



# 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 64th session (27–31 August 2012)

#### No. 23/2012 (Cuba)

#### Communication addressed to the Government on 14 March 2012

**Concerning: Mr. Yusmani Rafael Álvarez Esmori and Ms. Yasmín Conyedo Riverón**

**The Government replied on 8 May 2012.**

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

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

2. The Working Group considers the deprivation of liberty to be 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 sentence or despite an amnesty law applicable to him) (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 or judicial review or remedy (Category IV);

(e) When the deprivation of liberty constitutes a violation of the 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; disability or other status, and which aims towards or can result in ignoring the equality of human rights (Category V).

### **Submissions**

#### *Communication by the source*

3. The communication received by the Working Group concerns: (a) Mr. Yusmani Rafael Álvarez Esmori, Cuban national, 30 years of age, resident in Santa Clara, Villa Clara, member of the *Liga Juvenil Democrática* (Democratic Youth League); and (b) Ms. Yasmín Conyedo Riverón, Cuban national, 25 years of age, mother of a child of 6 years, independent journalist, representative of *Las Damas de Blanco* in Villa Clara.

4. It is reported that this couple was arrested on 8 January 2012 in front of their home by agents of the National Revolutionary Police (PNR) under the command of officers of the Department of State Security (DSE). The couple was arrested after they had taken part in a Sunday walk of *Las Damas de Blanco*. Ms. Conyedo Riverón was allegedly assaulted by Ms. Nereida Ganuza Santos, a government official and Communist Party militant. The agents did not show any arrest warrant. Mr. Ayolbis Gil Álvarez, an official of the Department of State Security, also took part in the arrest.

5. Following their arrest, the couple were transferred to the premises of the Department of Prisons (DEP) of the Ministry of the Interior. At present, Mr. Álvarez Esmori is detained at the maximum-security prison “La Pendiente” and Ms. Conyedo Riverón at the women’s maximum security prison of Guamajal.

6. Ms. Conyedo Riverón was charged with the offences of assault and breaking and entering committed against Ms. Ganuza Santos. The reasons for the arrest of Mr. Álvarez Esmori are not known. Ms. Ganuza Santos has allegedly withdrawn her complaints. The real reasons for the detention of these two people, however, according to the source, are believed to be political, on account of their militancy in *Las Damas de Blanco* and the *Liga Juvenil Democrática* of Villa Clara.

7. The source concludes that this couple were detained in reprisal for their exercise of internationally recognized fundamental rights and liberties. Their detention would therefore be arbitrary and contrary to the Universal Declaration of Human Rights, articles 9 and 10.

#### *Reply by the Government*

8. The Government of Cuba, in its prompt reply of 8 May 2012, maintained that the source’s allegations are false and totally distorted, conveying information which is neither objective nor trustworthy, coming from sources that are not acting in good faith.

9. It adds that these two persons “are not being held at present. They are free, awaiting trial for their criminal acts in breach of Cuban criminal legislation”. The persons originating the complaint were not assaulted; instead, contrary to what was alleged, it was they who attacked a flat, injuring the owners, who had to receive medical treatment for injuries. Those acts constituted the offences of breaking and entering and causing light injuries, referred to in articles 278.1, 278.2 and 274 of the Criminal Code, which were reported by the victims and gave rise to the trial awaiting the Álvarez-Conyedo couple.

10. The Government maintains that all the couple’s rights have been respected, and that on 5 April 2012 they were granted temporary release on bail by the Provincial Tribunal of Villa Clara. It adds that nobody in Cuba is prosecuted or punished for peacefully exercising

his or her rights, including those of opinion, expression and association, as guaranteed by the Constitution of the Republic.

*Comments by the source*

11. After the Government's reply was transmitted to the source for comment, the latter confirmed that the couple were released on 5 April 2012. They had been detained in maximum security prisons, like Guamajal and La Pendiente, which were intended for convicts. They were released on bail and the trial is following its course.

**Considerations of the Working Group**

12. The Working Group, in accordance with paragraph 17 (a) of its methods of work, may render an opinion, if the person who was detained has been released, and if it considers that there are grounds for doing so. In the present case, the Working Group considers it necessary to render an opinion on the arbitrary nature of the detention.

13. The analysis of the available information, of the background of these persons and of the circumstances of the case appears to show that the detention of the Álvarez-Conyedo couple was due to the legitimate exercise of their fundamental rights to freedom of opinion and expression, assembly and peaceful association, enshrined in articles 19 and 20 of the Universal Declaration of Human Rights, and in article 9 concerning the right of any person not to be subject to arbitrary arrest. The detention of these two persons, in the circumstances, constitutes a violation of those rights, so that the Working Group considers it to have been arbitrary, in accordance with Category II of its methods of work.

14. Moreover, the Working Group considers that the pretrial detention of 85 days of the persons detained also constitutes grounds for finding that the deprivation of liberty is arbitrary, exceeding a reasonable period, in view of the fact that the charges brought concerned not particularly serious offences but acts motivated by the legitimate exercise of internationally recognized human rights. The principle of international law is that deprivation of liberty before or during a trial must not be the general rule and that release on bail subject to appearance in court and execution of judgement is to be preferred.

15. In the light of the above, the Working Group considers that the case also shows the arbitrary nature of the detention according to Category III of its methods of work.

**Opinion**

16. In the light of the above, the Working Group renders the following Opinion:

The deprivation of liberty of the couple consisting of Mr. Yusmani Rafael Álvarez Esmori and Ms. Yasmín Conyedo Riverón from 8 January 2012 to 5 April 2012 was arbitrary and corresponds to categories II and III of the categories of arbitrary detention to which the Working Group refers when examining cases submitted to it, due to the violation of the human rights enshrined in articles 9, 19 and 20 of the Universal Declaration of Human Rights.

17. For this reason, the Working Group recommends that the State establish compensation for those affected by this violation of human rights.

18. The Working Group further recommends that the State party consider the possibility of ratifying the International Covenant on Civil and Political Rights.

*[Approved on 28 August 2012]*