

DECISION No. 11/1992 (CUBA)

Communication addressed to the Government of Cuba on
14 October 1991.

Concerning: Juan Mayo Méndez on the one hand and the Republic of
Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group. The Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.
3. (See paragraph 3 of Decision No. 1/1992.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).
6. The Working Group considers that:
 - (a) According to the allegation, Juan Mayo Méndez was detained in January 1990 and sentenced to six years' imprisonment;
 - (b) According to the allegation, articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights have been violated in this case;
 - (c) The Government states that Mr. Mayo Méndez is in prison accused of the offence of subversive propaganda, without saying that he has been sentenced;
 - (d) The report of the Special Representative of the Secretary-General mentions this situation, indicating that, according to the reports received, this person was caught writing anti-Government slogans;

(e) The Government's reply was transmitted to the source that submitted the communication in February 1992 but no response has yet been received;

(f) In the absence of any further information, the Working Group takes it that the act for which Mr. Mayo Méndez is being detained is wall-writing;

(g) Wall-writing should be considered as a manifestation of the freedom of opinion and expression provided for in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights;

(h) The principles for classifying detention as arbitrary, as laid down in paragraph 3 of this decision, indicate that arbitrary detention under category II is constituted by detention deriving from facts concerning the exercise of particular fundamental human rights, including the right established in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights;

(i) The discrepancy between the source and the Government as to whether or not a trial has taken place does not make it possible to pronounce on whether, in this case, there are grounds for a finding of arbitrary detention based on a delay in trial proceedings, in accordance with the provisions of principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, articles 10 and 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights.

7. In the light of the above, the Working Group decides:

The detention of Juan Mayo Méndez is declared to be arbitrary, being in contravention of articles 9, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Juan Mayo Méndez to be arbitrary, the Working Group requests the Government of the Republic of Cuba to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.