

DECISION No. 26/1992 (CUBA)

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

Concerning: Rubén Hoyos Ruiz, Miriam Aguilera, Ernesto Díaz Nodarse, Félix Rodríguez Ramírez, Fidel Vila, Leonelma Madiedo, Omar Pérez, Nérida Pérez Fuentes, Juan Ramón Llorens and Abelardo Ferreiro Alvarez 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. It 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, Rubén Hoyos Ruiz, Miriam Aguilera, Ernesto Díaz Nodarse, Félix Rodríguez Ramírez, Fidel Vila, Leonelma Madiedo and Omar Pérez, all from Sagua La Grande, Nérida Pérez Fuentes, Juan Ramón Llorens and Abelardo Ferreiro Alvarez were arrested on 22 March 1990 and in September were given sentences ranging from 18 months' limited freedom to 6 years' imprisonment. It is added that they are all members of the Cuban Committee for Human Rights (CCPDH);

(b) According to the allegation, articles 9, 10, 11, 19 and 20 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 "in case No. 6 of 1991 before the People's Provincial Court of Villa Clara, a group of persons engaged in the preparation and distribution of pamphlets and other forms of incitement against the social order were arrested". The persons concerned received the following sentences: (i) Rubén Hoyos, six years; (ii) Félix Rodríguez, four years; (iii) Fidel Vila Linares, five years; (iv) Omar Pérez Morales, two years; (v) Juan Ramón Llorens Herneta, one year and six months, a sentence which expired on 17 June 1992;

(d) The Government adds that the case contains no record of prison sentences for Miriam Aguilera, Ernesto Díaz, Leonelma Madiedo, Nérida Pérez Fuentes and Abelardo Ferreiro;

(e) The report of the Special Representative of the Secretary-General mentions this situation and indicates that, according to the reports received, Mr. Hoyos Ruiz was sentenced for "unlawful association and subversive propaganda". Confirmation that Miriam Aguilera is at liberty ("reported to have been arrested ...") may also be deduced from the Special Representative's report, and also Abelardo Ferreiro ("Jacinto Abelardo Tenreiro Alvarez ... on 22 March 1990 he is reported to have been arrested, together with other members of the Committee ..."). As regards Leonelma or Leonela Madiedo, the Special Representative refers to "Leonel Madiedo" as a member of the same Committee arrested on the same day and reported to be awaiting trial accused of enemy propaganda;

(f) The report adds that Ledesma was sentenced to three years' house arrest;

(g) The Government has not accused the detainees of any act constituting violence or other act of this kind. It has merely stated that they were sentenced "for preparing and distributing pamphlets and other forms of incitement against the social order";

(h) The preparation and distribution of pamphlets constitutes a legitimate exercise of the freedom of expression and opinion recognized in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. Since it is mentioned that all the detainees are members of the Cuban Committee for Human Rights, the Working Group concludes that freedom of association, recognized by article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights, is also affected in this case;

(i) According to the methods of work of the Working Group, as referred to in paragraph 3 of this decision, detention deriving from acts constituting the exercise, inter alia, of 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 Miriam Aguilera, Ernesto Díaz, Leonela or Leonelma Madiedo, Nérida Pérez and Abelardo Ferreiro did not receive sentences and are at liberty, and that Juan Ramón Llorens is also free, having been released on completing his sentence on 17 June 1992;

(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 Miriam Aguilera, Ernesto Díaz Nodarse, Leonela or Leonelma Madiedo, Nérida Pérez Fuentes, Abelardo Ferreiro Alvarez and Juan Ramón Llorens are filed since these persons are at liberty;

(b) The detention of Rubén Hoyos Ruiz, Félix Rodríguez Ramírez, Fidel Vila and Omar Pérez 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. 26/1992.)

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. 26/1992 (CUBA): Miriam Aguilera (X), Ernesto Díaz Nodarse (X), Leonela o Leonelma Madiedo (X), Nérida Pérez Fuentes (X), Abelardo Ferreiro Alvarez (X), Juan Ramón Llorens (X). (See also annex I, Decision No. 26/1992.)