

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**Mandates of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

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1 November 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18 and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding Mr. **Raul Garcia**.

According to the information received:

Mr. Raul Garcia, a 58- year old native Cuban, is currently being held in detention in Barbados after having completed a 20 years prison sentence.

Although born in Cuba, Mr. Garcia left his country at the age of 10 years old and migrated to the United States of America. Under existing Cuban laws, he lost the legal right to return to Cuba and the Cuban authorities have expressly refused to permit him to return. He lived in the United States of America for 24 years from 1964 to 1988 under a resident status. Because of a pending drug charge, he moved to Colombia with a new identity. After six years in Colombia, he lost his status of resident at the USA and his status in Colombia was not legitimate. The US authorities have also expressly refused to permit him to return to USA. Under this situation, he is considered a Stateless person.

In 1994, Mr. Garcia was sentenced to 20 years in prison after he was convicted for the crime of drug trafficking in Barbados. On 11 March 2010, Mr. Garcia completed his prison sentence and should be released. However, he has continued to be held in detention.

During these 31 months, Mr. Garcia was detained at Barbados' maximum security Prison (Dodd's Prison) and was subject to all detention conditions imposed on

convicted persons. On 9 September 2012, Mr Garcia was moved to Barbados Defence Force House and, since then, he has been in solitary confinement. He is locked away in a small area of the house for 23 hours every day allowing him to leave this restricted area for one hour each day to spend it in a small fenced in yard area. He has been denied contact with his family and has limited access to his lawyer. Mr. García is under 24 hours guard by soldiers of the Barbados Defence Force and armed police officers.

Concern is expressed about the allegations that Mr. Garcia has been deprived of his liberty for in excess of two years and seven months since the end of his prison sentence.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned person is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of the person named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR and the ICCPR. We would also like to draw your Excellency's Government's attention to paragraph 6 of General Comment 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the International Covenant on Civil and Political Rights (adopted at the 44th session of the Human Rights Committee, 1992).

In this regard, we would also like to draw your attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged" (adopted by the General Assembly by resolution 45/111 of 14 December 1990). We also refer to the Special Rapporteur on torture's report on solitary confinement (A/66/268) which calls for an absolute prohibition on the practice of prolonged solitary confinement. When used as a form of punishment after conviction solitary confinement adds a measure of inhumanity to the penalty that cannot be justified.

We would further like to draw your Excellency's Government's attention to Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 which states that, "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 [...]". We would also like to draw

your Excellency's Government attention to rule 37 of the Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which provides that "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits."

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate the reasons for maintaining in prison this person after his servicing of the criminal sentence and in what measure this is compatible with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
6. Please indicate whether compensation has been provided to this person or his family.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned person are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the

alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow  
Chair-Rapporteur of the Working Group on Arbitrary Detention

Juan E. Méndez  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment