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Human Rights Council Working Group on Arbitrary Detention

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No. 62/2011 (Bolivarian Republic of Venezuela)

Communication addressed to the Government on 15 February 2011

Concerning: Sabino Romero Izarra

The State has been a party to the International Covenant on Civil and Political Rights since 10 May 1978.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended in resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in resolution 15/18 of 30 September 2010. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

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 persons are kept in detention after the completion of their sentence or despite an amnesty law applicable to them) (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 subjected 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 the 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. According to the source, Mr. Sabino Romero Izarra, who is 46 years of age, a Venezuelan national and a Yukpa *cacique* (chief) of the Chaktapa community in the Sierra de Perijá mountain range, was arrested on the night of 14 October 2009 by officers of the Scientific, Criminal and Forensic Investigation Unit (CICPC) attached to the Ministry for Internal Relations and Justice and by officers of the Bolivarian National Guard attached to the Ministry for Defence, although they did not present an arrest warrant and he was not charged with any offence by the Public Prosecution Service. Mr Romero Izarra was deprived of his liberty without having being brought before a special indigenous court, despite his request for such an appearance in view of his origin.

4. Mr. Romero Izarra is supposed to be one of the persons responsible for demarcating land for his community. For this reason, on account of his work and his peaceful struggle to secure recognition of Yukpa ancestral lands, he is regarded as a highly respected leader in his community. According to information received, because of his work Mr. Romero Izarra had previously received death threats and there had been several break-ins at his home.

5. In order to mark the Day of Indigenous Resistance on 12 October 2009, the Executive granted three landownership titles to the Yukpa and Kariña indigenous communities living in the four river basins of the Sierra de Perijá, but only the communities in the Shirapta basin accepted the titles. The communities in the three other basins — the Yaza, Tokuko and Negro — are said to have rejected the proposed demarcation both on the day the titles were granted and during prior evaluations, considering as they did that the demarcation and the titles granted matched neither the smallholdings, their territory in its entirety, nor the territorial unity the communities wish to maintain. They contended that the principle of indigenous territory was not being respected.

6. The source states that one of the chiefs of the group of communities in the Shirapta basin — the only one that accepted the titles — is the manager of a branch office of a State-run coffee producing firm and that the deputy chief of the Shirapta basin is Mr. Tareck Al Assami, the Minister of Internal Relations and Justice, who is also a manager of the aforementioned firm.

6. The source states that on 13 October 2009 a group of indigenous persons from the Chaktapa community — including Mr. Romero Izarra — visited the Guamo Pamocha community (both communities live in the Sierra de Perijá) in order to settle a dispute with a member of that community. However, at approximately 6.30 p.m. there was a clash between the members of the two communities on the banks of the Guamo Pamocha community's section of the Yaza river. In the ensuing brawl, a teenage girl, Mireña Romero, and Mr. Ever Romero were killed and injuries were sustained by Mr. Juan de Dios Castro, teenagers Manuel Segundo Romero and Eddy Romero (nephew of Mr. Sabino and Mr. Olegario Romero), as well as two children, Edixon and Marilyn Romero (the nephew and daughter respectively of Mr. Sabino Romero).

8. Mr. Sabino Romero Izarra was injured in the fray and on 14 October 2009 was hospitalized at the military hospital in Maracaibo (Zulia state) where he was treated for a gunshot wound on the back of his left shoulder and another on his left wrist.

9. On the night of 21 October 2009, while waiting for Mr. Romero Izarra to be discharged from hospital, his family was notified by a telephone call from the Ombudsman's Office that a CICPC squad had just detained Mr. Romero Izarra. At the time of his arrest, when asked to produce an arrest warrant, the officers said that they did not yet have one and would present it later.

10. On 23 October 2009, the court of investigation of the town of Rosario de Perijá, of the criminal court circuit of Zulia State, ordered pretrial detention as a precautionary measure, a decision subsequently contested by Mr. Romero Izarra. His appeal, which was examined on 16 November 2009 by the Second Chamber of the Appeal Court of the criminal court circuit of Zulia State, was declared inadmissible on 24 November 2009. An application for *amparo* filed with the Constitutional Court on 25 February 2010 was declared inadmissible on 30 July 2010.

11. Mr. Romero Izarra was accused of the following offences:

- (a) Aggravated homicide for the death of the girl Mireña Romero;
- (b) Conspiracy against the Venezuelan State;
- (c) Attempted aggravated robbery of livestock from Mr. Olegario Romero (a charge later dropped from the proceedings).

12. These accusations were based entirely on testimony from Mr. Olegario Rosario's family, taken by the CICPC officers, which was disallowed at the investigation stage once it had been made available to the court of first instance investigating the case in the town of Rosario de Perijá. The source adds that new evidence was submitted at the hearing, but was declared null and void. As an example the source cites the case of Alexander Hernández who had been detained and allegedly tortured in order to force him to incriminate himself in connection with the events on 13 October 2009.

13. When the accused were brought before the court, Mr. Romero Izarra invoked article 260 of the Constitution and article 77 of the Code of Criminal Procedure, which read:

"Article 260. The legitimate authorities of the indigenous peoples shall have the power to apply within their territorial competence levels of administration of justice based on their ancestral traditions and affecting their members only, in accordance with their own rules and proceedings, provided the same are not contrary to this Constitution, law and public order. The manner in which this special competence shall be coordinated with the national judicial system shall be determined by law."

"Article 77. Plea of incompetence as to jurisdiction. At any stage of a trial, the court hearing a case shall be entitled to decline jurisdiction and, by means of a reasoned decision, refer the case to another court it considers to be competent. ..."

14. The source maintains that, in the present case, the three essential criteria for the indigenous justice system are fulfilled:

- (a) The parties involved: all are members of the Yukpa indigenous community;
- (b) The scene of the events: they occurred in the Guamo Pamocha community, which is an indigenous habitat;
- (c) The existence of legitimate authorities in those communities and of community customs and proceedings for resolving conflicts (the *Oshipa* or General Council of Elders with established traditional procedures for resolving conflicts within the community and enforcing the penalties).

15. The source indicates that, in the light of the foregoing, a special indigenous court should be the competent authority in this matter. However, the source reports that the

ordinary criminal court that was handling the case refused to decline jurisdiction and to allow Mr. Romero Izarra to be tried by the competent authority of his people.

16. Mr. Romero Izarra has been deprived of his liberty since he was admitted to Maracaibo military hospital, whence where he was transferred to the Army's First Infantry Division in Maracaibo. After his initial hearing, the procedural court ordered his transfer to the Fort Macoa detention centre of the Twelfth Brigade of the Caribbean Battalion, based in the municipality of Machiques de Perijá.

17. The source reports that, since Mr. Romero Izarra was first detained, various acts have been committed against him and his family. The source alludes to the violation of the right to personal safety of the detainee's relatives, and of their gender-related and indigenous rights at the hands of soldiers based at Fort Macoa, given that Mr. Romero Izarra's relatives are made to undress when they visit him at the detention centre. The source reports that the soldiers attempted to abuse Guillermina Romero, Mr. Romero Izarra's daughter, which caused her to stop visiting her father at the detention centre for fear of being raped. The situation was brought to the attention of the Ombudsman's Office in Maracaibo and that of the media on 26 May 2010.

18. Mr. Romero Izarra was tried for "causing social unrest" in a different jurisdiction, which was why he was transferred to Trujillo national prison. The transfer has proved problematic for his relatives, who live in the Sierra de Perijá.

19. His relatives have also complained that, at some of the hearings they have attended they have received threats from persons sent by cattle breeders and public servants.

20. The source also alleges that Mr. Romero Izarra has received numerous death threats in Trujillo national prison, and where little regard is shown for his ethnic origin and causes him constant problems. The source also alludes to Mr. Romero Izarra's refusal to participate in religious observance alien to his Yukpa culture, which has led to his ostracism by other inmates. He has on occasion been locked in the bathroom facilities of his cell block for an entire weekend.

21. The source reiterates that the aforementioned acts constitute a violation of article 260 of the Constitution, which provides that the legitimate authorities of the indigenous peoples shall have the power to apply within their territorial competence levels of administration of justice based on their ancestral traditions and affecting their members only, in accordance with their own rules and proceedings, provided the same are not contrary to this Constitution, law and public order.

22. In the light of the foregoing, the source maintains that Mr. Romero Izarra's detention runs counter to domestic legislation and to international norms and is therefore arbitrary. The source fears that the deprivation of Mr. Romero Izarra's liberty may be politically motivated and that the accusations against him may be unfounded and/or false, and alleges that his right to be presumed innocent and his right to not be arbitrarily deprived of his liberty have been violated. The source attributes his fear to the fact that Mr. Romero Izarra and his family have been involved in the fight to demarcate the land of the Sierra Perijá for more than 20 years. In this connection, the source recalls that it was precisely in 2008 that Mr. Romero Izarra's father, who had also been involved in that fight, was murdered. Following this tragedy, Mr. Romero Izarra became the main leader of the Yukpa people, in which capacity, he opposed the proposal of the Ministry of Internal Relations and Justice concerning the demarcation of land in the Sierra de Perijá, given that there had been no prior consultation with the indigenous peoples of the community on the matter. Consequently, he refused the government funding allocated to the Yukpa and Sierra de Perijá Plan, a security and defence plan that, among other things, would entail a military presence in the area.

23. The source also maintains that the authorities have committed various acts that have jeopardized Mr. Romero Izarra's right to due process in a number of ways. No arrest warrant had been issued at the time of his arrest. In fact, the arrest warrant in question was only issued two days after his transfer to the Army's First Infantry Division in Maracaibo. The source further maintains that Mr. Romero Izarra's right to be judged by an independent and impartial court has also been violated, emphasizing that since he was first deprived of his liberty, he has never had access to the assistance of an interpreter who speaks his language.

24. The source highlights the crime of conspiracy as one of the motives used to justify Mr. Romero Izarra's detention and points out that, in article 287 of the Criminal Code, conspiracy is defined as "when two or more persons gather for the purpose of committing an offence", making it a collective crime the commission of which, by its very nature, requires the participation of at least two persons. In Mr. Romero Izarra's case, the accusation against him is based on the presumption that when he travelled to Guamo Pamocha with his family, which included two children — his son and niece — who were injured, they were intent on committing a crime, when, in reality, it is natural for the Yukpa people to travel in a group.

25. The source reiterates that Mr. Romero Izarra, like anyone else, has the right to be tried by an independent and impartial judge. Judges should be independent of the State institutions when discharging their functions and should be bound only by the law and by justice.

Response of the Government

26. The Working Group regrets that the Government did not respond to the source's allegations, which were transmitted to it on 15 February 2011.

Considerations of the Working Group

27. The Working Group has been informed that Mr. Romero Izarra was acquitted in a ruling handed down at his trial before an ordinary criminal court and regained his freedom on 3 May 2011.

28. However, Mr. Romero Izarra was subsequently tried by the indigenous court in Tokuko in the state of Zulia. The hearing was conducted by Head Chief Reina Ubirichi, assisted by an elder, Adolfo Maiquichi. The accused and the relatives of the victims were present at the trial, which was open to the public. The trial established that the only person present responsible for the acts was Mr. Olegario Romero, who accepted liability. It became clear that Mr. Sabino Romero Izarra did not participate in or fire shots during the events under investigation, and those responsible for the two deaths were identified. According to the source, "for the most part, responsibility rests with public servants of the Ministry of Internal Relations and Justice and of the Ministry for Indigenous Peoples, who were intent on stigmatizing Mr. Sabino Romero Izarra and his family".

29. The Working Group believes that, although Mr. Romero Izarra has been released, it is still necessary to make a pronouncement on the deprivation of his liberty, given the violation of his right to not be arbitrarily detained, his right to be released during the trial, and his right to be presumed innocent, which are enshrined in articles 3, 5, 7, 8, 9, 10 and article 11, paragraph 1, of the Universal Declaration of Human Rights; and article 2, paragraph 3, article 9 and article 14, paragraphs 1, 2 and 3, of the International Covenant on Civil and Political Rights, to which the Bolivarian Republic of Venezuela has been a party since 10 May 1978.

Opinion of the Working Group

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

(a) Mr. Sabino Romero Izarra's deprivation of liberty violated the human rights enshrined in articles 3, 5, 7, 8, 9, 10 and article 11, paragraph 1, of the Universal Declaration of Human Rights; and article 2, paragraph 3, article 9 and article 14, paragraphs 1, 2 and 3, of the International Covenant on Civil and Political Rights and was consequently arbitrary according to category III criteria used in the Working Group's methods of work.

(b) Consequent upon Opinion rendered, the Working Group requests that the Government of the Bolivarian Republic of Venezuela award adequate compensation for the damage caused by the arbitrariness to which this Opinion refers.

(c) The Government of the Bolivarian Republic of Venezuela is invited to collaborate with the Working Group by providing timely information on the allegations presented.

[Adopted on 22 November 2011]
