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HUMAN RIGHTS COMMITTEE  
Seventy-sixth session  
14 October-1 November 2002

**VIEWS**

**Communication No. 778/1997**

Submitted by: José Antonio Coronel et al.  
(represented by counsel, Mr. Federico Andreu Guzmán)

Alleged victims: Gustavo Coronel Navarro, Nahún Elías Sánchez Vega,  
Ramón Emilio Sánchez, Ramón Emilio Quintero Roperó,  
Luis Honorio Quintero Roperó, Ramón Villegas Tellez and  
Ernesto Ascanio Ascanio

State party: Colombia

Date of communication: 29 September 1996 (initial submission)

Document references: Special Rapporteur's rule 91 decision, transmitted to  
the State party on 26 November 1997 (not issued in  
document form)

Date of adoption of Views: 24 October 2002

On 24 October 2002 the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 778/1997. The text of the Views is appended to the present document

[ANNEX]

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\* Made public by decision of the Human Rights Committee

**Annex**

**VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5,  
PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE  
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

**Seventy-sixth session**

**concerning**

**Communication No. 778/1997\***

Submitted by: José Antonio Coronel et al.  
(represented by counsel, Mr. Federico Andreu Guzmán)

Alleged victims: Gustavo Coronel Navarro, Nahún Elías Sánchez Vega,  
Ramón Emilio Sánchez, Ramón Emilio Quintero Roperó,  
Luis Honorio Quintero Roperó, Ramón Villegas Tellez and  
Ernesto Ascanio Ascanio

State party: Colombia

Date of communication: 29 September 1996 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 24 October 2002,

Having concluded its examination of communication No. 778/1997, submitted to the Human Rights Committee by Mr. José Antonio Coronel et al. on behalf of his seven relatives Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Ramón Emilio Sánchez, Ramón Emilio Quintero Roperó, Luis Honorio Quintero Roperó, Ramón Villegas Tellez and Ernesto Ascanio Ascanio under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts the following:

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Maurice Glèle Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen and Mr. Maxwell Yalden.

### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The six authors of the communication are José Antonio Coronel, José de la Cruz Sánchez, Lucenid Villegas, José del Carmen Sánchez, Jesus Aurelio Quintero and Nidia Linores Ascanio Ascanio, acting on behalf of seven deceased family members: Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Ramón Emilio Sánchez, Ramón Emilio Quintero Ropero, Luis Honorio Quintero Ropero, Ramón Villegas Tellez and Ernesto Ascanio Ascanio, all Colombian nationals who died in January 1993.<sup>1</sup> The authors of the communication claim that their relatives were victims of violations by Colombia of article 2, paragraph 3, article 6, paragraph 1, and articles 7, 9 and 17 of the International Covenant on Civil and Political Rights. The authors are represented by counsel.

#### **The facts as submitted by the authors**

2.1 Between 12 and 14 January 1993, troops of the “Motilones” Anti-Guerrilla Battalion (No. 17), attached to the Second Mobile Brigade of the Colombian National Army, conducted a military operation in the indigenous community of San José del Tarra (municipality of Hacari, department of Norte Santander) and launched a search operation in the region, making incursions into a number of neighbouring settlements and villages. During these operations, the soldiers raided several houses and arrested a number of people, including Ramón Villegas Téllez, Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Ramón Emilio Sánchez, Ramón Emilio Quintero Ropero and Luis Honorio Quintero Ropero. Both the raids and the arrests were carried out illegally, since the soldiers did not have the judicial warrants prescribed by Colombian law on criminal procedure to conduct searches or make arrests.

2.2 Ramón Villegas Téllez, Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Ramón Emilio Sánchez, Ramón Emilio Quintero Ropero, Luis Honorio Quintero Ropero and others were tortured by the soldiers, and some of them were forced to put on military uniforms and go on patrol with the members of the “Motilones” Anti-Guerrilla Battalion (No. 17). All of them were “disappeared” between 13 and 14 January 1993.

2.3 On 26 January 1993, Luis Ernesto Ascanio Ascanio, aged 16, disappeared while on his way home, abducted by soldiers who, a few days before, had raided the home of the Ascanio Ascanio family, ill-treating and harassing the family members, who included six minors and also a 22-year-old mentally deficient young man, whom they attempted to hang. The soldiers remained in the house until 31 January, holding its inhabitants hostage. Luis Ernesto Ascanio Ascanio was seen for the last time some 15 minutes away from the family home. On the same day, members of the Ascanio family heard shouts and shots coming from outside the house. On 27 January, two of the brothers of Luis Ernesto Ascanio Ascanio succeeded in evading the military guards and fled to Ocaña, where they advised the local authorities and submitted a complaint to the Provincial Office of the Attorney-General. Once the military patrol had withdrawn, the search for Luis Ernesto Ascanio Ascanio began; the outcome was the discovery of a pocket knife belonging to him some 300 metres away from the house.

2.4 The Second Mobile Brigade reported various alleged armed clashes with guerrillas of the Revolutionary Armed Forces of Colombia (FARC) - the first on 13 January 1993, the second on 18 January 1993 and two incidents on 27 January 1993. The version given by the military

authorities was that during the clashes the regular troops had killed a number of guerrillas. On 13 January 1993, three bodies were removed by the judicial police (SIJIN) in Ocaña, one of which was identified as the body of Gustavo Coronel Navarro. On 18 January, the soldiers deposited at the hospital the bodies of four alleged guerrillas "killed in combat". The SIJIN removed these corpses and confirmed the deaths of Luis Honorio Quintero Roperero, Ramón Emilio Quintero Roperero, Nahún Elías Sánchez Vega and Ramón Emilio Sánchez. On 29 January 1993, the Second Mobile Brigade brought in the bodies of four persons killed in the alleged clashes of 27 January 1993; again the SIJIN removed the bodies. On 21 May 1993, the bodies of the last four dead were exhumed in the cemetery of Ocaña; one of these was the body of Luis Ernesto Ascanio Ascanio, which was recognized by his relatives. The forensic report stated that one of the bodies brought to the hospital on 18 January contained a number of bullet entry holes with powder burns. In the records relating to the removal of the bodies on 21 May 1993, SIJIN officials stated that the bodies were clothed in uniforms used exclusively by the National Police.

2.5 The members of the victims' families and the non-governmental organizations (NGOs) assisting them have brought the facts to the attention of the judicial authorities in the criminal, administrative litigation, disciplinary and administrative departments at the local, provincial and national levels. Between 15 January and 1 February 1993, the relatives reported the disappearance of their family members to the Ocaña Provincial Office of the Attorney-General. They also lodged a complaint with the same authority concerning abuse of power by the Second Mobile Brigade and made various representations to the Ocaña Provincial Procurator's Office, the National Office for Examination and Processing of Complaints (Office of the Ombudsman) and the Regional Office of the Public Prosecutor in Cúcuta. The mayor of Hacari sent an official letter to the commander of the brigade requesting him to investigate the facts and order the release of the peasants. The mayor of the municipality of La Playa lodged complaints with the competent authorities concerning the incidents perpetrated by the Second Mobile Brigade within his municipality: namely acts of violence against the Ascanio Ascanio family and the disappearance of Luis Ernesto Ascanio Ascanio. After reporting the incidents, the Ascanio, Sánchez and Quintero families were subjected to a great deal of harassment; as a consequence, they had to leave the region and move to various places within the country.

2.6 On 15 July 1993, the municipal official in Hacari in charge of the case, after receiving information from the relatives, submitted a report in which he concluded that it was impossible to "identify individually" those responsible for the abduction of Gustavo Coronel Navarro and Ramón Villegas Téllez, but that they were members of the Second Mobile Brigade.

2.7 Only the family of Luis Ernesto Ascanio Ascanio submitted their complaint in person to the Ocaña Public Prosecutor's Office in February 1993. The facts relating to the other victims were brought to the attention of the Public Prosecutor's Office by one of the NGOs, since the other families were afraid to present themselves personally at the offices of the judiciary in Ocaña. The preliminary inquiries made were compiled in file No. 4239 and transmitted to the military jurisdiction, as the competent body, in April 1995. From 30 August 1995 onwards, the relatives attempted several times to convince the Human Rights Unit in the National Public Prosecutor's Office to begin criminal proceedings; but the request was turned down on the grounds that the matter was one for the military courts.

2.8 The military criminal jurisdiction undertook various preliminary investigations into the facts as described. Judge No. 47 of the Military Criminal Investigation Unit, attached to the Second Mobile Brigade, opened preliminary inquiries Nos. 27, 30 and 28,<sup>2</sup> the findings of which are contained in file No. 979, throughout which the incidents are referred to as “deaths in combat”.

2.9 On 3 July 1996, the Second Mobile Brigade was stationed in the city of Fusagasuga (Cundinamarca), and the family of Luis Ernesto Ascanio Ascanio succeeded in submitting a petition to become a party to the proceedings. Up to the date of the initial communication, they had not been notified of any judicial decision on the subject.<sup>3</sup>

2.10 The authors state that the Special Investigations Unit in the National Office of the Attorney-General opened a file (No. 2291-93/DH) on the incidents in question following complaints submitted by the relatives to the Provincial Office of the Attorney-General in Ocaña, and officials were appointed to conduct the investigation. On 22 February 1993, a preliminary report from the officials in charge of the investigation drew attention to contradictions between the versions of the relatives and those of the military, and also to the way in which the judge in charge of Court No. 47 in the Military Criminal Investigation Department had hampered and obstructed them in their task. They suggested that further evidence should be sought and that disciplinary investigation proceedings should be instituted against Judge No. 47 of the Military Criminal Investigation Department.

2.11 The director of the Special Investigations Unit ordered a new investigation, including an investigation into the conduct of Judge No. 47 of the Military Criminal Investigation Department. The investigating officials submitted several reports to the director; one of them, relating to Luis Honorio Quintero Roperero, Ramón Emilio Roperero Quintero, Nahún Elías Sánchez Vegas and Ramón Emilio Sánchez, stated that “it is fully demonstrated that material responsibility lies with anti-guerrilla section C of battalion 17 (‘Motilones’) of the Second Mobile Brigade under the command of Captain Serna Arbelaez Mauricio”.

2.12 On 29 June 1994, in their final report, the officials confirmed that it was fully proved that the peasants had been detained by members of anti-guerrilla battalion No. 17 (“Motilones”) of the Second Mobile Brigade, on the occasion of a military operation carried out in compliance with operation order No. 10 issued by the commander of that military unit; that the peasants were last seen alive when in the hands of the soldiers and appeared to have died later in the course of two alleged clashes with units of the military. They also established that Luis Ernesto Ascanio Ascanio, a minor, was last seen alive heading home some 15 minutes’ walk from home and that the boy was found dead after another alleged clash with the military. The officials identified the commanders, officers, non-commissioned officers and privates who formed part of the patrols that captured the peasants and occupied the dwelling of the Ascanio family. The report concluded that, “on the basis of the evidence advanced, the allegation of combats in which the victims could have taken part is discredited, since they were already being held by troops of the National Army, in a manner which was, moreover, irregular; some of them bear marks on the skin that demonstrate even more clearly the defenceless condition they were in ...”. The report recommended that the case should be referred to the Armed Forces Division in the Procurator’s Office.

2.13 On 25 October 1994, the Armed Forces Division in the Attorney-General's Office referred the file to the Human Rights Division of the same office on jurisdictional grounds. The transmission document indicates that "the following has been established ... the state of complete defencelessness of the victims ..., the close range at which the bullets that killed them were fired and the fact that they had been detained before they died; the foregoing, together with other evidence, disproves the existence of an alleged combat that allegedly was the central circumstance causing the deaths recorded".

2.14 On 28 November 1994, the Human Rights Division opened disciplinary proceedings file No. 008-153713 and began preliminary investigations. On 26 April 1996, it informed one of the NGOs that the proceedings were still at the preliminary inquiry stage.

2.15 On 13 January 1995, the families of the victims lodged a claim against Colombia in the administrative court for the deaths of Luis Honorio Quintero Roperó, Ramón Emilio Quintero Roperó, Ramón Emilio Sánchez, Luis Ernesto Ascanio Ascanio, Nahún Elías Sánchez Vega and Ramón Villegas Téllez; the claims were declared admissible between 31 January and 24 February 1995.

### **The complaint**

3.1 The authors submit that the facts outlined above amount to violations by Colombia of article 6, paragraph 1, of the International Covenant on Civil and Political Rights in that the seven victims were arbitrarily deprived of life.

3.2 They also allege a violation of article 7 of the Covenant on account of the torture suffered by the victims after having been arbitrarily detained and before being murdered.

3.3 The authors maintain that the detention of the victims by the armed forces without any type of arrest warrant constitutes a violation of article 9 of the Covenant.

3.4 The authors also allege a violation of article 17 of the Covenant, inasmuch as the victims' right to privacy and freedom from interference in family life were violated when they were arrested in their homes.

3.5 The authors allege a violation of article 2, paragraph 3, of the Covenant since the State party has not provided an effective remedy for cases where it fails in its obligation to safeguard the rights protected by the Covenant.

3.6 The authors submit that, in view of the nature of the rights infringed and the gravity of the incidents, only remedies of a judicial nature can be considered effective; that is not the case with disciplinary remedies, according to the Committee's case law.<sup>4</sup> The authors also consider that the military courts cannot be considered as offering an effective remedy within the meaning of article 2, paragraph 3, since in military justice the persons implicated are both judge and party. It is indeed an incongruous situation, since the judge of first instance in criminal military cases is the commander of the Second Mobile Brigade, who is precisely the person responsible for the military operation that gave rise to the incidents forming the subject of the complaint.

### **The State party's observations on admissibility**

4.1 In its communications dated 11 February and 9 June 1998, the State party requests that the complaint be declared inadmissible on the grounds that domestic judicial remedies have not been exhausted, as required under article 5, paragraph 2 (b), of the Optional Protocol to the International Covenant on Civil and Political Rights.

4.2 The State party maintains that the introduction of proceedings and the presentation of complaints before the investigating, supervisory and judicial authorities of the State, mentioned in the authors' communication with regard to the exhaustion of domestic remedies, form a basis for initiating the appropriate procedures but do not in themselves signify the exhaustion of those remedies.

4.3 The State party also reports that various proceedings are under way, from which it may be concluded that domestic judicial remedies have not been exhausted. The proceedings mentioned as under way are as follows:

- As regards criminal proceedings, investigation proceedings are being conducted by Court No. 47 of the Military Criminal Investigation Department. Progress is being made in one of the most important stages, namely that of investigation, in the course of which various steps have been taken, such as statements, identification of photographs, exhumations and special visits to the place where the incidents occurred and other neighbouring sites.
- In the light of Constitutional Court decision No. C-358, the Government has requested the Attorney-General's Office to study the possibility of transferring the criminal proceedings to the ordinary courts.
- As regards disciplinary proceedings, the Human Rights Division of the Attorney-General's Office has opened disciplinary proceeding file No. 008-153713 with a view to conducting a disciplinary inquiry concerning the members of the armed forces alleged to have been implicated.
- As regards administrative litigation, proceedings have been initiated (see para. 2.15) to obtain direct compensation and are at present under consideration in the administrative litigation courts, with a view to obtaining State compensation for damage that the State may have caused to an individual while performing its functions through one of its agents; this could lead to a declaration of institutional liability of the State in relation to the incidents forming the subject of the complaint.

4.4 According to the State party, the authors conclude that "the families and NGOs have applied to every possible source of legal remedy and have exhausted all the legal paths open to them", but they do not state in what way those sources are carrying out their functions. The authors themselves refer to "the great mass of information collected by the investigating authorities"; this confirms the Government's contention that the judiciary has been working on the case and is continuing to do so.

4.5 The Government does not share the authors' view that "the case has sunk in a morass of impunity". The remedies in themselves cannot be described as ineffective, nor can generalizations be made about their alleged ineffectiveness because of the difficulties faced both by the authorities and by the families of the victims in the exercise of those remedies. For instance, the sister of one of the victims submitted a petition to the National Directorate of Public Prosecutors' Offices requesting it to rule that a conflict of jurisdiction existed, so that the proceedings could be transferred from the military criminal justice system to the ordinary courts. This request could not be met and was refused, simply because she had applied to an administrative, and not a judicial, authority that was not competent to deal with petitions of that type. This clearly does not signify a denial of justice, and the difficulties and delays in the handling of the remedies cannot be interpreted as "impunity" on the part of the State.

### **The authors' comments on the State party's observations**

5.1 In communications dated 30 March and 19 October 1998, the authors maintain that the mere existence of a procedural means of addressing human rights violations is insufficient; such remedies must have the capacity to protect the right violated or, failing that, to compensate the damage done. They note that the Human Rights Committee, when dealing with particularly serious violations, has held that only domestic remedies in criminal justice can be deemed to constitute effective remedies within the meaning of article 2, paragraph 3, of the Covenant.<sup>5</sup> They also note that, according to the Committee, purely administrative and disciplinary remedies cannot be deemed adequate or effective.

5.2 The authors maintain that the disciplinary procedure in question is a self-monitoring mechanism for the civil service, whose function is to ensure that the service is operating correctly.

5.3 According to the authors, administrative litigation deals with only one aspect of the right to compensation: the damage done and the loss of income suffered by the victim as a result of abuse of authority by an agent of the State or an error on the part of the civil service. Other aspects of the right of victims of human rights violations to compensation, such as the right to protection of family members,<sup>6</sup> are not covered by the decisions of administrative courts or the Council of State. From this standpoint, administrative litigation does not fully guarantee the right to compensation.

5.4 As regards the State party's contention that the Government has requested the Attorney-General's Office to consider the possibility of transferring the criminal proceedings to the ordinary courts in the light of Constitutional Court decision No. C-358, the authors make the following observations:

- Transfer of the criminal proceedings currently being conducted by the military authorities to the ordinary courts is not a certainty, but merely a possibility. In similar situations, the military courts have refused to comply with Constitutional Court decisions.



- Notwithstanding Constitutional Court decision No. 358/97, declaring a number of articles of the Code of Military Justice unconstitutional, the provisions of the Constitution governing military jurisdiction remain in force and their ambiguous wording makes it possible for violations of human rights by members of the armed forces to be prosecuted in the military courts.
- The Ascanio Ascanio family filed an appeal to have the case transferred to the ordinary courts in the light of Constitutional Court decision No. 358/97. Their appeal was turned down by the Office of the Public Prosecutor.
- It was in fact the Office of the Public Prosecutor that decided, without any legally valid grounds for doing so, to transfer the preliminary proceedings in the case to the military courts.

5.5 With regard to the State party's contention that the authorities to which the victims' relatives had turned have "carried out their functions", the authors state that this assertion is far from the truth, since the communications sent identify each of the State institutions to which an appeal was made and indicate the status of the proceedings in each.

5.6 The criminal proceedings have remained within the military criminal jurisdiction, yet the victims' families have been unable to become parties to the proceedings. On 27 February 1998, the Human Rights Division of the Attorney-General's Office ordered the discontinuance of the disciplinary investigation being conducted against some of those responsible for the incidents in the case. The decision by the Attorney-General's Office was based on the fact that one of the officers involved had died and that disciplinary action was being taken against the others under article 34 of Act No. 200 of 1995, which set a statute of limitations of five years for disciplinary matters.

5.7 Lastly, the authors reiterate that the only appropriate domestic remedy is criminal proceedings, which in the present case are being conducted in the military courts. In accordance with the Committee's case law and that of other international human rights bodies, the military courts in Colombia cannot be considered an effective remedy for dealing with human rights violations committed by members of the army. Even if a military criminal trial might be considered an appropriate remedy, the military criminal court has been conducting its criminal investigation for more than five years without any apparent results. The Colombian Military Criminal Code stipulates a period of no more than 30 days within which to complete the initial investigation (art. 552) and no more than 60 days for completion of the proceedings when there are two or more offences or defendants (art. 562). The trial, in one of the various procedural formats, must be conducted within two months (arts. 652 to 681), by a summary court martial dealing with offences against life and the person (art. 683). The proceedings taking place in the military criminal court have exceeded these terms.

### **Decision on admissibility**

6.1 At its seventieth session, the Committee considered the admissibility of the communication and ascertained, as required under article 5, paragraph 2 (a) of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement.

6.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee considered that the length of time taken in the judicial proceedings relating to the investigation of the deaths and prosecution of the perpetrators was unjustified. In addition, it recalled that, if the violation that is the subject of the complaint is particularly serious, as is the case with violations of basic human rights, particularly the right to life, remedies of a purely disciplinary and administrative nature cannot be considered sufficient or effective. Furthermore, the compensation proceedings have been unreasonably prolonged.

6.3 On 13 October 2000, the Committee declared the communication admissible, considering that the facts presented gave rise to issues under articles 6, 7, 9 and 17 of the Covenant in conjunction with article 2, paragraph 3.

### **The State party's observations on the merits**

7.1 In its comments of 3 May and 20 September 2001, the State party restates its arguments concerning admissibility and repeats that domestic remedies have not been exhausted and that the situation cannot be described as a denial of justice.

7.2 According to the State party, the Public Prosecutor's Office has provided information to the effect that the Office of the Special Prosecutor to the Special Criminal Courts, Terrorist Unit 51-3, has begun an investigation into the deaths of Gustavo Coronel Navarro and others (case No. 15,282). The results to date are as follows:

- On 19 February 1999, the Attorney-General's Office decided that the investigation should be conducted by the ordinary courts and ordered the immediate transfer of the case to said courts. On 18 September 2000, the National Directorate of Public Prosecutors' Offices ordered case No. 15,282 to be assigned to the National Unit of Human Rights Prosecutors with a view to continuing proceedings. The National Unit of Human Rights Prosecutors returned case No. 15,282 to the Public Prosecutors' Unit on the grounds that it fell outside its jurisdiction. Lastly, in a letter dated 15 February 2001, the Office of the Special Prosecutor announced that it had replied to the request for information submitted by the Association of Relatives of Detained and Disappeared Persons (ASFADDES).<sup>7</sup>
- On 22 March 2001, the Office of the Special Prosecutor ordered two of the accused, Captain Mauricio Serna Arbalaez and Francisco Chilito Walteros, to be given a free hearing, presided by Judge No. 47 of the Military Criminal Investigation Unit.

7.3 With regard to the merits of the case, the State party requests the Human Rights Committee to cease its consideration on the merits, since decisions are being taken in the domestic judicial system concerning the protection of the petitioners' rights.

7.4 The State party reiterates that the criminal investigation is currently in the preliminary inquiry stage and that at no time have the authorities closed or suspended the investigation. It cannot therefore be said that the State party has violated international law, since it has deployed all domestic judicial resources in order to obtain results.

7.5 Lastly, the State party maintains that there is a contradiction in the arguments submitted by the authors in the Committee's decision on admissibility.

#### **Comments by the authors on the merits**

8.1 In their comments of 13 July and 27 November 2001 on the State party's observations, the authors point out that the State party has given no response whatsoever concerning the merits of the communication. According to the authors, the State party has not denied that, of the seven victims, including a minor, six were illegally detained, tortured, disappeared and subsequently executed, or that another was disappeared, by members of anti-guerrilla battalion No. 17 ("Motilones"), attached to the Second Mobile Brigade of the Colombian National Army. Nor does the State party dispute that unlawful raids were carried out on the dwellings of the families of the murdered and disappeared victims or that several of the residents were illegally detained. Moreover, the State party says nothing about the murder of several members of the Ascanio family by alleged paramilitary forces or about the constant harassment of the family members and members of NGOs who reported the incidents.

8.2 According to the authors, the State party's comments demonstrate that the investigations have remained at a preliminary stage for eight years. In addition, the Office of the Criminal Procurator of the Attorney-General's Office requested on 19 February 1998 that the military criminal proceedings should be transferred to the ordinary courts. That request was received on 13 May 1998 by Judge No. 47 of the Military Criminal Investigation Unit, who ordered the preliminary proceedings to be transferred to the Ocaña Regional Attorney-General's Office. The criminal investigations into the incidents are currently being carried out by the Third Terrorism Sub-Unit of the Prosecutor's Office at the Criminal Court of the Attorney-General's Special Circuit.

8.3 The authors maintain that the decision to give Captain Mauricio Serna Arbelaez a free hearing makes no sense, since he died in August 1994, as mentioned in paragraph 5.6 above. The authors point out that it is strange that the other members of the military involved in the incidents not only have not been charged but were not even suspended from duty during the investigations and were even subsequently promoted.

8.4 With regard to the administrative litigation brought by the victims' families, the Santander Administrative Court rejected the claims for compensation on 29 September 2000.

8.5 Lastly, the authors reiterate that the fact that the State party has nothing to say about the incidents and violations referred to in the communication, or about the denial of effective remedy for such serious violations, can only be interpreted as an acceptance of the facts.

### **Issues and proceedings before the Committee**

9.1 The Committee has considered the communication in the light of all the information provided by the parties in accordance with article 5, paragraph 1, of the Optional Protocol. The Committee notes that the State party continues to maintain that all domestic remedies have not been exhausted and that several procedures are still pending. The Committee considers that the application of domestic remedies has been unduly prolonged and that, consequently, the communication can be considered under article 5, paragraph 2 (b), of the Optional Protocol.

9.2 The Committee notes that the State party did not provide any more information concerning the facts of the case. In the absence of any reply from the State party, due consideration should be given to the authors' complaints to the extent that they are substantiated.

9.3 With regard to the authors' claim that there was a violation of article 6, paragraph 1, of the Covenant, the Committee notes that, according to the authors, the Special Investigations Unit of the Attorney-General's office established, in its final report of 29 June 1994, that State officials were responsible for the victims' detention and disappearance. Moreover, in its decision of 27 February 1998, which the Committee had before it, the Human Rights Division of the Attorney-General's Office acknowledged that State security forces had detained and killed the victims. Considering, furthermore, that the State party has not refuted these facts and that it has not taken the necessary measures against the persons responsible for the murder of the victims, the Committee concludes that the State did not respect or guarantee the right to life of Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Ramón Emilio Sánchez, Ramón Emilio Quintero Roper, Luis Honorio Quintero Roper, Ramón Villegas Téllez and Luis Ernesto Ascanio Ascanio, in violation of article 6, paragraph 1, of the Covenant.

9.4 With regard to the claim under article 9 of the Covenant, the Committee takes note of the authors' allegations that the detentions were illegal in the absence of any arrest warrants. Bearing in mind that the State party has not denied this fact, and since, in the Committee's opinion, the complaint is sufficiently substantiated by the documents mentioned in paragraph 9.3, the Committee concludes that there has been a violation of article 9 of the Covenant in respect of the seven victims.

9.5 With regard to the authors' allegations of a violation of article 7 of the Covenant, the Committee notes that, in the decision of 27 February 1998 referred to in the preceding paragraphs, the Attorney-General's Office acknowledged that the victims Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Luis Ernesto Ascanio Ascanio and Luis Honorio Quintero Roper had been subjected to treatment incompatible with article 7. Taking into account the circumstances of the disappearance of the four victims and that the State party has not denied that they were subjected to treatment incompatible with that article, the Committee concludes that the four victims were the object of a clear violation of article 7 of the Covenant.

9.6 However, with regard to the allegations concerning Ramón Emilio Sánchez, Ramón Emilio Quintero Roperero and Ramón Villegas Téllez, the Committee considers that it does not have sufficient information to determine whether there has been a violation of article 7 of the Covenant.

9.7 With regard to the claim under article 17 of the Covenant, the Committee must determine whether the specific conditions in which the raid on the homes of the victims and their families took place constitute a violation of that article. The Committee takes note of the authors' allegations that both the raids and the detentions were carried out illegally, since the soldiers did not have search or arrest warrants. It also takes note of the corroborating testimony gathered from witnesses by the Attorney-General's Office showing that the procedures were carried out illegally in the private houses where the victims were staying. In addition, the Committee considers that the State party has not provided any explanation in this regard to justify the action described. Consequently, the Committee concludes that there has been a violation of article 17, paragraph 1, inasmuch as there was unlawful interference in the homes of the victims and their families or in the houses where the victims were present, including the home of the minor Luis Ernesto Ascanio Ascanio, even though he was not there at the time.

9.8 The Human Rights Committee, acting under article 5, paragraph 4 of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts that have been set forth constitute violations of article 6, paragraph 1; article 7 in respect of Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Luis Ernesto Ascanio Ascanio and Luis Honorio Quintero Roperero; article 9; and article 17 of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party has an obligation to provide the victims' relatives with effective remedy, including compensation. The Committee urges the State party to conclude without delay the investigations into the violation of articles 6 and 7 and to speed up the criminal proceedings against the perpetrators in the ordinary criminal courts. The State party is also obliged to take steps to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the Committee's competence to determine whether or not there has been a violation of the Covenant and that, under article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 90 days, information on the measures it has taken to give effect to the Committee's decision. In addition, it requests the State party to publish the Committee's decision.

[Adopted in Spanish, French and English, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

**Notes**

<sup>1</sup> The authors' relationship with the victims is as follows:

José Antonio Coronel, father of Gustavo Coronel Navarro;

José de la Cruz Sánchez, father of Nahún Elías Sánchez Vega;

Lucenid Villegas, sister of Ramón Villegas Tellez;

José del Carmen Sánchez, father of Ramón Emilio Sánchez;

Jesus Aurelio Quintero, father of Ramón Emilio and Luis Honorio Quintero Roperó;

Nidia Linores Ascanio Ascanio, sister of Luis Ernesto Ascanio Ascanio.

<sup>2</sup> On 25 January, 2 February and 10 February 1993, respectively.

<sup>3</sup> Indeed, there is still no evidence that any judicial decision has been notified to them.

<sup>4</sup> See the views adopted in cases Nos. 563/1993 (Nydia Bautista de Arellana v. Colombia), on 27 October 1995, para. 8.2, and 612/1995 (Arhuacos v. Colombia), 29 July 1997, para. 8.2.

<sup>5</sup> See note 4.

<sup>6</sup> CCPR/C/D/563/1993, para. 10.

<sup>7</sup> The written reply, a copy of which is in the possession of the Secretariat, explains that statements were taken during the preliminary investigation from all persons who were in any way familiar with the facts, and evidence was produced. It also states that consideration is currently being given to the question of which body is competent to deal with the case.

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