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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighth session, 19-28 April 2017

Opinion No. 12/2017 concerning Danilo Maldonado Machado (Cuba)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 17 January 2017 the Working Group transmitted to the Government of Cuba a communication concerning Danilo Maldonado Machado. The Government replied to the communication on 10 March 2017. The State is not a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as 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 or her sentence or despite an amnesty law applicable to him or her) (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 Covenant (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 international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



Submissions

Communication from the source

4. Danilo Maldonado Machado, also known by his artist's name "El Sexto", born on 1 April 1983, is a Cuban national resident in Havana. He is a visual artist, graffiti artist, human rights and democracy activist and promoter of the *Cuba Decide* initiative.
5. The source notes that Mr. Maldonado's artistic works, together with his form of activism, have made him a well-known dissident. In December 2014, Mr. Maldonado was arrested while on his way to stage a work of art entitled *Rebelión en la granja* ("Animal Farm"). He was unofficially accused of "disrespecting the leaders of the revolution" and, without being charged, was sent to prison, where he remained awaiting trial for more than 10 months, until his release in October 2015.
6. In May 2015, Mr. Maldonado was awarded the Václav Havel International Prize for Creative Dissent. In September of the same year, Amnesty International declared Mr. Maldonado a "prisoner of conscience" who had been arrested for peacefully exercising his right to freedom of expression.
7. According to the source, Mr. Maldonado was arrested at his home in Havana at 11.15 a.m. on 26 November 2016. It is alleged that Mr. Maldonado's arrest was violent and that State agents gave him a brutal beating, which caused him to have a severe asthma attack. The source also maintains that the State agents did not show any arrest warrant at the time of the arrest or thereafter. Mr. Maldonado was not informed of the reason for his arrest, nor of any outstanding charges against him. His mobile phone was confiscated when he was placed in detention.
8. The source describes the arrest operation carried out by agents of the State Security Department, which reports to the Ministry of the Interior. He claims that the State Security Department is not an independent authority, but one that answers directly to the intelligence services, which are often behind the arrest of members of civil society who seek to publicly and non-violently oppose the regime.
9. The source explains that Mr. Maldonado was detained because he is a prominent dissident artist whose criticism of the Government reaches a worldwide audience. The source says that Mr. Maldonado was arrested primarily to prevent him from protesting against the regime during the nine-day period of mourning imposed after the death of Fidel Castro. Mr. Maldonado was the first activist to be detained as a result of operations initiated by the State Security Department following the death of Fidel Castro.
10. Mr. Maldonado's arrest took place after he published a video on Facebook commenting on the death of Fidel Castro, and after he spray-painted the words "*se fue*" ["he's gone"] on one of the walls of the Habana Libre hotel.
11. According to the source, since his arrest on 26 November 2016, Mr. Maldonado has been transferred several times to different prisons and detention facilities of the National Revolutionary Police. Mr. Maldonado was detained initially at the San Agustín police station, in the municipality of La Lisa, Havana. He was then transferred to Villa Marista, a prison in Havana that often houses political prisoners. After that, he was transferred to a police station in the municipality of Guanabacoa, and then another police station in the municipality of Vedado, Havana, located at the intersection of Zapata and C. He was subsequently transferred to the prison of El Vivac, on the outskirts of Havana and, on 7 December 2016, to another prison in Havana, Valle Grande, where he had previously been detained for more than 10 months until his release in October 2015. Until 21 January 2017, Mr. Maldonado was detained in Combinado del Este, a detention centre also located in Havana.
12. According to the source, during his time in detention, Mr. Maldonado was never shown an arrest warrant and no formal charges were brought against him. On 5 December 2016, the State agents unofficially informed his family that he would be detained for at least 60 more days "pending the investigation of his case by the prosecutor". As of 6 December 2016, he was not allowed to make or receive telephone calls. Only his mother was allowed to visit him, subject to the approval of State agents. Mr. Maldonado was held

in isolation from 9 to 12 December 2016, during which time he was kept naked and not given any food.

13. The source claims that the official reason for Mr. Maldonado's arrest was not known until 9 December 2016 — 14 days after his arrest — when a decision was issued rejecting an application for a writ of habeas corpus submitted by his family on Monday, 5 December 2016. According to the court decision, Mr. Maldonado was arrested for “destruction of property”, an offence which, according to the source, is punishable by a fine under Cuban law, not imprisonment.

14. The source says it is thought that during Mr. Maldonado's imprisonment, State officials tried to silence him further by putting sedatives in his food. After experiencing severe drowsiness, and fearing for his physical and mental health, Mr. Maldonado stopped eating the food he was given, eating only when State agents allowed his mother to bring him food from outside. It is claimed that this is why Mr. Maldonado quickly lost weight during his detention and is now so physically debilitated.

15. The source maintains that Mr. Maldonado's condition in prison deteriorated from the time of his arrest, including during his solitary confinement and as a result of being subjected to inhuman and degrading treatment, to the point where there was a serious risk to his physical and psychological health and to his life.

16. The source concludes that Mr. Maldonado's detention constitutes arbitrary deprivation of his liberty under categories II and III. According to the source, Mr. Maldonado's detention is arbitrary under category II because the State deprived him of liberty for exercising his right to freedom of opinion and expression, in breach of its international obligation under article 19 of the Universal Declaration of Human Rights. In this context, the source submits that Mr. Maldonado's arrest and detention are based solely on his activism, which includes the expression of opinions critical of the regime, the defence of victims of human rights violations and calling for democratization in Cuba. The source explains that, over the past three years, Mr. Maldonado has been the subject of repression at the hands of the Government, including through constant harassment, arrests and threats of prosecution.

17. The source alleges that Mr. Maldonado's detention is also arbitrary under category III, as he was deprived of his liberty for a prolonged period without formal charges being brought against him. This represents a violation of, or total disregard for, the international norms relating to the right to a fair trial by the Government, as set forth in 10 and 11 of the Universal Declaration of Human Rights. The source explains that the State has denied Mr. Maldonado the right to a fair trial and an impartial investigation, both in the past and in the present case. To date, the State has not complied with the minimum international standards of due process guaranteed by the Universal Declaration of Human Rights. Mr. Maldonado was never shown an arrest warrant; he was not informed of the reason for his arrest until long after the arrest, nor of the charges against him; and to date he has not been brought before a competent and independent authority to determine whether he should remain in prison or even whether his arrest and detention should ever have taken place.

18. The source adds that the violent arrest of Mr. Maldonado, the attempt by State agents to sedate him to keep him silent and his detention in solitary confinement without food or clothing constitute cruel, inhuman and degrading treatment, as provided for in article 5 of the Universal Declaration of Human Rights and principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. His arrest without a warrant and his continued detention without charge violate principles 10 to 13 of the Body of Principles.

19. Mr. Maldonado was prohibited from having any contact with his family or lawyer. Members of his family had to ask repeatedly about his whereabouts until they found him on the afternoon of the day of his arrest. State agents moved Mr. Maldonado several times to different prisons and detention facilities of the National Revolutionary Police in various municipalities of Havana, often without giving him any explanation or allowing him to notify his family. The source argues that these acts by the State constitute a violation of principles 15 and 16.

Response from the Government

20. On 17 January 2017, the Working Group transmitted the allegations from the source to the Government under its standard procedure. The Working Group requested the Government to provide detailed information on the circumstances of Mr. Maldonado's arrest and his current situation by 17 March 2017. The Working Group further requested the Government to clarify the legal basis for his detention, as well as details on the conformity of this deprivation of liberty with international human rights law. The Government transmitted its response to the Working Group on 10 March 2017.

21. In its reply, the Government provided information on the nature of Mr. Maldonado's activities, stating that he has not carried out any recognized artistic activity in the country, and that he is not affiliated to any cultural association or institution in Cuba. The Government noted that Mr. Maldonado cannot be described as a human rights defender, as his actions have been directed at violating the existing legal order, not to promoting and striving for the protection and realization of human rights.

22. According to the Government, Mr. Maldonado carries out such actions with the support and financing of United States organizations, which actively work to destroy the constitutional order freely chosen by the overwhelming majority of Cubans. The Government points out that Mr. Maldonado's criminal record includes several offences under ordinary law, including disorderly conduct and robbery with violence, for which he served a 6-year custodial sentence. In addition, other allegations have been made against him by his ex-wife and mother of his daughter for failing to pay child support and for bodily harm and threatening behaviour.

23. The Government notes that, because of his antisocial behaviour, Mr. Maldonado was unable to complete his studies at Florida International University in 2014, when he was expelled for repeated disciplinary problems, including drug use.

24. In the Government's view, the allegations made by the source in its submission, that Mr. Maldonado's detention was politically motivated, are false and malicious. Mr. Maldonado's detention on 26 November 2016 was not for acts of protest, but for damaging the facade of a symbolic and central hotel in Havana.

25. The Government indicates that these events gave rise to complaint No. 72239/16, for the offence of damage to property, as established in article 339 of the Criminal Code (preliminary investigation No. 5 -235/2016).

26. The Government notes that the detention was carried out pursuant to an order issued by a competent authority. There was no violence during the arrest, nor did anyone cause him to have an asthma attack during detention. He was taken to the police station in the municipality of La Lisa in Havana. His family was immediately informed of his detention. It is not true that they had to ask repeatedly about his whereabouts.

27. The Government stresses that there are computerized registers in all detention centres in the country to record information on detainees. The Public Assistance and Information System contains details of all detentions and makes it possible to ascertain the whereabouts of any person detained in any part of the country. At the time of his detention, a record was immediately prepared with the time, date and grounds for his arrest, as well as other details of interest, as set out in the Criminal Procedure Act. The detention was recorded in the appropriate register.

28. The Government claims that the police officers involved did comply with the obligation to inform him of the reasons for his arrest and his rights. This information is also clearly displayed in detention facilities so that detainees may read it at any time. A medical examination was conducted before he entered the cell and it was confirmed that he did not present any health problems. On the night of 26 November 2016, several hours after his arrest, he had difficulty breathing; this was related to the bronchial asthma he has had since childhood and for which he is receiving medical treatment. He was transferred to a polyclinic, where he was given all the necessary medical care.

29. The Government points out that, during the investigation process, Mr. Maldonado acknowledged that he had committed the acts, as well as his ties with terrorists and

organizations located abroad that are trying to destroy the political and social system in Cuba and impose regime change against the will of the Cuban people.

30. The Municipal Prosecutor's Office in the municipality of Plaza de la Revolución, where the offence took place, imposed the precautionary measure of pretrial detention, based on the gravity of the acts and the damage caused to one of the city's heritage sites, as well as Mr. Maldonado's criminal record. He was transferred to Combinado del Este prison on 7 December 2016.

31. The Government states that, on 5 December 2016, Mr. Maldonado's mother filed a habeas corpus procedure concerning her son. In accordance with the Criminal Procedure Act, the First Criminal Division of the Provincial People's Court of Havana examined the investigation file and ascertained that Mr. Maldonado had been arrested under complaint No. 72239/16 for the alleged offence of damage to property. The Court ascertained, based on the elements in the file, that all the guarantees provided for in the Act for the processing of such an application had been respected, and found that the person in respect of whom the habeas corpus writ had been requested was subject to an interim measure in accordance with the formalities and guarantees set out in the Criminal Procedure Act. Accordingly, it rejected the application for the special habeas corpus procedure.

32. On 14 December 2016, an appeal was filed against the decision of the First Criminal Division of the Provincial People's Court of Havana. On 28 December 2016, the Division rejected the appeal, on the grounds that it had been established that Mr. Maldonado was charged with the crime of damaging property and, accordingly, the acting prosecutor had ordered the precautionary measure of pretrial detention.

33. According to the Government, it is not true that Mr. Maldonado was prohibited from contacting his lawyer. Neither Mr. Maldonado nor his relatives hired a lawyer for his defence, even though the exercise of this right is guaranteed in Cuba. Lawyers may visit and interview their clients with the necessary degree of privacy whenever they need to, by prior arrangement with the head of the prison or detention facility, upon submission of the corresponding legal services contract. The investigative authorities have at their disposal an office with a computer and a telephone so that they can review the investigative actions set out in the files of the preparatory stage.

34. The Government also refutes the allegations that Mr. Maldonado was sent to a solitary confinement cell, that he did not receive any visits and that he was left naked and without food. It claims that, while he was in detention, he received eight family visits and two conjugal visits from his partner. In addition, he made regular telephone calls. Meals were guaranteed, as they are for all persons deprived of their liberty in Cuba.

35. The Government rejects the allegations of cruel, inhuman or degrading treatment. The Cuban revolution, which was profoundly humanist and ethical in nature, put an end to that State policy. In their conduct, the Cuban authorities act with full respect for the physical and moral integrity of individuals.

36. Cuban law strictly prohibits subjecting persons deprived of their liberty to any kind of ill-treatment, corporal punishment or cruel, inhuman or degrading treatment, as well as using unlawful means of coercion or any type of measure that may cause physical or psychological suffering or violate their human dignity.

37. In Cuba, there is no room for impunity and there are no regulations or policies to support it. There is the will to tackle and repress manifestations of the above-mentioned phenomena, as well as the legal means to impose severe sanctions when acts are committed that could correspond to the acts provided for in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

38. On 21 January 2017, the precautionary measure of pretrial detention of Mr. Maldonado was modified and he received a fine, a sanction provided for in the Criminal Code along with other custodial measures, for the offence of damage to property.

39. It was also decided to provisionally discontinue (under articles 264 to 271 of the Criminal Procedure Act) other proceedings against Mr. Maldonado under complaints nos. 18297/16 of 3 March 2016, for other acts contrary to the normal development of a child

(Criminal Code, art. 315); 22086/16 of 15 April 2016, for threatening behaviour (Criminal Code, art. 284); and 24718/16 of 27 April 2016, for bodily injury (Criminal Code, art. 274).

40. Lastly, the Government notes that Mr. Maldonado left Cuba on 27 January 2017 for the United States.

41. On 20 March 2017, the Working Group received a note verbale from the Government updating the information it had provided on 10 March 2017. The Government pointed out that it was not true that Mr. Maldonado had been prohibited from having contact with his lawyer, as he had appointed defence counsel Lilian de la Caridad Cardet Batista to represent him in the criminal proceedings against him. The lawyer appeared in person in proceedings as from 22 December 2016, as she was entitled to do from the moment when the precautionary measure of pretrial detention was ordered.

Comments from the source

42. The Working Group forwarded to the source the responses provided by the Government in notes nos. 102/2017 and 113/2017, dated 10 and 20 March 2017, respectively. The source responded with comments on 27 March 2017.

43. In this regard, the source notes that, for more than 30 years, the Government has been repeatedly condemned by the Inter-American Commission on Human Rights of the Organization of American States for implementing policies of harassment and persecution against democracy activists, dissidents, civil society groups and human rights defenders.

44. The source points out that the Inter-American Commission on Human Rights has stated that “restrictions on political rights, on freedom of expression, and on the dissemination of ideas, the failure to hold elections, and the absence of an independent judiciary in Cuba combine to create a permanent panorama of breached basic rights for the Cuban citizenry”.¹

45. The source claims that Mr. Maldonado’s intention in spraying the graffiti with the message “he’s gone” on the day of Fidel Castro’s death was not to damage the facade of the hotel in question, but rather, in the context of systemic censorship and repression of dissidents and activists like him, to send a critical political message about the person who had governed Cuba for 47 years. In the source’s view, in the absence of “legal” avenues for dissent, walls and paint can be non-violent tools of expression and opposition.

46. The source notes that, as a human rights activist in Cuba, Mr. Maldonado frequently participates in peaceful demonstrations organized every Sunday by *Las Damas de Blanco* (the “Ladies in White” group). Mr. Maldonado also engages in activism that seeks to provoke a peaceful response from Cubans. For example, in December 2014, he was arrested while on his way to stage an artistic performance entitled *Rebelión en la Granja*, in reference to the George Orwell book *Animal Farm*. Mr. Maldonado was awarded the Václav Havel International Prize for Creative Dissent in May 2015.² His role as a human rights activist has been recognized in numerous publications and the media.³

47. The source notes that Mr. Maldonado’s lack of contact with the outside world for much of his detention and the multiple times he was transferred without being able to notify his family are referred to in the application for habeas corpus filed by his mother on 5 December 2016 to ascertain his whereabouts, as well as the appeal against the refusal of habeas corpus lodged by his mother on 12 December 2016, in which she also complained of a series of violations of due process under Cuban procedural law.

48. In addition, with respect to the Government’s updated submission of 20 March 2017, the source claims that Mr. Maldonado’s family and friends experienced serious

¹ Annual report of the Inter-American Commission on Human Rights, OEA/Ser.L/V/II.130 Doc. 22 rev.1, para. 154.

² See <https://oslofreedomforum.com/talks/2015-havel-prize-acceptance-speech-1>.

³ See <http://www.pbs.org/newshour/art/meet-el-sexto-the-performance-artist-pushing-for-free-speech-in-cuba/> and <http://www.elnuevoherald.com/noticias/mundo/america-latina/cuba-es/article130441589.html>.

difficulties in obtaining the legal representation of an independent defence counsel in view of the restrictions on the exercise of that profession in Cuba. In this regard, it stresses that the habeas corpus application and appeal were lodged by Mr. Maldonado's mother, not by a duly accredited lawyer. Similarly, the source notes that the Government acknowledged that it was not until 22 December 2016, after the ruling on the habeas corpus appeal had been handed down, that Mr. Maldonado had access to legal counsel, who was only given access to the case file, which did not amount to the effective protection of the right to personal liberty.

49. The source reiterates that Mr. Maldonado's arrest was violent, and involved insults and blows. The source emphasizes that the Government has not denied that neither Mr. Maldonado nor any lawyer who represented him was ever properly notified, in writing, of the charges against him.

50. Finally, the source indicates that when Mr. Maldonado was released on 21 January 2017, neither he, nor his lawyer nor his family received any document or notification or explanation for his release. Mr. Maldonado and his family learned the reasons for his release and the alleged "dismissal" of his case only on 13 March 2017, when they were informed of the State's reply to the Working Group.

Discussion

51. The Working Group was informed of Mr. Maldonado's release on 21 January 2017. However, it will consider the matter in the present opinion in accordance with the rule set out in paragraph 17 (a) of its methods of work.

52. The Working Group is mandated to investigate all cases of deprivation of liberty imposed arbitrarily that are brought to its attention. In the discharge of its mandate, it refers to the relevant international standards set forth in the Universal Declaration of Human Rights, as well as to the relevant international legal instruments, in accordance with its working methods.

53. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68).

54. The Working Group acknowledges the Government's willingness to cooperate with this procedure of the Human Rights Council, as expressed in its official response to the communication from the source. In addition, the Working Group notes that, although Cuba has not ratified the International Covenant on Civil and Political Rights and is therefore not a party to that instrument, it did sign the Covenant in 2008 and is therefore favourable to its early ratification.

55. Based on the information obtained, the Working Group notes that Mr. Maldonado, born on 1 April 1983, is a visual artist, graffiti artist, human rights activist and advocate of democracy in Cuba.

56. The Working Group notes, by way of background information, that on 20 October 2015, together with other special procedures of the Human Rights Council, it transmitted a communication to the Government concerning the deprivation of liberty of Mr. Maldonado in a previous case (JAL CUB 3/2015 — not the one that is the subject of the present opinion). The Government's response to that communication was received by the Working Group on 22 December 2015.

57. Based on the submissions from the parties, the Working Group observes that Mr. Maldonado was arrested at 11.15 a.m. on 26 November 2016 and that State agents did not show any arrest warrant at the time of arrest or thereafter. According to the Government, the arrest was made pursuant to an order issued by an appropriate authority, but it did not substantiate that argument, nor did it provide any documentation to support it, such as a copy of the order. In addition, the Working Group was unable to establish whether Mr. Maldonado was informed, at the time of his arrest, of the legal grounds for his arrest or of any outstanding charges. According to the information received, Mr. Maldonado was

officially informed of the charge against him some days after being released. Despite having had the opportunity to do so, the Government failed to prove conclusively that formal charges were brought against Mr. Maldonado during his time in detention. Nor did the Government prove that Mr. Maldonado had effective access to a lawyer of his choice from the time of his arrest. Based on the information available, the Working Group notes that Mr. Maldonado was not provided with legal representation until 22 December 2016, long after his arrest and after his relatives had already sought judicial remedies of habeas corpus and appeal without adequate legal assistance.

58. The Working Group recalls that, in accordance with applicable international law, every person who is detained has the right to be informed of the reasons for his or her detention at the time of arrest and of the charges against him or her without delay. This means that, if the authorities were unable to inform the individual of the charges against him or her, including the legal basis for them, at the time of the arrest because of, for example, the circumstances in which the arrest was carried out, they must do so within a few hours (see A/HRC/WGAD/2016/57, para. 107).

59. The Working Group has emphasized in its jurisprudence that everyone has the right to be informed clearly of the reason for his or her detention, as well as of the legal means available to challenge the lawfulness of such detention.⁴

60. The Working Group also recalls that all persons have the right to effective legal assistance by counsel of their choice, at any time during their detention, including immediately after being detained. The authorities have the obligation to inform the person of that right from the time of his or her arrest.⁵

61. The Working Group stresses that persons have the right to appear in person before a court to challenge the lawfulness of their detention.⁶ Based on the information received, the Working Group is not convinced that this right was guaranteed to Mr. Maldonado.

62. In light of the foregoing, the Working Group finds that Mr. Maldonado's detention was arbitrary under category I, as the arrest was carried out without an official arrest warrant and without the charges against him being presented, and that the State agents did not justify or provide the legal basis for Mr. Maldonado's deprivation of liberty at the time of his arrest and transfer to detention. In addition, the Working Group considers that the detention was arbitrary under category III, as he was not informed of the reasons for his arrest at the time of arrest, he was detained without formal charges, he was not guaranteed the right to be assisted by counsel of his choice from the time of his detention and he was not brought before a court to challenge the detention order, which represents a violation by the Government of international norms relating to the right to a fair trial, in accordance with articles 10 and 11 of the Universal Declaration of Human Rights. The Working Group is not convinced that Mr. Maldonado's detention was a consequence of his exercise of the rights and freedoms guaranteed by article 19 of the Universal Declaration of Human Rights, in accordance with category II.

63. Finally, in light of the allegations made by the source concerning the lack of judicial independence, violations of freedom of expression and attacks on the rights of human rights defenders, the Working Group decided to forward the information to the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, for their information and possible action.

Disposition

64. In light of the foregoing, the Working Group renders the following opinion:

⁴ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), principle 7.

⁵ Ibid., principle 9.

⁶ Ibid., principle 11.

The deprivation of liberty of Danilo Maldonado Machado, being in contravention of articles 3, 9 and 10 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I and III.

65. The Working Group requests the Government of Cuba to take the steps necessary to remedy the situation of Mr. Maldonado without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

66. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Maldonado an enforceable right to compensation and other reparations, in accordance with international law.

Follow-up procedure

67. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether compensation or other reparations have been made to Mr. Maldonado;

(b) Whether an investigation has been conducted into the violation of Mr. Maldonado's rights and, if so, the outcome of the investigation;

(c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Cuba with its international obligations in line with the present opinion;

(d) Whether any other action has been taken to implement the present opinion.

68. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

69. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

70. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁷

[Adopted on 20 April 2017]

⁷ See Human Rights Council resolution 33/30, paras. 3 and 7.