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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its sixty-third session, 30 April–4 May 2012

#### No. 10/2012 (Nicaragua)

#### Communication addressed to the Government on 24 February 2012

**Concerning: Jason Zachary Puracal**

**No response has been received from the Government.**

**The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a further three-year period in its resolution 15/18 of 30 September 2010.

2. 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 the detainee) (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 International Covenant on Civil and Political Rights (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 subject 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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

## **Submissions**

### *Communication from the source*

3. The case has been reported to the Working Group on Arbitrary Detention as follows:

4. Mr. Jason Zachary Puracal, aged 34, a citizen of the United States of America residing in Nicaragua, married to a Nicaraguan law student, father of a four-year-old child, domiciled in San Juan del Sur in Rivas Department, a former University of Washington student and holder of a franchise in the RE/MAX real estate company, was arrested on 11 November 2010 in San Juan del Sur by masked agents of the national police who entered his office carrying AK rifles. The agents proceeded to search the premises without showing a valid search warrant and confiscated several documents.

5. Mr. Puracal went to Nicaragua in 2002 as a Peace Corps Volunteer. When he had finished his term of service, he purchased a RE/MAX franchise (from the firm RE/MAX Horizons) jointly with three other United States citizens and is now an agent for the firm.

6. After searching Mr. Puracal's office, the police searched his home, again without showing a valid search warrant, while his 65-year-old mother and young son were sleeping there. The police stayed in his home for six hours. Later Mr. Puracal was driven to the police station where he was taken into custody. Some 24 hours after Mr. Puracal's detention, on 12 November 2010, Judge Diógenes Dávila issued an arrest warrant retroactively.

7. Mr. Puracal was denied the right to contact a lawyer after he was arrested. He was interrogated for three days without a lawyer present despite his repeated demands to speak with a defence attorney. Three days after his arrest, the public prosecutor charged Mr. Puracal and 10 Nicaraguan citizens with international drug trafficking, money-laundering and having links to organized crime. Mr. Puracal maintains that he does not know the co-defendants.

8. According to the source, although the Nicaraguan Code of Criminal Procedure establishes that a person may not be held in custody for longer than six months without being brought before a judge, that is exactly what happened to Mr. Puracal, who remained in custody without being tried until 6 August 2011 – in other words, for nine months. The trial hearing was postponed several times at the request of the public prosecutor's office, which never explained why the postponements had been requested. Before the trial, Mr. Puracal was denied his right to meet with a defence attorney in order to prepare his defence.

9. The trial was postponed several times. On 29 August 2011, the 11 defendants were summarily convicted. Mr. Puracal was sentenced to 22 years' imprisonment by the Alternate Judge of the Rivas District Criminal Court, Mr. Kriguer Alberto Artola Narváez, who found him guilty of money-laundering, international drug trafficking and having links to organized crime under articles 282, 359 and 393 of the Criminal Code of Nicaragua (Act No. 641).

10. The purchase by RE/MAX of the El Petén farm in Pastasma, north of Jinotega, was considered to constitute evidence of money-laundering and of the provision of logistical support for drug trafficking. During the trial, Judge Artola Narváez, who apparently does not have a law degree, refused to admit various pieces of evidence submitted by Mr.

Puracal's defence team or to allow the witnesses for the defence to testify; he even rejected the testimony of Mr. Alejandro Ruíz Jirón, a deputy of the National Assembly. Videos and forensic evidence submitted by the defence were likewise disallowed. The defence lawyers were not permitted to cross-examine the witnesses for the prosecution.

11. Mr. Puracal was not notified of the sentence. His lawyer had to petition the court and demand notification, which was not issued until 21 September 2011. Mr. Puracal immediately filed an appeal, but Judge Artola Narváez refused to process it. It was not until 19 December 2011 that the appeal was admitted by the High Court of Granada.

12. In the meantime, Mr. Puracal is being held in the La Modelo maximum security prison in Tipitapa, where he shares a cell with seven convicts. During his time there, he has been allowed only one visit from a family member. Meetings with his defence lawyer, which are limited to 30 minutes, are always held in the presence of a prison guard – in other words they are not private meetings. In prison he suffered severe burns when he was trying to boil water to make it safe to drink, and he has not received appropriate medical attention.

13. The source considers that the detention of Mr. Puracal for over 15 months without an opportunity to exercise his right to due process is arbitrary. After his arrest, he was denied the right to challenge the legality of his arrest and initiate appeal proceedings. During the trial, his rights to submit evidence, cross-examine prosecution witnesses and lodge complaints or appeals were violated.

14. With regard to the money-laundering offence, the only evidence submitted by the prosecution against Mr. Puracal were the documents found in his office during the police raid. According to the source, those documents do not show that any crime was committed. The expert for the prosecution, Mr. Victoriano Zepeda, stated that no evidence was found of any money having been exchanged or of there ever having been any financial ties between Mr. Puracal and the other defendants. Nor was any evidence found to suggest that Mr. Puracal might have acquired properties on behalf of RE/MAX to benefit the co-defendant Manuel Antonio Ponce Espinosa.

15. Similarly, no evidence was found to suggest that Mr. Puracal might have helped Mr. Ponce Espinosa to launder money by using RE/MAX to purchase the Las Nubes farm in San Juan del Sur and the El Petén farm in Jinotega. The prosecution had to drop the charge that Mr. Puracal had helped Mr. Ponce Espinosa invest in the Carín Restaurant in San Juan del Sur when it was shown that Mr. Puracal had not been involved in that transaction in any way. The prosecution also withdrew all references to the farms once a video showed that the President of Nicaragua, on a visit to the El Petén farm, had held it up as a model of sustainable development.

16. The judge refused to admit several pieces of evidence submitted by the defence that would have shown how ill-founded the prosecution's money-laundering charges were. The judge did not admit, for example, the immigration records of Mr. Puracal's wife and son, which showed that his trip to Costa Rica in 2010 had been a vacation. Mr. Puracal's own immigration records showed that the statements made by the police officers who testified in the case that he had also travelled to Costa Rica in 2009 were inaccurate. The testimony of the RE/MAX accountant, who would have demonstrated that the company's operations were open and transparent, was likewise not admitted on the grounds that it was irrelevant.

17. The charges of international drug trafficking were even more ill-founded. The searches made of Mr. Puracal's office, home and truck and the VaporTracer tests conducted in November 2010 found no trace of drugs. The prosecution claimed, however, that VaporTracer tests carried out later had indicated "with a 70-per cent probability" the possible presence of cocaine residue in Mr. Puracal's truck. Mr. Puracal's counsel was not allowed to see the test results, nor was it ever established exactly when and where the tests had been carried out. In any event, the test results could not be used as grounds for filing

charges of international drug trafficking; at most they could be used to bring charges of illegal drug use. The source adds that the reliability of the VaporTracer tests has been questioned in the United States of America and notes that, since there is only one VaporTracer device in Nicaragua, it is impossible to carry out independent cross-checks of findings.

18. The charge of links to organized crime was also never substantiated. The charge was based on the testimony of a police officer, Berman Antonio Morales Castillo, who stated that an anonymous informant had mentioned that Mr. Puracal had met with one of the co-defendants in a house in Rivas. The judge refused to hear the testimony of the house's owner. Another police officer, Byron Stanley Alfaro Traña, who apparently met with the judge on several occasions during the trial, stated that another informant, about whom he remembered nothing except that his nickname was "El Diablito", had claimed to have seen Mr. Puracal meet with another co-defendant in the RE/MAX office in San Juan del Sur. That was all the evidence put forward.

19. The source seriously doubts whether the appeal filed against the conviction will be independently and objectively reviewed. The source questions the independence of the judiciary in Nicaragua, and refers to *Image of Justice: Independence and Associationism in Nicaragua's Judicial System*, by Manuel Arauz Ulloa and María Asunción Moreno, according to which, instead of obeying the Constitution and the law, magistrates and judges obey their hierarchical superiors, who in turn obey the political parties to which they belong. The administration of justice is considered by the Nicaraguan people to be slow, expensive, dominated by party politics and unpredictable from a legal perspective. Of all State institutions, the judiciary is held in lowest esteem by citizens.

20. The source maintains that, first, Mr. Puracal was denied the right to be judged by an impartial and independent tribunal. The judge at his trial, Mr. Artola Narváez, does not, according to the source, even hold a law degree, as confirmed by a statement issued by the Supreme Court secretariat. The judge cannot even show that he has three years of professional practice as a lawyer or that he has served for two years as a local magistrate, as is required under article 137 of the Judiciary Organization Act. Not only was Mr. Artola Narváez not qualified to act as a judge, during the proceedings he showed himself to be neither independent nor impartial. Moreover, he had *ex parte* contact on several occasions during the trial with the prosecution witness Byron Stanley Alfaro Traña.

21. In addition, Mr. Puracal was denied the right to prepare his defence and to communicate with his counsel after his arrest and during the three days of his interrogation by the police. He was also denied access to the evidence presented against him, as well as to the evidence in his favour that the public prosecutor's office had in its possession but did not wish to present at trial. The latter consisted of the documents seized during the police raid of the RE/MAX office that could have been used by the defence had they not been confiscated. According to the source, the documents would have shown that Mr. Puracal was totally innocent of the charges against him.

22. The source concludes that the detention of Mr. Puracal is arbitrary on the following grounds: he was denied the right to be tried by a competent, independent and impartial court; the principle of the presumption of innocence was not observed; and his right to be brought before a judge without delay and his right to a fair trial were violated when he was denied the right to contact a lawyer, to properly prepare and conduct his defence, to communicate with his lawyer in private, to examine the evidence against him, to present evidence in his favour, and to have access to the evidence in his favour that was in the possession of the public prosecutor's office.

*Response from the Government*

23. The Government did not submit the report requested by the Working Group, nor did it request an extension of the deadline within the 60-day time limit established for doing so in the Working Group's methods of work and explain why it was impossible for it to respond. The Working Group therefore adopts its Opinion on the basis of the information provided by the source.

**Discussion**

24. The Working Group notes that it is not taking a position with regard to the validity of the charges brought by the Nicaraguan authorities in order to deprive Mr. Jason Zachary Puracal of his liberty or with regard to the legality and quality of the evidence that may have been used by the Public Prosecution Service.

25. The Working Group notes that no valid arrest warrant was shown when Mr. Puracal was arrested since it was not issued until the day after his arrest. The police also raided the home and office of Mr. Puracal without a valid search warrant. It was only three days after his arrest that the public prosecutor charged Mr. Puracal and 10 Nicaraguan citizens with international drug trafficking, money-laundering and having links to organized crime. The source states that Mr. Puracal does not know the persons in question.

26. The source claims that Nicaraguan law prohibits persons who have been charged with an offence from being held in pretrial detention for longer than six months. In fact, Mr. Puracal was not brought to trial until nine months after his arrest. At the trial, Mr. Puracal was sentenced to 22 years' imprisonment for money-laundering, international drug trafficking and having links to organized crime.

27. The appeal lodged by the defence was initially rejected by the judge in the case but was eventually processed.

28. The source also alleges that the evidence presented by the defence was not admitted by the court and that Mr. Puracal was not permitted immediate access to a lawyer during the initial rounds of interrogation to which he was subjected. The source also states that public officials are now present during the meetings that Mr. Puracal has with his lawyer.

29. The facts as described constitute a violation of the rights set forth in articles 8 to 11 of the Universal Declaration of Human Rights and article 2, paragraph 3, article 9, article 10, paragraph 2 (a), and article 14 of the International Covenant on Civil and Political Rights, to which Nicaragua is party.

30. It is the opinion of the Working Group that, on the basis of the information provided by the source and in the light of the Government's silence with regard to the allegations made, there were major irregularities in the trial of Mr. Puracal, including his arrest without a warrant and the search of his office and home, also without a warrant; the failure to inform Mr. Puracal promptly of the charges against him; and the denial of his right to an effective means of appealing against his detention. All these elements give the deprivation of liberty of Mr. Puracal an arbitrary character under category III of the Working Group's methods of work.

**Disposition**

31. In light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Mr. Jason Zachary Puracal is arbitrary under category III of the methods of work of the Working Group.

32. In accordance with this Opinion, the Working Group recommends that the Republic of Nicaragua order the immediate release of Mr. Puracal, either definitively, or temporarily

if it is deemed necessary to arrange a new trial that upholds the substantive and procedural guarantees established in the international instruments in force in Nicaragua, without prejudice to the provision of reparation for the damage caused.

*[Adopted on 4 May 2012]*

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