

DECISION No. 28/1992 (CUBA)

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

Concerning: Aurea Feria Cano, Jesús Contreras, Adolfo González Cruz, Mayra González Linares and Enrique Martínez Martínez 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 cases in question within 90 days of the transmittal of the letter by the Working Group. The Working 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 cases, 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, Aurea Feria Cano, Jesús Contreras, Adolfo González Cruz, Mayra González Linares and Enrique Martínez Martínez were arrested on 22 January 1990 and sentenced on 13 November to prison terms ranging from two to five years. It is added that they are members of the "Indio Feria Democratic Union";

(b) According to the allegation, articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights have been violated in this case;

(c) The Government states that the detainees "were part of the 'Indio Feria' counter-revolutionary group, with which they engaged in the preparation and distribution of enemy propaganda". It indicates that the detainees were sentenced in case No. 26 of 1990 by the People's Provincial Court of the City of Havana to the following prison terms: (i) Aurea Feria Cano, five years; (ii) Jesús Contreras Milán, six years; (iii) Luis Enrique Martínez, three years; and Adolfo González, two years, a sentence due to run until 11 April 1992. However, the last-mentioned was released from prison on 12 July 1991 for good conduct;

(d) The Government adds that Mayra González did not receive a prison sentence and is at liberty;

(e) The report of the Special Representative of the Secretary-General states that Aurea Feria had already been detained for four days from 25 December 1989 accused of attempting to obtain asylum in embassies of socialist countries. The report states that Jesús Contreras, Adolfo González, Mayra González and Enrique Martínez are members of the Indio Feria Democratic Union and that they are still in prison serving sentences for the offence of "enemy propaganda";

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

(g) The Government has accused the detainees of acts constituting a legitimate exercise of the rights of association ("forming part of a group" described as counter-revolutionary) and freedom of expression and opinion (preparation and distribution of propaganda which the Government considers to be enemy propaganda). The Government report does not provide any grounds for concluding that the group is counter-revolutionary, nor does it indicate what would constitute a counter-revolutionary group or to what enemy the propaganda prepared and distributed refers;

(i) According to the Working Group's methods of work, as referred to in paragraph 3 of this decision, detention deriving from acts constituting the exercise of, inter alia, the rights to freedom of expression and opinion and association is arbitrary;

(j) In the absence of any further information, the Working Group takes it that Mayra González did not receive a sentence and is at liberty and that Adolfo González Cruz has also been free since 12 July 1991 following the commutation of his sentence;

(k) The methods of work adopted by the Working Group provide that if the person has been released, for whatever reason, since the Working Group took up the case, the case is filed. Although the Working Group at its

third session reserved the right to decide on a case-by-case basis on the arbitrariness or otherwise of detention, the complete lack of information from the source does not allow it to do so in the present situation.

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

(a) The cases of Mayra González Linares and Adolfo González Cruz are filed since these persons are at liberty;

(b) The detention of Aurea Feria Cano, Jesús Contreras and Enrique Martínez Martínez is declared to be arbitrary, being in contravention of articles 9, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 22 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 the persons mentioned above 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.

(See also annex II, Decision No. 28/1992.)

Annex IIDECISION ON CASES OF REPORTEDLY RELEASED DETAINEES
AND LIST OF SUCH PERSONS

In the course of its consideration of some of the cases of alleged arbitrary detention which it transmitted to Governments, the Working Group was informed, either by the Government concerned or by the source of the allegation, and in some cases by both, that the person(s) concerned is (are) no longer in detention.

Paragraph 14 (a) of its methods of work states that the Working Group, in the light of the information examined during its investigation, shall take one of the following decisions:

"(a) If the person has been released, for whatever reason, since the Working Group took up the case, the case is filed; nevertheless, the Working Group reserves the right to decide, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned".

The following list contains the cases of persons who are reportedly no longer in detention and regarding whom the Working Group, after having examined the available information, is of the opinion that no special circumstances warrant the Group to consider the nature of their detention. The Working Group, without prejudging the nature of the detention, therefore decides to file their cases, in the terms of paragraph 14 (a) of its methods of work.

(The names of the persons listed below are preceded by the number of the decision regarding them, by order of its adoption by the Working Group, and the country concerned. The signs (X), (Y) and (Z) following each name indicate whether the information of that person's release was provided by the Government (X), the source (Y), or both (Z).)

Decision No. 28/1992 (CUBA): Mayra González Linares (X), Adolfo González Cruz (X). (See also annex I, Decision No. 28/1992.)