

DECISION No. 21/1992 (CUBA)

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

Concerning: Esteban González González, Manuel Pozo Montero,
Arturo Valentín Montané Ruiz, Manuel de la Caridad Regueiro Robaina and
Isidro Daniel Ledesma Quijano 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 resolution 1991/68 of the Commission on Human Rights (E/CN.4/1992/27).

6. The Working Group considers that:

(a) According to the allegation, Esteban González, Manuel Pozo, Arturo Montané, Manuel Regueiro and Isidro Ledesma were arrested between 23 and 24 September 1989 and sentenced to three to six years' imprisonment or three years' limited freedom for offences against State security. The communication adds that all those concerned are members of the Democratic Movement (MID);

(b) According to the allegation, articles 9, 10, 11 and 20 of the Universal Declaration of Human Rights, articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights and principle 11 of the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment have been violated in this case;

(c) The Government states that the individuals concerned are in prison, having been convicted of taking part in a rebellion carried out by a subversive group led by González, and are serving the following sentences: González, seven years (to be completed in 1996); Pozo, five years; Montané, three years; and Reguiero, five years;

(d) No information has been provided about Isidro Ledesma;

(e) The report of the Special Representative of the Secretary-General mentions this situation and indicates that, according to the reports received, the persons concerned - together with Mario Jesús Fernández Mora, who was released on 19 March 1991 - are serving the sentences in question "for

organizing a political movement which opposes the regime". The Special Representative adds that Montané and Regueiro were split up and transferred on a number of occasions to various prisons;

(f) The report also says that Ledesma has been sentenced to three years' house arrest;

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

(h) In the absence of any further information, the Working Group takes it that the persons concerned are serving the sentences mentioned by the Government and that Ledesma has been sentenced to three years' house arrest;

(i) Since the Government has provided no information concerning the charges brought against the individuals concerned, stating only that they were convicted of "rebellion" and "joining a subversive group", the Working Group accepts that the grounds for the conviction were that the individuals had organized a political movement opposed to the regime, as stated both in the report of the Special Representative of the Secretary-General of the United Nations, and in the allegation received by the Group;

(j) Forming a political party is a legitimate exercise of the freedom of association and is a manifestation of the freedoms of opinion and expression. Consequently, the imprisonment of the persons concerned constitutes arbitrary detention under category II, as referred to in paragraph 3 of this decision;

(k) According to deliberation 01 adopted by the Working Group on 23 March 1992, house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave.

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

The detention of Esteban González González, Manuel Pozo Montero, Arturo Valentin Montané Ruiz, Manuel de la Caridad Regueiro Robaina and Isidro Daniel Ledesma Quijano 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 above-mentioned persons 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.