

**PETITION TO:**  
**UNITED NATIONS**  
**WORKING GROUP ON ARBITRARY DETENTION**

Chair-Rapporteur: Mr. Seong-Phil Hong (South Korea)  
Vice-Chair: Ms. Leigh Toomey (Australia)  
Vice-Chair: Ms. Elina Steinerte (Latvia)  
Mr. Sètonджи Roland Adjovi (Benin)  
Mr. José Guevara (Mexico)

In the matter of

**Eduardo Cardet Concepción**, citizen of Cuba (“**Applicant**”)

v.

Cuba (“**State**”)

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Petition for Relief and Request for Allegation Letter Pursuant to the Individual Complaint Procedure of the UN Working Group on Arbitrary Detention.

*Submitted By:*

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July 23, 2018

## **I. PROCEDURAL ELEMENTS**

### **A. Mandate of the UN Working Group on Arbitrary Detention**

Pursuant to Human Rights Council resolution 33/30 of 30 September 2016, the mandate of the UN Working Group on Arbitrary Detention (WGAD) is in place through September 2019. The mandate, as clarified and extended by Human Rights Commission resolution 1997/50,<sup>1</sup> is as follows:

- (a) To investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned;
- (b) To seek and receive information from Governments and intergovernmental and non-governmental organizations, and receive information from the individuals concerned, their families or their representatives;
- (c) To act on information submitted to its attention regarding alleged cases of arbitrary detention by sending urgent appeals and communications to concerned Governments to clarify and to bring to their attention these cases;
- (d) To conduct field missions upon the invitation of Governments, in order to understand better the situations prevailing in countries, as well as the underlying reasons for instances of arbitrary deprivation of liberty;
- (e) To formulate deliberations on issues of a general nature in order to assist States to prevent and guard against the practice of arbitrary deprivation of liberty and to facilitate consideration of future cases;
- (f) To present an annual report to the Human Rights Council presenting its activities, findings, conclusions and recommendations.

### **B. Standing of United Nations Watch to Submit an Individual Complaint**

Pursuant to the mandate of the WGAD, the “Manual of Operations of the Special Procedures of the Human Rights Council” (Manual of Operations),<sup>2</sup> and the publication “Working with the United Nations Human Rights Programme, a Handbook for Civil Society” (Handbook for Civil

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<sup>1</sup> The mandate was originally created by Human Rights Commission resolution 1991/42. The Human Rights Council assumed the mandate in its decision 1/102 and has renewed the mandate of the WGAD every three years, most recently in resolution 33/30.

<sup>2</sup> See Manual of Operations of the Special Procedures of the Human Rights Council, ¶ 23, 38 and 133 (Aug. 2008), [http://www.ohchr.org/Documents/HRBodies/SP/Manual\\_Operations2008.pdf](http://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf).

Society),<sup>3</sup> United Nations Watch, a nongovernmental human rights organization, is permitted to provide information on a specific human rights case or situation in a particular country, or on a country's laws and practices with human rights implications.

### **C. Grounds for the initiation of the procedure involving investigation of individual cases**

The methods of work of the WGAD<sup>4</sup> provide that a deprivation of liberty is arbitrary if a case falls into one of the following categories:

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

As detailed below, the detention of Eduardo Cardet Concepción (the “Applicant”) is arbitrary under Categories II and III above. It is arbitrary under Category II because the State of Cuba deprived him of his liberty as a result of his exercise of the rights to freedom of opinion and expression and freedom of association, failing to comply with its obligations under Articles 19

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<sup>3</sup> See Working with the United Nations Human Rights Programme, a Handbook for Civil Society, 108 (2008), [http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook\\_en.pdf](http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf).

<sup>4</sup> See Methods of work of the Working Grp. on Arbitrary Det., UN Doc. A/HRC/36/38 (July 13, 2017), <http://www.ohchr.org/EN/Issues/Detention/Pages/MethodsOfWork.aspx>.

and 20 of the Universal Declaration of Human Rights (UDHR). The detention is also arbitrary under Category III because the arrest, detention, and trial were conducted by the State of Cuba in violation of the international norms relating to the right to a fair trial in accordance with Articles 10 and 11 of the UDHR. Therefore, United Nations Watch believes that the Applicant's case satisfies the requirements to initiate the "individual complaint" procedure.

As further explained below, United Nations Watch has received credible allegations that the Applicant's conditions in prison have worsened since his arbitrary detention on November 30, 2016, including his being subjected to inhuman and degrading treatment, to the point of posing a serious threat to his health, both physical and psychological, and in the worst of events, to his life. United Nations Watch believes that without the intervention of the WGAD, the Applicant will continue to be arbitrarily detained and this continuous detention will place his physical and psychological integrity at further risk.

**D. Confidentiality Waiver**

In accordance with the Manual of Operations, in communications sent to governments, the source is normally kept confidential. The Manual of Operations also states that an information source may request that its identity be revealed. Accordingly, United Nations Watch waives its right to confidentiality and requests that its identity be revealed in the event that, as part of the procedure involving investigation of individual cases, an allegation letter is sent to the State of Cuba in connection with the information supplied herein.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## II. QUESTIONNAIRE

The following questionnaire was retrieved from the Fact Sheet No. 26 of the WGAD (Annex V) available on the website of the United Nations High Commissioner for Human Rights in accordance with the Manual of Operations.<sup>5</sup>

### A. IDENTITY

1. **Family name:** Cardet Concepción

2. **First name:** Eduardo

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

7. **Profession and/or activity (if believed to be relevant to the arrest/detention):**

National Coordinator of the Christian Liberation Movement (Movimiento Liberacion, MCL)<sup>6</sup>, a Cuban dissident movement advocating peaceful political change in Cuba.

[REDACTED]

### B. ARREST

1. **Date of arrest:** November 30, 2016

2. **Place of arrest (as detailed as possible):**

At approximately 7:00 p.m. on November 30, 2016, just outside the Applicant's home in Holguín, Cuban State Security agents violently restrained the Applicant and arbitrarily detained him without any explanation, arrest warrant or charges.

The Applicant's arrest took place two days after he stated in a media interview during a trip overseas that "Castro was a very controversial man, very much hated and rejected by our

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<sup>5</sup> Model Questionnaire To Be Completed By Persons Alleging Arbitrary Arrest or Det., Working Grp. on Arbitrary Det., <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

<sup>6</sup> For more information on the MCL, see CHRISTIAN LIBERATION MOVEMENT, <http://www.oswaldopaya.org/es/movimeinto-cristiano-liberacion/> (last visited April 23, 2018).

people.”<sup>7</sup> Before the Applicant’s return to Cuba, Cuban State Security agents briefly detained the Applicant’s wife and threatened her that they would arrest the Applicant upon his return due to his political activism.<sup>8</sup>

Accordingly, United Nations Watch’s sources presume that the Applicant was arrested to prevent him from engaging in political activism on behalf of the MCL, and from further speaking out against the Cuban regime or Fidel Castro, particularly during the nine-day mandatory mourning period imposed by the State after Fidel Castro’s death.

At the time of the Applicant’s arrest, Cuba was experiencing a wave of repression in which hundreds of activists were arrested for demonstrating against the Cuban government, particularly in the wake of Fidel Castro’s death. Danilo Maldonado (aka “El Sexto”) was the first activist to be arrested by Cuban State Security after Castro’s passing, quickly followed by the Applicant. Maldonado has since been released.

**3. Forces who carried out the arrest or are believed to have carried it out:**

According to United Nations Watch’s sources, agents of the Cuban Department of State Security, a branch of the Cuban Ministry of the Interior, carried out the Applicant’s arrest. This is not an independent authority, but a political police answering directly to the intelligence services of a dictatorial regime often responsible for summary and violent arrests (and, sometimes, extrajudicial killings) of members of civil society who try to non-violently and publicly oppose the regime.<sup>9</sup>

**4. Did they show a warrant or other decision by a public authority? No**

**5. Authority who issued the warrant or decision? N/A**

**6. Reasons for the arrest imputed by the authorities:**

Reasons were not provided at the time of the arrest. According to United Nations Watch sources, subsequently, the Applicant’s family was told that the Applicant was arrested because of his counter-revolutionary activity.

**7. Relevant legislation applied (if known): Unknown**

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<sup>7</sup> *URGENT ACTION: Human Rights Defender’s Sentence Upheld*, AMNESTY INTERNATIONAL (May 25, 2017), <https://www.amnesty.org/download/Documents/AMR2563632017ENGLISH.pdf>.

<sup>8</sup> Eduardo Berdejo, *Cuba Gobierno amenaza con destruir moralmente la familia de Eduardo Cardet*, ACIPRENSA (Dec. 12, 2016), <https://www.aciprensa.com/noticias/cuba-gobierno-amenaza-con-destruir-moralmente-la-familia-de-eduardo-cardet-49208>.

<sup>9</sup> U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., *Country Reports on Human Rights Practices Cuba 6* (2017) [hereinafter *State Department Report on Cuba*]; See also generally Javier El-Hage & Roberto C. Gonzalez, *The Case of Oswaldo Payá*, HUMAN RIGHTS FOUNDATION (July 22, 2015), <https://cubadecide.org/wp-content/uploads/2017/08/casopaya.pdf> (describing actions of this political police).

## C. DETENTION

1. **Date of detention:** Detained on November 30, 2016, convicted and sentenced on March 20, 2017.
2. **Duration of detention (if not known, probable duration):** Ongoing since November 30, 2016.
3. **Forces holding the detainee under custody:** Government of Cuba
4. **Places of detention (indicate any transfer and present place of detention):**

At the time of his arrest, the Applicant was beaten and taken to the local police station where he was beaten again. Then he was taken in handcuffs to a detention facility in Holguín province. There, the Applicant was held incommunicado for a period of nine days, after which he was transferred to the Provisional Prison of Holguín. On December 19, 2017, the Applicant was transferred to the “Cuba Sí” maximum security prison where he is currently being held. On the day of the transfer to “Cuba Sí,” the Applicant was attacked and seriously injured by three other prisoners, did not receive medical care for his injuries, and was denied a visit from his wife until almost one month later.<sup>10</sup>

### 5. **Authorities that ordered the detention:**

According to United Nations Watch’s sources, the agents of the Cuban Department of State Security who carried out the arrest acted on orders from the Cuban Ministry of Interior.

### 6. **Reasons for the detention imputed by the authorities:**

The “official” reason for the Applicant’s detention is that the Applicant attacked a police officer during the course of the arrest, a crime for which the Applicant has been prosecuted and convicted. However, this cannot serve as the basis for the arrest itself, as the alleged crime only took place after the arrest was in process. Moreover, because Cuban State Security warned the Applicant’s wife prior to the arrest that they intended to arrest her husband for his political activity, United Nations Watch believes that the criminal charge is nothing more than an after-the-fact justification for prosecuting the Applicant and continuing to hold him in custody to prevent his activism. Furthermore, witnesses present at the scene told Amnesty International that the Applicant was so quickly and violently restrained during his arrest that he had no opportunity to fight back in self-defense.<sup>11</sup>

### 7. **Relevant legislation applied (if known):** Article 142 of the Cuban Penal Code

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<sup>10</sup> *URGENT ACTION: Prisoner of Conscience Attacked in Prison*, AMNESTY INTERNATIONAL (Jan. 22, 2018), [https://www.amnesty.org.uk/files/2018-01/FI03217\\_3.pdf?05JV97UAntNTYfyZjWyQNPuTDwgm.70U](https://www.amnesty.org.uk/files/2018-01/FI03217_3.pdf?05JV97UAntNTYfyZjWyQNPuTDwgm.70U).

<sup>11</sup> *URGENT ACTION: Defender Sentenced After Criticizing Castro*, AMNESTY INTERNATIONAL (March 27, 2017), <https://www.amnesty.org/download/Documents/AMR2559792017ENGLISH.pdf>.

## D. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION

### 1. Background – Cuba’s Systematic Repression of Dissidents and Activists

Cuba is an authoritarian state, which until recently was led by Raúl Castro (Raúl), who held the three most powerful governmental positions: president of the Council of State and Council of Ministers, Communist Party first secretary, and commander in chief of the security forces.<sup>12</sup> On April 19, 2018, Miguel Diaz-Canal was officially named to replace Raúl Castro, though Raúl will continue to be head of the Communist party until 2021 when Diaz-Canal will replace him in that position as well.<sup>13</sup> Previously these positions all were held by Fidel Castro (“Fidel”).<sup>14</sup> Fidel’s reign was known for its harsh suppression of civil and political rights, backed up by the State security forces and the Cuban legal system, including a judiciary lacking in independence.<sup>15</sup>

After Raúl succeeded his brother in 2006,<sup>16</sup> he continued the same abusive tactics, including surveillance, beatings, arbitrary detention, and public acts of repudiation (*i.e.*, violence and intimidation against dissidents).<sup>17</sup>

Today, Cuba is a one-party communist state with the Communist Party being the only legal party recognized by the constitution.<sup>18</sup> The Communist Party controls all government offices and most civil institutions. According to Freedom House, “the overlap between state and party is almost total.”<sup>19</sup> In addition, Cuba does not have free or fair elections with all candidates being

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<sup>12</sup> *State Department Report on Cuba*, *supra* note 9 at 1.

<sup>13</sup> Patrick Oppmann & Alanne Orjoux, *Miguel Diaz-Canal named Cuba’s new president*, CNN (April 20, 2018), <https://edition.cnn.com/2018/04/19/americas/cuba-new-president-named/index.html>.

<sup>14</sup> Lily Rothman, *How Fidel Castro Went From Revolutionary to Ruler*, TIME (Nov. 26, 2016), <http://time.com/3666177/fidel-castro-cuba-history/>; *Cuba: Fidel Castro’s Record of Repression*, HUMAN RIGHTS WATCH (Nov. 26, 2016), <https://www.hrw.org/news/2016/11/26/cuba-fidel-castros-record-repression>.

<sup>15</sup> *Cuba: Fidel Castro’s Record of Repression*, *supra* note 14. See also *Fidel Castro’s terrible legacy*, THE WASHINGTON POST (Nov. 26, 2016), [https://www.washingtonpost.com/opinions/fidel-castros-terrible-legacy/2016/11/26/0659042c-b3de-11e6-8616-52b15787add0\\_story.html?noredirect=on&utm\\_term=.f3d1e872e45b](https://www.washingtonpost.com/opinions/fidel-castros-terrible-legacy/2016/11/26/0659042c-b3de-11e6-8616-52b15787add0_story.html?noredirect=on&utm_term=.f3d1e872e45b); Glenn Garvin, *Red ink: The high human cost of the Cuban revolution*, MIAMI HERALD (Dec. 1, 2016), <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article118282148.html>.

<sup>16</sup> Daniel Trotta & Sarah Marsh, *Cuba’s Fidel Castro made revolutionary mark on history*, REUTERS (Nov. 26, 2016), <https://www.reuters.com/article/us-cuba-castro-obituary/cubas-fidel-castro-made-revolutionary-mark-on-history-idUSKBN13L05O>.

<sup>17</sup> *Cuba: Fidel Castro’s Record of Repression*, *supra* note 14.

<sup>18</sup> *Freedom in World 2018: Cuba*, FREEDOM HOUSE (2018), <https://freedomhouse.org/report/freedom-world/2018/cuba>; *State Department Report on Cuba*, *supra* note 9, at 1.

<sup>19</sup> *Freedom in World 2018: Cuba*, *supra* note 18.



prescreened by the Communist Party, and any opposition eliminated through government harassment and intimidation.<sup>20</sup>

Individual Cubans are not free to express their political views without fear of government retribution.<sup>21</sup> The Organization of American States' (OAS) Inter-American Commission on Human Rights (IACHR), the most authoritative regional mechanism, has repeatedly condemned the Cuban government's policies of harassment and persecution of democracy activists, dissidents, civil society groups, and human rights defenders. In 2007, the IACHR stated "Cuba is the only country in the Hemisphere where it can be categorically said that there is no freedom of expression."<sup>22</sup> It said that such statements are based on the following persistent conditions: (a) deprivation of personal freedom as a result of expression of opinions or criticism by journalists and dissidents; (b) restrictions to the right of access to information over the internet; (c) indirect restrictions on the practice of journalism applied to the international media and correspondents; and, (d) the criminalization of public demonstrations.<sup>23</sup>

In this vein, the government of Cuba also severely restricts freedom of association. Political groups that are not officially recognized are prohibited by the constitution.<sup>24</sup> Legal recognition is denied to opposition political parties and NGOs.<sup>25</sup> Independent civil society organizations and their members are subjected to intimidation, raids, confiscations, physical assaults, arbitrary detentions and charges, and forced exile, as a matter of course.<sup>26</sup> In 2017, the Cuban Commission for Human Rights and National Reconciliation (CCDHRN) documented 13 cases of physical aggression, 27 acts of harassment, and two acts of repudiation perpetrated or encouraged by state security forces against dissidents.<sup>27</sup>

## **2. Background - Cuba's Use of Arbitrary Detention as a Tool to Silence Dissent and its Violation of the Rights of Political Prisoners**

Cuba routinely uses arbitrary detention as a tool to silence government critics and human rights activists.<sup>28</sup> In a December 15, 2015 statement, the UN High Commissioner for Human Rights,

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<sup>20</sup> *Freedom in World 2018: Cuba*, *supra* note 18; *State Department Report on Cuba*, *supra* note 9, at 1.

<sup>21</sup> *Freedom in World 2018: Cuba*, *supra* note 18; *State Department Report on Cuba*, *supra* note 9, at 11.

<sup>22</sup> *Annual Rep. of the Inter-Am. Comm'n H.R.*, at ¶ 127, OEA/Ser.L/V/II.130 Doc. 22 rev. 1. (Dec. 29, 2007), <http://www.cidh.org/annualrep/2007eng/TOC.htm>.

<sup>23</sup> *Id.*

<sup>24</sup> *State Department Report on Cuba*, *supra* note 9, at 17.

<sup>25</sup> *See id.*

<sup>26</sup> *Freedom in World 2018: Cuba*, *supra* note 18.

<sup>27</sup> *Freedom in World 2018: Cuba*, *supra* note 18.

<sup>28</sup> *State Department Report on Cuba*, *supra* note 9, at 5.

Zeid Hussein, expressed concern at the high number of arbitrary arrests and short-term detentions of human rights defenders and dissidents engaged in peaceful demonstrations in Cuba at that time.<sup>29</sup> CCDHRN reported 9,940 arbitrary detentions in 2016 and 4,800 arbitrary detentions through November 2017.<sup>30</sup> The Cuban authorities use a variety of laws to justify these arrests, such as laws against public disorder, contempt, and lack of respect.<sup>31</sup> Preventive detention of up to four years is another tool used to control dissent.<sup>32</sup>

Furthermore, police are known to violate procedural laws and commit human rights abuses with impunity in connection with these arbitrary arrests.<sup>33</sup> Detentions are often accompanied by violence,<sup>34</sup> and police and security forces frequently employ physically abusive tactics, threats, and harassment during questioning.<sup>35</sup> In many cases, police also fail to provide detainees with a signed “report of detention.”<sup>36</sup>

Cuban criminal procedure imposes strict timelines for when and how the initial stages of the case must proceed, including presentation of the initial criminal complaint, investigating officer’s initial report, and prosecutor’s recommendation to open a criminal investigation.<sup>37</sup> Procedure also requires detainees to be informed of the basis for arrest and criminal investigation and to have access to an attorney within 168 hours (7 days).<sup>38</sup> These rules are often ignored.<sup>39</sup> Political detainees also are habitually denied bail and/or interrogated during detention outside the presence of an attorney.<sup>40</sup> The Committee Against Torture expressed concern about these types of deficiencies in its 2012 concluding observations on Cuba.<sup>41</sup>

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<sup>29</sup> Press Release, Office of the High Comm’r for Human Rights, UN Human Rights Chief urges Cuba to halt harassment of civil society activists (Dec. 15, 2015).

<sup>30</sup> *State Department Report on Cuba*, *supra* note 9, at 5.

<sup>31</sup> *See id.*

<sup>32</sup> *See id.*; World Report 2018: Events of 2017, HUMAN RIGHTS WATCH, 166 (2018) [hereinafter *Human Rights Watch Report 2017*], [https://www.hrw.org/sites/default/files/world\\_report\\_download/201801world\\_report\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf).

<sup>33</sup> *State Department Report on Cuba*, *supra* note 9, at 6.

<sup>34</sup> *See id.* at 5.

<sup>35</sup> *See id.* at 6

<sup>36</sup> *See id.* at 5; *Human Rights Watch Report 2017*, *supra* note 32, at 166.

<sup>37</sup> *State Department Report on Cuba*, *supra* note 9, at 7.

<sup>38</sup> *See id.*

<sup>39</sup> *See id.*

<sup>40</sup> *See id.*

<sup>41</sup> Concluding observations of the Comm. against Torture: Cuba, ¶ 8, UN Doc. CAT/C/CUB/CO/2 (June 25, 2012).

In addition to overcrowding and poor sanitation in prisons which exacerbated illnesses,<sup>42</sup> the government also mistreats political prisoners, holding them in isolation for extended periods, subjecting them to abuse in custody, and denying them access to home visits, prison classes, telephone calls, and family visits.<sup>43</sup> In some cases, detainees are subjected to physical assaults by other inmates with the acquiescence of the guards.<sup>44</sup> Prisoners who criticize the government or engage in protests are subjected to extended solitary confinement, assaults, restrictions on family visits, and denial of medical care.<sup>45</sup> In 2012, the Committee Against Torture called on the government to ensure prison conditions meet the Standard Minimum Rules for the Treatment of Prisoners.<sup>46</sup>

The Cuban government denies independent monitors access to its prisons.<sup>47</sup> Requests for country visits from the UN Special Rapporteurs on Human Rights Defenders and Freedom of Expression from 2015 and 2016, respectively, remain outstanding.<sup>48</sup> A request for a country visit from the WGAD in 2016 remains pending.<sup>49</sup>

### **3. Background - Lack of Independence of the Judiciary in Cuba**

The judiciary in Cuba lacks independence. It is controlled by the government through the National Assembly and the Council of State.<sup>50</sup> Two UN treaty bodies—the Committee Against Torture and the Committee Against Enforced Disappearances—have criticized the lack of judicial independence in Cuba in their recent reviews of the country.<sup>51</sup> In April 2017, the Committee on Enforced Disappearance stated that the subordination of the courts to the National Assembly and the Council of State “may affect the guarantee of the independence of the courts required under the Convention in hearing cases of enforced disappearance,” and recommended

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<sup>42</sup> *State Department Report on Cuba*, *supra* note 9, at 3.

<sup>43</sup> Concluding observations of the Comm. against Torture: *Cuba*, *supra* note 41 at ¶¶ 10-11; *State Department Report on Cuba*, *supra* note 9, at 3-4, 10; *Freedom in World 2018: Cuba*, *supra* note 18.

<sup>44</sup> *State Department Report on Cuba*, *supra* note 9, at 3.

<sup>45</sup> *See id.*

<sup>46</sup> Concluding observations of the Comm. against Torture: *Cuba*, *supra* note 41, at ¶ 10.

<sup>47</sup> *State Department Report on Cuba*, *supra* note 9, at 10; *Human Rights Watch Report 2017*, *supra* note 32, at 168.

<sup>48</sup> *Country visits of Special Procedures*, <http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=CUB> (last visited July 22, 2018).

<sup>49</sup> Rep. of the Working Grp. on Arbitrary Det. On the Thirty-Sixth Session of the Human Rights Council (Sept. 11-29, 2017), ¶ 42, UN Doc. A/HRC/36/37 (July 19, 2017).

<sup>50</sup> *Freedom in the World 2018: Cuba*, *supra* note 18; *Human Rights Watch Report 2017*, *supra* note 32, at 168.

<sup>51</sup> Concluding observations of the Comm. against Torture: *Cuba*, *supra* note 41, at ¶ 18; Comm. On Enforced Disappearances, Concluding observations on the report submitted by Cuba under article 29(1) of the Convention, ¶¶ 17-18, UN Doc. CED/C/CUB/CO/1 (April 19, 2017).

that Cuba “adopt the measures necessary to guarantee the full independence of the judiciary...”<sup>52</sup> This echoed a similar recommendation from the Committee Against Torture in 2012.<sup>53</sup>

While due process protections exist in the law, in practice, the police and courts regularly ignore these protections.<sup>54</sup> Often, the burden is placed on defendants to prove innocence, trials are held in secret for reasons of “state security” or are closed to the press, and although defendants are entitled to legal representation, only state attorneys are licensed to practice in criminal courts.<sup>55</sup> Furthermore, the criteria for admitting evidence at trial is arbitrary. Prosecutors are known to introduce irrelevant or unreliable evidence.<sup>56</sup> While defense attorneys have the right to review investigation files, they often face difficulty obtaining the files for cases of political detainees.<sup>57</sup> Freedom House downgraded Cuba’s score from one to zero (out of four) for due process in 2017 due to a pattern of due process violations in a number of cases against the regime’s opponents.<sup>58</sup>

#### **4. The Arbitrary Detention and Prosecution of the Applicant**

##### ***a. Background Information on the Applicant***

The Christian Liberation Movement (“MCL”) is a Cuban NGO that advocates for peaceful and democratic change in Cuba. It was founded by Oswaldo Payá and others in 1988. As with other opposition NGOs, the Cuban regime does not recognize MCL as a legal organization and subjects its activists to harassment, intimidation, and abuse.<sup>59</sup> For example, the government ignored applications of MCL members to run in National Assembly elections in 1990. After the government rejected the group’s application for legal status in 1995, state security officers staked out the home of Oswaldo Payá, detained two of the co-applicants and several other MCL members, and sent harassing letters to other MCL co-applicants and members.<sup>60</sup>

Ove the years, Cuban security officers have detained several MCL activists. During a wave of repression in 2003, 17 members of the MCL including six of its leaders were imprisoned for promoting MCL’s Varela Project.<sup>61</sup> At the time, the IACHR accused the government of arbitrarily arresting peaceful activists and subjecting them “to long interrogations and other types

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<sup>52</sup> Comm. On Enforced Disappearances, *supra* note 51 at ¶¶ 17-18.

<sup>53</sup> Concluding observations of the Comm. against Torture: Cuba, *supra* note 41, at ¶ 18.

<sup>54</sup> *State Department Report on Cuba*, *supra* note 9, at 8-9.

<sup>55</sup> *See id.*

<sup>56</sup> *See id.* at 9.

<sup>57</sup> *See id.*

<sup>58</sup> *Freedom in World 2018: Cuba*, *supra* note 18.

<sup>59</sup> CHRISTIAN LIBERATION MOVEMENT, *supra* note 6.

<sup>60</sup> *Cuba: A group called Christian Liberation Movement and its leader, Oswaldo Paya Sardiñas*, IMMIGRATION AND REFUGEE BOARD OF CANADA (July 1, 1998), <http://www.refworld.org/docid/3ae6ad922c.html>.

<sup>61</sup> CHRISTIAN LIBERATION MOVEMENT, *supra* note 6.

of psychological torture.”<sup>62</sup> In August 2009, Oswaldo Payá, complained of inhumane prison conditions for MCL prisoners and called for action from the international community. He wrote:

José Daniel Ferrer has been confined to a cell where he must sleep on the floor and where rats constantly appear out of the hole that serves as his bathroom. It is difficult to imagine a cell with crueler conditions.

Alfredo Domínguez was sent to a Dantesque place of punishment, known as “Potosí,” far away from the prison. He was confined, without clothes, in another cage called the “punishment cell,” where mosquitoes devour him as he has no way to protect himself...

The executioners of the Las Tunas prison deliberately provoked these prisoners with taunts and tricks about visits, including lying to their families when they came to the prison to ask about them.<sup>63</sup>

According to its website, MCL’s vision is rooted in the Christian Democratic world of social justice and it seeks to bring change led by Cubans for Cubans.<sup>64</sup> MCL projects and initiatives include: The Varela Project, seeking to open spaces for free and responsible participation of Cubans in the political and economic life of society through legislative change, and One Cuban, One Vote, a campaign for electoral reform to ensure free and fair democratic elections.<sup>65</sup>

Oswaldo Payá served as the leader of the MCL until he was killed along with fellow MCL activist, Harold Cepero, in a mysterious car crash in Santiago de Cuba on July 22, 2012. Though the circumstances of that car crash have not been properly investigated, the Cuban government is clearly implicated. The car spun out of control after being rammed by a vehicle bearing state license plates.<sup>66</sup> The Spanish passenger who survived claimed that his confession was coerced and his trial was rigged.<sup>67</sup> Cuba has ignored all demands for an international probe into the incident.<sup>68</sup>

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<sup>62</sup> Annual Rep. of the Inter-Am. Comm’n on H.R., at ¶¶ 21, 23-26, OEA/Ser.L/V/II.118 Doc. 70 rev. 2 (Dec. 29, 2003), <http://www.cidh.org/annualrep/2003eng/chap.4a.htm>.

<sup>63</sup> Oswaldo Paya, *Ruthless treatment of Christian Liberation Movement prisoners*, HAVANA JOURNAL (Aug. 12, 2009), <http://havanajournal.com/politics/entry/ruthless-treatment-of-christian-liberation-movement-prisoners/>.

<sup>64</sup> CHRISTIAN LIBERATION MOVEMENT, *supra* note 6.

<sup>65</sup> *Initiatives and Documents*, CHRISTIAN LIBERATION MOVEMENT, <http://www.oswaldopaya.org/es/iniciativas-y-documentos/> (last visited April 24, 2018).

<sup>66</sup> *Oswaldo Paya’s death in Cuba two years ago still awaits a proper investigation*, THE WASHINGTON POST (July 21, 2014), [https://www.washingtonpost.com/opinions/oswaldopayas-death-in-cuba-two-years-ago-still-awaits-a-proper-investigation/2014/07/21/b0ac9612-0bb8-11e4-8c9a-923ecc0c7d23\\_story.html?utm\\_term=.8012be4d0f07](https://www.washingtonpost.com/opinions/oswaldopayas-death-in-cuba-two-years-ago-still-awaits-a-proper-investigation/2014/07/21/b0ac9612-0bb8-11e4-8c9a-923ecc0c7d23_story.html?utm_term=.8012be4d0f07).

<sup>67</sup> *See id.*

<sup>68</sup> *See id.*

The Applicant, Dr. Eduardo Cardet Concepción, works as a family doctor at the health center in Velasco, Holguín province.<sup>69</sup> He joined MCL in the early 2000s and rose up in the ranks to lead several major initiatives aimed at peaceful democratic change in Cuba, including the Varela Project and One Cuban, One Vote. The Applicant has been arrested several times for his activism. In 2013, he was suspended from his job in retaliation for his MCL activism. However, he was reinstated following protests and popular pressure. In November 2014, he was appointed national coordinator of the MCL.<sup>70</sup>

***b. Arbitrary Arrest, Detention, and Prosecution of the Applicant***<sup>71</sup>

Fidel Castro died on November 25, 2016. A few days later, while traveling outside the country in the United States, the Applicant spoke critically about Fidel Castro to international media. In an interview with the Madrid-based radio station *esRadio*, aired two days before his arrest, the Applicant described the imposed state of mourning for Fidel Castro in Cuba, and said “Castro was a very controversial man, very much hated and rejected by our people.”<sup>72</sup>

While the Applicant was still outside the country, agents of the Cuban Security Services briefly detained the Applicant’s wife at the police station and threatened her that they would imprison the Applicant upon his return to Cuba because of his political activism and participation in the One Cuban, One Vote campaign. Nevertheless, the Applicant returned to Cuba on November 29, 2017.

At around 7:00 p.m. on November 30, 2016, as the Applicant arrived home, at least four plainclothes security officers accosted the Applicant, pushed him off his bicycle, dragged him, and violently detained him.<sup>73</sup> The arrest was witnessed by the Applicant’s wife and two children, as well as neighbors and other witnesses. A number of witnesses reported to Amnesty International that the Applicant was quickly and violently restrained by the plainclothes officers, handcuffed and beaten, and that he had no opportunity to fight back in self-defense.<sup>74</sup> Witnesses

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<sup>69</sup> *Biography of Eduardo Cardet*, CHRISTIAN LIBERATION MOVEMENT, <http://www.oswaldopaya.org/es/acerca-de-eduardo-cardet/biografia-de-eduardo-cardet/> (last visited April 24, 2018).

<sup>70</sup> *See id.*

<sup>71</sup> The facts in this section are taken from *Up-to-date information on prisoner of conscience Eduardo Cardet National Coordinator of the MCL*, CHRISTIAN LIBERATION MOVEMENT, <http://www.oswaldopaya.org/es/2016/12/01/detenido-y-golpeado-eduardo-cardet-coordinador-nacional-del-mcl/> (last visited July 17, 2018); sources close to the events who do not wish to be identified; and other sources specifically referenced herein.

<sup>72</sup> *URGENT ACTION: Human Rights Defender’s Sentence Upheld*, *supra* note 7.

<sup>73</sup> *URGENT ACTION: Demand Release of Human Rights Defender*, AMNESTY INTERNATIONAL (Jan. 31, 2017), <https://www.amnesty.org/download/Documents/AMR2556012017ENGLISH.pdf>.

<sup>74</sup> *See id.*

stated that his injuries were so severe he was unable to stand when being moved from one vehicle to another.<sup>75</sup>

When the Applicant's family questioned the authorities about the reason for his arrest, they were told it is because "he is counter-revolutionary." The next day, the security forces came to the Applicant's home and informed his wife that the Applicant was being charged with attacking a state official under Article 142 of the Cuban Penal Code.

The Applicant was held incommunicado for nine days and was beaten again in custody. He was denied visits and telephone calls and his family was unaware of his whereabouts. Despite the severe beatings to which he was subjected during his arrest while already handcuffed and after arriving at the station, the Applicant, who suffers from asthma, was also denied medical attention for the first seven days of his detention.

After seven days, the Applicant was examined by Surgery, General Medicine and Orthopedics specialists. The medical records describe ocular, thoracoabdominal, arm and leg lesions, and ecchymosis in the neck. When the Applicant's wife was finally able to see him more than one week after the arrest, his eyes were still swollen and bruised.<sup>76</sup> The family made a complaint about the violence to Cuban authorities. Following his wife's visit, the Applicant was beaten again and placed in a punishment cell. The State Security forces also harassed and threatened the Applicant's family and prohibited the Applicant's wife from leaving the country.

After nine days, the Applicant was transferred to the Provisional Prison of Holguín. Cuban authorities decided to hold the Applicant in preventive detention until trial. His requests for bail were denied three times and the State Prosecutor requested a three-year prison sentence.

While in the Provisional Prison of Holguín, the State Security official who beat the Applicant continued to verbally harass him, telling him that if he abandons his ideas he will be immediately released. A fellow inmate also assaulted the Applicant. The Applicant's request for a visit from a priest was denied. In March 2017, close to his trial date, the Applicant contracted bronchitis and required medication and an inhaler.

The trial was held on March 3, 2017. According to United Nations Watch's sources, the trial was not conducted in a fair and impartial manner. The Prosecution presented six witnesses, three of whom were State Security officers who participated in the arrest and three of whom were not

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<sup>75</sup> Eduardo Cardet Concepcion, *National Coordinator of the Christian liberation Movement Arrested and Beaten by the Cuban Police*, CHRISTIAN LIBERATION MOVEMENT, <http://www.oswaldopaya.org/es/2016/12/06/eduardo-cardet-concepcion-national-coordinator-of-the-cristan-movement-iberacion-arrested-and-beated-by-the-cuban-police/> (last visited April 24, 2018).

<sup>76</sup> *See id.*

present at the scene at the time of the arrest.<sup>77</sup> The defense attorney established that the testimony of the three witnesses who had not been present at the scene was not credible. For example, they could not describe how the Applicant was dressed or the appearance of his bicycle and they claimed the incident occurred during daylight although it was already dark. Furthermore, the court allowed only three of the witnesses proposed by the Applicant to testify. Several other proposed witnesses were not permitted to testify. The Applicant was convicted and, on March 20, 2017, he was sentenced to three years in prison, as the prosecutor had requested.

Following the conviction, State Security forces continued to threaten and harass the applicant: telling him that his appeals were in vain, his sentence would be extended, he might be sent to another province where he would be unable to communicate with his family by telephone; threatening to send him to solitary confinement; and urging him to renounce his convictions.

On December 19, 2017, the Applicant was transferred to the maximum security Cuba Sí prison where he is currently being held. His family was notified about the transfer only on the day it occurred and was allowed to visit the Applicant for only a few minutes.<sup>78</sup> On the day of the transfer, three prisoners at the Cuba Sí prison physically attacked the applicant.<sup>79</sup> The Applicant's wife was not permitted to visit him until almost one month later, on January 15, 2018, when she observed two circular scars on his abdomen. The Applicant told his wife that he had not received medical attention since the attack and was suffering from headaches and dizziness.<sup>80</sup> The family lodged a complaint about the attack to the public prosecutor, but received no response.<sup>81</sup>

In a ruling issued on February 24, 2018, the IACHR found that Dr. Eduardo Cardet Concepción faces risk of irreparable harm to his life and personal integrity due to Cuba's failure to protect him in prison and provide him with necessary medical care.<sup>82</sup> Since being transferred to Cuba Sí, the Applicant's health has further deteriorated. He has suffered a number of intense asthma attacks and other health problems, including the flu. On May 18, 2018, the Applicant underwent a biopsy, but has not yet been informed of the result.<sup>83</sup>

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<sup>77</sup>The trial of my husband has been partial, CHRISTIAN LIBERATION MOVEMENT (March 3, 2017), <http://www.oswaldopaya.org/es/2017/03/03/el-juicio-a-mi-esposo-ha-sido-parcial-yaimaris-vecino-esposa-de-eduardo-cardet/> (last visited April 24, 2018).

<sup>78</sup> *URGENT ACTION: Prisoner of Conscience Attacked in Prison*, *supra* note 10.

<sup>79</sup> *See id.*

<sup>80</sup> *See id.*

<sup>81</sup> *See id.*

<sup>82</sup> Eduardo Cardet Concepcion regarding Cuba, Provisional Measures, Order of the Court, ¶¶ 3, 14 (Inter-Am. Ct. H.R. Feb. 24, 2018), <http://www.oas.org/es/cidh/decisiones/pdf/2018/16-18MC39-18-CU.pdf>.

<sup>83</sup> Eduardo Cardet, awaiting results of diagnostic tests in the hands of authorities, DIARIO DE CUBA (June 23, 2018), [http://www.diariodecuba.com/derechos-humanos/1529711061\\_40219.html](http://www.diariodecuba.com/derechos-humanos/1529711061_40219.html); Suspenden visitas a Eduardo Cardet



On May 26, 2018, the head of Cuba Sí prison, informed the family that the Applicant's rights to family visits have been suspended for six months, a reprisal for the family's lobbying efforts with international human rights mechanisms and in the international press.<sup>84</sup>

Since the Applicant's arrest, his family home has been under constant surveillance and was even attacked with rocks. The arrest of the Applicant and continued abuse and harassment have taken a psychological toll on the family, particularly the Applicant's two young children.<sup>85</sup>

#### **E. INDICATE REASONS WHY YOU CONSIDER THE ARREST AND/OR DETENTION TO BE ARBITRARY**

The detention of Dr. Eduardo Cardet Concepción constitutes an arbitrary deprivation of his liberty falling within Category II and Category III as established by the WGAD.<sup>86</sup> A detention is arbitrary under Category II when it results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the UDHR and, insofar as State parties are concerned, by articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights ("ICCPR").<sup>87</sup> A detention is arbitrary under Category III, "when the total or partial non-observance of the international norms relating to the right to a fair trial, established in the UDHR 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."<sup>88</sup>

##### **1. Category II: Violation of Articles 19 and 20 of the UDHR**

Although Cuba signed the ICCPR in 2008, it has not yet ratified the convention. Therefore, the deprivation of liberty under Category II will be analyzed pursuant to the relevant provisions of the UDHR. As a member of the United Nations and a state party to the UN Charter, Cuba is bound to uphold its commitment to promote and encourage respect for human rights and fundamental freedoms.

The arrest and detention of the Applicant is analyzed under Category II because it is related to the exercise of his right to freedom of opinion and expression under Article 19 of the UDHR and

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durante 6 meses, CHRISTIAN LIBERATION MOVEMENT (May 27, 2018), <http://www.oswaldopaya.org/es/2018/05/26/suspenden-visitas-a-eduardo-cardet-durante-6-meses/> (last visited July 18, 2018).

<sup>84</sup> *URGENT ACTION: Family of Prisoner of Conscience Denied Visits*, AMNESTY INTERNATIONAL (June 7, 2018), <https://www.amnesty.org/download/Documents/AMR2585372018ENGLISH.pdf>.

<sup>85</sup> *Niegan libertad condicional a lider opositor Cubano*, MARTI (July 12, 2018), <https://www.martinoticias.com/a/niegan-libertad-condicional-a-lider-opositor-cubano-eduardo-cardet/188410.html>.

<sup>86</sup> *Methods of work of the Working Grp. on Arbitrary Det.*, *supra* note 4, ¶ 8.

<sup>87</sup> *Id.* at ¶ 8(b).

<sup>88</sup> *Id.* at ¶ 8(c).

his right to Freedom of Association under Article 20 of the UDHR (respectively, Articles 19 and 21 of the ICCPR).

The arrest, continuous detention, and wrongful conviction of the Applicant is based solely on his political activism as the leader of the MCL in Cuba, a human rights NGO seeking peaceful democratic change in Cuba. MCL is a prohibited organization in Cuba and its activists, including the Applicant, have been subjected to harassment, intimidation, violence, and arbitrary arrest in the past. The Applicant himself has been previously arrested for his activism.

Prior to his present detention, State Security forces advised the Applicant's wife that they planned to subject the Applicant to a lengthy imprisonment for his activism upon the Applicant's return to the country. One day after his return, State Security Forces violently arrested the Applicant and later informed the family that the Applicant was being held in detention because he is a counter-revolutionary. The Cuban authorities manufactured an after-the-fact legal justification for continuing to hold the Applicant in detention by charging him with attacking a state official during the course of his arrest. This, notwithstanding eyewitness testimony that the Applicant was the one attacked and that he was restrained so quickly and violently that he had no opportunity to fight back.

Furthermore, despite the criminal charges, State Security forces have repeatedly threatened and harassed the applicant during the course of his detention—both before and after his conviction—telling him that if he renounces his beliefs he will be released, or alternatively threatening to extend his prison term. This supports the conclusion that the criminal charges against the Applicant were manufactured to provide a legal basis for the arbitrary detention. This is also consistent with the Cuban regime's documented practice of accusing the regime's critics of various crimes to keep them in prison.

Thus, the Applicant is being arbitrarily deprived of his liberty for peacefully exercising his rights, guaranteed by international human rights law, to freedom of opinion and expression and freedom of association.

## **2. Category III: The Non-Observance of the International Norms Relating to the Right to a Fair Trial**

The Applicant's detention constitutes an arbitrary deprivation of liberty falling within Category III because Cuba failed to observe the minimum international standards of due process guaranteed by the UDHR and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>89</sup> The State of Cuba has denied the Applicant the right to humane treatment and to a fair and impartial trial.

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<sup>89</sup> According to the Working Group's Fact Sheet No. 26: "in order to evaluate the arbitrary character or otherwise of cases of deprivation of freedom entering into Category 3, the Working Group considers, in addition to the general

### *a. Denial of Humane Treatment*

Article 5 of the UDHR provides that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>90</sup> The relevant principles of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (BOP) state the following:

#### **Principle 1**

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

#### **Principle 6**

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

#### **Principle 10**

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

#### **Principle 11**

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.
2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.
3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

#### **Principle 12**

1. There shall be duly recorded:
  - (a) The reasons for the arrest;

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principles set out in the Universal Declaration of Human Rights, several criteria drawn from the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.” *See* Fact Sheet No. 26, Working Grp. on Arbitrary Detention, 4, <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf> (last visited April 24, 2018).

<sup>90</sup> The distinctions between torture and cruel, inhuman or degrading treatment are discussed by Manfred Nowak, the Special Rapporteur on Torture from 2004 to 2010, in his report to the Human Rights Council’s Thirteenth Session, at ¶¶ 187-188, UN Doc. A/HRC/13/39/Add.5 (Feb. 5, 2010). Nowak explains that both torture and cruel or inhuman treatment involve infliction of severe pain and suffering, but in the case of torture it is usually for the purpose of extracting information or a confession. Degrading treatment is humiliation of the victim, even if the pain or suffering inflicted is not severe.

- (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
  - (c) The identity of the law enforcement officials concerned;
  - (d) Precise information concerning the place of custody.
2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

**Principle 13**

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.

**Principle 15**

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

**Principle 19**

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

**Principle 24**

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

**Principle 38**

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

The Applicant was arbitrarily taken into custody from his place of residence by plainclothes State Security officers on November 30, 2016. No arrest warrant or official identification was presented, thereby violating BOP Principles 10-13.

The Applicant was severely beaten during the arrest and again upon arrival to the police station. Despite the severity of the beatings, the Cuban authorities did not provide the Applicant with medical care until seven days after he was detained. According to United Nations Watch's sources, the medical evaluation describes serious injuries to the Applicants, eyes, neck, abdomen, arms, and legs. The Applicant was held incommunicado for the first nine days of his detention. The Applicant's wife stated that the injuries were still visible when she first saw the Applicant more than a week after the arrest. After her visit, the Applicant was again beaten and placed in a punishment cell. Additionally, the Applicant was subjected to lengthy pretrial detention and his requests for bail were denied.

While in detention, the State Security forces continued to psychologically abuse the Applicant with threats and harassment aimed at persuading him to renounce his beliefs. The Applicant has been physically assaulted at least twice by fellow inmates during his incarceration. After the second of these beatings in the Cuba Sí prison on Dec. 19, 2017, the Applicant was also denied access to his family for almost one month. The Applicant's wife has stated that when she finally saw the Applicant on January 15, 2018 she observed scars on his abdomen, he was suffering from headaches and dizziness, and had not received any medical attention since the attack. The Applicant has also been denied a request for a visit from a priest. Based on these facts, the IACHR found that the Applicant faces a serious threat to his well-being and has ordered Cuba to protect him.<sup>91</sup> Additionally, on May 26, 2018, family visits were suspended for six months.

The treatment to which the Applicant was subjected during his arrest and detention violates Article 5 of the UDHR and Principles 1 and 6 of the BOP. The denial of medical care to the applicant also violates BOP Principle 24. The denial of family visits during the first nine days of detention, following the Dec. 19, 2017 beating, and currently for six months, violate BOP Principles 15 and 19. The denial of release on bail pending trial violates BOP Principle 38. In addition to these violations, the Committee Against Torture has expressed concern, *inter alia*, about denial of family visits, physical and verbal abuse of prisoners, incommunicado detention, and lengthy pretrial detention in Cuba.<sup>92</sup>

Furthermore, in a different case involving a Cuban dissident subjected to a criminal prosecution, the WGAD found that pretrial detention of 85 days exceeded a reasonable period in view of the charges, and constituted grounds for finding the deprivation of liberty was arbitrary.<sup>93</sup> Similarly here, where the only alleged crime purportedly took place during the course of the violent arrest of the Applicant, there was no justification for denial of bail.

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<sup>91</sup> Eduardo Cardet Concepcion regarding Cuba, *supra* note 82 at ¶ 22.

<sup>92</sup> Concluding observations of the Comm. against Torture: Cuba, *supra* note 41, at ¶ 10.

<sup>93</sup> Opinion on detention of Mr. Yusmani Rafael Alvarez Esmori and Ms. Yasmin Conyedo Riveron, No. 23/2012, Working Grp. On Arbitrary Det. (Aug. 28, 2012).

### ***b. Denial of Fair and Impartial Trial***

Article 10 of the UDHR declares that: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” The right to be tried by an independent and impartial tribunal is absolute and not subject to any exceptions.<sup>94</sup> This requirement of independence includes the “independence of the judiciary from political interference by the executive branch and legislature.”<sup>95</sup> Article 11 of the UDHR declares that “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

Cuba is an authoritarian regime whose courts are subordinate to the executive and legislative branches, which are controlled by the Communist Party. Two treaty bodies have criticized Cuba in recent years for the lack of independence of its judiciary. In addition, as WGAD pointed out in its 2012 opinion about Cuba’s detention of Alan Gross, several UN human rights experts previously had criticized Cuba’s court system. These include the Special Rapporteur on violence against women; the Committee Against Torture; the Special Rapporteur on independence of judges and lawyers; and the Personal Representative of the High Commissioner for Human Rights.<sup>96</sup> Based on these statements, the WGAD found in the Gross case that it could not “rule out the possibility that the courts of first and second instance that heard Mr. Gross’s case did not carry out their judicial function independently and impartially.”<sup>97</sup> This has not changed.

Cuba does not observe the minimum international standards of due process guaranteed in Articles 10 and 11 of the UDHR: (1) the Applicant was not presented with an arrest warrant; (2) upon his arrest, the Applicant was not informed of the charges against him and was held incommunicado for nine days; (3) during the trial, the Applicant’s lawyer did not have the opportunity to present all of the evidence in his client’s defense, as several defense witnesses were prevented from testifying; (4) at the same time, the court accepted unreliable testimony from three prosecution witnesses who had not been present at the scene and whose testimony was discredited on cross examination by defense counsel.

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<sup>94</sup> General Comment No. 32, Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial, UN Human Rights Committee, CCPR/C/GC/32, ¶ 19 (Aug. 23, 2007) [hereinafter *General Comment No. 32*]. *See also*, Gonzalez del Rio v. Peru, Communication, No. 263/1987, ¶ 5.2, Human Rights Committee (Nov. 2, 1992) (“the right to be tried by an independent and impartial tribunal is absolute right that may suffer no exception”).

<sup>95</sup> *General Comment No. 32*, *supra* note 94 at ¶ 19.

<sup>96</sup> Opinion on detention of Mr. Alan Phillip Gross, No. 69/2012, ¶ 47, Working Grp. On Arbitrary Det. (Nov. 23, 2012).

<sup>97</sup> *See id.* at ¶ 48.

Indeed, the results of the Applicant's trial were predetermined from the start. State Security Forces threatened the Applicant's wife that they would imprison the Applicant before they even arrested him—and before the alleged crime was committed.

**F. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN**

The family filed an appeal to the Provincial Court. On May 18, 2017, the appeal was denied. An application for parole was also denied. According to the family, the reason for this denial is that the Applicant has not met the conditions to reintegrate into society because he has not yet understood the consequences of his actions. The family is attempting to get the case reviewed by Cuba's Supreme Court. That process is ongoing.

**G. FULL NAME, POSTAL AND ELECTRONIC ADDRESSES OF THE PERSON(S) SUBMITTING THE INFORMATION**

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Please state whether you want your identity to be kept confidential: United Nations Watch waives its right to confidentiality.

**H. PETITION**

In accordance with resolution 24/7 of 26 September 2013, United Nations Watch hereby submits this individual complaint to the UN Working Group on Arbitrary Detention, and respectfully calls on the working group to initiate the procedure involving investigation of individual cases towards reaching an opinion of the WGAD declaring the Applicant's detention to be arbitrary and in violation of international law. Specifically, UN Watch calls on the WGAD:

- a. To initiate a procedure involving investigation of individual cases, in the case of the Applicant and send an allegation letter to the state inquiring about his case generally, and specifically about the legal basis for his arrest, imprisonment, and/or the cruel, inhumane, and degrading treatment suffered by the Applicant while in detention;
- b. To urge the State of Cuba to release the Applicant immediately and unconditionally, as he is arbitrarily and illegally being deprived of his freedom solely for peacefully exercising his right to freedoms of opinion, expression and association according to international law;
- c. To issue an opinion declaring that the Applicant's ongoing detention to be arbitrary and in violation of international law as a result of both Category II and Category III violations; and
- d. To ask the State of Cuba to guarantee that the Applicant will cease to be subjected to cruel, inhumane, and degrading treatment.