

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chairman/Rapporteur: Mr. José Guevara Bermúdez (Mexico)

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HUMAN RIGHTS COUNCIL

UNITED NATIONS GENERAL ASSEMBLY

In the Matter of

Luis Manuel Otero Alcantara

Citizen of the Republic of Cuba

v.

Government of the Republic of Cuba

Submitted by

International human rights lawyer

Kurtuluş BAŞTİMAR

Eymir Mahallesi, Sapanca Gölü Caddesi

C2-53 Blok, No: 8, Ankara/TURKEY

June 7, 2021

I. IDENTITY

1. Surname: Otero Alcántara

2. Name: Luis Manuel

3. Sex: Male

4. Date of birth or age (at the time of arrest): 2 December 1987. (33 years old)

5. Nationality / Nationalities: Cuban

6. (a) Identity document (if any): Identity Card

(b) Published by: Ministerio del Interior.

(c) The (date): 2018. He was detained by political police in 2020 and has been undocumented since then.

(d) No: 87100209208

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

Independent artist

8. Address of habitual residence: Calle Damas 955 between Habana and Avenida del Puerto. Old Havana. Havana. Cuba

II. Arrest

1. Date of arrest: 2 April 2021 at 05:00 (local time)

2. Place of detention (as detailed as possible): Interior of your property. They smashed the house and forcibly removed him as he lay sleeping in his bed.

3. Forces that carried out the arrest or are believed to have carried out: Elements of the Department of State Security, DSE, (Cuban Political Police) of the Ministry of the Interior supported by elements of the public force (National Revolutionary Police)

4. Did they show an order or other decision of a public authority?

NO

5. Authority that issued the order or decision: No order was filed by the acting elements

6. The reasons for detention given by the authorities: None

7. Legal basis for detention including relevant legislation applied (if known):

The legal basis are decree 349 as well as Article 203 Penal Code of Cuba

III. Detention

1. Date of Detention: 2 April 2021 at 09:00 (local time)

2. The duration of detention (if not known, the estimated duration): 30 days

3. Ways to keep the detainee in custody:

Forcé boarding school, guarded by a strong operation of the Cuban political police in combination with the national police incommunicado, deprived of media, without family visits and relatives and subjected to medical treatments and procedures (including the presence of psychologists and military psychiatrists) without their consent in an isolated room of the Calixto García University Hospital in Havana.

4. Places of detention (indicate any transfer and current place of detention):

Calixto García University Hospital. Havana. Cuba

5. The authorities who ordered the arrest: It is unknown.

6. The reasons for the detainee's detention outlined by the authorities: None

7. Legal basis for detention including relevant legislation applied (if known): Decree 349 and Article 203 Penal Code of Cuba

IV. Describe the circumstances of the detention.

Mr. Luis Manuel Otero Manuel Alcántara is a Cuban visual artist who makes performative works of a political and social nature that the Cuban political authorities do not recognize, criminalize and repress with all the force and power of the state. The arrest of Mr. Otero occurs while the artist is on hunger strike as a protest against the raid on April 23 of his home by the political police and subsequent destruction of his works of art exhibited in the home as part of a work of social benefit for the benefit of the infants of his community.

1. Background information about Luis Manuel Otero Alcantara

Mr. Luis is a Cuban performance artist and dissident, known for his public performances that openly criticize the Cuban government and its policies. A self-taught artist, Alcántara lives in the El Cerro neighborhood of Havana. Since 2018 Alcántara has been arrested dozens of times¹ for his performances in violation of Decree 349, a Cuban law requiring artists to obtain advance permission for public and private exhibitions and performances.²

In 2017 Alcántara was arrested for "being in illicit possession of construction materials" in relation to his work as a cofounder of the #00 bienal de la Habana, an alternative event to the official³

In April 2019 Alcántara was arrested by the Cuban police during his participation in a satellite event of the Havana Biennial⁴ On August 10, 2019 Alcántara was arrested in Havana during part of his performance Drapeau. In the work, he wore a Cuban flag draped over his shoulders, in defiance of a 2019 law dictating how the flag could be used⁵

¹ <https://elpais.com/cultura/2020-03-09/el-proceso-al-artista-luis-manuel-otero-alcantara-juzga-la-libertad-de-expresion-en-cuba.html> Accessed June 2, 2021

² <https://www.reuters.com/article/us-cuba-art-censorship/imprisonment-of-cuban-art-ivist-sparks-charges-of-censorship-idUSKBN20X39R> Accessed 2 june 2021

³ <https://hyperallergic.com/413086/cuba-alternative-havana-biennial-organizers-detained/> Accessed 3 June, 2021

⁴ <http://www.theartnewspaper.com/comment/the-2019-havana-biennial-is-a-smokescreen-for-government-censorship> accessed June 3, 2021

⁵ <https://www.artforum.com/news/cuban-artist-manuel-otero-alcantara-arrested-over-performance-with-cuban-flag-80486> Accessed on June 3, 2021

On March 1, 2020 Alcántara was arrested in Havana on the charges of defiling patriotic symbols and property damage.⁶ In November 2020, Alcántara took part in a hunger strike as part of the *San Isidro Movement*. Alcántara and other protesters were twice detained by police during the protest.⁷ On December 3, 2020, he was released from prison, but arrested again the same day when he joined another protest. He was released to house arrest the same day.⁸

Luis Manuel Otero was named a prisoner of conscience following his detention of 1 March. Although he was released on 14 March, the criminal procedure against him remains open, and he remains at risk of further detention. If Luis Manuel Otero Alcántara is sent back to prison, he would revert to be a prisoner of conscience as all the charges against him stem solely from the peaceful exercise of his right to freedom of expression.

1.a Lastest situation of Mr. Luis Manuel Otero Alcantara

The artist and activist was forcibly hospitalized after going on a hunger strike to protest government censorship. After an arrest, a hunger strike, and a forced hospital stay, Cuban artist Luis Manuel Otero Alcántara has been released from custody in Havana.

Otero Alcántara's discharge was confirmed yesterday by the San Isidro Movement (MSI), a protest group led by the artist. He had been detained for more than four weeks stemming from a demonstration against the Cuban government. Otero Alcántara could not be reached for comment. A source close to the artist claimed that state security has not yet returned his phone.

In late April, the 33-year-old artist and activist gave up food and water in protest of the government's seizure of several of his artworks that month. He was admitted into a local hospital on May 2, more than a week into his hunger strike, where he was guarded by police and prevented from seeing friends and family.

⁶ <https://www.washingtonpost.com/opinions/2020/03/11/cuba-arrested-performance-artist-because-hes-everything-regime-cant-control/> Accessed on June 3, 2021

⁷ <https://www.theartnewspaper.com/news/cuban-artist-luis-manuel-otero-alcantara-in-a-critical-condition-after-going-on-hunger-strike-says-protestor-in-youtube-film> accessed on June 3, 2021

⁸ <https://www.theartnewspaper.com/news/cuban-artist-luis-manuel-otero-alcantara-released-but-then-placed-under-house-arrest-as-protests-in-havana-continue> Accessed on June 3, 2021

1.b The grounds of all above-mentioned and current detention of Mr. Luis Manuel Otero Alcantara

President Díaz-Canel in April and published in Cuba's Official Gazette in July, Decree 349 which come into force in December 2018.

Under the decree, all artists, including collectives, musicians and performers, are prohibited from operating in public or private spaces without prior approval by the Ministry of Culture. Individuals or businesses that hire artists without the authorization can be sanctioned, and artists that work without prior approval can have their materials confiscated or be substantially fined. Under the new decree, the authorities also have the power to immediately suspend a performance and to propose the cancelation of the authorization granted to carry out the artistic activity. Such decisions can only be appealed before the same Ministry of Culture (Article 10); the decree does not provide an effective remedy to appeal such a decision before an independent body, including through the courts.

1.c The Decree 349 as a vague and broad legislation introduced in Cuba

The decree contains vague and overly broad restrictions on artistic expression. For example, it prohibits audiovisual materials that contain, among other things: "use of patriotic symbols that contravene current legislation" (Article 3a), "sexist, vulgar or obscene language" (Article 3d), and "any other (content) that violates the legal provisions that regulate the normal development of our society in cultural matters" (Article 3g). Furthermore, it makes it an offence to "commercialize books with content harmful to ethical and cultural values" (Article 4f).

Prohibiting artistic expression based on concepts such as “obscene”, “vulgar” or “harmful to ethical and cultural values” does not meet the tests of legitimate purpose, necessity and proportionality required under international human rights law. The lack of precision in the wording of the decree opens the door for its arbitrary application to further crackdown on dissent and critical voices in a country where artists have been harassed and detained for decades. This would not only contravene the right to freedom of expression of artists in Cuba, but the right of every person in the country to seek and receive information and ideas of all kind.

International human rights law and standards require that any restriction to the right to freedom of expression, including through art, must be provided by law and formulated with sufficient precision to avoid overly broad or arbitrary interpretation or application, and in a manner that is accessible to the public and that clearly outlines what conduct is or is not prohibited.

Restrictions must also be demonstrably necessary and proportionate for the purpose of protecting a specified public interest which, under international human rights law, are only national security, public order, and public health or morals, or the rights or reputations of others.

As signatory to the International Covenant on Civil and Political Rights (ICCPR), Cuba is required to refrain from acts that would defeat the object and purpose of the treaty. Article 19 of the ICCPR specifically protects the right to freedom of expression, which includes the “freedom to seek, receive and impart information and ideas of all kinds...” including “in the form of art”.

The rights to freedom of opinion and expression are essential for the full development of any person or society, and are key to enabling individuals to exercise other human rights. As such, under international law, states have a duty to protect the free expression of ideas and opinions of all kinds, including when deeply offensive. Laws restricting insult or disrespect of heads of state or public figures, the military or other public institutions, flags or symbols are prohibited under international human rights law.

The blanket requirement for prior authorization by the Ministry of Culture of an artist’s work to be shown in public, as set out in Article 2.1, would also impose controls over the exercise of artistic expression that may amount to prior censorship and would exceed the permissible restrictions on the right to freedom of expression.

Luis Manuel Otero Alcántara appears to be charged with “insults to symbols of the homeland” (Article 203 of the Penal Code), an offense inconsistent with international human rights law and standards, and “damage” to property (Article 339).

In the past 30 months, authorities have arbitrarily detained Luis Manuel more than 20 times. Prior to his detention, he had announced on Facebook that he planned to participate in a protest convened by LGBTI activists after alleged state censorship of a movie featuring two men kissing.⁹

1.d The Current situation of Mr. Luis Manuel Otero Alcántara

Although he was released on 01 June, the criminal procedure against him remains open, and he remains at risk of further detention. As it could be understood above, Mr. Luis has been detained more than twenty times and there is no any guarantee that he will not be arrested after his final release. Mr. Otero Alcántara is known for his high energy, but in the regime’s video he was sitting on the edge of a bed, clad in a robe, shoulders slumping, subdued. Like any hostage tape it was proof of life but no more. He was not permitted visitors of his own choosing or access to an independent doctor, lawyer or foreign diplomats. He committed no crime but was not allowed to use his phone or make contact with anyone outside the hospital.¹⁰

1.e Background on The Republic of Cuba

⁹ <https://www.amnesty.org/en/latest/news/2020/03/cuba-release-artist-prisoner-of-conscience/> accessed on 3 June, 2021

¹⁰ <https://www.wsj.com/articles/free-otero-alcantara-11622474168> Accessed on 3 June 2021

Cuba is a country under authoritarian rule, where civil and political rights are severely restricted by law and by practice and often violated. The Constitution itself subordinates the exercise and enjoyment of rights to the protection of the revolution¹¹ and political power is concentrated in the ruling Communist Party, headed since more than fifty years by the Castro family. A very restrictive Association Law further prevents the development of a healthy civil society in the country. All this together means that human rights and democracy work is actually illegal in Cuba; human rights organizations cannot be registered and therefore officially do not exist and are not entitled to receive funding; and human rights defenders can be and actually are legally persecuted. This also applies to trade unions, lawyers, political parties and some religious denominations, and their members.

In 2008, the Cuban Government signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. At the moment of signature, the Cuban Government stated: “The Republic of Cuba hereby declares that it was the Revolution that enabled its people to enjoy the rights set out in the International Covenant on Civil and Political Rights

The right to freedom of expression in Cuba

Article 53 of the Constitutions establishes that “citizens have freedom of speech and of the press in keeping with the objectives of socialist society¹² and that the law regulates the exercise of freedoms. The legal framework adopted further limits the right to freedom of expression. The Penal Code lists a number of crimes that are used to restrict this right: contempt, dissemination of false information, defamation, etc. Such crimes can be punished with detention sentences of up to four years – or more, if it is found that they created a danger to the State. Special laws – such as the infamous ‘Gag Law’

¹¹ See for example article 62: “None of the freedoms which are recognized for citizens can be exercised contrary to what is established in the Constitution and the law, or contrary to the existence and objectives of the socialist State, or contrary to the decision of the Cuban people to build socialism and communism. Violations of this principle can be punished by law.”

¹² x State ideology – as opposed to national security – cannot be considered an accepted ground for the limitation of freedom of expression in international human rights law. For a summary of Cuban laws affecting right to freedom of expression, see “The Right to Freedom of Expression: Restrictions on a Foundational Right”, International Center for Not-for-Profit Law, 2015, page 8 – available at <http://www.icnl.org/research/trends/trends6-1.pdf>.

(‘Ley Mordaza’) no. 88, with its “high levels of abstraction and ambiguity (...) making the interpretation and application of this legal disposition a source of arbitrariness¹³

The will of the Government to strictly control what citizens say about its rule makes freedom of expression one of the most restricted rights in Cuba. Artistic expressions such as music and painting are also restricted if they are considered a risk to national security or a way to offend public authorities. According to article 144 of the Penal Code, a person who “threatens, slanders, defames, insults, libels or in any way outrages or offends, orally or in writing, the dignity or decorum of an authority, public functionary, or his agents or assistants” can be punished with imprisonment of three months to one year – extendable to three years if the authorities in question are the President of the State Council, the President of the Nacional Assembly, members of the State Council or of the Ministerial Council, Ministers or Parliamentarians.

V. LEGAL ANALYSIS

Mr. Luis’s arrest and detention is arbitrary¹⁴ under Categories I, II and III as established by the UN Working Group on Arbitrary Detention (the “Working Group”). The detention is arbitrary under Category I because it is impossible to invoke any legal basis justifying his deprivation of liberty and continued detention. The detention is arbitrary

¹³ Situation of the Right to Freedom of Opinion and Expression in Cuba”, Report to the Special Rapporteur on Freedom of Opinion and Expression prepared by a group of Cuban NGOs, July 2016, page 9.

¹⁴ An arbitrary deprivation of liberty is defined as any “depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law.” International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 UNT.S. 171, entered into force on March 23, 1976 (hereinafter “ICCPR”), at art. 9(1). Such a deprivation of liberty is specifically prohibited by international law. Id. “No one shall be subjected to arbitrary arrest, detention or exile.” Universal Declaration of Human Rights, G.A. Res. 217A (III), UN Doc. A/810, at art. 9, (1948). “Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law...” Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, UN Doc. A/43/49, (hereinafter “Body of Principles”) at Principle 2

under Category II because it resulted from Mr. Luis's peaceful exercise of his right to freedom of expression. The detention is arbitrary under Category III because the Government's detention and prosecution of Mr. Luis failed to meet minimum international standards of due process.

DEPRIVATION OF LIBERTY UNDER CATEGORY-I

A detention violates Category I when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. The Working Group has found detentions arbitrary under Category I when some of the following violations are present: (1) when the government has held an individual incommunicado for a period of time; (2) when the government has arrested an individual without judicial authorization for such deprivation of liberty; (3) when vague laws are used to prosecute individuals; and (4) when laws are used to target government critics¹⁵

Mr. Luis was held in Comunicado

Incommunicado detention occurs where an individual is "deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including habeas corpus."¹⁶ Article 9(3) of the ICCPR provides that "[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."¹⁷ In the event that a person is deprived of liberty by arrest or detention, Article 9(4) of the ICCPR guarantees that such person "shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."¹⁸ In General Comment No. 35, the Human Rights Committee has interpreted the term "promptly" to be within

¹⁵ See, e.g., *Bettar v. Morocco*, Working Grp. on Arbitrary Detention, Commc'n No. 3/2013, paras. 30-314 (April 30, 2013); *61 Individuals v. United Arab Emirates*, Working Grp. on Arbitrary Detention, Commc'n No. 60/2013, para. 22 (November 22, 2013).

¹⁶ Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism, Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, UN Doc. A/HRC/13/42, p. 2 (May 20, 2010), <https://undocs.org/A/HRC/13/42>. The Special Rapporteur's report has been recognized by the Working Group as identifying the extent of human rights violations associated with incommunicado detention. See UN Working Group on Arbitrary Detention, Report of the Working Group, UN Doc. A/HRC/22/44, fn. 27 (Dec. 24, 2012),

¹⁷ ICCPR, *supra* note 42, art. 9(3).

¹⁸ ICCPR, *supra* note 42, art. 9(4)

approximately 48 hours, except in exceptional circumstances¹⁹ The requirement that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other judicial officer applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity²⁰

In contravention of these obligations, Mr. Luis was not brought promptly before a judge or other judicial officer and was not entitled to a trial within a reasonable time or to release following his arrest. He was not allowed to see the judge or other officer for 30 days of detention.

The Cuban Government Arrested Mr. Luis Without Judicial Authorization

Article 9(1) of the ICCPR states that “[n]o one shall be subjected to arbitrary arrest or detention” and that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law²¹ In the case of Mr. Luis, he was arrested without any judicial authorization.

The Cuban Government Used Vague Laws to Prosecute Mr. Luis

The Working Group has previously stated that restrictions on freedom of expression cannot be justified by vague and general references to interests of national security or public order, and that detentions based on these statutes are arbitrary under a Category I classification²² Article 15(1) of the ICCPR guarantees individuals the right to know what the law is and what conduct violates the law. Specifically, that article states that “[N]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the

¹⁹ General Comment No. 35: Article 9 (Liberty and Security of Person), ¶ 33, Human Rights Comm. U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014) (hereinafter “General Comment No. 35”), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en (“While the exact meaning of ‘promptly may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.”).

²⁰ ICCPR, *supra* note 42, art. 9(1).

²¹ ICCPR, *supra* note 42, art. 9(1)

²² See, e.g., *Mbanza Judicael v. Rep. of Congo*: Opinion adopted by the Working Group on Arbitrary Detention, ¶ 26, Human Rights Council, 28th Sess., U.N. Doc. A/HRC/WGAD/2014/44 (Feb. 4, 2015), <http://hrlibrary.umn.edu/wgad/44-2014.pdf>.

time when it was committed.”²³ In General Comment No. 35, the Human Rights Committee states that “[a]ny substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.”²⁴

As a contrary to this obligation of the Republic of Cuba, Mr. Luis was arrested and detained based on the decree 349 which is a vague and broad legislation that is not compatible with international obligation of the Republic of Cuba.

DEPRIVATION OF LIBERTY UNDER CATEGORY-II

Mr. Luis Was Detained for Exercising His Freedom of Opinion and Expression

Freedom of opinion and expression are protected by international instruments and include the freedom to seek, receive, and impart information of all kinds, either orally or in writing. Article 19 of the ICCPR provides that “[e]veryone shall have the right to hold opinions without interference” and that “[e]veryone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”²⁵ An analogous guarantee of freedom of opinion and expression is provided in the Universal Declaration of Human Rights (UDHR)²⁶ The Human Rights Committee has clarified that Article 19 of the ICCPR “protects all forms of expression and the means of their dissemination.”²⁷ Article 19 of the ICCPR is of special importance for human rights defenders²⁸ and journalists working on reporting of human rights abuses are explicitly recognized as

²³ ICCPR, supra note 42, art. 15(1).

²⁴ General Comment No. 35, supra note 47, ¶ 22.

²⁵ ICCPR, supra note 42, at art. 19(1)-(2).

²⁶ Universal Declaration of Human Rights, G.A. Res. 217A (III), UN Doc. A/810, at Art. 19 (1948).

²⁷ Human Rights Committee, General Comment No. 34: Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/G/34 at ¶ 12 (September 12, 2011) (hereinafter “General Comment No. 34”).

²⁸ Human rights defenders are individuals who promote and protect all human rights through peaceful means without discrimination. Human rights defenders can join groups of people with or without structure, or organizations such as associations or foundations. Anyone, regardless of their occupation, can be a human rights defender; they are defined primarily by what they do rather than their profession. See generally, Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Resolution 53/144, U.N. Doc. A/RES/53/144 (March 8, 1998); UNITED NATIONS SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, “Who is a Defender,” available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

human rights defenders²⁹ The Human Rights Committee has also specifically recognized that Article 19(2) protects the work of journalist³⁰ and “includes the right of individuals to criticize or openly and publicly evaluate their government without fear of interference or punishment.”³¹

Withstanding the aforementioned protections of individuals’ rights to freedom of expression, the Government arbitrarily detained and prosecuted Mr. Luis as a direct result of his exercising freedom of expression. This is because, with his art, Luis criticizes the government and he also express himself through his art and this is a form of expression. Hence, the Republic of Cuba deprived liberty of Luis since he exercised his right to freedom of expression under Article 19 ICCPR.

The Restrictions on Freedom of Expression Enumerated in Article 19(3) of the ICCPR Do Not Apply to Mr. Luis’s Case

Article 19 of the ICCPR provides limited exceptions for national security, public safety, and public order. Specifically, Article 19 provides that: “The exercise of the [right to freedom of expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; and (b) For the protection of national security or of public order (ordre public), or of public health and morals.”³² However, these exceptions are interpreted narrowly. The Human Rights Committee has noted that restrictions “may not put in jeopardy the right itself³³ As such, any limitation “must meet a strict test of justification.³⁴ To guide States, the Human Rights Committee has established three requirements for any limitation on the right to freedom of expression. A permissible limitation must be (1) “provided by law,” (2) for the protection of one of the “enumerated purposes,” under Article 19(3) of the

²⁹ See *id*

³⁰ *Movlonov et. al. v. Uzbekistan*, UN Human Rights Committee, Communication No. 1334/2004, U.N. Doc. CCPR/C/95/D/1334/2004 (March 19, 2009)

³¹ *De Morais v. Angola*, UN Human Rights Committee, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002, ¶ 6.7 (March 29, 2005)

³² ICCPR, *supra* note 42, at art. 19(3).

³³ See General Comment No. 34, *supra* note 58 at ¶ 21.

³⁴ *Park v. Republic of Korea*, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, ¶ 10.3 (adopted October 20, 1998), <http://hrlibrary.umn.edu/undocs/session64/view628.htm>.

ICCPR and (3) “necessary” to achieve that purpose³⁵ In particular, the Government must be able to show an “individualized justification” for why the restrictions on the rights were necessary³⁶ General allegations claiming that an individual’s expression or association threatened national security—without evidence of a specific threat and a proportional response—will not meet this high burden³⁷ Where the Government has failed to demonstrate the elements required for justification of an exception, a violation of the relevant article will be deemed to have taken place³⁸

The narrow limitations on the right to freedom of expression and association contained in Articles 19(3) of the ICCPR do not apply in this case. The limitation on Luis’s freedom of expression fails to satisfy the second requirement. Specifically, the Government’s restrictions on Luis’s freedom of expression was not for a proper purpose under Article 19(3). The government failed to show how the detention of Mr. Luis for exercising his right to freedom of expression is necessary and proportional to the legitimate aim.

The art of Mr. Luis posed neither a threat to others’ rights or reputations nor a threat to national security or public order, health or morals. Thus, because Mr. Luis’s art is protected expression under Article 19(2) of the ICCPR and because the Government’s restriction on these does not fall within the narrow exceptions contained in Article 19(3) of the ICCPR, Mr. Luis’s continued detention is arbitrary under Category II.

³⁵ Shin v. Republic of Korea, Communication No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000, ¶¶ 7.2-7.3 (adopted March 16, 2004), <http://hrlibrary.umn.edu/undocs/html/926-2000.html>

³⁶ Id

³⁷ In Kim v. Republic of Korea, the Committee rejected the argument that punishing the distribution of materials that coincided with the policy statements of the Democratic Peoples’ Republic of Korea, was “necessary” for the protection of national security. The Human Rights Committee noted that “North Korean policies were well known within the territory of the State party and it is not clear how the (undefined) ‘benefit’ that might arise for the DPRK from the publication of views similar to their own created a risk to national security, nor is it clear what was the nature and extent of any such risk.” Kim v. Republic of Korea, Commc’n No. 574/1994, ¶ 12.4, 64th Sess., Human Rights Comm., U.N. Doc. CCPR/C/64/D/574/1994, (Nov. 20, 1998),

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F64%2FD%2F574%2F1994&Lang=en. See also Sohn v. Republic of Korea, Commc’n No. 518/1992, ¶ 10.4, Human Rights Comm., U.N. Doc. CCPR/C/54/518/1992 (July 19, 1995), <http://hrlibrary.umn.edu/undocs/html/vws518.htm>

³⁸ Shin v. Republic of Korea, supra note 75, ¶¶ 7.2-7.3.

DEPRIVATION OF LIBERTY UNDER CATEGORY-III

The Republic of Cuba Violated Mr. Luis's Right to Legal Counsel

Articles 14(3)(d) and 14(3)(b) of the ICCPR guarantee that an individual may “defend himself in person or through legal assistance of his own choosing” and “have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.” Such guarantee “requires that the accused is granted prompt access to counsel.”³⁹ The Body of Principles further provide for the right of a detainee to communicate and consult with his legal counsel, stating that such right “may not be suspended or restricted save in exceptional circumstances”⁴⁰ and that “[c]ommunication 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 manner of days.”⁴¹ Rule 119 of the Mandela Rules also provides for the right to access legal advice⁴²

In the case of Luis, he was not allowed to be communicated with his lawyer during entire period of his detention. Hence the government violated his right to counsel, his rights under Article 14(3) of the ICCPR, Paragraph 18 of the Body of Principles, Rule 119 of the Mandela Rules.

The Republic of Cuba Violated Mr. Luis's Right to Access to Medical Care

Numerous authoritative sources have confirmed a government's obligation to treat ill or injured detainees and that its failure to do so may violate the prohibition on cruel or inhuman treatment. In particular, a detained or imprisoned person is guaranteed a proper medical examination and any necessary medical care and treatment under Principle 24 of the Body of Principles. Rule 27.1 of the Mandela Rules similarly requires that all prisons ensure prompt access to medical attention in urgent cases, and generally provide adequate medical treatment and care to prisoners, either at the prison's own hospital

³⁹ General Comment No. 32, supra note 83, at para. 34

⁴⁰ Body of Principles, supra note 42, at Principle 18.

⁴¹ Id. at Principle 15.

⁴² United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), (Sept. 29, 2015), Rule 119, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/295/06/PDF/N1529506.pdf?OpenElement>.

facilities or via referral to specialized institutions or civil hospitals. In addition, Rule 22.1 of the Mandela Rules requires that every prisoner be provided with “food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”

Despite the fact that the health condition was worsened in detention, the government refused to provide medical treatment. These facts clearly show that the Government is violating Mr. Luis’s right to access to medical care and adequate food supply during his detention, which he is entitled to under Principle 24 of the Body of Principles and Rules 22.1 and 27.1 of the Mandela Rules.

The Republic of Cuba violated Mr. Luis’s Right to be Visited by Family and to Communicate with the Outside World

Principle 19 of the Body of Principles provides that “detained or imprisoned persons shall have the right to be visited by and to correspond with, in particular, members of his family . . . subject to reasonable conditions and restrictions as specified by law or lawful regulations.” Similarly, this right is protected by the Mandela Rules, notably Rule 43 stating that “[d]isciplinary sanctions or restrictive measures shall not include the prohibition of family contact,” Rule 58 stating that “[p]risoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals,” and Rule 106 stating that “[s]pecial attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.

As it was explained above, Mr. Luis was not allowed to communicate outside the world and with his family. His Phone was taken away from him and there was police cordon surrounding the place where he was under detention

By detaining Luis for one month, Cuban government violated Principle 19 of the Body of Principles as well as Rules 43, 58, and 106 of the Mandela Rules.

VI. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

Kurtuluş BAŞTİMAR, has been retained by Uncle of Mr. Luis as his international counsel. Mr. Luis's uncle has given explicit consent to Kurtuluş BAŞTİMAR to initiate the regular procedure before the Working Group. He has given consent to have his name mentioned in a letter to the Government, and for his name to be published in an official opinion by the Working Group which will be reflected in the report to the Human Rights Council.

Fecha: Mayo 31 2021

Firma:

A handwritten signature in black ink, appearing to read "E. Berro", is centered below the "Firma:" label. The signature is written in a cursive style with a prominent vertical stroke on the right side.