



# General Assembly

Distr.: General  
22 November 2012  
English  
Original: Spanish

---

**Human Rights Council**  
**Working Group on Arbitrary Detention**

**Opinions adopted by the Working Group on Arbitrary  
Detention at its sixty-fourth session, 27–31 August 2012**

**No. 28/2012 (Bolivarian Republic of Venezuela)**

**Communication addressed to the Government on 19 March 2012**

**Concerning Mr. Raúl Linares Amundaray**

**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 that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), 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 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 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 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; or 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. Mr. Raúl Leonardo Linares Amundaray is a Venezuelan national and a deputy superintendent in the scientific, criminal and forensic science unit attached to the Ministry of the Interior and Justice in which he has served for twenty years. He lives in Urbanización Miranda, Caracas. He was arrested on 11 May 2008 when he went voluntarily to the homicide division of the aforementioned investigative unit. Between 13 May 2008 and June 2008 Mr. Linares Amundaray was held at the Simon Rodríguez police station of the scientific, criminal and forensic unit.

4. It has been reported that Mr. Linares Amundaray was forced to fire shots to defend himself and his family when four attackers entered his home at night. The attackers entered the home by climbing over the walls. Mr. Amundaray's wife and his 6- and 3-year-old daughters were in the house at the time. The attackers managed to neutralize all the house's alarm systems and to reach the balcony. Mr. Linares Amundaray shouted two warnings and fired a warning shot into the air. In the dark, he was forced to fire a second shot at a person who seemed to be of adult height (1.68 m) but who turned out to be a minor. The minor, Alejandro Buroz Morales subsequently died.

5. This version of the events was corroborated by the statements of several witnesses who were both inside and outside the building as well as by several neighbours. The circumstances were also confirmed by the evidence of experts.

6. This act, which was done in order to defend the person concerned and his family, is characterized as non-punishable by the Criminal Code. In spite of this, Mr. Linares Amundaray was arrested and remains under arrest. According to the source, this is on account of the political and financial influence of the minor's father, René Buroz Henríquez, who allegedly has close ties with political and judicial authorities.

7. Mr. Linares Amundaray's arrest was ordered by No. 14 procedural court of the Caracas Metropolitan Area criminal circuit court.

8. In December 2008, in application of an order for *amparo* for the right to life, Mr. Linares Amundaray was transferred to the Bolivarian Intelligence Services (SEBIN). However, in violation of the *amparo* order, on 31 August 2010 he was transferred to the Yare III remand centre and subsequently to the premises of the Baruta (Caracas) municipal police, where he is currently being detained.

9. It has been reported that prior to the events described above, there had been a number of night-time criminal break-ins into other houses in the area. Because of that, local inhabitants were afraid and nervous. Mr. Linares Amundaray used his service-issue firearm, a 9 mm Glock pistol, registration number EBF234.

10. The source adds that article 423 of the Criminal Code authorizes legitimate self-defence without the need to determine the reasons for a break-in. The same provision specifies that any wounds or homicide caused in defence of a person's own property to the

persons responsible for burglary, breaking and entering or arson affecting a house, other inhabited premises or an outbuilding shall not be punishable, provided the incident took place at night and in such circumstance that the inhabitants of the house, building or outbuilding have good reason to feel that their personal safety is threatened.

11. The case file contains the statements of the three attackers, who describe how they entered the home, the obstacles they had to overcome in order to do so and the two warnings shouted by Mr. Linares Amundaray, whose version of the incident is confirmed by the expert evidence, the meteorological reports and the visual examination of the scene.

12. In spite of the provisions of article 423 of the Criminal Code and all the evidence gathered, after Mr. Amundaray had been in pretrial detention for 2 years, the Attorney General's Office requested that his detention be extended for a further 2 years. On 10 May 2012, the fifteenth judge of the court of first instance responsible for the Caracas metropolitan area circuit ordered a 1-year extension of Mr. Linares Amundaray's detention. However, the judge indicated in his findings that "none of the parties has been responsible for dilatory acts"; consequently, he should not have agreed to the request by the Attorney General's Office.

13. According to the source, the detention of Mr. Linares Amundaray for 3 years and 10 months is arbitrary. This individual coercive measure appears wholly disproportionate to the seriousness of the offence, the circumstances in which it was committed and the likely sentence. In no case may pretrial detention exceed the minimum penalty laid down for the offence or a period of 2 years. Nor may the extension of the pretrial detention exceed the minimum penalty for the offence in question, and in deciding an extension, the court is required to bear in mind the principle of proportionality.

14. The source adds that not only is Mr. Linares Amundaray innocent of any dilatory action, he has taken steps to speed up the procedure.

15. The source concludes that there are no legal grounds for keeping Mr. Amundaray in detention. His detention undermines the right to individual freedom enshrined in article 44 of the Constitution of the Bolivarian Republic of Venezuela and in article 244 of the Code of Criminal Procedure.

16. The source draws attention to article 7 of the Universal Declaration of Human Rights and article 26 of the International Covenant on Civil and Political Rights, which enshrine the right to equal protection from the law, without any discrimination.

17. The source further adds that in conformity with the principle of criminal legality (*nullum crimen nulla poena sine lege previa*) there is no existing law to justify keeping this person in detention.

18. In addition, the source denounces the fact that the case is being heard by a judge who is a personal friend of the father of the deceased. This has been recognized by the judge herself, who applied to have herself disqualified from hearing the case by declaring that she had a manifest interest in it. Nonetheless, the first chamber of the Caracas court of appeal declared her application unfounded and obliged her to hear the case. This is clearly a violation of the right to be tried by an independent and impartial judge.

19. Accordingly, the source requests that Mr. Linares Amundaray's rights be fully restored and that he be released.

#### *Response from the Government*

20. The Government has not responded to the communication sent by the Working Group on 19 March 2012, in which the Working Group forwarded to it the communication from the source. The Working Group regrets this and is obliged to adopt an opinion as to

the arbitrary nature of the deprivation of liberty, without the need to request any further information from the source.

### **Considerations of the Working Group**

21. The essence of the allegations submitted to the Working Group is that Mr. Raúl Leonardo Linares Amundaray, a police officer, who at the time of the incident held the rank of deputy superintendent in the scientific, criminal and forensic science unit attached to the Ministry of the Interior and Justice after twenty years' service, was arrested on 11 May 2008 and charged with homicide for having used his service-issue weapon to repel a criminal attack on his home, causing the death of the attacker, Alejandro Buroz Morales. The source maintains that the accused went voluntarily to the police's homicide division, where he was arrested.

22. The communication claims that Mr. Linares "was forced to fire in self-defence and to protect his family" because at the time of the attack, at night, he was at home with his wife and his six- and three-year-old daughters. The attackers entered the home by climbing over walls and neutralizing the building's alarm system. Before he fired, he shouted two warnings and fired a warning shot; the second shot caused the death of the attacker referred to above, who turned out to be a minor.

23. The source adds that there had been other incidents in the vicinity in previous days affecting other houses on the estate and that "local inhabitants were afraid and nervous".

24. The communication maintains that Mr. Linares Amundaray acted in self-defence and to protect his family, which justified his action, and with no homicidal intent. It argues that in their statements the three attackers describe how they entered the home and how they overcame obstacles in order to do so. They also confirm that "Mr. Linares Amundaray shouted two warnings", thereby confirming his version, which is also corroborated by the expert evidence, the visual examination of the scene, the meteorological reports and the offenders' confessions.

25. After Mr. Linares Amundaray had been held in detention for two years, the Attorney-General's Office obtained a further year's extension of the pretrial detention from the judge hearing the case, despite the recognition that "none of the parties has been responsible for dilatory acts". Yet again, on 13 May 2011, on expiry of the extension, he was refused conditional release.

26. The source complains that the judge hearing the case is "a personal friend of the father of the deceased" as she has herself admitted, but in spite of this she was not disqualified from hearing the case; this is a violation of the guarantee to be tried by an independent and impartial judge. The decision to turn down the judge's application to have herself disqualified was upheld by the first chamber of the Caracas court of appeal.

27. The State has disputed none of the facts referred to, despite having had the opportunity to do so, and has not submitted the report which, in accordance with its methods of work, was requested by the Working Group.

28. In the view of the Working Group, in the case at hand it is clear that the detained person acted in legitimate self-defence, and this constitutes grounds for a waiver of criminal liability under article 423 of the Criminal Code of the Bolivarian Republic of Venezuela as well as under the legislation of countries governed by the rule of law; in this case, the judicial system of the Bolivarian Republic of Venezuela has failed to recognize this.

29. The facts concerned by the complaint, which are undisputed, constitute a violation of the human right to a fair trial, in accordance with the criteria of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Mr. Linares Amundaray has not been heard fairly and in public by an independent and impartial court

either to determine his rights and obligations or to examine any criminal charges against him (art. 9 of the Universal Declaration of Human Rights and art. 14, para. 1 of the International Covenant on Civil and Political Rights). Nor has he been able to exercise his human right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence (art. 11 of the Universal Declaration and art. 14, para. 2 of the Covenant) or the right to be tried without undue delay (art. 14, para. 3 (c) of the Covenant). Moreover, as a result of the refusal to waive criminal liability on the grounds that he acted in self-defence, he is being tried for an act that does not constitute a criminal offence; this is prohibited by the same article 11, paragraph 2 of the Declaration and article 15, paragraph 1 of the Covenant.

30. Nor has Mr. Linares Amundaray been able to exercise the right to an effective remedy to obtain release on bail, as is provided for by article 8 of the Declaration and articles 2, paragraph 3, 9, paragraph 3 and 9, paragraph 4 of the Covenant.

31. All of the above constitutes arbitrary detention affecting Mr. Linares Amundaray, under the terms of category III of the working methods of the Working Group.

### **Disposition**

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

The deprivation of liberty of Mr. Raúl Linares Amundaray is arbitrary and falls within category III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it, for violation of the human rights enshrined in articles 9, 10 and 11 of the Universal Declaration of Human Rights and article 2, paragraph 3 and articles 9 and 14 of the International Covenant on Civil and Political Rights.

33. In the light of the above, the Government of the Bolivarian Republic of Venezuela is urged to order the immediate release of Mr. Raúl Linares Amundaray and to award adequate compensation for the violation of the rights mentioned.

*[Adopted on 29 August 2012]*

---