









FOLLOWING A COMPLAINT BY 7 INTERNATIONAL NGOs TO THE WORKING GROUP ON ARBITRARY DETENTIONS,

## UNITED NATIONS FINDS THAT MAYKEL OSORBO, WINNER OF TWO LATIN GRAMMY AWARDS, HAS BEEN IMPRISONED SOLELY FOR HIS PRO-DEMOCRACY ACTIVISM AND DEMANDS HIS RELEASE

### 1. A LITIGIOUS PROCESS THAT CULMINATES IN A CATEGORICAL RULING

At its 92nd session, the **United Nations Working Group on Arbitrary Detention** has ruled strongly in favor of one of the creators of *Patria y Vida*, Maykel Castillo Perez (Maykel Osorbo), after an arbitration process that began with the [complaint on July 7, 2021](#), 7 weeks after his detention. In this process, Cuba has had equal opportunity to present as much evidence as it deemed necessary, and it did so in its [letter of allegations on October 11, 2021](#).

Nevertheless, our legal teams were able to ratify on October 25, in the [letter of response to Cuba's allegations](#), each and every one of the points of the complaint, leaving the State Party's arguments unsubstantiated.

### 2. LAWYERS AND PROSECUTORS: UN ASSERTS THE ILLEGALITY OF THE CUBAN PROCEDURAL SYSTEM

In its [Legal Opinion](#), the Working Group has ruled on Maykel's counsel and advocacy in Cuba:

*"the aforementioned professional belongs to a Collective Law Firm, under the Ministry of Justice and controlled by the Government, through the **National Organization of Collective Law Firms, so that it cannot be considered as an independent legal counsel** (...) Mr. Castillo was denied legal assistance of his own choice and, therefore, the right to challenge the legality of the detention, in contravention of Articles 8 and 9 of the Universal Declaration and Principles 11 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment."*

We must note here that the Working Group's assertion applies to all cases in Cuba, so the formal discrediting of the Cuban legal profession as an independent legal profession is an opinion that **exposes the lack of effective defense in a generalized manner in all criminal proceedings in Cuba**. This is not the first time that the United Nations has rejected the Cuban legal profession as a valid tool for independent and therefore effective defense<sup>1,2</sup>, although on this occasion it has been, after numerous and proven complaints, much more conclusive and generalised.

<sup>1</sup> [Opinion No. 63/2019 \(Cuba\)](#): "This is not the first time that the Working Group is analyzing a case where it is alleged that there have been serious irregularities in the access to legal assistance for detainees in Cuba; otherwise, it has been verified in recent cases that detainees have not had the fundamental guarantee of access to a lawyer who can exercise their defense without limitations or interruptions. The Working Group has even received cases of lawyers who have been subjected to arbitrary detention."

<sup>2</sup> [Opinion No. 63/2019 \(Cuba\), adopted on November 19, 2019](#): "The Working Group was able to verify that, under the Decree-Law on the Practice of Law and the National Organization of Collective Law Firms, and its Regulations (issued by the Ministry of Justice), the Ministry of Justice exercises extensive regulatory and supervisory functions over the legal profession. This includes the high inspection of the National Organization of Collective Law Firms, the determination of fees for legal services, serves as administrative instance of appeal against decisions denying admission or separating individuals from the legal profession, receives reports from the National Board of Directors, may authorize the practice of the profession, approves the creation and extinction of collective law firms, supervises the training regime of newly graduated lawyers, among many others (see aticles 3, 11, 20, 29 and First Special Provision of the Decree-Law, as well as articles 20 and 42 of the Regulations).

Regarding the prosecution, **the ruling establishes the illegality of the preventive detention dictated by the prosecution**, that is to say, of the accusing party itself without judicial intervention, which is the case of ALL the 11j detainees in Cuba:

**"The Prosecutor's Office cannot be considered an independent and impartial judicial authority** for the purposes of Article 10 of the Universal Declaration. This body fulfils the function of investigation and prosecution, essential to justice, but **incompatible with the power to decide independently and impartially on the legal merits of deprivation of liberty**. Given these circumstances, the Working Group refers the case to the Special Rapporteur on the independence of judges, prosecutors and lawyers. "

The Working Group also discredits the offenses charged against Maykel Castillo, which are among the most common in Cuba in political cases:

*"Mr. Castillo has been detained as a result of (...) the **crimes of assault, contempt and evasion of prisoners and detainees** related to acts of **disobedience, aggression and offenses** against officers of the National Revolutionary Police (...) The Working Group has previously determined that these crimes are excessively vague and overly broad, as they do not clearly define the criminal activity they are intended to punish (...) The application of vague and overly broad provisions in the present case **make it impossible to invoke a legal basis to justify the detention of Mr. Castillo.**"*

## 2. ARBITRARY DETENTION IN ALL ITS EXTREMES

The Working Group confirmed that arbitrary detention has occurred in all possible categories in the case of Maykel Castillo:

**"The deprivation of liberty of Maykel Castillo Pérez is arbitrary, in that it contravenes Articles 3, 5, 8, 9, 10, 11 and 12 of the Universal Declaration of Human Rights, and falls into categories I, II, III and V."**

Thus, **the ruling** is replete with technical discrediting that makes the detention incompatible with legality:

**"[Maykel Castillo] remained without the possibility of being legally advised or preparing his defense for three months**, which contravenes international standards of protection against arbitrary detention, which determine that all persons deprived of their liberty have the right to the legal assistance of a lawyer of their choice at any time during their detention, including immediately after arrest."

*"The Working Group has been informed, in a documented manner, that Mr. Castillo, from December 14, 2019, to May 18, 2021, **has been detained 121 times.**"*

*"Mr. Castillo was subjected to **imprisonment for one year and one month, from September 23, 2018 to October 23, 2019**. This, **for having filmed a police operation in the public road**, with his cell phone and having refused to hand it over to the police. "*

*"Mr. Castillo was **fined on April 22, 2020, with 3,000 Cuban pesos, by means of Decree Law 370**, for publishing on his Facebook that "a Cuban woman died in the street because of Covid-19". In addition, for this **he suffered a 3-day deprivation of liberty, without charge and without judicial guardianship.**"*

*"The Working Group wishes to express its deepest concern at the reports it has received of the harassment, intimidation, threats and detentions to which Mr. Castillo has been subjected."*

*"The Working Group is convinced that **Mr. Castillo Pérez has been persecuted and arbitrarily detained for exercising his fundamental rights to freedom of opinion, expression, assembly, association and participation.**"*

*"The Working Group considers that **there would be no place for a criminal trial.**"*

***"The Government (...) has not provided any substantiation to support its claims."***

"The Working Group notes that the **fundamental rules of due process were not observed with** regard to the time Mr. Castillo has been held in pre-trial detention and without access to a lawyer of his choice. This resulted in the **denial of the guarantees of the protection of the law.**"

"The Working Group has not been satisfied that Mr. Castillo has been provided with access to **an independent lawyer, nor has he been able to appear in court on time or to prepare for trial on an equal footing.** Furthermore, **all remedies exercised, including Habeas Corpus, were consistently denied and he has been held in pre-trial detention for an inordinate amount of time,** including prior to his appearance in court. In consideration of the above elements, **Mr. Castillo's detention is arbitrary due to violations of due process.**"

"The manner in which Mr. Castillo has been detained is framed, given the **pattern of persecution and harassment, and the lack of due process, in a situation of discrimination because of his political position and his activities in the area of human rights.**"

"...no document that supports the detention order, nor in which it is demonstrated that Mr. Castillo was **informed of the reasons for it,** nor is there any record that this preventive detention order has been subject to judicial control."

### 3. DECISION

The Working Group has requested that the Government "**ensure that all acts of intimidation against Mr. Castillo are brought to an end and that an impartial and effective investigation into these acts is carried out and that those responsible are brought to justice**".

The Working Group requests the Government of Cuba to remedy "**the situation of Maykel Castillo Pérez without delay (...) and that the appropriate remedy would be to release Mr. Castillo Pérez immediately and to grant him the effective right to obtain compensation and other forms of reparation,** in accordance with international law. "

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### 4. REFERRAL TO OTHER INSTANCES

The Working Group refers the present case to the *Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, the *Special Rapporteur on the independence of judges and lawyers* and the *Special Rapporteur on cultural rights*.

### 5. VISIT TO THE ISLAND BY THE WORKING GROUP ON ARBITRARY DETENTION

The Working Group has urged that, "**given the recurrent pattern of arbitrary detentions observed by this international mechanism for the protection of human rights in recent years, the Government of Cuba should give favorable consideration to inviting the Working Group to conduct an official visit to the country**".