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**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. 68/2023, concerning Yandier García Labrada (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,<sup>1</sup> on 6 July 2022 the Working Group transmitted to the Government of Cuba a communication concerning Yandier García Labrada. The Government of Cuba replied within the established deadline, on 2 September 2022. The State is not a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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



## 1. Submissions

### (a) Communication from the source

4. Yandier García Labrada is a national of Cuba whose home is in Manatí, Las Tunas, Cuba. He is a member of Movimiento Cristiano Liberación, an independent civil society organization in Cuba that advocates a transition to democracy on the island and carries out activities to promote and defend human rights. It is claimed that the Cuban authorities have intimidated and harassed members of Movimiento Cristiano Liberación, including Mr. García Labrada, who has reportedly been harassed, threatened and deprived of his liberty on several occasions. These instances of arbitrary detention usually lasted between four and five hours, after which he was released with a warning to cease engaging in activism and defending human rights and democracy.

5. According to the information received, Mr. García Labrada was arrested at about 3 p.m. on 6 October 2020 while he was queuing for food and basic supplies for himself and a family member outside a food supply outlet in Manatí. While he was there, a supermarket security guard pushed him and Mr. García Labrada publicly complained about the disorganization and irregularities in the supply of goods. Other people joined him in the complaint, causing the officials who ran the establishment to call the police.

6. The source states that Mr. García Labrada was arrested along with three other persons. The arrest was reportedly conducted in a heavy-handed manner, as four or five police officers threw him, head first, against the patrol car to arrest him. The persons arrested with him were released a few hours later on the same day. However, the source reports that Mr. García Labrada remains in detention to this day.

7. It is stated that, following his arrest, Mr. García Labrada was held incommunicado for approximately one month. He was unable to receive visitors or make telephone calls. The only visit that he received was from a relative on 3 November 2020. The visit lasted 20 minutes, during which time the relative noticed that Mr. García Labrada had bruises on his ribs, shoulders and arms and could not move his left arm.

8. Despite the injuries from the blows that he received, and despite the fact that he suffers from asthma, Mr. García Labrada has not received any medical care. Mr. García Labrada frequently suffers from respiratory crises.

9. The source claims that the authorities prevented communication between Mr. García Labrada, his family and members of Movimiento Cristiano Liberación. On 4 November 2020, a member of Mr. García Labrada's family was returning home when he was detained for five hours by a State security officer who demanded that he "abandon his opposition" in exchange for Mr. García Labrada's release. Around noon on 10 June 2021, another member of Mr. García Labrada's family was leaving his home when he was arrested and taken to the police station in the locality where he lived, where he was deprived of his liberty for about three hours. During this time, the State security officer insulted him and harshly threatened him to make him stop protesting on behalf of Mr. García Labrada. The officer accused the family member of being a "leader of Movimiento Cristiano Liberación" and threatened to deprive him of his liberty, warning him that his "cell was ready and waiting for him". The officer added that, if he continued to campaign in support of Mr. García Labrada, he would be sentenced to 12 years in prison.

10. On 23 June 2021, after Mr. García Labrada had spent eight months in detention without a trial and without access to his case file, the hearing against him took place. The hearing was conducted online and was full of irregularities. Mr. García Labrada was unable to present witnesses or adequately prepare his defence. However, the prosecution did present witnesses. Mr. García Labrada's defence lawyer was present at the online hearing but his participation in it was limited, since he did not have access to the case file to prepare his client's defence and had been notified of the proceedings only the previous day. The hearing was closed to the public on the grounds that it was taking place online. The prosecution charged Mr. García Labrada with contempt, public disorder and spreading an epidemic and requested a term of imprisonment of between 3 and 5 years.

11. On 23 July 2021, a prison guard informed Mr. García Labrada that he had been sentenced to 5 years in prison for the offences of contempt, interference with authority and spreading epidemics. The trial was held online without the participation of the defendant. On the same day, the family was informed via a brief phone call. However, when the family tried to speak about the current situation in Cuba and ask for details of the conviction, the call was cut off. The source states that an appeal was filed but was denied. Mr. García Labrada and his family have been prevented by the judicial authorities from accessing the case file, and thus do not have copies of the judgments. Consequently, they are unaware of the details of, and grounds for, the conviction and the subsequent decision to uphold it. The witnesses proposed by the defence to describe what happened on the day of the arrest were threatened by State agents and prevented from participating in the trial. As Mr. García Labrada lacks access to the court file and judgments in the case, he has been unable to file further appeals against the conviction.

12. According to the information received, in mid-September 2021, Mr. García Labrada's family members were permitted to speak to him on the phone for only three minutes. They learned that he was feeling unwell and had a fever. On 27 September 2021, the family members were informed that he had tested positive for the coronavirus disease (COVID-19). Although he suffers from asthma, he did not receive adequate medical care.

13. On 13 November 2021, Mr. García Labrada was placed in a punishment cell without any explanation and for no apparent reason. The source believes that the measure was taken in retaliation for his having expressed support for the peaceful demonstrations planned for 15 November. He was removed from the punishment cell on 18 November.

14. On 26 December 2021, Mr. García Labrada was transferred, without prior notice, to a higher security wing within the same prison. A family visit had been planned for that day but the prison authorities prevented his family from entering the prison without any explanation.

15. In January 2022, Mr. García Labrada was transferred from the provincial prison in Las Tunas to the maximum security prison known as La Carbonera in the municipality of Colombia. The transfer allegedly involved a worsening of his detention conditions, since he is under a maximum security regime and is further away from his family. Visits to Mr. García Labrada are now even more tightly restricted and he is allowed only one or two phone calls per month, lasting less than five minutes.

16. According to the source, on the weekend of 2 and 3 April 2022, the inmates of La Carbonera prison made a series of complaints. Mr. García Labrada expressed support for the complaints and, as a result, was severely beaten with truncheons by prison officers and transferred to a punishment cell, where he remained for two days. The cell was outside the prison and was constructed in a manner that made the conditions stifling inside.

17. The source reports that, after Mr. García Labrada was released from the punishment cell, he was transferred to a solitary confinement cell, where he has remained ever since. Under this regime, he is in an individual cell with no possibility of going out to common areas, such as the canteen or the courtyard. He receives his meals in the cell and is allowed to go outside only once a week for 30 minutes.

18. The source states that Mr. García Labrada has been unable to file complaints or seek measures of protection at the national level because restrictions imposed in connection with the COVID-19 pandemic, including facility closures and restrictions on public transport, have prevented him from accessing domestic remedies. In addition, the justice system's lack of independence prevents the judicial authorities from acting impartially, especially in cases where the victims are considered to be opponents of the Government, as in Mr. García Labrada's case. There are fears that bringing such actions could worsen his current situation, as he remains deprived of his liberty in State custody.

*i. Context and detentions in Cuba*

19. The source claims that there are significant challenges to the defence and promotion of human rights in Cuba. The COVID-19 pandemic paved the way for the imposition of restrictions on a number of rights, such as the rights to freedom of expression, assembly,

association and movement, including restrictions on mobility in several parts of the country. It is alleged that the Government has used the pandemic as a pretext for stepping up repression against members of independent civil society, including the members of *Movimiento Cristiano Liberación*. A number of methods have been used to criminalize civil society actors, such as short-term detention, summonses to police stations, house arrest, fines and the use of criminal offences such as the offence of “spreading epidemics”. According to the source, at least 114 people have been tried for this offence during the pandemic.

20. The source notes that 10 April 2021 was the second anniversary of the promulgation of the Constitution of 2019, article 41 of which “recognizes and guarantees, for all persons, the inalienable, imprescriptible, indivisible, universal and interdependent enjoyment and exercise of human rights”. However, the persecution and intimidation of persons considered to be “opponents” affects human rights defenders, artists and independent journalists.<sup>2</sup> The Inter-American Commission on Human Rights warned that “there is a practice of persecution and harassment in Cuba against freelance journalists and independent media outlets, human rights defenders, and artists who speak out against the lack of freedoms and political rights or who are involved in political affairs”.<sup>3</sup>

21. According to the information received, the Eighth Congress of the Communist Party of Cuba was held from 17 to 19 April 2021. The Communist Party is the only legal political party in the country and is considered to be the highest ruling political force in society and the State, according to article 5 of the Constitution. While the Congress was being held, there was a rise in political repression in the form of arbitrary arrests, the forced house arrest of members of independent civil society, and cuts in telephone services and Internet access. The Congress itself was dominated by calls for a hard-line approach to persons considered to be “dissidents” or “opponents”. Moreover, the crackdown has worsened since the mass demonstrations held in the streets of different cities beginning on 11 July 2021, and repressive measures have been taken against persons who decided to exercise their right to protest against human rights violations and the effects of the pandemic on the country. These facts reveal an intention to step up measures against human rights defenders, including Mr. García Labrada, whose vulnerability is even greater as he is deprived of his liberty, incommunicado and in the custody of the State.

ii. *Legal analysis*

a. Category II

22. The source argues that Mr. García Labrada’s detention is arbitrary under category II because it resulted from the exercise of his right to freedom of opinion and expression.<sup>4</sup> The authorities are said to have violated Mr. García Labrada’s right to freedom of opinion and expression, as guaranteed by international law and enshrined in article 19 of the Universal Declaration of Human Rights.

23. The Government arrested Mr. García Labrada outside a supermarket when he publicly spoke out about the disorganization affecting the supply of food and basic provisions. Three other people were arrested along with Mr. García Labrada. They were released that same afternoon but Mr. García Labrada remains deprived of his liberty. In reality, his prolonged detention stems from his activism as a human rights defender with *Movimiento Cristiano Liberación* since 2015, in which capacity he has spoken out against the Government several times. On a number of occasions, the State security authorities have threatened Mr. García Labrada’s family members by threatening to keep him incarcerated for years if the family does not stop seeking justice for him.

<sup>2</sup> See <https://www.ohchr.org/en/press-releases/2021/03/cuba-rights-human-rights-defenders-must-be-upheld-says-un-expert>.

<sup>3</sup> Inter-American Commission on Human Rights, “IACHR and Offices of Special Rapporteurs Condemn Harassment of Artists, Journalists, and Activists in Cuba and Call on State to Cease Acts of Persecution Against Those Exercising the Right to Freedom of Expression and Artistic Creation” press release, 13 May 2021, available at [https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media\\_center/preleases/2021/119.asp](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/119.asp).

<sup>4</sup> Human Rights Committee, general comment No. 34 (2011), para. 9.

24. The source recalls that, under international human rights law, no person may be subject to the impairment of any human rights on the basis of his or her actual, perceived or supposed opinions.<sup>5</sup> All forms of opinion are protected, including opinions of a political nature. It is incompatible with the right to freedom to criminalize the holding of an opinion. The source points out that the harassment, intimidation or stigmatization of a person, including arrest, pretrial detention, trial or imprisonment, by reason of the opinions he or she may hold constitutes a violation of international human rights law.<sup>6</sup>

25. It is claimed that, on a number of occasions, Mr. García Labrada was subjected to harassment and attacks by the State for exercising his right to freedom of opinion and expression as a member of Movimiento Cristiano Liberación. After joining this organization, he was intimidated, threatened and detained for short periods of time on several occasions. The detention usually lasted between four and five hours, after which he was released with a warning to cease engaging in activism and defending human rights and democracy. In 2016, for example, he was detained for 12 hours in the province of Las Tunas in a unit known as “Investigation”. In February 2017, he was arrested by State security agents while on his way to work at 7 a.m. He was held for several hours and threatened with imprisonment in El Típico prison if he continued to campaign with Movimiento Cristiano Liberación. In January 2020, he was again intimidated by State security agents, who summoned him to the police station to warn him that he would be imprisoned if he “continued his activism in favour of change in Cuba”.

b. Category III

26. The source argues that Mr. García Labrada’s detention is arbitrary under category III, as the non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights, is of such gravity as to give the deprivation of liberty an arbitrary character.

27. It is claimed that Mr. García Labrada’s right to be informed, at the time of his arrest, of the reasons justifying his deprivation of liberty was violated. This right is protected by article 9 of the Universal Declaration of Human Rights and principles 10 and 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. It is also protected by article 95 of the Constitution of Cuba.

28. According to the source, when the authorities arrested Mr. García Labrada, on 6 October 2020, they did not provide any explanation of the reasons for the arrest. Eight months later, at the trial hearing on 23 June 2021, he learned that he was being charged with the offences of contempt, public disorder and spreading epidemics.

29. The authorities’ failure to inform Mr. García Labrada of the reasons for his arrest and the continuation of his deprivation of liberty constitute a violation of the right to due process.

30. It is claimed that the authorities violated Mr. García Labrada’s right to be brought promptly before a judge, to which he is entitled under 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. In addition, article 95 of the Constitution of Cuba establishes that all persons facing criminal charges have the right “to be tried by a legally pre-established court”, which, under international law, must be done without delay.

31. In the source’s view, the fact that Mr. García Labrada was deprived of his liberty for more than eight months without being allowed by a judge to bring a defence, in accordance with due process, is a violation of his right to due process.

32. In addition, the source argues that Mr. García Labrada’s right to challenge the lawfulness of his detention and prepare an adequate defence, in accordance with 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, has been violated.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

Furthermore, article 95 of the Constitution of Cuba states that persons facing criminal charges have the right to “legal assistance from the outset of the proceedings”.

33. According to the information received, the legal assistance that Mr. García Labrada received was not provided from the outset of his detention, but about two months later, at the insistence of his family. Despite this, his lawyer was unable to prepare a proper defence because the prosecution prevented him from accessing the case file and his contact with Mr. García Labrada was restricted. For example, the hearing against Mr. García Labrada, which took place on the morning of 23 June 2021, was conducted online and was full of irregularities. Mr. García Labrada was unable to present witnesses or prepare an adequate defence, since neither his family nor his lawyer had been given access to the case file. The prosecution, on the other hand, did present witnesses. Mr. García Labrada’s defence lawyer was present at the online hearing but his ability to participate in it was limited by the fact that he had been notified of the proceedings only the previous day. The hearing was closed to the public on the grounds that it was taking place online.

34. The source argues that, in the present case, the authorities have violated Mr. García Labrada’s right to be presumed innocent until proved guilty according to law. This right is enshrined in article 11 of the Universal Declaration of Human Rights and protected by principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In addition, article 95 of the Constitution of Cuba states that any person facing criminal proceedings has the right “to be presumed innocent until a final judgment has been handed down against him or her”.

35. It is reported that Mr. García Labrada was not allowed to receive visitors and that his communication by telephone continues to be restricted. In early June 2021, he called his family to tell them that he had been moved to a different wing of the prison. He was transferred to the wing for prisoners convicted of offences under ordinary law, such as murder, despite the fact that, at the time, he was being held in pretrial detention because a final judgment against him had not yet been handed down. The fact that the Cuban authorities transferred Mr. García Labrada to an area where he shares a cell with convicted persons shows that they consider him to be guilty. Failing to keep unconvicted persons separate is contrary to principle 8 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. It is also reported that he was deprived of his liberty and held incommunicado for approximately nine months without a final judgment, which shows that he was convicted in advance, in violation of the presumption of innocence.

c. Category V

36. The source argues that Mr. García Labrada’s detention is arbitrary under category V, as it constitutes a violation of international law on the grounds of discrimination. It is alleged that the Cuban authorities detained Mr. García Labrada for expressing his political opinions and for criticizing the Government. The authorities convicted Mr. García Labrada of offences that international organizations have already identified as instruments for criminalizing the work of human rights defenders. In this connection, the Inter-American Commission on Human Rights has noted the use, in Cuba, of “indictments for crimes such as contempt, pre-criminal social dangerousness, non-payment of fines, public disorder, and resistance or rebellion, in order to discourage their work in defending and promoting human rights”.<sup>7</sup>

**(b) Response from the Government**

37. On 6 July 2022, the Working Group transmitted the source’s allegations to the Government and asked it to provide a response by 5 September 2022. The Working Group received the Government’s response on 2 September 2022, within the established deadline.

38. In its response, the Government states that the source’s allegations are totally false. It then attempts to demonstrate beyond doubt that the source’s account is inaccurate and based on flawed reasoning, including in relation to the date of and grounds for Mr. García Labrada’s arrest, the alleged failure to respect his rights and the alleged non-compliance with due

<sup>7</sup> Inter-American Commission on Human Rights, *The situation of human rights in Cuba*, document OEA/Ser.L/V/II Doc.2 (2020), para. 16.

process. It also maintains that none of the five categories recognized by the Working Group is applicable to the case of Mr. García Labrada.

39. The Government states that Mr. García Labrada was arrested on 1 September 2020 by the competent national authority on suspicion of having committed the offences of stealing and illegally slaughtering cattle and selling the meat, which are punishable under articles 322 (1) and 240 (1) of the Criminal Code. At the time of the arrest, Mr. García Labrada was found to be in possession of 127 pounds of beef, which was the property of a citizen, as well as the implements that he had probably used to commit the offence. The Government points out that the date of arrest given by the source cannot be correct, as the detainee had been imprisoned in El Típico prison, in the province of Las Tunas, since 28 September 2020, under the precautionary measure of pretrial detention. It is therefore impossible for him to have been arrested in a public place, as the source claims, because he was in prison.

40. The Government also states that Mr. García Labrada's lawyer was present from the preliminary phase of the proceedings. Moreover, on 14 September 2020, a relative of Mr. García Labrada signed a contract with a collective law firm in the province of Las Tunas. From that point onward, a lawyer had been responsible for Mr. García Labrada's defence, and had thus had access to the proceedings and had been able, in full accordance with his powers, to put forward evidence for the police investigation.

41. The Government reports that, after the charges against Mr. García Labrada were presented to the court, the case was committed for trial on 18 January 2021 and the charge sheet drawn up by the prosecution was delivered to Mr. García Labrada's lawyer. On 25 January 2021, the lawyer also received the preliminary case file, which remained in his possession until 10 February 2021. The Government therefore insists that the source is lying when it claims that Mr. García Labrada's defence lawyer did not have access to the case file to prepare the defence.

42. According to the Government, the prosecution of Mr. García Labrada is recorded in preliminary case file No. 1122/20, filed with the criminal investigation body of the province of Las Tunas. Mr. García Labrada's right to a defence was never restricted, as proven by the fact that his lawyer set out the case for the defence in writing (four pages that are filed with the competent body) and put forward as evidence the defendant's statement, 15 pieces of documentary evidence and a number of testimonies. All this took place in accordance with article 283 of Act No. 5, the Criminal Procedure Act, which recognizes the right of defence lawyers, once they have examined a case file, to formulate their preliminary submissions and put forward such evidence as they believe to be in their client's interests.

43. The Government contests the claim that notification of the date of the oral proceedings was given belatedly, since the order on admission of evidence, of 12 February 2021, stated that the oral hearing would be held on 28 April 2021.

44. The Government acknowledges that the oral proceedings were indeed held by videoconference. However, this was not for the reasons stated, but because online hearings were called for under the epidemiological measures adopted in the country to contain the spread of COVID-19. This manner of proceeding did not result in any violation of due process or the defendant's safeguards and rights.

45. The Government states that the audio and video system used in the hearing allowed for direct, secure and real-time communication, in compliance with the principles of immediacy and due process. The court and the parties were at the police station of the National Revolutionary Police in the municipality of Manatí, while the defendant joined the hearing by videoconference from the facility where he was being held in pretrial detention.

46. The Government also refutes the allegation that Mr. García Labrada was unable to participate in the oral hearing, since his statements are noted in the court record. In fact, according to the Government, he was granted the right to object to the make-up of the panel of judges but declined to do so. He was present during the testimonies of the witnesses put forward by his lawyer and by the prosecution and during the cross-examination.

47. The Government states that the documentary evidence and testimonies were put forward, and the rest of the proceedings were conducted, in person. The oral proceedings were public and adversarial. The number of persons was restricted only in order to comply

with the physical distancing made necessary by the pandemic. According to the Government, this restriction was applied equally, without discrimination, in all the judicial proceedings that took place at this time.

48. The Government claims that, during the oral hearing, the following facts were proven: Mr. García Labrada, together with two co-defendants, went to the town of Sosa, in the municipality of Manatí, Las Tunas, on 1 September 2020. Once there, they stole a 700-pound light-brown cow worth 3,000 Cuban pesos. About 10 metres from the road to which the animal had been taken, they illegally slaughtered it and, a few metres from that point, they were arrested by officers of the National Revolutionary Police.

49. According to the Government, the evidence showing that the defendant was responsible for the proven facts and identifying him as the perpetrator of the offence of stealing and slaughtering cattle is the following: (a) the possession of beef from a cow owned by another person and the knives used to kill the animal; (b) the inspection report and the sketch of the place where the slaughtered animal was seen; and (c) the biological report on the blood and meat tissue, which identified the species of the animal from which the meat had been taken and the presence of blood on the seized knives.

50. The Government also states that, during the investigation, the defendant explained where and how he had slaughtered the animal. Furthermore, Mr. García Labrada's guilt was demonstrated by the criminal odorology assessment, which gave a positive result in that it linked him to the place where the animal from which the seized meat came had been slaughtered.

51. The Government claims that the source is not telling the truth in stating that the witnesses proposed by the defence were not admitted. In fact, according to the Government, it was Mr. García Labrada's witnesses who confirmed that he was employed by the company Flora y Fauna at the time when the acts were committed, as well as other matters relevant to the case.

52. On the basis of the evidence, the court found Mr. García Labrada guilty and issued judgment No. 123/210 of 6 May 2021 in case No. 27/2021, providing as follows:

(a) A penalty of 2 years' imprisonment was handed down for theft, under article 322 (1) of the Criminal Code, which provides for a penalty of between 1 and 3 years for any person who appropriates another person's property. In this case, the defendant, together with two other persons, stole a 700-pound cow valued at 3,000 Cuban pesos;

(b) A penalty of 4 years' imprisonment was handed down for the illegal slaughter of cattle under article 240 (1) of the Criminal Code, which provides for penalties of between 4 and 10 years' imprisonment for any person who slaughters cattle without prior authorization from the State body specifically designated for this purpose;

(c) The proceedings were heard by the First Criminal Division of the Provincial People's Court of Las Tunas. As neither the defendant nor the prosecutor filed applications for judicial review within the 10-day period established by law, the judgment became final.

53. The Government refutes the claim that Mr. García Labrada was charged with the offences of contempt, interference with authority and spreading epidemics.

54. According to the Government, the court handed down a penalty that was very close to the minimum threshold for both of the offences of which he was convicted and, in accordance with article 56 of the Criminal Code, imposed a single joint penalty of 5 years' imprisonment, which was also within the minimum threshold.

55. The Government refutes the source's claim that Mr. García Labrada's alleged "political opinions" were somehow used as a pretext for depriving him of his liberty or applying a harsher regime. In the Government's view, its actions have been in keeping with the principles of equality and non-discrimination enshrined in the Constitution.

56. The Government notes that the source's own allegation acknowledges that Mr. García Labrada has links to a movement that is not a Cuban civil society organization and has no legitimacy in the country. According to the Government, however, these links were not taken into account at any stage of the criminal proceedings against Mr. García Labrada.



57. The Government points out that Mr. García Labrada was placed in a minimum security regime and had served 2 years, 3 months and a number of days in prison at the time of submission of this response. It adds that Mr. García Labrada's sentence has been reduced by 120 days and will therefore end in May 2025.

58. The Government adds that, in the course of Mr. García Labrada's sentence, he has not been placed in a higher-security wing or in an isolation cell. According to the facility's officials, Mr. García Labrada has so far maintained good behaviour and good personal relations with both the staff and the other inmates. No disciplinary measures are listed on his record.

59. According to the Government, Mr. García Labrada has received monthly visits from his family and has enjoyed the other privileges and rights to which he is entitled, including regular home leave.

60. The Government states that Cuba ensures the full enjoyment of and universal access to free, quality health-care, protection and rehabilitation services in its health system. The guarantee of medical care for all inmates and detainees throughout the prison system is recognized in the national legal system. The Government refutes the claim that Mr. García Labrada has been denied medical care as, during the time he spent in the facilities of the criminal investigation body, he had access to primary health-care services, and no incidents or evidence of physical injuries were recorded. The Government states that he has been guaranteed medical care in prison and that, in September 2020, he had a polymerase chain reaction (PCR) test for COVID-19 that was negative.

61. The Government considers it unacceptable to claim that he has not received adequate medical care, given that, in 2021, he received three doses of the Abdala vaccine against COVID-19, completely free of charge, as did the rest of the Cuban population.

62. The Government is concerned about the inclusion of the heading "Context and detentions in Cuba" on the strength of unreliable sources that are being used against the Government of Cuba, including references to regional organizations to which Cuba does not belong and which it does not recognize as legitimate.

## **2. Additional comments from the source**

63. The Working Group transmitted the Government's response to the source on 6 September 2022. The source submitted final comments and observations on 21 September 2022. In these comments, the source states that it does not recognize the version of events put forward by the Government, according to which Mr. García Labrada was arrested on 1 September 2020 because he had stolen and slaughtered cattle. As Mr. García Labrada was living with a family member, it is known that he first went missing after his arrest on 6 October 2020. In addition, on 8 September 2020, Mr. García Labrada participated, as he had done every year, in a meeting and celebration in the town of Manatí, along with family members and other members of Movimiento Cristiano Liberación.

64. The source argues that, in any case, the version put forward by the Government contains extremely worrying claims, insofar as it indicates that Mr. García Labrada was arrested on 1 September 2020 and held in El Típico prison in Las Tunas, under the precautionary measure of pretrial detention, starting on 28 September 2020. This suggests that Mr. García Labrada was arbitrarily detained for 27 days without being brought before a judge and that his whereabouts were unknown even to the State.

65. The source highlights the serious human rights violations committed against Mr. García Labrada, a member of Movimiento Cristiano Liberación, because he had exercised his fundamental rights to freedom of opinion, expression and association. On those grounds, he has been subjected to extremely harsh detention conditions consisting of a punishment regime, isolation, lack of adequate medical care and continuous restrictions on communication with his family, even before the conviction against him was fabricated, in gross violation of the principle of the presumption of innocence. The source highlights the climate of political persecution in Cuba and the internal organization of its justice system, stressing that access to medical care and due defence has been denied and that the Inter-American Commission on Human Rights granted precautionary measures in favour of

Mr. García Labrada.<sup>8</sup> In addition, the source insists that no judicial authority with the necessary competence, independence and impartiality has been available to analyse the allegations about the unlawfulness of the arrest and to order the corresponding reparation.

### 3. Request for further information from the Government and the source

66. The Working Group requested additional information from the Government and the source, in particular regarding the date and circumstances of Mr. García Labrada's arrest, his subsequent whereabouts and the charges brought against him, and any other information that they might wish to provide.

67. The Government of Cuba replied to the request by repeating its claims and stating that the source's allegation is totally false, since, on the date on which the source claims that Mr. García Labrada was arrested, he was in the provincial prison in Las Tunas; he thus could not have been arrested again. The Government also claims that Mr. García Labrada left the prison system on 7 December 2022, when he was granted parole under article 58 (1) of the Criminal Code in force at the time. He had spent 2 years, 3 months and 7 days in prison. The Government also notes that Mr. García Labrada's sentence has been reduced by 180 days and will end definitively on 3 March 2025.

68. The source also sent additional comments pointing out that press articles attest to the fact that Mr. García Labrada was arrested on 6 October 2020, as claimed.<sup>9</sup> The source explains that, on 8 September every year, Cubans celebrate the feast of Our Lady of Charity and the anniversary of the founding of Movimiento Cristiano Liberación. It is well known that Mr. García Labrada has been an active member of Movimiento Cristiano Liberación in recent years and that, as a result, he has been subjected to persecution and repression by the State authorities. Lastly, the source mentions that Mr. García Labrada's family is unaware of the origin of much of the information submitted by the Government, in particular the information concerning the legal proceedings and the processing of the case, as they have not been able to access the case file.

### 4. Discussion

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

70. In determining whether Mr. García Labrada's detention 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>10</sup>

71. First and foremost, the Working Group notes the Government's claim that Mr. García Labrada has been released, while the source states that he is still deprived of his liberty. The Working Group notes that, in accordance with paragraph 17 (a) of its methods of work, it reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. In the present case, the Working Group considers that the allegations made by the source, and the discrepancies between these claims and those of the Government, are extremely serious. It will therefore proceed to deliver its opinion.

#### (a) Category I

72. Although the source has not made allegations under category I, the Working Group believes that it is imperative to refer to this category, since it goes without saying that the case begins with Mr. García Labrada's arrest and the grounds for the arrest. Moreover, one

<sup>8</sup> See <https://www.oas.org/en/iachr/decisions/pdf/2021/resoluci%C3%B3n%205-2021.%20mc-1068-20%20cb%20en.pdf>.

<sup>9</sup> See [https://diariodecuba.com/derechos-humanos/1604512330\\_26215.html](https://diariodecuba.com/derechos-humanos/1604512330_26215.html); <https://www.radiotelevisionmarti.com/a/encarcelan-a-miembro-del-movimiento-cristiano-liberacion/276937.html>; and <https://www.dw.com/es/cuba-liberan-al-disidente-silverio-portal-piden-la-libertad-de-m%C3%A1s-presos-pol%C3%ADticos/a-55791637>.

<sup>10</sup> [A/HRC/19/57](#), para. 68.

of the Working Group's key mandates is to establish the conditions under which the complainant was detained.

73. The source claims that Mr. García Labrada was arrested on 6 October 2020, without a warrant and without being informed at the time of his arrest of the reasons for the arrest. It was not until eight months later, at the trial hearing on 23 June 2021, that he learned that he was being charged with the offences of contempt, public disorder and spreading epidemics. This statement is refuted by the Government, which claims that he was arrested on 1 September 2020 on suspicion of having committed the offences of stealing and illegally slaughtering cattle and selling the meat, which are punishable under articles 322 (1) and 240 (1) of the Criminal Code. At the time of the arrest, Mr. García Labrada was found to be in possession of 127 pounds of beef, which was the property of another citizen, as well as the implements that he had allegedly used to commit the offence. The Government adds in its reply that, on 28 September 2020, the detainee was already being held in El Típico prison, in the province of Las Tunas, under the precautionary measure of pretrial detention. It is therefore impossible for him to have been arrested in a public place on the date indicated by the source.

74. The Working Group noted the discrepancy between the two dates. In view of this inconsistency, it requested additional information from the Government and the source.

75. The Working Group considers that the source has carefully explained the details of the case and pointed out that press articles support the claim that Mr. García Labrada was arrested on 6 October 2020, as claimed by the source (see para. 68).

76. The Government merely repeated its claims, insisting that the date of arrest given by the source is incorrect. The Working Group is not persuaded by this statement. The request for clarification was based on the expectation that the Government, which possesses all the documents relating to the case, would attach a document to its response that would easily prove its claim. As it did not do so, the Working Group accepts the information submitted by the source to the effect that Mr. García Labrada was arrested on 6 October 2020.

77. 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>11</sup> If these procedures are not respected, the detention is arbitrary and seriously undermines the ability to conduct a proper legal defence.

78. The Working Group has previously stated that, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.<sup>12</sup> This is typically done through an arrest warrant or arrest order (or equivalent document).<sup>13</sup> 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.

79. In the present case, it appears that Mr. García Labrada was arrested without a warrant and without being informed at the time of his arrest of the reasons for the arrest. The Working Group therefore finds a breach of articles 3 and 9 of the Universal Declaration of Human Rights.

80. The Working Group notes that Mr. García Labrada was not brought promptly before a judge; that is, within the established time period of 48 hours after arrest, barring absolutely exceptional circumstances, which must be justified, in line with international standards and

<sup>11</sup> Human Rights Committee, general comment No. 35 (2014), para. 23.

<sup>12</sup> Opinions No. 9/2019, para. 29; No. 46/2019, para. 51; and No. 59/2019, para. 46.

<sup>13</sup> 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.

as reiterated in the Working Group's jurisprudence.<sup>14</sup> The Working Group also notes that Mr. García Labrada was not afforded the right to bring proceedings before a court so that it could decide without delay on the lawfulness of his detention, in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Furthermore, bearing in mind that pretrial detention should be the exception rather than the rule, the Working Group considers that the detention of Mr. García Labrada following his arrest lacked a legal basis, as it was not based on an individualized determination that detention was reasonable and necessary, taking into account all the circumstances that would render it unnecessary.<sup>15</sup>

81. The Working Group considers the length of time that Mr. García Labrada spent in pretrial detention, i.e. eight months from his arrest on 6 October 2020 until the trial hearing on 23 June 2021, to be not only excessive but also in violation of the international norms and guarantees against arbitrary detention set out in article 10 of the Universal Declaration of Human Rights<sup>16</sup> 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. García Labrada's human rights also contravenes the universal principle of law which holds that, in order to avoid a characterization of arbitrariness, detention should not continue beyond the period for which the State can provide appropriate justification, which principle has been violated in this case.

82. On the basis of the foregoing, the Working Group finds that the detention of Mr. García Labrada is arbitrary under category I.

**(b) Category II**

83. The source argues that Mr. García Labrada was deprived of his liberty because he exercised his right to freedom of opinion and expression as a member of Movimiento Cristiano Liberación.

84. The source also mentions that, since Mr. García Labrada joined this organization, he has been intimidated, threatened and detained for short periods of time on several occasions. The detention usually lasted between four and five hours, after which he was released with a warning to cease engaging in activism and defending human rights and democracy. In 2016, for example, he was detained for 12 hours in the province of Las Tunas in a unit known as "Investigation". In February 2017, he was arrested by State security agents while on his way to work at 7 a.m. He was held for several hours and threatened with imprisonment in El Típico prison if he continued to campaign with Movimiento Cristiano Liberación. In January 2020, he was again intimidated by State security agents, who summoned him to the police station to warn him that he would be imprisoned if he "continued his activism in favour of change in Cuba". The source also claims that, on a number of occasions, State security authorities threatened his family members by threatening to keep him incarcerated for years if the family did not stop seeking justice for him.

85. The Government has not refuted any of these allegations and has merely stated that Mr. García Labrada's links to Movimiento Cristiano Liberación were not taken into account at any stage of the criminal proceedings against him. It added that this movement is not a Cuban civil society organization and does not have legitimacy in the country.

86. The Working Group has previously considered a similar case.<sup>17</sup> In addition, several special procedure mandate holders have sent a communication regarding the detention of Mr. García Labrada and other members of Movimiento Cristiano Liberación.<sup>18</sup> The Working

<sup>14</sup> Opinions No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; No. 30/2019, para. 30; and No. 34/2021, para. 72.

<sup>15</sup> A/HRC/19/57, paras. 48–58.

<sup>16</sup> Ibid. See also opinions No. 5/2019, para. 26; and No. 62/2019, paras. 27–29.

<sup>17</sup> See opinion No. 66/2018.

<sup>18</sup> See communication CUB 4/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26620>.

Group is persuaded that Mr. García Labrada's detention is politically motivated, in violation of articles 18, 19 and 20 of the Universal Declaration of Human Rights. The Working Group therefore finds Mr. García Labrada's detention to be arbitrary under category II, and decides to refer this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

(c) **Category III**

87. Given the Working Group's conclusion that Mr. García Labrada's detention was arbitrary under categories I and II because it resulted from the exercise of his human rights, the Working Group considers that there was no basis for a trial to take place. However, since a trial did take place, the Working Group will proceed to analyse whether, in the course of the judicial proceedings, the fundamental components of a fair, independent and impartial trial were respected.

88. The right to a fair trial was established in the Universal Declaration of Human Rights as one of the fundamental pillars of international law to protect individuals against arbitrary treatment. To that end, everyone is entitled to a public hearing at a trial in which he or she has all the guarantees necessary for his or her defence and where the right to be tried by a competent, independent and impartial tribunal is respected.

89. The source claims that Mr. García Labrada did not receive legal assistance from the outset of his detention, but about two months later, at the insistence of his family.

90. The Government has refuted this claim, stating that, on 14 September 2020, a relative of Mr. García Labrada signed a contract with a collective law firm in the province of Las Tunas.

91. Despite this rebuttal, the Working Group has cross-checked the dates that the source and the Government have given for the provision of legal assistance. Irrespective of which version is regarded as correct, the Working Group finds that Mr. García Labrada went without the necessary legal assistance for at least the first 14 days (as per the Government's version) or the first two months (as per the source's version) of his detention.

92. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel immediately after their arrest, and such access must be provided without delay. In addition, legal consultation and all communications with lawyers must remain confidential. Mr. García Labrada's lack of legal assistance for either 14 days or two months, depending on the version, prevented him from receiving a fair trial in accordance with the principle of equality of arms and the right to have adequate time and facilities for the preparation of his defence, in violation of articles 10 and 11 (1) of the Universal Declaration of Human Rights.

93. The Working Group is concerned to note that the Government has not refuted the source's claim that Mr. García Labrada was subjected to torture and ill-treatment, yet it has challenged the claim that he was held incommunicado. The Government has not denied the claim that, when a relative visited Mr. García Labrada on 3 November 2020, the latter was found to have bruises on his ribs, shoulders and arms, was unable to move his left arm and had not received any medical care, despite the injuries from the blows that he had received and despite the fact that he suffers from asthma. Consequently, the source states that the detainee was tortured and ill-treated.

94. In this connection, the Working Group recalls that the burden of proof rests upon the Government if it wishes to refute the allegations,<sup>19</sup> and that it is not sufficient for the Government to claim that the requirements of national law and domestic legal procedures have been followed.<sup>20</sup>

95. The Government has not submitted any document attesting to the detainee's state of health. Instead, it merely states in general terms that the principles enshrined in its national laws ensure the full enjoyment of and universal access to free, quality health-care, protection

<sup>19</sup> A/HRC/19/57, para. 68.

<sup>20</sup> See opinion No. 70/2018.

and rehabilitation services in its health system and that medical care is therefore provided to all inmates and detainees throughout the prison system.

96. 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, especially the right to be presumed innocent established in article 11 of the Universal Declaration of Human Rights. The Working Group thus endorses the report issued by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, entitled "Violence and its impact on the right to health",<sup>21</sup> and decides to refer the present case to her. Furthermore, given the gravity of the allegations, the Working Group also decides to refer the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

97. In the light of the foregoing, the Working Group declares Mr. García Labrada's detention to be arbitrary, in violation of articles 10 and 11 of the Universal Declaration of Human Rights, under category III.

**(d) Category V**

98. The source claims that Mr. García Labrada was deprived of his liberty because of his political opinions and because he was critical of the Government.

99. The Working Group recalls that a detention is arbitrary under category V when it 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. The Working Group also notes that one of the factors that tend to establish the discriminatory nature of deprivation of liberty is whether it is part of a pattern of persecution against the detained person, involving, for example, previous detention, acts of violence or threats.<sup>22</sup>

100. As established in the discussion above concerning category II, Mr. García Labrada's detention resulted from the peaceful exercise of his fundamental rights under international law. When deprivation of liberty has resulted from the active exercise of civil and political rights, there is a strong presumption that the deprivation of liberty also constitutes a violation of international law on the grounds of discrimination.<sup>23</sup>

101. As mentioned above, Mr. García Labrada was repeatedly intimidated, threatened and detained for short periods of time after joining Movimiento Cristiano Liberación. The Government has not refuted these claims, but merely denies that Mr. García Labrada's membership of that organization was taken into account during the criminal proceedings against him. In addition, the Working Group recalls that it has already held that the deprivation of liberty of another member of Movimiento Cristiano Liberación was arbitrary.<sup>24</sup>

102. For these reasons, the Working Group finds that Mr. García Labrada was arrested in a discriminatory manner because he was an activist in a political movement opposed to the Government of Cuba, as this was the latest in a series of arrests and acts of harassment directed against Mr. García Labrada.

103. The Working Group concludes that Mr. García Labrada has been deprived of his liberty on discriminatory grounds, in violation of articles 2 and 7 of the Universal Declaration of Human Rights, rendering his detention arbitrary under category V.

**(e) Concluding remarks**

104. 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

<sup>21</sup> See [A/HRC/50/28](#).

<sup>22</sup> [A/HRC/36/37](#), para. 48.

<sup>23</sup> Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and No. 59/2019, para. 79.

<sup>24</sup> See opinion No. 66/2018.

systematically.<sup>25</sup> 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.

## 5. Disposition

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

The deprivation of liberty of Yandier García Labrada, being in contravention of articles 2, 3, 7, 8, 9, 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

106. The Working Group requests the Government of Cuba to take the steps necessary to remedy the situation of Mr. García Labrada without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

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

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

109. 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 torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

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

## 6. Follow-up procedure

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

112. 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

<sup>25</sup> 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.

whether further technical assistance is required, for example through a visit by the Working Group.

113. 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.

114. 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>26</sup>

*[Adopted on 15 November 2023]*

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<sup>26</sup> Human Rights Council resolution 51/8, paras. 6 and 9.