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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 101st session, 11–15 November 2024

Opinion No. 66/2024 concerning Jorge Martín Perdomo and Nadir Martín Perdomo (Cuba)*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,¹ on 1 May 2024 the Working Group transmitted to the Government of Cuba a communication concerning Jorge Martín Perdomo and Nadir Martín Perdomo. The Government submitted a late response on 5 August 2024. 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).

* Mumba Malila did not participate in the discussion of the case.

¹ [A/HRC/36/38](#).



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

4. Jorge Martín Perdomo is a national of Cuba, born on 11 March 1983.
5. Nadir Martín Perdomo is a national of Cuba, born on 12 May 1984.

(i) Context

6. The source reports that Jorge Martín Perdomo and Nadir Martín Perdomo are brothers who were detained on 17 July 2021 in the context of the mass demonstrations of 11 July 2021 and the following days, which took place in several areas and regions of Cuba.

7. The source asserts that the aforementioned demonstrations were peaceful and spontaneous gatherings of thousands of Cubans, mostly young people, who shouted phrases such as “libertad” (freedom), “patria y vida” (homeland and life), “abusadores” (abusers), “abajo el comunismo” (down with communism), “abajo la dictadura” (down with the dictatorship), “abajo los Castro” (down with the Castros), “abajo Díaz-Canel” (down with Díaz-Canel) and “Díaz-Canel puesto a dedo” (Díaz-Canel, the shoo-in). These demonstrations were held in response to the serious situation caused by the gradual accumulation of shortages of food and medicine and the escalation of acts of repression and restrictions of fundamental freedoms.

8. The source states that, on 11 July 2021, the President of Cuba gave a televised address in which he encouraged the authorities and other groups to violently confront the demonstrators. The President said the following: “We call on all revolutionaries in the country, all communists, to take to the streets.” As a result, individuals in civilian clothing, who did not identify themselves, but who were actually military personnel from the Ministry of the Interior, and civilians from rapid response brigades violently arrested participants in the demonstrations throughout the country. These arrests led to public disorder, including violent attacks against demonstrators.

9. There is an abundance of documentary evidence and reports demonstrating how individuals in civilian clothing, including young people from the Young Communist League and those doing military service, were given pieces of wood and baseball bats with which to repress and beat the demonstrators. The source adds that the President’s words sparked uncontrollable chaos on the country’s streets. According to the reports received, only demonstrators have been prosecuted – that is, accused of and tried for crimes – while the Cuban authorities have benefited from secrecy, a lack of transparency and impunity.

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

(ii) Arrest and detention

11. The source states that, in the afternoon of 11 July 2021, Messrs. Martín Perdomo peacefully participated in the mass demonstration that took place in San José de las Lajas, their area of residence. A number of home-made videos show how demonstrators shouted slogans such as “libertad” and “patria y vida”. After leaving the demonstration to return home, Messrs. Martín Perdomo were placed under surveillance by on-duty officers from the Directorate General of Counter-Intelligence of San José de las Lajas, who were wearing civilian clothing and carrying no form of identification.

12. On 16 July 2021, Messrs. Martín Perdomo were threatened by officers from the San José de las Lajas unit of the Division for Criminal Investigations and Operations, who said that they would return the following day to seize the computers in the house.

13. According to the source, on 17 July 2021, three officers from the San José de las Lajas unit of the National Revolutionary Police came to the home of Messrs. Martín Perdomo bearing an official summons on which neither the date nor the reason for the document’s issuance were indicated. Messrs. Martín Perdomo went to the San José de las Lajas unit of the National Revolutionary Police that afternoon.

14. The source reports that, that night, the relatives of Messrs. Martín Perdomo became concerned when the two men failed to return home. They called the aforementioned unit and, after much insistence, were told that both brothers had been detained, without being given any further information.

15. The source points out that Messrs. Martín Perdomo were not shown an arrest warrant and were presented only with an unsigned summons instructing them to attend a sham interview at the local unit of the National Revolutionary Police. Once the brothers entered the police unit, they were arrested and deprived of their liberty.

16. The source submits that the Cuban authorities (the Directorate General of the National Revolutionary Police and the Directorate General of Counter-Intelligence of the Ministry of the Interior) engage in bad practice by carrying out arrests without showing an arrest warrant, which is completed after the person has been deprived of their liberty in order to meet procedural requirements. The Cuban authorities are also known, as has occurred in the case of Messrs. Martín Perdomo, to employ tricks and schemes, such as the issuance of summons to attend sham interviews at the units of the National Revolutionary Police, with the aim of luring individuals to the police unit concerned so that they can be arrested and deprived of their liberty once inside. When making such arrests, it is common for the Cuban authorities not to inform the individual concerned of the reasons for their arrest or the rights and guarantees for arrested persons.

17. According to the source, Messrs. Martín Perdomo were not informed of their rights or the reasons for their detention at the time of their arrest. While detained at the San José de las Lajas unit of the National Revolutionary Police, the two men were told that they had been charged with the alleged crime of public disorder. The crimes of contempt for authority and assault were added to the charge sheet at a later date. The charges against Messrs. Martín Perdomo are set out in preliminary case file No. 403 of 2021 of the San José de las Lajas investigative unit.

18. The source submits that the measure of pretrial detention was imposed on Messrs. Martín Perdomo by the Mayabeque Provincial Prosecutor's Office and the investigator of that province. The source adds that, in Cuba, it is a procedural requirement for detained persons to undergo an assessment before a precautionary measure of pretrial detention can be imposed. Notwithstanding the foregoing, the measure imposed on Messrs. Martín Perdomo was unjust insofar as it was both disproportionate and unreasonable, bearing in mind that both men are upstanding citizens with no criminal record who have a recognized domicile and are known to have stable employment, that there is no indication that they were trying to evade justice and that the misrepresented events that served as the basis for the men's arbitrary detention and subsequent prosecution did not pose any danger to society.

19. The source adds that the precautionary measure of pretrial detention has been given inquisitorial characteristics under the Criminal Procedure Act (No. 5) (the law in force at the time of the events), in particular the provisions governing the preparatory phase of oral proceedings. The measure imposed on Messrs. Martín Perdomo, which was taken instead of another, non-custodial, precautionary measure, is the most drastic step that can be taken against an accused person during that phase.

20. The source states that the precautionary measure of pretrial detention imposed on Messrs. Martín Perdomo pending the oral proceedings was not subject to judicial review. The fact that Messrs. Martín Perdomo, like all the individuals who were deprived of their liberty for participating in the mass demonstration of 11 July 2021, were not brought before a judge promptly after their arrest amounts to a violation of principle 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

21. The source asserts that, after their arrest on 17 July 2021, the brothers were deprived of their liberty for six months under a precautionary measure of pretrial detention, during which time they were not given access to a judge or a court. They were first provided with such access in February 2022, when they were brought before the Criminal Chamber of the People's Municipal Court of San José de las Lajas, located within the People's Municipal Court of Quivicán in Mayabeque Province.

22. According to the source, on 30 July 2021, the legal team chosen by Messrs. Martín Perdomo filed a request for the precautionary measure of pretrial detention to be modified. This request, which was submitted to the designated prosecutor through the investigator assigned to the case, made it clear that the brothers were upstanding citizens, enjoyed good social standing, had no criminal record, had a recognized domicile and stable employment and had fulfilled their tax obligations. All of these arguments were ignored in order to keep Messrs. Martín Perdomo in pretrial detention.

23. The source submits that the detainees were subjected to psychological duress by being deprived of their liberty for a lengthy period while waiting to be brought before the court. They have also suffered psychological abuse, in the form of insults and threats, at the hands of the authorities responsible for their detention, namely, the officers from the relevant units of the National Revolutionary Police, the Directorate General of Counter-Intelligence and the Division for Criminal Investigations and Operations.

24. The source alleges that Messrs. Martín Perdomo have been held incommunicado and thus prevented from seeing their relatives for the entire duration of their pretrial detention. The detainees had their first telephone call with their relatives 62 days after their arrest. It was not until 65 days after their arrest that they were able to make direct contact with the legal team representing them in the criminal proceedings.

25. The legal team representing the detainees in the criminal proceedings against them is made up of lawyers from the San José de las Lajas Collective Law Firm, which is part of the National Organization of Collective Law Firms. According to the source, while the National Organization of Collective Law Firms is supposedly a non-governmental organization, the reality is that it is a transfiguration of a socialist State entity, with all the attributes of one, including ties to the Communist Party of Cuba and grass-roots committees of the Young Communist League.

26. According to the source, the Government has used the coronavirus disease (COVID-19) pandemic as an excuse to sidestep its obligation to ensure that persons deprived of their liberty owing to their participation in the demonstration of 11 July 2021 are able to communicate with the outside world. The source adds that it is common for the State to prevent persons who have been deprived of their liberty for sociopolitical reasons from communicating with the outside world for lengthy periods of time. The source refers to the Working Group's deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies, in which it noted that, even when the in-person attendance of meetings must be restricted due to health emergencies, alternative means, such as electronic communications, should be used.

27. The source states that, with regard to the lengthy period of time during which the relatives of Messrs. Martín Perdomo were kept in the dark about the brothers' legal situation, article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance establishes that "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal by the authorities to acknowledge the deprivation of liberty or reveal the fate or whereabouts of the disappeared person, which places the victim outside the protection of the law.

28. The source reports that, on 17 July 2021, Messrs. Martín Perdomo were detained at the municipal unit of the National Revolutionary Police in San José de las Lajas (Mayabeque). That same day, they were transferred to the so-called "AIDS prison", which is situated in the same municipality and the same province, where they were deprived of their liberty for 48 days before being moved to Quivicán prison (Mayabeque) on 3 September 2021. On 12 February 2022, Nadir Martín Perdomo was transferred to Melena del Sur prison (Mayabeque), where he remained until 16 November 2022, when he was transferred back to Quivicán prison. On 9 July 2023, Jorge Martín Perdomo was transferred to a camp in Quivicán (Mayabeque). Nadir Martín Perdomo was moved to the same camp on 11 July 2023. On 21 October 2023, Jorge Martín Perdomo was transferred to the Canasí camp in Mayabeque. He was then transferred to the Ho Chi Min camp, also in Mayabeque, on 1 February 2024.

29. According to the source, during the aforementioned transfers, no steps were taken to ensure that Messrs. Martín Perdomo were able to exercise their right to immediately notify their relatives of their movements, in violation of rule 68 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

(iii) *Criminal proceedings*

30. According to the source, on 8 February 2022, the Criminal Chamber of the People's Municipal Court of San José de las Lajas (located within the People's Municipal Court of Quivicán) issued judgment No. 7 of 2022, in which it sentenced Messrs. Martín Perdomo to 6 years' imprisonment for the crimes of public disorder, assault and contempt of authority.

31. According to the source, the criminal proceedings were a sham trial held for the purposes of legitimizing, concealing and misrepresenting the acts of cruelty and violence perpetrated against certain individuals because of political differences, as well as criminalizing and turning public opinion against those who participated in the demonstration of 11 July 2021 in order to make an example of them.

32. The source affirms that the judicial proceedings against Messrs. Martín Perdomo violated the essence of due process, since they were manifestly biased towards the State and its punitive action, to the detriment of the citizens' ability to exercise their defence rights.

33. The source alleges that judgment No. 7 of 2022 of the People's Municipal Court of San José de las Lajas offers yet another example of the Cuban authorities' using hateful, humiliating and unethical language to describe those who oppose the current form of organization of the State by referring to the demonstrators of 11 July 2021 as "disturbed street performers". The source adds that the judgment contains accusations of alleged punishable conduct, which the judges included solely for the purpose of turning public opinion against Messrs. Martín Perdomo, doing so without providing any evidentiary basis or setting out the criminal action to be taken in response.

34. According to the source, following the conclusion of the trial before the lower court, the legal team hired to represent Messrs. Martín Perdomo lodged an appeal against their conviction, in due time and form, with the First Chamber of the Provincial People's Court of Mayabeque. This appeal was broadly based on the fact that the legal team disagreed with the classification of the crimes with which the brothers had been charged, arguing that the acts described or that occurred did not meet the definitions of those crimes.

35. The legal team also noted the incomplete and obscure account set out in the judgment, as well as the clear bias shown by the court when it dismissed the evidence provided by the defence using superfluous arguments and without offering counter-evidence, which has been a common tactic used to criminalize many of the demonstrators of 11 July 2021.

36. The source reports that the appeal was rejected.

37. With regard to the conditions of detention, the source states that the Cuban authorities are unable to guarantee the availability of personal hygiene products for detained persons. As a result, the burden of finding and supplying personal hygiene products for such persons falls on their families.

38. According to the source, the food that detainees are given is insufficient, very poor quality and cold, with little or no protein or vitamin content. This highlights the prima facie failure of the Cuban authorities to comply with rules 1, 18, 22, 24 and 58 of the Nelson Mandela Rules.

39. The source adds that the situation is compounded by the precariousness, overcrowding and inefficiency that prevail in the Cuban prison system, which means that not even the Cuban authorities, acting through the Directorate of Prisons of the Ministry of the Interior, can guarantee detainees their basic rights, such as access to personal hygiene products, as such products are inaccessible to millions of Cubans.

(iv) *Legal analysis*

40. According to the source, the detention of Messrs. Martín Perdomo falls under categories I, II, III and V of the Working Group.

a. Category I

41. The source claims that Messrs. Martín Perdomo were not shown an arrest warrant and were presented only with an unsigned summons instructing them to attend a sham interview at the local unit of the National Revolutionary Police. Once inside this police unit, the brothers were arrested and deprived of their liberty before being transferred to various detention centres. The source submits that the Working Group has stated in many of its opinions that a detention is considered arbitrary under category I if it lacks legal basis.

42. The source adds that the precautionary measure of pretrial detention imposed on Messrs. Martín Perdomo was not subject to judicial review. With regard to the time limit for bringing a person deprived of their liberty before the competent authority, the source recalls that the Working Group has stated in its opinions that international human rights standards specify that the maximum time limit for bringing a detained person before the competent authority is 48 hours and make clear that any delay must be absolutely exceptional and justified.²

43. The source states that, compared with other participants in the mass demonstration of 11 July 2021, the precautionary measure imposed on Messrs. Martín Perdomo, far from being applied as an exceptional measure, was instead applied exclusively as an informal measure, without regard to the personal situation of the persons detained or the nature of the alleged crime and, most seriously of all, without judicial oversight under the outdated Criminal Procedure Act (No. 5 of 1977), which had to be repealed. In this regard, the Working Group has stated that, owing to the particularly restrictive nature of pretrial detention, its imposition should be the exception, rather than the rule. The exceptional nature of pretrial detention is a consequence of the presumption of innocence, according to which, in principle, all persons subject to trial must be tried at liberty, liberty must be recognized as the general rule or principle, and pretrial detention as an exception in the interests of justice.³

b. Category II

44. The source alleges that the deprivation of liberty of Messrs. Martín Perdomo constitutes a flagrant prima facie violation by the Cuban authorities of the brothers' rights under articles 7, 18, 19 and 20 of the Universal Declaration of Human Rights.

45. The source asserts that charges have been brought against the brothers in an attempt to criminalize those who, on 11 July 2021 and the following days, exercised their right to demonstrate, which is a universal and alienable human right enshrined in core human rights instruments and a fundamental right under article 56 of the Constitution.

c. Category III

46. According to the source, the detainees' rights under articles 9 and 10 of the Universal Declaration of Human Rights have been violated, as the two men have been subjected to prolonged arbitrary pretrial detention with inquisitorial characteristics. Based on this line of argumentation, the Cuban authorities violated, prima facie, the criminal procedure guarantees set forth in article 95 (b) and (h) of the Constitution, since they did not allow the two men to have access to legal assistance from the beginning of the criminal proceedings or to communicate immediately with their relatives.

47. The source mentions that, in Cuba, criminal proceedings, which are governed by the Criminal Procedure Act (No. 5), have inquisitorial characteristics and that legal representation is provided through the National Organization of Collective Law Firms, which, in reality, is an administrative body under the control of the Communist Party. Accordingly, the senior leadership of the Communist Party of Cuba has control over the courts, the Public Prosecution Service, investigative bodies, prosecutorial bodies, expert witnesses, pro-government lawyers and the official mass media.

² Opinion No. 62/2023, para. 71.

³ Opinion No. 72/2023, para. 63.

d. Category V

48. According to the source, the brothers are being deprived of their liberty in retaliation for their opposition to the Government.

49. The source claims that there are several home-made videos of the demonstration that show the civic leadership role played by Messrs. Martín Perdomo.

50. The source argues that Messrs. Martín Perdomo are not “maggots”, “rats” or “mercenaries”, which are the humiliating terms that have become a feature of the hate speech used by the Cuban authorities to humiliate and denigrate those who oppose them.

51. The source adds that Messrs. Martín Perdomo are upstanding citizens and peaceful demonstrators whose “crimes” were to express, repeatedly and loudly in the midst of a spontaneous civic demonstration, civil and political views that run counter to those of the Communist Party of Cuba.

(b) **Response from the Government**

52. In order to be able to issue an opinion in the present case, the Working Group, in accordance with its methods of work, transmitted the source’s allegations to the Government of Cuba on 1 May 2024 and requested it to submit a response by 1 July 2024. On 1 July 2024, the Government requested an extension of the time limit, which was granted by the Working Group, and the new deadline was set for 31 July 2024.

53. The Government submitted its response on 5 August 2024. The Working Group finds it regrettable that the Government did not respond to the communication within the time limit. Despite the Government’s late response, the Working Group will proceed to render an opinion on the arrest and detention of Messrs. Martín Perdomo, on the basis of all the information that it has received, in accordance with paragraph 16 of its methods of work.⁴

2. **Discussion**

54. In determining whether the detention of Messrs. Martín Perdomo 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.⁵ Mere assertions that lawful procedures have been followed are not sufficient to rebut the source’s allegations.

55. The Working Group wishes to reaffirm that States have an obligation to respect, protect and uphold all human rights and fundamental freedoms, including liberty of person, and that any national law allowing deprivation of liberty should be formulated and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights and other applicable international instruments. Consequently, even if a detention is in conformity with national legislation, regulations and practices, the Working Group has a right and an obligation to assess the judicial proceedings and the law itself to determine whether the detention is also consistent with the relevant provisions of international human rights law.⁶

(a) **Category I**

56. The source argues that the arrest and detention of Messrs. Martín Perdomo are arbitrary under category I of the Working Group. The Working Group recalls that a detention is considered arbitrary under category I if it lacks legal basis. As the Working Group has previously stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a national law that may authorize the arrest. The authorities must invoke that

⁴ [A/HRC/36/38](#).

⁵ [A/HRC/19/57](#), para. 68.

⁶ Opinions No. 10/2018, para. 39; No. 4/2019, para. 46; No. 46/2019, para. 50; and No. 5/2020, para. 71.

legal basis and apply it to the circumstances of the case.⁷ In its late response, the Government has opposed this assertion by stating that the demonstrations gave rise to vandalism, criminal acts and violations of the social distancing measures introduced in response to the COVID-19 pandemic.

57. According to the source, Messrs. Martín Perdomo were detained on 17 July 2021 after the demonstrations of 11 July 2021 and the following days, which took place in several areas and regions of Cuba. After leaving the demonstration to return home, Messrs. Martín Perdomo were placed under surveillance by on-duty officers from the Directorate General of Counter-Intelligence, who were wearing civilian clothing and carrying no form of identification.

58. The source informs the Working Group that, on 17 July 2021, three officers from the San José de las Lajas unit of the National Revolutionary Police came to the home of Messrs. Martín Perdomo with an official summons on which neither the date nor the reason for the document's issuance were indicated. After receiving the summons, Messrs. Martín Perdomo went to the San José de las Lajas unit of the National Revolutionary Police that same afternoon. The source informs the Working Group that the day before, on 16 July 2021, the brothers had been threatened by agents from the San José de las Lajas unit of the Division for Criminal Investigations and Operations, who said that they would return the following day to seize the computers in the house.

59. The source emphasizes that, once inside the police unit, Messrs. Martín Perdomo were arrested and deprived of their liberty without being shown an arrest warrant or being informed of their rights or the reasons for their detention. The source insists that this is a practice commonly employed by the Cuban authorities.

60. In the present case, Messrs. Martín Perdomo admit that they joined the protests of 11 July 2021 and insist that they went to the unit of the National Revolutionary Police only because they had been summoned for a supposed interview. The Government, in contrast, states that that Messrs. Martín Perdomo were arrested for participating in violent disturbances and acts of vandalism and for disrupting the peace, which resulted in several law enforcement officers being attacked. The Government affirms that these events cannot be called "peaceful", since they sparked violent acts that jeopardized the peace and stability of the State. The Government also claims that those acts violated the sanitary measures in force in the context of the COVID-19 pandemic, which was peaking at exactly that moment.

61. The Working Group notes, however, that the fact that Messrs. Martín Perdomo were not arrested in flagrante delicto means that they had the right to be presented with an arrest warrant and informed of the reasons for their arrest at the time thereof, which is a procedurally inherent component of the right to liberty and security of person and the prohibition of arbitrary deprivation of liberty.

62. The Working Group is not convinced that these requirements were fulfilled in the case of the arrest of Messrs. Martín Perdomo and considers, therefore, that their arrest violated articles 3 and 9 of the Universal Declaration of Human Rights and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

63. Furthermore, the source alleges that the initial detention of Messrs. Martín Perdomo was not subject to judicial review. The Government, in its late response, did not directly address this argument.

64. Principle 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that any person detained on a criminal charge should be brought before a judicial or other authority provided by law promptly after his or her arrest. International human rights standards specify that the maximum time limit for

⁷ See, for example, opinions No. 46/2017, No. 66/2017, No. 75/2017, No. 93/2017, No. 35/2018, No. 79/2018, No. 89/2020 and No. 72/2021.

bringing a detained person before the competent authority is 48 hours and make clear that any delay must be absolutely exceptional and justified.⁸

65. In the present case, the Government does not provide sufficient information to show that Messrs. Martín Perdomo were brought before a judge to challenge their detention within 48 hours of their initial deprivation of liberty. Although Messrs. Martín Perdomo were eventually brought before the courts, this took place well after the 48-hour deadline for challenging the grounds for the arrest. According to the source, it was only in February 2022 (six months after their arrest) that Messrs. Martín Perdomo were brought before the Criminal Chamber of the People's Municipal Court of San José de las Lajas. On the basis of the information received, the Working Group considers that the detention of Messrs. Martín Perdomo was not subject to judicial oversight, in violation of article 9 of the Universal Declaration of Human Rights.

66. According to the source, the measure of pretrial detention was imposed on Messrs. Martín Perdomo by the Mayabeque Provincial Prosecutor's Office and the investigator of that province, also without judicial review. The source adds that, compared with other participants in the mass demonstration of 11 July 2021, the precautionary measure imposed on Messrs. Martín Perdomo, far from being applied as an exceptional measure, was instead applied exclusively as an informal measure, without regard to the personal situation of the persons detained or the nature of the alleged crime. In its late response, the Government stated that the prosecutor ordered the pretrial detention measure on 24 July 2021, which was within the deadlines established under current procedural law, and that the measure was not disproportionate given that the acts committed by Messrs. Martín Perdomo violated public order and peace.

67. The Working Group recalls that pretrial deprivation of liberty, as a precautionary and non-punitive measure, must also comply with the principles of legality, necessity and proportionality to the extent strictly necessary in a democratic society. It may be imposed only within the limits strictly necessary to ensure that the efficient undertaking of investigations is not impeded nor the action of justice evaded, and provided that the competent authority substantiates and confirms the fulfilment of the aforementioned requirements. Owing to the particularly restrictive nature of pretrial detention, its imposition should be the exception, rather than the rule. The exceptional nature of pretrial detention is a consequence of the presumption of innocence, according to which, in principle, all persons subject to trial must be tried at liberty, liberty must be recognized as the general rule or principle, and pretrial detention as an exception in the interests of justice.⁹ In determining whether the conditions governing pretrial detention have been met, the Working Group examines whether the national courts have taken into account the particular circumstances of the person concerned but does not check whether there are risks that would make pretrial detention necessary.¹⁰

68. Despite the Government's assertions that Messrs. Martín Perdomo were involved in allegedly violent protests, it has not provided sufficient information to demonstrate the need for pretrial detention in these circumstances. The Working Group also notes that pretrial detention was ordered by prosecutors and not by judges. There is no indication that the detained persons could have appealed against this decision before a judge. The foregoing demonstrates that Messrs. Martín Perdomo were subjected to pretrial detention in the absence of an individualized judicial assessment.¹¹

69. In view of the foregoing, the Working Group considers that the detention of Messrs. Martín Perdomo has been carried out without the guarantees set forth in article 9 of the Universal Declaration of Human Rights, and that their detention is therefore arbitrary and falls within category I.

⁸ Opinions No. 20/2019, para. 66; and No. 26/2019, para. 89.

⁹ Opinion No. 37/2022, para. 60.

¹⁰ Opinion No. 15/2022, para. 66.

¹¹ Opinions No. 14/2020, para. 53; and No. 63/2021, paras. 91–93.

(b) Category II

70. The source states that the detention of Messrs. Martín Perdomo is arbitrary under category II because it is a direct result of repression and punishment for having participated in the demonstrations that took place in Cuba over several days in July 2021, which have been a matter of public record, and for having expressed their opinions and political positions during those events. Thus the rights to freedom of expression and to freedom of peaceful assembly and association, enshrined in articles 19 and 20 of the Universal Declaration of Human Rights, have been violated. In its late response, the Government claims that the arrest occurred because Messrs. Martín Perdomo had engaged in acts of violence, breaches of the peace and vandalism, in violation of COVID-19 laws.

71. 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.

72. 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.

73. 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.¹²

74. 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.¹³

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

76. The Working Group 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.¹⁴

77. The Working Group specifically notes that there are no allegations that Messrs. Martín Perdomo have engaged in acts of public disorder, thereby violating the health measures in place during the COVID-19 pandemic. Similarly, the Working Group is not convinced that the actions of Messrs. Martín Perdomo can justify the loss of the protection afforded to them by articles 19 and 20 of the Universal Declaration of Human Rights.

78. In addition, and with regard to the charges of assault, contempt for authority and public disorder brought against Messrs. Martín Perdomo, the Working Group has previously determined that these and similar offences are excessively vague and overly broad, as they

¹² Opinion No. 58/2017, para. 42.

¹³ Opinions No. 58/2017 and No. 63/2019.

¹⁴ [A/HRC/20/27](#), para. 25.

do not clearly define the type of criminal activity that they are intended to punish.¹⁵ The principle of legality requires that laws be formulated with sufficient precision to give individuals access to and an understanding of the law and enable them to regulate their conduct accordingly. The application of vague and overly broad provisions in the present case has made it impossible to invoke a legal basis to justify the detention and arrest of Messrs. Martín Perdomo.¹⁶

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

(c) Category III

80. In the light of the findings noted in relation to category II, in which it concluded that the detention of Messrs. Martín Perdomo results from the exercise of the rights to freedom of opinion, association and expression, the Working Group considers the detention and the trial to be disproportionate and unjustified. However, given that criminal proceedings were instituted against the brothers and considering the allegations of the source, the Working Group will proceed to analyse whether, in course of the ongoing judicial proceedings, the fundamental elements of a fair, independent and impartial trial have been respected, including the right of the person to be heard in public proceedings with all the guarantees necessary for his or her defence and the right to be tried by a competent, independent and impartial criminal court.

81. The Working Group recalls that the right to a fair trial has, since the proclamation of the Universal Declaration of Human Rights, become established as one of the fundamental pillars of international law to protect individuals against arbitrary treatment.

82. In the case of Messrs. Martín Perdomo, the Working Group wishes to stress that, according to the information from the source, the precautionary measure of detention was ordered by the prosecutor assigned to the case. The fact that this measure is not considered excessive or unlawful in view of the breaches of the peace committed – as the Government puts it – does not matter; what does matter is that the measure was not issued by the competent authority. The Working Group has always insisted that in the field of criminal law, in cases in which coercive measures are imposed, the right to defence must be guaranteed at all stages of the process. In order to ensure this equality, the legal system must provide for a separation between the authority conducting the investigation and the authorities in charge of the detention and ruling on the conditions of the pretrial detention. This separation is a necessary requirement to 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.¹⁷ This separation, which guarantees the impartiality of the proceedings, has not been respected in the case of Messrs. Martín Perdomo.

83. Moreover, the Working Group underscores the need for any form of detention or imprisonment to be ordered by a judicial or other authority in keeping with the law and to be always subject to the effective control of that authority, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under

¹⁵ Opinion No. 65/2020, para. 78. See also opinions No. 63/2019 and No. 4/2020; and Inter-American Commission on Human Rights, Annual Report 2019, chap. IV.B, Cuba, para. 22, available at <http://www.oas.org/es/cidh/docs/anual/2019/docs/IA2019cap4BCU-es.pdf>.

¹⁶ Opinions No. 41/2021 and No. 63/2021.

¹⁷ E/CN.4/2005/6, para. 79.

Any Form of Detention or Imprisonment. This has not occurred in both cases brought against Messrs. Martín Perdomo.

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

85. Furthermore, the source informs the Working Group that Messrs. Martín Perdomo disappeared for several hours after their detention, during which time the authorities refused to give the brothers' relatives any information about their whereabouts or well-being. The whereabouts of Messrs. Martín Perdomo were discovered once the necessary enquiries had been made, when it was revealed that they had been transferred to Quivicán prison pending their respective trials.

86. The source informs the Working Group that Messrs. Martín Perdomo were unable to communicate with their family at the time of their detention, having been unreasonably deprived of that right, in violation of principles 15, 16 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The source states that the brothers were able to make their first telephone call to their relatives and receive their first visit from them 62 days and six months after their arrest, respectively.

87. The Government has denied such assertions in its late response, claiming that the aforementioned situation arose following the introduction in the country of measures to contain the outbreak of COVID-19, meaning that family visits to prisons were suspended to preserve the health and safety of citizens.

88. The source indicates that Messrs. Martín Perdomo were only able to make contact with their legal team 65 days after their arrest, as they had been prevented from receiving visits until 20 October 2021, a claim which has not been denied by the State. They made their statements at the first hearing, which took place in the absence of legal counsel. With regard to this assertion, the Government, in its response, merely mentions in general terms that Messrs. Martín Perdomo were represented during the criminal proceedings and the trial by a defence lawyer that they had chosen themselves. The Working Group notes, however, that Messrs. Martín Perdomo were held incommunicado for several days, without being able to speak to their family or a lawyer, in contravention of principles 15, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, as stated above.

89. The Working Group, in its deliberation No. 11, has stressed that it is mindful of the fact that the public health emergency measures introduced to combat the pandemic may limit access to detention facilities and prevent persons deprived of their liberty from holding meetings with their legal counsel and families. Nonetheless, States must ensure the availability of alternative forms of communication. Legal counsel must be able to contact the client through secured online communication or communication over the telephone, free of charge and in circumstances in which privileged and confidential discussions can take place.¹⁸

90. The Working Group notes that Messrs. Martín Perdomo were denied the opportunity to contact and receive assistance from legal counsel immediately after their detention and were prevented from receiving a fair trial in accordance with the principle of equality of arms and the right to adequate time and facilities to prepare a defence, in violation of articles 10 and 11 (1) of the Universal Declaration of Human Rights and principles 15, 17, 18 and 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group also recalls that holding detained persons incommunicado constitutes a violation of their right to challenge the legality of their detention before a court, as provided for in article 8 of the Universal Declaration of Human Rights.¹⁹

¹⁸ A/HRC/45/16, annex II (English only).

¹⁹ Opinion No. 41/2021, para. 107.

91. In the light of the foregoing, the Working Group is convinced that the authorities failed to comply with international standards relating to the right to a fair, independent and impartial trial, as set forth in articles 10 and 11 of the Universal Declaration of Human Rights. The Working Group thus considers that the detention of Messrs. Martín Perdomo is arbitrary under category III.

(d) Category V

92. The Working Group is convinced that Messrs. Martín Perdomo were detained in a discriminatory manner for having participated in a nationwide protest against the regime, in violation of their rights to freedom of expression and association, as stated above.

93. The Working Group notes that the demonstration was motivated by discontent towards the Government. The source states that, before their arrest, Messrs. Martín Perdomo were threatened with the confiscation of their computers, a claim which was not refuted by the Government. Furthermore, judgment No. 7 of 2022 of the People's Municipal Court of San José de las Lajas refers to the protesters of 11 July 2021 as "disturbed street performers". Accordingly, it is the Working Group's view that Messrs. Martín Perdomo were arrested, charged and imprisoned because of their alleged political affiliation. In the light of the above, the Working Group finds that the detention of Messrs. Martín Perdomo is arbitrary under category V, in violation of articles 2 and 7 of the Universal Declaration of Human Rights.

3. Disposition

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

The deprivation of liberty of Jorge Martín Perdomo and Nadir Martín Perdomo, being in contravention of articles 1, 2, 3, 6, 7, 8, 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls under categories I, II, III and V.

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

96. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Messrs. Martín Perdomo immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

97. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Messrs. Martín Perdomo and to take appropriate measures against those responsible for the violation of their rights.

98. 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 and the Special Rapporteur on the independence of judges and lawyers for appropriate action.

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

4. Follow-up procedure

100. 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 Messrs. Martín Perdomo have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Messrs. Martín Perdomo;

(c) Whether an investigation has been conducted into the violation of the rights of Messrs. Martín Perdomo 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.

101. 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.

102. 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.

103. 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.²⁰

[Adopted on 13 November 2024]

²⁰ Human Rights Council resolution 51/8, paras. 6 and 9.