 7 August 2021, Mr. Rosales Fajardo was transferred to the Boniato maximum security prison, located on the outskirts of Santiago de Cuba, where he and the other men being transferred were given a violent reception, organized by the prison’s Chief of Recidivism Reduction. The men were handed over to a group of prisoners who beat and sexually assaulted them. Mr. Rosales Fajardo survived the organized attack and was not sexually assaulted, but he described these events as one of the most terrifying and terrible experiences of his life.

23. The source adds that Mr. Rosales Fajardo was charged with several crimes under the Cuban Criminal Code, namely, incitement to commit a crime (art. 202 (1)), breaches of the peace (art. 200 (1)), contempt for authority (art. 144 (1)) and assault (art. 142 (1) and (4) (a)). On 20 and 21 December 2021, Mr. Rosales Fajardo was tried and sentenced to eight years in prison. In June 2022, the appeal courts upheld the judgment against Mr. Rosales Fajardo. During the appeal proceedings, only the prosecution side was allowed to testify and presented testimony from at least 12 police officers.

24. According to the source, a family member of Mr. Rosales Fajardo has been to the Boniato maximum security prison on several occasions to drop off some hygiene items for him, but has only been allowed to see and speak with him on one occasion, in mid-October 2021, when she was allowed a 90-minute face-to-face meeting. In addition, communication with the family member has been limited to a few three-minute phone calls.

25. The source adds that, on several occasions during 2022, Mr. Rosales Fajardo experienced violations of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) with respect to freedom of religion and belief. He was repeatedly stopped from attending religious services held in the prison, and his relative was also often prevented from providing him with religious literature. In January 2022, Mr. Rosales Fajardo was threatened with solitary confinement if he was found sharing his faith or even approaching other prisoners. Before Easter, in 2022, these threats were carried out when Mr. Rosales Fajardo was held in solitary confinement for five days after asking why he was being prevented from attending religious services.

26. According to the source, Mr. Rosales Fajardo was a victim of discrimination inasmuch as a scheduled conjugal visit was arbitrarily cancelled. Also, a transfer to La Caoba prison in Palma Soriano, a minimum security prison closer to the family's home, ordered during the summer of 2022, was repeatedly postponed without explanation until it finally took place in December 2022.

27. On 16 December 2021, several special procedures mandate holders of the Human Rights Council sent a communication to the Government of Cuba concerning alleged arbitrary detention, short-term enforced disappearance and ill-treatment in relation to Mr. Rosales Fajardo, pastor of the Monte de Sion Church in Palma Soriano.<sup>2</sup> In the communication, the special procedures mandate holders expressed concern at evidence suggesting that Mr. Rosales Fajardo was detained and was being prosecuted for the legitimate exercise of his rights to peaceful assembly and freedom of expression and because of his membership in a minority religious congregation, which has been denied registration with the Council of Churches of Cuba.

### iii. *Legal analysis*

28. The source alleges that Mr. Rosales Fajardo's detention is arbitrary and falls under categories II and V of the Working Group.

29. With respect to category II, the source states that the reason for which the person has been deprived of liberty is as a result of the peaceful exercise of his rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights.

30. The source argues that Mr. Rosales Fajardo was arrested simply for exercising his right to express himself freely by participating in the peaceful mass protests that took place in Cuba on 11 July 2021. Mr. Rosales Fajardo, like hundreds of other Cuban citizens, was caught up in the mass arrests. But unlike many of them, he remains deprived of his liberty.

31. With regard to category V, the source states that the disproportionately harsh treatment inflicted on Mr. Rosales Fajardo is related to his history of difficulties with the Cuban Government as the leader of an independent, unregistered church and because of his religious beliefs, which clash with the anti-religious philosophy of the Cuban Communist Party.

32. The source states that Mr. Rosales Fajardo's case differs significantly from those of many activists who were detained during the 11 July protests in Cuba. Firstly, he spent the first month detained in a State security facility (Cuban secret police), totally incommunicado, and was then transferred to a maximum security prison. In addition, seven habeas corpus petitions filed by his lawyer were summarily denied. Further, Mr. Rosales Fajardo informed his relative that prison officials had threatened to send him to a psychiatric facility.

33. During the transfer to the Boniato maximum security prison, Mr. Rosales Fajardo was severely beaten. He told his lawyer that he was handcuffed, thrown to the ground and kicked repeatedly in the abdomen and face, resulting in the loss of a tooth.

<sup>2</sup> See communication CUB 7/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26895> (Sp. only).

34. The source claims that the religious sector in Cuba is as a whole the largest independent group in Cuban civil society. Mr. Rosales Fajardo is being much more harshly treated by the State compared even to some human rights activists, precisely because he is the pastor of an independent church and to serve as a warning to other religious leaders that their participation in calls for democratic change in Cuba will have serious consequences.

35. The source also claims that, in 2009, the State security officer who was involved in the arbitrary seizure of Mr. Rosales Fajardo's church and house is now a senior delegate at the Ministry of the Interior and responsible for the decision to charge and imprison Mr. Rosales Fajardo. Lastly, the source states that Mr. Rosales Fajardo has no history of violence and no criminal record.

**(b) Response from the Government**

36. In order to be able to issue an opinion on the case described above, the Working Group, in accordance with its methods of work, transmitted the source's allegations to the Government of Cuba on 16 June 2023 and requested it to submit a response by 16 August 2023. On 16 August 2023, the Government requested an extension of the deadline, which was granted by the Working Group. The Government of Cuba sent its response regarding the case of Mr. Rosales Fajardo on 18 September 2023, within the deadline set.

37. In its reply, the Government denies the allegations of the source and states that the detention of Mr. Rosales Fajardo does not fall into any of the categories established by the Working Group. The Government states that the detention and criminal prosecution of Mr. Rosales Fajardo were justified in law, in conformity with the national legislation in force, and in accordance with the country's obligations under the international human rights instruments to which Cuba is a party. The Government also states that the criminal prosecution against Mr. Rosales Fajardo is not related to his religious beliefs or activities.

38. The Government insists that freedom of religion and worship is fully recognized and protected in the Cuban constitutional and legal order. All beliefs and religions enjoy equal consideration, and every citizen is free to change his or her religious beliefs or to have none at all. Moreover, no one in Cuba is persecuted for his or her religious creed.

39. The Government states that the source is lying in claiming that Cuba allegedly arbitrarily expropriated a church owned by Mr. Rosales Fajardo, and that it is untrue to say that he decided to leave the Open Bible denomination due to his alleged disappointment with the lack of denominational leadership in the religious congregation. On the contrary, the Government claims that Mr. Rosales Fajardo was expelled as a pastor by that congregation on 11 July 2011, for doctrinal divergences and ties with persons accused of socially deplorable behaviour.

40. The Government notes that there is no record of any personal property having been confiscated from him in 2009. It also points out that this citizen never worked in a church and that when he was pastor of the Open Bible Churches he held services in a house that was the personal property of a member of his family until he was expelled from that religious denomination by the congregation itself.

41. The Government claims that Mr. Rosales Fajardo was arrested for participating, together with his son, in violent riots, for breach of the civic peace and for attempted vandalization of government institutions in his community, events that all occurred on or after 11 July 2021. According to the Government, these events cannot be called "peaceful" since they resulted in injuries to seven law enforcement officers, the destruction of a bus parked at the site and an assault on a female official guarding the municipal headquarters of the Communist Party of Cuba, which the demonstrators, including Mr. Rosales Fajardo and his son, were planning to take by force. It adds that Mr. Rosales Fajardo committed acts in violation of the social distancing measures in place at the time to counter the COVID-19 pandemic, during one of the most sensitive periods of peak transmission of the pandemic. Thus the Government states that the demonstrations could not 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.

42. The Government maintains that, after the arrest, a case was immediately opened and Mr. Rosales Fajardo's wife was informed within 24 hours. In addition, Mr. Rosales Fajardo and his son were immediately seen and examined by medical specialists on admission and during their stay at the criminal investigation unit. The medical reports showed that neither Mr. Rosales Fajardo nor his son had any injuries. Moreover, both were interviewed by prosecutors at the criminal investigation unit and neither reported at that time having been subjected to ill-treatment or degrading practices.

43. Mindful of the time frames established by law, on 14 July, the examining magistrate asked the Prosecutor's Office to apply the precautionary measure of pretrial detention for Mr. Rosales Fajardo, which the prosecutor approved on 17 July.

44. The Government states that this measure was ordered for the offences of incitement to commit a crime, breaches of the peace, contempt for authority and assault, under articles 241, 244 and 247 of the Criminal Procedure Act in force at the time. It does not consider the precautionary measure of pretrial imprisonment for Mr. Rosales Fajardo, ordered at the beginning of the investigation, to be disproportionate in view of his unlawful and harmful conduct and the seriousness of the criminal acts committed against law and order and the public peace.

45. As to Mr. Rosales Fajardo's son, he was detained for 72 hours and released against a precautionary measure of bail of 2,000 pesos in cash, in accordance with the established legal requirements.

46. The Government reports that Mr. Rosales Fajardo immediately exercised his right to choose a legal representative, which demonstrates that he was fully aware of the grounds for his detention and underlines the legal nature of the detention. On 30 July 2021, Mr. Rosales Fajardo had a visit from his defence counsel, despite the fact that the COVID-19 restrictions were still in force.

47. The Government explains that Mr. Rosales Fajardo was transferred to the Boniato penitentiary in continuation of the precautionary measure on 5 August 2021 and that the source is again lying when it claims that Mr. Rosales Fajardo was allegedly subjected to beatings on admission to the penitentiary. These assertions are contradicted by statements made by members of the Boniato penitentiary prisoners' council, who, in an interview conducted by the Attorney General's Office, agreed that Mr. Rosales Fajardo was never physically or psychologically assaulted.

48. On 30 September 2021, the prosecutor drew up preliminary charges against Mr. Rosales Fajardo, accusing him of incitement to commit a crime, breaches of the peace, contempt for authority and assault, and sought a combined sentence of ten years' deprivation of liberty. This sentence was confirmed on 21 October 2021 by the People's Municipal Court of Palma Soriano after consideration of the preliminary investigation file. Between 20 and 21 December 2021, an oral hearing was held in case No. 92/2021 of the Popular Municipal Court of Palma Soriano, and Mr. Rosales Fajardo was sentenced to a combined sentence of seven years' imprisonment for the offences of breaches of the peace, contempt for authority and assault but was acquitted of the charge of incitement to commit a crime.

49. The Government points out an error of fact by the source, who claimed that the combined sentence imposed on Mr. Rosales Fajardo was eight years' deprivation of liberty. In any case, Mr. Rosales Fajardo appealed the decision in accordance with the law, but the Provincial Court of Santiago de Cuba rejected the defendant's petition and confirmed the lower court judgment on 23 June 2022.

50. The Government states that the source is lying when it claims that Mr. Rosales Fajardo's family has only been allowed to see and talk to him once, in mid-October 2021 and underlines that isolation measures were in force at the time to contain the COVID-19 pandemic, which meant that family visits to prisons had been suspended in order to protect, above all, the health of the inmates and their families. Visiting restrictions were later eased and, starting in late 2021, Mr. Rosales Fajardo received statutory visits from his wife and son, and the appropriate conjugal visits, so the allegation of arbitrary cancellation of a conjugal visit is false. However, the Government acknowledges the suspension of a conjugal

visit on 1 December 2022, as punishment for a disciplinary offence and in accordance with the provisions of the Prison System Rules.

51. The Government can report to the Working Group that, starting in 2023, in addition to family visits, scheduled visits and telephone calls, Mr. Rosales Fajardo has been granted three home leave permits, in February, April and June 2023, for three days in each case, which disproves the claims of alleged restrictions on his ability to meet his family.

52. The Government wishes to inform the Working Group that Mr. Rosales Fajardo is guaranteed the conditions to practise his faith, in accordance with the Prison System Rules, and is also guaranteed his right to take part in educational programmes, school classes and vocational training, as a means of developing his overall level of cultural attainment and preparing him to re-enter society. Mr. Rosales Fajardo has attended agronomy courses, in which he obtained excellent grades.

**(c) Additional comments from the source**

53. The Working Group transmitted the Government's response to the source on 18 September 2023 and requested any final comments and observations, which were received on 16 October 2023.

54. In its additional comments, the source states that Mr. Rosales Fajardo continues to be detained under an unjust criminal penalty imposed for taking part in the mass demonstration of 11 July 2021.

55. The source indicates that the Government has merely asserted that acts of vandalism were committed. The source states that that is not true and, by way of corroboration, attaches a brief video showing the residents of Palma Soriano in Santiago de Cuba protesting peacefully. In addition, the source attaches several photographs showing police arresting Mr. Rosales Fajardo and putting a chokehold on his neck.

56. The source also rejects the testimony of three detainees who, when interviewed by the Government itself, stated that Mr. Rosales Fajardo was never physically mistreated. Not knowing the circumstances of this testimony, the source refutes it and downplays its probative value. The source states that the Government has not presented any evidence to disprove the violent acts committed against Mr. Rosales Fajardo; these acts should be evaluated by an independent body and not by the testimony of three inmates whose relationship with Mr. Rosales Fajardo is unknown.

57. Lastly, the source asks that Mr. Rosales Fajardo's case be considered in the context of the events of 11 July 2021, given the ongoing government repression and the country's generally poor record on fundamental human rights, including freedom of religion or belief, freedom of assembly, freedom of expression, and the right to due process and fair trial. The source insists that the actions taken against Mr. Rosales Fajardo are based on his beliefs.

**2. Discussion**

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

59. In determining whether Mr. Rosales Fajardo'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.<sup>3</sup> However, it must be borne in mind that mere assertions that lawful procedures have been followed are not sufficient to rebut the source's allegations.

**(a) Category I**

60. The source has argued that the arrest and detention of Mr. Rosales Fajardo is arbitrary because he was deprived of his liberty by officers of the National Revolutionary Police and members of the Black Berets without a warrant from a competent authority. The Government,

<sup>3</sup> [A/HRC/19/57](#), para. 68.

in its response, asserts that Mr. Rosales Fajardo was arrested on 11 July 2021 for having taken part in violent riots, disturbance of the peace and attempts to vandalize government institutions in his community (Palma Soriano, Santiago de Cuba province), during the riots of 11 July 2021. The Government adds that these events cannot be described as “peaceful” and that they resulted in injuries to seven law enforcement officers, the destruction of a bus parked at the site and an assault on an official in charge of the maintenance of one of the government facilities. Furthermore, according to the Government, those acts violated the sanitary measures in force in the context of the COVID-19 pandemic, which was peaking at exactly that moment.

61. Detained persons have the right to be promptly informed of the charges against them. This is inherent in article 9 of the Universal Declaration of Human Rights and principles 2 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. These provisions also require that the procedures for carrying out legally authorized deprivation of liberty should be established by law and that States parties should ensure compliance with them, including by specifying when an arrest warrant is required.<sup>4</sup> If these procedures are not respected, a detention is arbitrary and seriously undermines the ability to conduct a proper legal defence.

62. 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, 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 refer to this legal basis and apply it to the circumstances of the case,<sup>5</sup> 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.<sup>6</sup> The reasons for arrest must be provided immediately upon arrest and must include not only the general legal basis of the arrest, but also enough factual details to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.<sup>7</sup>

63. In the present case, the Working Group will first consider whether a legal basis existed, in order to establish whether Mr. Rosales Fajardo’s deprivation of liberty was arbitrary. The Working Group notes that in its reply the Government does not refer to the existence of an arrest warrant or its equivalent, nor does it mention that Mr. Rosales Fajardo was arrested in flagrante delicto. With regard to the Government’s argument that Mr. Rosales Fajardo took part in violent riots, the source attaches to its additional comments photos and videos in which the demonstrators can even be seen advancing with their hands in the air. Various photos also show Mr. Rosales Fajardo being detained by a person dressed in a black uniform and a beret of the same colour, who has immobilized him with a chokehold to the neck. The Government claims that Mr. Rosales Fajardo’s family was immediately informed of the arrest, which the family has emphatically denied.

64. Under the circumstances, the Working Group is obliged to recall that the accused has the right to be presented with an arrest warrant at the time of arrest and to have the reasons for the arrest explained at the time of arrest, as a procedurally inherent component of the right to liberty and security of person and the prohibition of arbitrary deprivation under articles 3 and 9, respectively, 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. From the description given by both parties, it is clear to the Working Group that the detention took place in violation of the above-mentioned principles.

65. The source claims that, after their arrest, Mr. Rosales Fajardo and his minor son disappeared briefly – for three days – during which time the authorities refused to give the detainees’ family any information about their whereabouts or condition. The place of detention where they were held from 11 to 14 July 2021 is unknown. The Government has denied this claim, and instead asserts that their families were informed of the detainees’

<sup>4</sup> Human Rights Committee, general comment No. 35 (2014), para. 23.

<sup>5</sup> Opinions No. 9/2019, para. 29; No. 46/2019, para. 51; and No. 59/2019, para. 46.

<sup>6</sup> Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39. In cases of flagrante delicto, it is typically not possible to obtain a warrant.

<sup>7</sup> Human Rights Committee, general comment No. 35 (2014), para. 25; Opinion No. 30/2017, paras. 58–59; and Opinion No. 85/2021, para. 69.



whereabouts within 24 hours as established by law. The Government has only asserted this fact but has produced nothing to support its denial, despite the fact that it bears the burden of proof. Furthermore, the Working Group notes that Mr. Rosales Fajardo spent the first month of his detention in a State security facility (Cuban secret police), totally incommunicado, before being transferred to a maximum security prison. Seven habeas corpus petitions filed by his lawyer were summarily denied.

66. The source adds that Mr. Rosales Fajardo was not able to communicate with his family at the time of his arrest, and that his family has been allowed to see and talk to him only once, in mid-October 2021. The Government rejects this allegation, pointing out that isolation measures were in force at the time to contain the COVID-19 pandemic, which meant that family visits to prisons had been suspended in order to protect, above all, the health of the inmates and their families. In addition, the Government reports to the Working Group that, in 2023, in addition to family visits, scheduled visits and telephone calls, Mr. Rosales Fajardo was granted three home leave permits, in February, April and June 2023, for three days in each case.

67. The source has stated that the incommunicado detention also applied to Mr. Rosales Fajardo's lawyers, to whom he did not have access, which meant that the first hearing took place in the absence of legal counsel. This assertion has also been denied by the Government, which, in its response, states that Mr. Rosales Fajardo immediately exercised his right to choose a legal representative, since he had a visit from his lawyer on 30 July 2021, despite the fact that the COVID-19 pandemic restrictions were still in place. The Working Group notes that, according to the above information, Mr. Rosales Fajardo was without legal representation for more than 20 days, from 11 July (the day of his arrest) to 30 July 2021.

68. In this context, the Working Group finds that Mr. Rosales Fajardo 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 on the prevention of arbitrary deprivation of liberty in the context of public health emergencies, noted that secret and/or incommunicado detention constitutes the most serious violation of the rule 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.<sup>8</sup> 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 claims that Mr. Rosales Fajardo was denied the right to be released pending trial. The Government, in its response, insists that the detention of Mr. Rosales Fajardo is covered by articles 241, 244 and 247 of the Criminal Procedure Act, which apply to the offences of incitement to commit a crime, breach of the peace, contempt for authority and assault. It does not consider the precautionary measure of pretrial imprisonment for Mr. Rosales Fajardo, ordered at the beginning of the investigation, to be disproportionate in view of his unlawful and harmful conduct and the seriousness of the criminal acts committed against law and order and the public peace.

71. The Working Group expresses its concern at the information received, which shows that Mr. Rosales Fajardo was kept in prison for several months under a pretrial detention order requested by the police and issued by a prosecutor, and which was, moreover, confirmed by the judge in the case, with reference to article 56 of the Cuban Constitution and without producing sufficient evidence, as stated by the source. This has not been contested by the State party. Based on the information provided by the source, the Working Group notes that no account was taken of the fact that pretrial detention is a measure of last resort, which means that it should be the exception and not the rule and that it should be adopted only as a last resort and on an exceptional basis.<sup>9</sup> Moreover, it should apply for a brief period,

<sup>8</sup> A/HRC/45/16, annex II, para. 9.

<sup>9</sup> A/HRC/19/57, paras. 48–58. See also opinion No. 62/2019, paras. 28 and 29.

i.e., for the shortest possible time; none of which occurred during the legal proceedings against Mr. Rosales Fajardo.

72. The Working Group considers the length of time Mr. Rosales Fajardo was held in pretrial detention not only excessive but also to run counter to international norms and guarantees against arbitrary detention, contained in articles 3 and 9 of the Universal Declaration of Human Rights<sup>10</sup> and principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group recalls that, for detention not to be characterized as arbitrary, it must not extend beyond the period for which the State can provide appropriate justification.<sup>11</sup>

73. In view of the violations of international human rights law suffered by Mr. Rosales Fajardo, the Working Group finds that his detention is arbitrary and contrary to articles 3, 6 and 9 of the Universal Declaration of Human Rights and articles 2, 4, 10, 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and falls into category I.

**(b) Category II**

74. The Working Group considers a deprivation of liberty to be arbitrary under category II when it results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18 and 21 of the Universal Declaration of Human Rights. In the present case, the source states that Mr. Rosales Fajardo's detention is arbitrary under category II because it is a direct result of repression and punishment for 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. His arrest is also associated with the repression of his religious freedom. Thus the rights to freedom of expression, freedom of peaceful assembly and association, and freedom of religion or belief, under articles 18, 19 and 20 of the Universal Declaration of Human Rights, have been violated.

75. The Government, for its part, claims that the arrest occurred because Mr. Rosales Fajardo, in the company of his son, had participated in violent riots, breaches of the peace and attempts to vandalize government institutions in his community (Palma Soriano, Santiago de Cuba province), all of which occurred on 11 July 2021 and which, according to the Government, cannot be considered peaceful.

76. The Government states that the demonstrations could not 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 property, goods and institutions.

77. 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.

78. 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; participation in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion or dissent, religious ideas or beliefs.

79. 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.<sup>12</sup>

<sup>10</sup> A/HRC/19/57, paras. 48–58. See also opinions No. 5/2019, para. 26; and No. 62/2019, paras. 27–29.

<sup>11</sup> Opinion No. 62/2019, paras. 28 and 29.

<sup>12</sup> Opinion No. 58/2017, para. 42.

80. 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.<sup>13</sup>

81. 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, it is incompatible with the Universal Declaration of Human Rights to criminalize the holding of an opinion, nor is it permissible for persons to be harassed, intimidated or stigmatized, arrested, detained, tried or imprisoned on account of their opinions.

82. 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.<sup>14</sup> In this regard, it notes that there is no allegation that Mr. Rosales Fajardo attempted any violent act, and the Government's assertions are refuted by the photos and videos presented by the source, which show, on the one hand, a peaceful demonstration and, on the other, the arrest of Mr. Rosales Fajardo carried out by violent means.

83. The Working Group specifically notes that there are no allegations that Mr. Rosales Fajardo has engaged in breaches of the peace or that he has attempted to destroy State property in violation of the health measures in place during the COVID-19 pandemic. Similarly, the Working Group is not convinced that Mr. Rosales Fajardo's actions can justify the loss of the protection granted to all persons under articles 19 and 20 of the Universal Declaration of Human Rights.

84. Moreover, the Working Group is not convinced that it is necessary to prosecute Mr. Rosales Fajardo to protect a legitimate interest (the rights and freedoms of others, public morals and law and order) in accordance with the provisions of the articles of the Universal Declaration of Human Rights. Likewise, it is not convinced that the arrest and detention of Mr. Rosales Fajardo, or his transfer to a high security prison, was a necessary or proportionate response to his activities.

85. In view of the above, the Working Group finds that the arrest and detention of Mr. Rosales Fajardo was essentially due to the peaceful exercise of his rights to freedom of assembly and association, to freedom of opinion and expression and to the exercise of his faith, in violation of articles 18, 19 and 20 of the Universal Declaration of Human Rights. In 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, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on freedom of religion or belief, and finds the detention of Mr. Rosales Fajardo arbitrary under category II.

**(c) Category III**

86. Given its finding that the detention of Mr. Rosales Fajardo occurred as a result of the exercise of the rights to freedom of opinion, of association and of expression, 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 have been taken against him and considering the allegations of the source, the Working Group will proceed to determine whether fundamental elements of a fair, independent and impartial trial have been respected in the course of the ongoing judicial proceedings.

87. 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

<sup>13</sup> Opinions No. 58/2017 and No. 63/2019.

<sup>14</sup> A/HRC/20/27, para. 25.

Declaration of Human Rights, become established as one of the fundamental pillars of international law to protect individuals against arbitrary treatment. To that 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 a competent, independent and impartial court is respected.

88. In the case of Mr. Rosales Fajardo, the Working Group wishes to emphasize that, by the Government's own affirmation, the order for pretrial detention as a precautionary measure was issued by the prosecutor in the case at the behest of the police criminal investigator in the case. The fact that that measure is not considered excessive or unlawful in view of the breaches of the peace committed – as the Government puts it – is not relevant; what is relevant is that it 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 a defence must be guaranteed at all stages 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 responsible for the detention and for ruling on the conditions of pretrial detention. This separation is a necessary requirement to prevent conditions of detention from being used to impair the effective exercise of the right to defend oneself, favour self-incrimination or allow pretrial detention to amount to a form of advance punishment.<sup>15</sup> This separation, which guarantees the impartiality of the case, has not been applied in the case of Mr. Rosales Fajardo.

89. The Working Group insists on the need for any form of detention or imprisonment to be ordered by a judicial or other authority in accordance with the law, and always subject to effective oversight under the law. The judge or court ordering such measures must offer the best 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, which has not occurred in the case of Mr. Rosales Fajardo.

90. In the case of Mr. Rosales Fajardo, the Provincial People's Court of Santiago de Cuba justified the launch of proceedings by stating that it had received convincing evidence of the violent activity and of the offences of which Mr. Rosales Fajardo was accused. This is the same court whose judge also agreed to pretrial detention, citing article 56 of the Constitution. The judge stated that, while article 56 protects the rights of assembly, demonstration and association for lawful and peaceful purposes, Mr. Rosales Fajardo had failed to consider that restrictions applied to these individual rights specifically in cases where they offend the supreme leader of the revolution and/or are not of a lawful or peaceful nature. These judicial decisions reveal bias in the trial court.

91. The source adds that Mr. Rosales Fajardo was charged with several offences under the Cuban Criminal Code, namely, incitement to commit a crime (art. 202 (1)), breaches of the peace (art. 200 (1)), contempt for authority (art. 144 (1)) and assault (art. 142 (1) and (4) (a)). On 20 and 21 December 2021, Mr. Rosales Fajardo was tried and sentenced to eight years in prison. The source states that, in June 2022, the appeal courts upheld the sentence against Mr. Rosales Fajardo. During the appeal proceedings, only the prosecution was allowed to testify, presenting the evidence of at least 12 police officers. In its response, the Government does not provide an explanation for this.

92. The source alleges that Mr. Rosales Fajardo and his lawyer only learned of some of the charges against him through documents issued during his habeas corpus appeals. A judgment of the People's Provincial Court of Santiago de Cuba falsely stated, in the opinion of the source, that Mr. Rosales Fajardo had been informed of the charges against him on 12 July 2021, the day after his arrest; that, too, would call into question the impartiality of the Court. The Government's response also fails to address this specific point.

93. 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 responsible for detention and the conditions of pretrial detention violates Mr. Rosales Fajardo's right to a defence. The Working Group also recalls that the rights to equality before the courts and to a fair trial include a strict obligation to respect the right to

<sup>15</sup> E/CN.4/2005/6, para. 79.

the admission of witnesses relevant to the defence.<sup>16</sup> In the present case, Mr. Rosales Fajardo was denied this right; this blanket refusal to admit witnesses on behalf of the defence is characteristic of a serious denial of equality of procedural arms and is, in fact, a violation of articles 10 and 11 of the Universal Declaration of Human Rights.

94. The Working Group notes that Mr. Rosales Fajardo was denied communication with, and the assistance of, a lawyer 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 prevented Mr. Rosales Fajardo from receiving a fair trial in accordance with the principle of equality of arms, in violation of articles 10 and 11 (1), of the Universal Declaration of Human Rights and principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

95. Further, Mr. Rosales Fajardo informed his relative that prison officials had threatened to send him to a psychiatric facility. The source further states that Mr. Rosales Fajardo, at the time of his arrest, was handcuffed, thrown to the ground and kicked repeatedly in the abdomen and face, which resulted in the loss of a tooth. According to the source, a guard who was present during the assault later stated that the guards took turns urinating on the detainee's head and said that the beating was in retaliation for Cuban pastors' posts on social media about Mr. Rosales Fajardo's detention. In the Boniato maximum security prison he was brutally beaten and, according to the source, Mr. Rosales Fajardo described this experience as one of the most terrifying and terrible of his life. The Government has denied this assertion and has stated that the doctors who examined Mr. Rosales Fajardo did not find any evidence of ill-treatment.

96. The Working Group is surprised to note that the Government has included the testimony of three convicts, who are in the same prison as Mr. Rosales Fajardo and whom it presents as members of the Boniato penitentiary prisoners' council. The Working Group takes a cautious approach to these statements, made by other inmates of the prison system who find themselves in the position of testifying before a prosecutor.

97. The source adds that prison officials carried out their threats to place Mr. Rosales Fajardo in solitary confinement, isolating him for five days when he asked why he was being prevented from attending religious services. The Working Group has stated on several occasions that solitary confinement may amount to cruel, inhuman or degrading treatment or even torture;<sup>17</sup> all the more so where it is ordered for reasons that are not serious enough and the detainee is not continuously supervised – as was the case with Mr. Rosales Fajardo. The Working Group considers it appropriate to refer these allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

98. The Working Group expresses its deepest concern over the allegations of torture of Mr. Rosales Fajardo, which appear to constitute violations of articles 5 and 25 (1), of the Universal Declaration of Human Rights. In the Working Group's view, torture is not only a serious violation of human rights per se, but also undermines the ability of individuals to defend themselves and hinders the exercise of their right to a fair trial under articles 10 and 11 of the Universal Declaration of Human Rights.

99. Taking into account the above findings, 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 and are of sufficient gravity for the deprivation of liberty to be considered arbitrary under category III.

#### (d) Category V

100. In this context, the Working Group considers that the arrest, conviction and sentencing of Mr. Rosales Fajardo is discriminatory and constitutes an act of repression in an attempt to

<sup>16</sup> Opinion No. 29/2017, para. 66.

<sup>17</sup> Opinion No. 2/2021, para. 83; General Assembly resolution 68/156, para. 28; and [A/66/268](#), paras. 71 and 72.

silence him and punish him for sharing his opinions, an activity that is expressly protected by international law.

101. The Working Group is convinced that the detention of Mr. Rosales Fajardo was the result of the peaceful exercise of his rights under international law. Where detention is the result of the active exercise of civil and political rights, there is a strong presumption that it also constitutes a violation of international law on grounds of discrimination based on political, religious or other views.

102. Therefore, the Working Group considers that Mr. Rosales Fajardo was deprived of his liberty for discriminatory reasons because of his political, religious or other opinions. The Working Group therefore finds that his detention violates articles 2 and 7 of the Universal Declaration of Human Rights and is arbitrary under category V.

### **3. Disposition**

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

The deprivation of liberty of Lorenzo Rosales Fajardo, being in contravention of articles 2, 6, 7, 9, 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls under categories I, II, III and V.

104. The Working Group requests the Government of Cuba to take the necessary steps to remedy the situation of Mr. Rosales Fajardo without delay and to bring it into conformity with the relevant international standards, including those set forth in the Universal Declaration of Human Rights.

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

106. The Working Group urges the Government to carry out a thorough and independent investigation into the circumstances surrounding the arbitrary deprivation of liberty of Mr. Rosales Fajardo and to take appropriate action against those responsible for the violation of his rights.

107. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to 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 freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

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

### **4. Follow-up procedure**

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

110. 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.

111. 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.

112. 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>18</sup>

*[Adopted on 16 November 2023]*

---

---

<sup>18</sup> Human Rights Council resolution 51/8, paras. 6 and 9.