

**OPINION No. 16/2003 (CUBA)**

Communication addressed to the Government on 19 July 2002.

Concerning: Léster Téllez Castro, Carlos Brizuela Yera, Carlos Alberto Domínguez y Bernardo Arévalo Padrón.

**The State is not a party to the International Covenant on Civil and Political Rights**

1. (Same text as paragraph 1 of opinion No. 15/2002.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.
3. (Same text as paragraph 3 of opinion No. 15/2002.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, which made comments thereon. The Working Group is now in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.
5. The following cases were referred to the Working Group on arbitrary detention:

(a) Léster Téllez Castro, a journalist and editor with the Avileña Free Press agency, was arrested on 4 March 2002 on a visit to Ciego de Ávila to see Mr. Jesús Álavarez Castillo, a correspondent from the CubaPress agency. Force was used in the arrest, and the law enforcement officers did not produce an arrest warrant. On 19 April he was moved to Canaleta prison, in Ciego de Ávila. No charges have been brought against him. Nevertheless he has been unofficially informed that he would be accused of “disturbing the peace in a medical institution”, of “refusal to obey” and “disparagement”;

(b) Carlos Brizuela Yera, a journalist, and member of the Camagüey College of Independent Journalists, was arrested in the same way and in the same circumstances as Mr. Téllez Castro. On 11 March 2002 he was moved to a detention centre in the province of Holguín. No charges have been brought against him either, although he has been informed unofficially that he will be accused of the same offences;

(c) Carlos Alberto Domínguez, a journalist, and employee of the Cuba Verdad agency, director of the Law Institute, and member of the 30 November Democratic Party, was arrested on 23 February 2002 in the city of Havana by four State security agents. On 29 March 2002 he was moved to Valle Grande prison in Havana. He is accused of having participated in the organization of political demonstrations that were to be held on 24 February 2002 to commemorate the death of four pilots from Brothers to the Rescue, based in Miami, Florida. Officially charges have been brought against him for the offences of “disturbing the peace” and “refusal to obey”. It is alleged that he is prevented from meeting with his lawyer and that the length of visits by family members has recently been reduced. It is also claimed that his health has undergone considerable deterioration;

(d) Bernardo Arévalo Padrón, a journalist and founder of the Línea Sur press agency, was arrested in 1997 and sentenced to six years' imprisonment in November of that year for disparagement of the President and Vice-President of the Councils of State and Government. In October 2002 he earned the right to apply for conditional release by virtue of having served half his sentence. Nevertheless, his application was rejected.

6. The source considers that these persons were arrested and are in detention essentially for political reasons; mainly for having engaged in the peaceful exercise of their right to freedom of expression, recognized by the Constitution of the Republic of Cuba, and for having stated their ideological differences.

7. The Government, in its reply, maintains that:

(a) Mr. Téllez Castro went to the hospital where Mr. Álvarez Castillo, together with other people, was being examined, and caused a serious disturbance of the peace which paralysed the public services of the hospital for over an hour. The people awaiting treatment in the hospital reacted immediately to the offensive actions of Mr. Téllez Castro and his companions, defending their legitimate right to access to the medical services they required with varying degrees of urgency. In view of the breach of the peace and public nuisance caused by the actions of Mr. Téllez and his companions, it was necessary for police officers to intervene to re-establish medical services and prevent physical attacks. Léster Téllez Castro is an antisocial element, impulsive, disrespectful, provocative in his attitude towards the authorities. He has been involved in several attempts to leave the country illegally, and in 1992 was jailed for theft; he was tried for robbery with violence in 1993 and, also in 1993, for theft;

(b) Carlos Brizuela Yera served four years in prison from 1994 to 1998 for an attempt on the life of a police officer. Léster Téllez Castro and Carlos Brizuela Yera are in pre-trial detention for aggravated disorderly conduct, resistance and contempt. These offences are duly defined in the Cuban Criminal Code and the trial will be conducted with full guarantees of due process, in accordance with the rule of law;

(c) Carlos Alberto Domínguez embarked on migration formalities in 1994 in order to travel to the United States of America for family reunification. His application was rejected by the Interests Section of the United States of America in Havana. Mr. Domínguez was responsible for various acts that constitute offences under the criminal law in force. On 23 February 2002, in view of his premeditated recidivism, he was arrested. He is being held in the Valle Grande prison in the city of Havana. Mr. Domínguez is not a journalist; he holds a licence to work as a self-employed watchmaker. There is no Cuba-Verdad press agency in Cuba. His arrest has no connection with the free exercise of religion or opinion and expression. Mr. Domínguez acted with the clear and premeditated objective of causing public disorder and preventing the proper conduct of activities in the public interest;

(d) Mr. Arévalo Padrón is serving a sentence of six years' imprisonment for contempt, as provided for and punished under current criminal legislation. In each phase of the criminal proceedings, Mr. Arévalo Padrón enjoyed all necessary guarantees of due process. Mr. Arévalo Padrón is not a journalist, and is not the director of a press agency. Mr. Arévalo Padrón has organized and participated in actions clearly aimed at subverting the constitutional order freely decided on by the Cuban people in exercise of its sovereignty, and his

acts, in addition to constituting clear violations of legality, have posed a manifest threat to the life and safety of other citizens. With other citizens, he attempted to found a covert cell to carry out terrorist activities in Cuba, promoted and funded by the so-called Independent Democratic Cuba terrorist organization, based in the United States of America. He was placed under a minimum-security regime, as a preliminary step to conditional release. However, taking advantage of the placement in an open centre, he repeatedly violated the disciplinary regulations, so that as a result that privilege was revoked in June 2002.

8. With respect to these cases the source has replied that Léster Téllez Castro had been engaged in journalism and the defence of human rights for the past two-and-a-half years. The source acknowledges that he then left prison, after being convicted to six years' imprisonment for robbery with violence, but maintains that at that time he was a vulnerable adolescent, under bad influences, and that, according to family and friends, he has led an exemplary life since finishing his sentence. The source adds that the Cuban authorities harp on this background to discredit his activities and justify his current imprisonment to the international community. The source has admitted that Carlos Brizuela Yera, like his friend Téllez, has a criminal record. Reportedly he was arrested for displaying a poster reading "Down with Fidel" in a street demonstration, whereas the Government accused him, in the judgement handing down the sentence that he served from 1994 to 1998, of an attempt on the life of a police officer. The source asserts that on that occasion both were arrested with many other activists in a demonstration when they went to visit Mr. Álvarez Castillo, hospitalized after being assaulted by police officers.

9. On Carlos Alberto Domínguez, the source maintains that his political militancy has also earned him several detentions and a prohibition on leaving the country, even though he has held, as have his wife and three children, a United States visa since June 2000.

10. As for Bernardo Arévalo Padrón, the source asserts that he was sentenced to six years' imprisonment largely for having called the Cuban authorities liars for not respecting the final declaration of an Ibero-American summit.

11. The Working Group, on the basis of the observations of both the Government and source, considers that in the cases of Léster Téllez Castro and Carlos Brizuela Yera, both Government and source agree that their detention followed a demonstration opposite a hospital, and that others were also arrested. The Government, other than stating that hospital services were disrupted for an hour owing to the demonstration, does not convincingly refute the fact that this was a peaceful demonstration to protest a beating by the police. The exercise of the rights of opinion and demonstration is protected by the Universal Declaration of Human Rights. As for the criminal records of these two individuals, noted by the Government and acknowledged by the source, the Working Group considers that the submission before the Group relates to the current situation of the detention of these persons and not their prior judicial situation.

12. In the case of Carlos Alberto Domínguez, there is no denial of the fact that he was arrested after having organized political demonstrations, in which no use of violence is alleged. The Government did not specify the charges relating to public disorder or the interruption of activities in the public interest, and in any event it is apparent that the demonstrations were organized to commemorate certain events and to express a political opinion that differs from that of the Government, a right protected by the Universal Declaration of Human Rights.

13. Bernardo Arévalo Padrón was arrested on charges of contempt for having publically criticized the country's highest authorities. The Government alleges that by his activities he threatened the life and safety of citizens, and funded an organization for the perpetration of terrorist acts. Nevertheless, it does not indicate how those acts have been carried out, and does not refute the fact that public criticism of the authorities led to six years' imprisonment for him. The Working Group maintains with regard to exercise of freedom of expression that it does not admit of greater restrictions, and that in any event any restrictions must meet the requirements of legality and legitimacy, and be necessary to a democratic society. Such restrictions would apply to use of violence, incitement to racial or religious hatred, or to commit crimes. In this case such circumstances do not apply, either with regard to Mr. Arévalo's activities or his public criticisms of the authorities. Accordingly the Working Group considers that he has been detained merely for having peacefully exercised the right to freedom of opinion.

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

The deprivation of liberty of Léster Téllez Castro, Carlos Brizuela Yera, Carlos Alberto Domínguez and Bernardo Arévalo Padrón is arbitrary, being contravention of articles 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

15. The Working Group, having rendered this opinion, requests the Government of Cuba to take the necessary steps to remedy the situation of these four persons, to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take appropriate steps with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 5 September 2003