

DECISION No. 29/1992 (CUBA)

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

Concerning: Jorge Quintana and Carlos Ortega 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 it 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, had 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, Jorge Quintana and Carlos Ortega were arrested on 7 November 1990 and sentenced to three years' limited freedom for offences against State security;

(b) According to the allegation, articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights, articles 9, 14 and 19 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 Quintana Silva was sentenced to a non-custodial penalty for the offence of "other acts against State security"; "however, since the conditions and requirements of the penalty were infringed, the measure was revoked by the People's Provincial Court of the City of Havana and replaced by one of imprisonment for the time remaining until completion of the sentence on 3 March 1993";

(d) The Government states, with respect to Ortega Piñero, that he was sentenced to one year's limited freedom - but not to imprisonment; he completed his sentence on 3 January 1991 and is now free;

(e) The report of the Special Representative of the Secretary-General mentions this situation and indicates that, according to the reports received, Quintana was sentenced for "enemy propaganda" and Ortega sentenced to three years' restricted freedom as a member of the "Seguidores de Mello" group who had sent a critical letter to the leaders of the Young Communists' League expressing disagreement with the way the country was being governed;

(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 not accused the detainee of any act constituting violence or other act of this kind. It has merely stated that the penalty was "for the offence of other acts against State security", a charge so vague as not to justify detention. The information provided by the Special Representative as mentioned above points to the conclusion that the reason for Quintana's arrest might be the letter he sent to the Young Communists' League, an act which would constitute a legitimate exercise of his right to freedom of expression and opinion;

(h) In the absence of any further information, the Working Group takes it that Mr. Ortega has been at liberty since 3 January 1991;

(i) 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 case of Carlos Ortega is filed since this person is at liberty;

(b) The detention of Jorge Quintana 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 case submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Jorge Quintana 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. 29/1992.)

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. 29/1992 (CUBA): Carlos Ortega (X). (See also annex I,
Decision No. 29/1992.)