



# General Assembly

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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session (27–31 August 2012)

#### No. 24/2012 (Cuba)

#### Communication addressed to the Government on 11 May 2012

#### Concerning José Daniel Ferrer García

**The Government responded to the communication from the Working Group on 7 June 2012.**

#### **The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (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 International Covenant on Civil and Political Rights (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 and judicial review or remedy (category IV);

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

## Submissions

### *Background*

3. In an initial communication concerning Mr. José Daniel Ferrer García, general coordinator of the organization known as the Unión Patriótica de Cuba (Patriotic Union of Cuba), the source reported that Mr. Ferrer García was arrested by police officers in Havana on 21 February 2012 at around 6 p.m. His detention was apparently not acknowledged by the authorities.

4. The source states that Mr. Ferrer García, who was born on 29 July 1970, is originally from the city of Palma Soriano (Santiago de Cuba province). He lives in Palmarito de Cauto (Santiago de Cuba). He is married to Ms. Belkis Cantillo, who is a representative of the group known as “Damas de Blanco Laura Pollán” (Laura Pollán Ladies in White) in Oriente Province. Mr. Ferrer García has three minor children. In 1996 he was active in the organization Movimiento Cubano de Jóvenes por la Democracia (Cuban Movement of Youth for Democracy). He later became involved in the Movimiento Cristiano Liberación (Christian Liberation Movement) and was a member of the so-called Comité Ciudadano Gestor del Proyecto Varela (Citizens’ Coordinating Committee for the Varela Project).

5. The source recalls that Mr. Ferrer García was one of the 75 dissidents arrested in March 2003. He was sentenced to 25 years’ imprisonment for offences against the national independence and economy of Cuba, in application of article 91 of the Criminal Code. He was allegedly offered the possibility of release provided that he agreed to take up residence in a European country but rejected the offer on the grounds that he preferred prison to exile. Nevertheless, on 23 March 2011 he was released under the terms of *licencia extra-penal*, meaning that his conviction still stands. After his release he is reported to have founded the organization known as Unión Patriótica de Cuba and organized various political rallies in the municipalities of Baracoa, Cobre, Guantánamo and Holguín and in the provincial capital, Santiago de Cuba. He is alleged to have gone on a hunger strike on a number of occasions.

6. After his arrest, Mr. Ferrer García was transferred first to the Operations Unit in Camagüey and from there to the Versalles Police Unit in Santiago de Cuba; these measures allegedly constitute a violation of his right to personal liberty and not to be arbitrarily detained; his right to personal security; his right to freedom of thought, opinion and expression; freedom of association; freedom of movement within his country and his right to participate in political life. All of the above is in violation of articles 9, 13, 18, 19, 20 and 21 of the Universal Declaration of Human Rights.

7. In its response, the Government reported that the person in question had engaged in clearly provocative activities, shown disrespect for and violated the constitutional order established by the people of Cuba, in compliance with instructions from and with funding from agents of the United States secret service and the anti-Cuban mafia in Miami, in the

run-up to the visit of Pope Benedict XVI to Cuba. It added that Mr. Ferrer García was at liberty.

8. The source confirmed the release of Mr. Ferrer, insisting that he had been arbitrarily detained from 21 to 24 February 2012, but also added that he had been detained again on 2 April 2012.

9. On 4 May 2012, at its sixty-third session, the Working Group adopted its Opinion No. 13/2012 (Cuba) on the detention of Mr. Ferrer García. Pursuant to paragraph 17 (a) of its methods of work, the Working Group decided to file the case of the detention of Mr. Ferrer García, since he had been released after 3 days' deprivation of liberty. However, it also decided to transmit a new communication to the Government setting out the new allegations received concerning a further detention of Mr. Ferrer García by State officials on 2 April 2012.

*Communication from the source*

10. According to the new communication, Mr. Ferrer García was arrested again on 2 April 2012 at his home, together with his wife, Ms. Belkis Cantillo. They were allegedly forced out of their home barefoot and beaten. Subsequently, they were taken to the State Security Operations Unit in Reparto Versalles, Santiago de Cuba. The arrest allegedly took place soon after Mr. Ferrer García had participated in a meeting to prepare for a protest march to demand the release of several political activists. Ms. Cantillo was released on 6 April 2012. The source adds that 42 other political activists who were members of the Frente Nacional de Resistencia Cívica Orlando Zapata Tamayo (Orlando Zapata Tamayo National Civic Resistance Front), the Damas de Blanco and the Alianza Democrática Oriental (Eastern Democratic Alliance) were also arrested on the same date and were later released uncharged.

11. The source further adds that on the day of the arrest Mr. Ferrer García's home was also searched. The officers who carried out the search allegedly failed to present a search warrant. The search was carried out from 3 p.m. to 9.30 p.m. The officers allegedly confiscated office equipment, books, money, personal papers and a Cuban flag. Martha Beatriz, Mr. Ferrer García's 14-year-old daughter, was allegedly threatened by one of the officers involved in the search, who reportedly said to her, "even though you're a minor, anything could happen to you".

12. On 26 April 2012, the authorities presented Mr. Ferrer García's wife with a document indicating that charges had been brought against Mr. Ferrer García for disorderly conduct and that he would be soon brought before a court.

13. The source adds that the physical and psychological integrity of Mr. Ferrer García and his family are threatened. Mr. Ferrer García is currently being detained in solitary confinement and subjected to cruel, inhuman and degrading treatment. He is allegedly not receiving medical treatment for an ulcer in his small intestine, and he is said to have lost a lot of weight. Mr. Ferrer García allegedly does not have access to a lawyer.

*Response from the Government*

14. The Government responded to the Working Group's further communication in a letter dated 7 June 2012. It reported that at that time Mr. Ferrer García was not being detained. It also reported that if he had been detained at any point it was because of his continual criminal actions in violation of Cuban criminal law, which could not go unpunished, even if it was known that the purpose of the actions was to provoke a reaction from law enforcement officials.

15. Neither Mr. Ferrer García nor any member of his family were mistreated by law enforcement officials. His family's rights were never violated. The slanderous allegation of supposed threats against a minor was ever less plausible. Neither police officers nor State security agents harass or injure people.

16. The Government denies that Mr. Ferrer García was a victim of cruel, inhuman or degrading treatment, or that he was refused medical care.

17. The Government concludes by pointing out that no one in Cuba is persecuted or punished for peacefully exercising any of his or her rights, including the rights to freedom of opinion, expression and association, within the framework of the broad freedoms guaranteed by the Constitution and by the nation's laws, which are fully in line with international human rights instruments.

*Comments from the source*

18. In its comments on the Government's response, the source reported to the Working Group that Mr. Ferrer García had been released on 29 April 2012. He had allegedly been arrested in order to prevent him from travelling to Havana. The source states that there is no law criminalizing travel within the country, much less entry into Havana, and that this therefore constituted a violation of article 43 of the Constitution, which recognizes freedom of movement within the national territory.

19. The source reported that after his release Mr. Ferrer García was again arrested on 9 May 2012 in Havana (before being released without charge on 10 May 2012) and on 30 July 2012 in Holguín, after which he was released, also without charge, on 1 August 2012. The source believes that these repeated arrests are used as a means of harassment and intimidation to suppress peaceful political activism and freedom of expression.

**Considerations of the Working Group**

20. While the Working Group's methods of work allow it to file a case once the person who is the subject of the complaint has been released, article 17 (c) of the methods of work also states that: "If the Working Group considers that further information is required from the Government or from the source, it may keep the case pending until that information is received."

21. In the case at hand, the Working Group finds it impossible to issue a substantive opinion on the basis of the source's allegations and the Government's claims, which contain more vague and disparaging remarks than information about the reasons for and conditions of the person's deprivation of liberty. The Government claims that the source's allegations are neither objective, trustworthy nor credible. It accuses the source of not acting in good faith or in accordance with the principles of cooperation in the field of human rights, and of acting with political motives, which goes against the Charter of the United Nations. It believes that these allegations, which it considers false and slanderous, are directed against Cuba.

22. The source, for its part, claims that Mr. Ferrer García was arrested against a background of multiple threats and repressive measures against political opponents and activists that took place before, during and after the Pope's visit to Cuba, mainly in the cities of Santiago de Cuba, Holguín, and Guantánamo. The repressive forces allegedly raided, looted and destroyed homes, employing violence against the inhabitants. It concludes that if the Government does not accept the allegations, it should simply invite the Working Group to send a mission to the country so that it can form its own opinion.

23. The Working Group forms its opinions by way of an adversarial procedure, in which the Government responds to the source's allegations and the source then comments on that

response. In order to issue an opinion, the Working Group requires credible, reliable and trustworthy information and properly substantiated allegations.

24. For these reasons, the Working Group deems it necessary to ask both the source and the Government to provide evidence to support their positions.

**Disposition**

25. In the light of the foregoing, the Working Group decides to ask both the source and the Government to provide more background information on their respective claims so that it can issue a substantive opinion on whether or not the deprivation of liberty of Mr. José Daniel Ferrer García was arbitrary.

*[Adopted on 28 August 2012]*

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