



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3076/2017\*, \*\*

<i>Communication submitted by:</i>	Isabel López Martínez, Gladys Cecilia Rincón de Múnera, Nadín José Múnera Rincón, Adolfo Múnera Rincón, Gladys Cristina Múnera Rincón, María Camila Múnera Cepeda and Fredy Alberto Sepúlveda Pineda (represented by Melik Özden of the Europe-Third World Centre (CETIM) and Franklin Castañeda of the Fundación Comité de Solidaridad con los Presos Políticos (Committee of Solidarity with Political Prisoners Foundation) (FCSP))
<i>Alleged victim:</i>	Adolfo de Jesús Múnera López, the authors and the National Union of Food-Industry Workers (SINALTRAINAL)
<i>State party:</i>	Colombia
<i>Date of communication:</i>	9 September 2015
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 15 December 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	11 March 2020
<i>Subject matter:</i>	Murder of a trade unionist
<i>Procedural issues:</i>	Status of victim, failure to substantiate allegations, exhaustion of remedies, abuse of the right of submission
<i>Substantive issues:</i>	Right to an effective remedy, right to life, right to security of person, right to privacy, freedom of association
<i>Articles of the Covenant:</i>	2 (3), 6 (1), 9 (1) and (5), 14 (6), 17 and 22
<i>Articles of the Optional Protocol:</i>	1, 2, 3 and 5 (2) (b)

\* Adopted by the Committee at its 128th session (2–27 March 2020).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



1. The authors of the communication, dated 9 September 2015, are: Isabel López Martínez, Gladys Cecilia Rincón de Múnera, Nadín José Múnera Rincón, Adolfo Múnera Rincón, Gladys Cristina Múnera Rincón and María Camila Múnera Cepeda, all Colombian nationals, acting on their own behalf and on behalf of their family member Adolfo de Jesús Múnera López, a Colombian national born on 17 September 1957 and killed on 31 August 2002, and Fredy Alberto Sepúlveda Pineda, a Colombian national, acting on behalf of the National Union of Food-Industry Workers (SINALTRAINAL). The authors claim violations of articles 2 (3), 6 (1), 9 (1) and (5), 14 (6), 17 and 22 of the Covenant. The authors are represented by counsel. The State party ratified the Optional Protocol on 29 October 1969. The Optional Protocol entered into force for the State party on 23 March 1976.

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

2.1 Mr. Múnera López was a trade union and community leader known for his defence of labour rights. He lived in Barranquilla and had been employed by a bottling company, a subsidiary of a large multinational, since 27 April 1983. He was a member of the board of directors of SINALTRAINAL.

2.2 The authors describe a climate of violence directed against trade unions that existed between 1996 and 2004. During that time, trade unionists were persecuted based on accusations and allegations made by the Attorney General's Office that they had links with the insurgency, which paramilitary movements used to justify violent acts against them. The authors describe the cases of numerous trade unionists who were arrested, charged and subsequently acquitted, as well as trade unionists who were victims of threats and violence. Furthermore, the authors claim that this violence was triggered by the fact that SINALTRAINAL went on strike in 1995, thereby seriously hampering the operations of the bottling plant for which Mr. Múnera López worked and thus of its multinational parent company. Subsequently, in 2001, SINALTRAINAL filed a lawsuit against the multinational company before the District Court of Miami (United States of America), where the company has its headquarters. According to the authors, by 2004, a total of nine SINALTRAINAL trade unionists employed by the multinational company had been murdered, four of them in retaliation for union demands. Another 38 workers had had to flee from the cities where they lived, and 67 had received death threats.<sup>1</sup> The authors claim that paramilitary groups were responsible for much of this anti-union violence. The authors also claim that the State party encouraged the creation of self-defence groups through regulatory frameworks such as Decree No. 356 of 1994, which regulated the security cooperatives known as CONVIVIR and made it possible to arm, finance and provide military training to civilians, thereby creating a situation of risk for the general public. This decree was subsequently declared unconstitutional but, according to the authors, the State party did not take all the measures necessary to prevent the armed groups that had already been formed from continuing to commit serious human rights violations.

2.3 On 6 March 1997, Mr. Múnera López's home was raided and searched by officers of the Atlántico National Police Department. The officers presented a search warrant approved by the Attorney General's Office in connection with an investigation of Mr. Múnera López and two other individuals suspected of committing the crime of rebellion and collaboration with the Ejército de Liberación Nacional (National Liberation Army) (ELN). After seizing a number of personal items from his home, the officers went to his place of work and forced open his locker, taking other personal items, including a diary containing the names of fellow trade unionists who, according to the authors, were subsequently threatened. According to the authors, the police officers who searched his home did so on the orders of two managers of the multinational company.

2.4 Within the framework of this investigation, on 29 October 1998, the special prosecutor before the regional court of the City of Barranquilla ordered the pretrial detention of Mr. Múnera López for the alleged crime of rebellion as a precautionary

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<sup>1</sup> See SINALTRAINAL, "*Ampliado caso 2595 OIT por violación del derecho a la vida trabajadores Coca Cola*" (International Labour Organization case No. 2595 for violation of the right to life of Coca Cola workers), 29 May 2008.

measure. Mr. Múnera López appealed this order and was never arrested. On 5 February 1999, the Special Prosecutor before the National Court revoked the precautionary measure and cancelled the arrest warrant. Then, on 28 September 1999, Special Prosecutor No. 51 closed the criminal case in the absence of evidence to justify the investigation.

2.5 The authors claim that, from the day of the raid at Mr. Múnera López's home onward, and as a result of the investigation of his actions, there was a general impression that he was linked to the National Liberation Army and that he consequently became the object of threats from unknown persons. As a security measure, Mr. Múnera López and his family moved to his mother's house in the Bosque de Barranquilla neighbourhood and were forced to leave the city several times. He was also obliged to request leave from his job for his own safety, but this was denied. From 2001 onward, the threats intensified: he received anonymous death threats over the phone at his parents' home, powerful motorcycles ridden by armed individuals were observed driving around the house, and several persons in an unlicensed vehicle asked neighbours where Mr. Múnera López lived.

2.6 On 29 April 1997, the bottling company for which Mr. Múnera López worked informed him of its decision to terminate his contract, claiming that he had continually failed to show up to work. In July 1997, Mr. Múnera López filed an action for reinstatement before the Seventh Labour Court of the Barranquilla Circuit, which ruled in his favour on 22 May 2001, declaring the dismissal illegal and ordering that he be paid compensation. This decision was appealed by the respondent and thus did not become final until after the Seventh Review Chamber of the Constitutional Court had handed down its review judgment on 13 November 2003.

2.7 In view of the threats he had been receiving since 6 March 1997, Mr. Múnera López reported that he was at risk and requested protection from various public authorities on five different occasions. First, on 22 April 1997, Mr. Múnera López presented an official letter to the Regional Ombudsman of Barranquilla. Second, in view of the deterioration of the situation, on 7 December 2001, he requested urgent protection from the Senate Human Rights Committee because of his status as a politically persecuted person. Third, on 4 February 2002, he wrote to the Coordinator of the Protection Group of the Human Rights Department of the Ministry of the Interior. Fourth, on 4 March 2002, with the assistance of the Committee of Solidarity with Political Prisoners Foundation, he sent an official request to the Committee for Regulation and Risk Assessment to be included in the Programme for the Protection of Trade Union Leaders and Human Rights Defenders. Finally, on 8 March 2002, he filed a criminal complaint against unknown persons with the Sectional Directorate of the Attorney General's Office and once again requested protection.

2.8 On 5 August 2002, the Ministry of the Interior's Committee for Regulation and Risk Assessment granted Mr. Múnera López three months' humanitarian protection, which included assistance with his forced migration from the city of Barranquilla and a financial contribution. This was the only reaction from the public authorities to the five communications sent by the author.

2.9 On 31 August 2002, the author was gunned down as he left his mother's house with his sister. The authors indicate that his murder brought the number of union leaders killed since 1999 in the city to 38.

2.10 On 26 August 2004, the authors filed a suit for direct reparation with the Atlántico Administrative Court against the Ministry of the Interior, the National Police, the Administrative Department of Security and the State of Colombia for failure to protect a citizen at risk. In that suit, they sought a declaration that these public bodies were responsible and should be ordered to pay compensation for the material and moral damages caused to the victim's family.

2.11 On 28 March 2005, the Fifth Criminal Court of the Barranquilla Circuit identified a person as the perpetrator of the murder and sentenced him to 17 years' imprisonment. In its judgment, the Court established that the motive for the murder was the victim's status as a trade union and community leader and his role (whether real or presumed) as a subversive with ties to a Colombian guerrilla group (in any case, this claim was examined and dismissed by the Court) and that the facts led it to accept, or at least to consider, the conclusion that he was murdered by a hired killer or someone who acted like one. This

judgment was appealed by the convicted person before the High Court of the Judicial District of Barranquilla, which, on 21 July 2005, upheld the first-instance judgment in its entirety. This latter judgment was in turn appealed in cassation before the Supreme Court of Justice, which, on 18 May 2006, rejected the appeal, making the first-instance decision final. According to the authors, despite the allusion to somebody having planned and ordered the murder, to date the justice system has not identified any such person.

2.12 On 24 November 2010, the Atlántico Administrative Court dismissed the claim for reparation against the public authorities, finding that Mr. Múnera López himself was responsible for failing to protect himself, in particular by failing to leave Barranquilla. The authors did not appeal this decision. However, they argue that this remedy could not be considered effective in the event of particularly serious human rights violations such as a violation of the right to life.<sup>2</sup>

### **The complaint**

3.1 The authors allege violations of Mr. Múnera López's rights under articles 2 (3), 6 (1), 9 (1), 17 and 22 of the Covenant and of their own rights, as his family members, under article 2 (3) of the Covenant. They also allege a violation of the right to free association of SINALTRAINAL as a collective victim under article 22.

3.2 The authors claim that the State party is responsible by omission for a violation of the right to life protected by article 6 of the Covenant because it failed to effectively respond to requests for protection. In addition, the authors refer to a judgment of the Inter-American Court of Human Rights which holds the State party responsible for establishing a legal framework that led to the creation of paramilitary groups.<sup>3</sup> The same judgment indicates that the State of Colombia did not take sufficient measures to prevent and protect the civilian population, which was at risk from the actions of paramilitary groups. In the present case, the authors consider that the unfounded accusations made by the Colombian authorities (see paras. 2.3 to 2.5 above) gave rise to allegations that ultimately put Mr. Múnera López's life at risk, as stated in the judgment of the Fifth Criminal Court of the Barranquilla Circuit of 28 March 2005 (see para. 2.11 above). The authors point out that, according to a report by the Attorney General's Office, 44 per cent of all crimes against trade unionists between 2001 and 2011 had the same motive and were perpetrated by paramilitary groups.<sup>4</sup>

3.3 The authors also claim that the State party violated article 2 (3), read in conjunction with article 6 (1) of the Covenant, because it did not guarantee the right to an effective remedy by failing to investigate who instigated the murder, as well as possible irregularities in the multinational company for which Mr. Múnera López worked. The authors claim that the company has links with paramilitary groups and that it was involved in the murder, with the collusion of the State party. According to the authors, the Attorney General's Office did not investigate the possible link between the increase in the number of attacks by paramilitary groups against trade unionists on the staff of the multinational company and the managers of that company, which also violates their right to the truth.

3.4 The authors also claim a violation of Mr. Múnera López's right to security of person, under article 9 of the Covenant, because of the failure to provide him with protection (para. 3.2 above).

3.5 The authors claim that the criminal proceedings in connection with which Mr. Múnera López was investigated, during which his home and workplace were searched, amounted to arbitrary interference with his privacy and home, in violation of article 17 of the Covenant. They add that the stigmatization that followed these events marked the start of his persecution: Mr. Múnera López began to receive death threats on 6 March 1997,

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<sup>2</sup> See *Bautista de Arellana v. Colombia* (CCPR/C/55/D/563/1993) para. 8.2.

<sup>3</sup> See *Rochela Massacre v. Colombia*, judgment of 11 May 2007, merits, reparations and costs, paras. 66–103.

<sup>4</sup> “*Judicialización de los Crímenes contra Sindicalistas. Análisis de las Sentencias Proferidas de 2000 a 2011 por la Justicia Colombiana*” (Prosecution of crimes against trade unionists. Analysis of decisions handed down by the Colombian courts from 2000 to 2011), p. 49.

forcing him to move to his mother's house to protect himself from bodily harm, and he continued to receive them until the day he was killed.

3.6 The authors claim that the State party also violated article 2 (3) with respect to the rights of the authors, who are members of Mr. Múnera López's family, because the Atlántico Administrative Court dismissed their claim for reparation. The authors consider that the judgment places responsibility on Mr. Múnera López for his own death and disregards the responsibility of the State party for the murder. In their comments on the admissibility of the communication, the authors also claim that the decision of the Atlántico Administrative court and its refusal to order reparation for Mr. Múnera López's family members constituted a breach of articles 9 (5) and 14 (6) of the Covenant.

3.7 The authors also claim that Mr. Múnera López was subjected to political persecution because he was a trade union leader, and that this was fuelled by the investigation carried out against him following the raid on his home, which made him look like a member of a guerrilla group and paved the way for his dismissal by the bottling company – a dismissal that was later declared illegal. They therefore consider that the State party has direct responsibility for the threats he received and for his murder. According to the authors, the fact that he was persecuted for being a trade union leader was not properly investigated as a motive for his murder. The authors therefore consider that the foregoing, taken as a whole, constitutes a violation of Mr. Múnera López's right to freedom of association, as protected under article 22 of the Covenant.

3.8 In addition, the authors stress that, in denying the State party's responsibility for the murder, the Atlántico Administrative Court also denied their right to restitution, compensation and collective rehabilitation, which would have ensured that criminal structures were dismantled and organizations such as SINALTRAINAL could carry out their work safely. These omissions and actions by the State party in this and similar cases involving SINALTRAINAL trade unionists also constitute a violation of the collective right of SINALTRAINAL under article 22. The authors claim that article 1 of the Optional Protocol does not prevent individuals from claiming that actions or omissions that concern legal persons and similar entities amount to a violation of their own rights or freedoms under the Covenant.<sup>5</sup>

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

4.1 The State party submitted its observations on the admissibility of the communication in a note verbale dated 12 February 2018. It claims that the communication is inadmissible under articles 2 and 3 of the Optional Protocol because it is unsubstantiated and because it constitutes an abuse of the right of submission of an individual communication.

4.2 The State party considers that the communication does not present any facts from which any responsibility on the part of the State can be deduced. First, with regard to the allegations of arbitrary or illegal interference with Mr. Múnera López's privacy, it is noted that the search in question was ordered in accordance with the relevant laws and procedures. Similarly, the arrest warrant and precautionary measure ordered in his respect were issued in accordance with the law, and it is for that reason that he was able to appeal them and they were ultimately revoked, thus exonerating the State authorities from any responsibility. The State party should therefore be found to be in full compliance with national law and the Covenant in relation to these events.

4.3 With regard to Mr. Múnera López's right to freedom of association, it was not the State party but rather the private company that employed Mr. Múnera López that disregarded his trade union rights by terminating his employment contract. In fact, it was the State party's judicial authorities that recognized the rights concerned and ordered his reinstatement and the payment of wages and compensation.

4.4 With regard to Mr. Múnera López's right to freedom and security of person, the State party argues that it can be established that proper and effective steps were taken to try

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<sup>5</sup> See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 9.

to provide him with protection. More specifically, on 2 January 2002, the competent State authorities requested Mr. Múnera López to provide documentation to allow them to assess his application to join the protection programme. Despite the fact that he did not provide the requested documentation, on 24 July 2002 the Committee for Regulation and Risk Assessment, at the request of the Political Committee of SINALTRAINAL and the Committee of Solidarity with Political Prisoners, ordered that he should be provided with 2,781,000 pesos in humanitarian assistance. The first payment was made on 16 August 2002. This assistance was provided on condition that Mr. Múnera López would stay in Bogotá for his own protection. However, in contravention of this agreement and without prior notice, Mr. Múnera López returned to Barranquilla, where he was killed on 31 August 2002. No omission on the part of the State authorities can therefore be established.

4.5 The State party concludes that, for the reasons set out above, the communication lacks substantiation and legal rigour and is therefore manifestly inadmissible on the basis of that lack of substantiation.

4.6 The State party also notes that the alleged events occurred more than 15 years ago, between 1998 and 2002, and that the criminal conviction of the perpetrators of the murder, which the authors consider insufficient or inappropriate, was handed down on 28 March 2005. In addition, the last legal action brought by the authors was resolved on 24 November 2010, when the Atlántico Administrative Court dismissed their claims of State responsibility. The State party argues that the passage of such a long period of time and the authors' untimely submission to the Committee more than five years later constitute an abuse of the right of submission under article 3 of the Optional Protocol.

#### **Authors' comments on the State party's observations on admissibility**

5.1 In their comments of 9 May 2018, the authors respond to the State party's claims of inadmissibility. They maintain that the criminal proceedings against Mr. Múnera López and the search of his home were arbitrary, since the aim was to keep him under surveillance and harass him in order to hamper his union activities. These actions put him at risk, as he came to be perceived as a member of a guerrilla group at a time marked by paramilitary and anti-union violence.

5.2 In response to the State party's assertion that it was the judicial authorities that protected Mr. Múnera López's right to freedom of association, the authors claim that the Constitutional Court, in concluding that his dismissal was illegal, referred only to his right to receive wages, but not to the anti-unionist nature of the dismissal. Furthermore, the dismissal was prompted by the actions of the public authorities, as it was justified by his continued absences from work, which were the result of the criminal prosecution initiated against him by the State party. Moreover, the State party never investigated the various threats and acts of harassment that were intended to restrict the author's freedom of association.

5.3 With regard to Mr. Múnera López's security of person, the authors consider that the protection that was provided was not proportionate to the risk, since it involved only a small financial contribution that arrived late and did not include effective protection. They also claim that the Committee for Regulation and Risk Assessment refused to carry out a technical study of the level of risk in his case, which would have made it possible to design an effective protection package. In addition, the threat against Mr. Múnera López resulted from accusations made in the context of the criminal prosecution initiated against him. The threat was exacerbated by national legislation conducive to the creation of paramilitary groups and the actions of institutions such as the Administrative Department of Security, which, according to the authors, provided intelligence on union leaders, educators and other persons persecuted by these paramilitary groups.

5.4 The authors claim that the State party failed to investigate the threats, surveillance and harassment that began five years before the murder, despite Mr. Múnera López's requests. In this regard, they claim that the prosecutor's office did not follow the usual protocols, did not initiate investigations and did not take concrete measures. Similarly, with regard to the investigation of the murder, the authors consider that, owing to the nature of the crime – the murder of a trade union leader threatened for political reasons – the

investigation should not have been limited to bringing proceedings against the perpetrator of the murder, but should also have sought to identify the persons who instigated the murder, especially since the Fifth Criminal Court recognized that one of the motives for the crime was Mr. Múnera López's status as a community leader. The obligation to investigate is also closely linked to the right to the truth of the victim's relatives, SINALTRAINAL and the community of the El Bosque neighbourhood in Barranquilla.

5.5 In addition, the authors contend that the decision of the Atlántico Administrative Court and the refusal to provide reparations to Mr. Múnera López's family amounted to a violation of articles 2 (3), 9 (5) and 14 (6) of the Covenant.

5.6 Concerning the claim that the communication constitutes an abuse of the right of submission, the authors note that the State party accepts that the investigations were not completed until 24 November 2010.

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

6.1 On 8 June 2018, the State party provided its observations on the merits of the communication. It reiterates its observations on the admissibility of the communication, arguing that the State party bears no responsibility for the events that led to the death of Mr. Múnera López.

6.2 With regard to the alleged violation of article 6 (1) of the Covenant, the State party reiterates that Mr. Múnera López was provided with protection, despite the fact that he did not submit the documentation requested by the authorities, and that this protection was conditional on his not returning to the area where he was at risk, a condition with which he did not comply. Furthermore, the events in question have already been investigated and led to the conviction of the perpetrators (sic) of the murder in a judgment endorsed by the highest court of the land, the Supreme Court of Justice.

6.3 With regard to the alleged violations of articles 9 (1) and 17 of the Covenant, the State party notes that the search and precautionary measure ordered in respect of Mr. Múnera López were in strict compliance with the law. In fact, on 29 September 1999, Special Prosecutor No. 51 decided to close the investigation, and Mr. Múnera López was cleared of any responsibility. Therefore, the authorities' actions were entirely legal and all judicial guarantees were respected; there was no arbitrary detention or illegal interference with Mr. Múnera López's privacy.

6.4 With regard to the allegations of a violation of article 22 of the Covenant, the State party reiterates that it was the State party's judicial authorities that granted the author the right protected under this article, which had been violated by the multinational company that had dismissed him.

6.5 With regard to the allegations of a violation of article 2 (3), the State party asserts that Mr. Múnera López had the opportunity to bring legal actions and appeals that were effective in recognizing the violations in question. In particular, the State party points out that a senior prosecutor revoked the precautionary measure and arrest warrant in respect of Mr. Múnera López and decided to close the investigation. In relation to his labour rights, the order was given for his reinstatement and the payment of duly indexed wages and compensation, which were later paid to his heirs; this ruling was upheld by the Constitutional Court on 13 November 2003. In relation to the murder of Mr. Múnera López, the perpetrators of the murder were sentenced to 17 years' imprisonment by the Fifth Criminal Court of Barranquilla, and the victim's relatives had the opportunity to sue the State for direct reparation before the Atlántico Administrative Court.

#### **Authors' comments on the State party's observations on the merits**

7.1 On 20 October 2018, the authors submitted their comments on the State party's observations on the merits, in which they argued that the State party had not sufficiently demonstrated that it had fulfilled its obligations to guarantee Mr. Múnera López's rights. In this connection, they stressed that the State party is ignoring the national and local context in which the events took place and Mr. Múnera López's position as a trade union leader, which was a determining factor in his murder.

7.2 The authors reiterate that the national context of the 2000s was marked by widespread violence caused by the activity of illegal armed groups, most of which were paramilitary groups whose main objective was to expand their drug trafficking and organized crime activities, which they financed through demanding protection money from businesses, extortion, collaboration with contractors and cattle ranchers, the creation of security and surveillance companies that carried out targeted killings and corruption within public institutions. They also reiterate that the State party encouraged the creation of these groups by adopting conducive policy frameworks.

7.3 In particular, in the Department of Atlántico and in its capital city of Barranquilla, where Mr. Múnera López lived, confrontations between these paramilitary groups intensified, leading to an increase in homicides, of which there were 788 in 2002.<sup>6</sup> The situation began to improve in 2006, when many paramilitary groups demobilized, but there was subsequently a resurgence of criminal gangs. Between 2000 and 2010, 44 trade unionists were murdered, of whom 16 were unionized teachers and 28 trade unionists from other sectors. Of these murders, 35 took place in Barranquilla or Soledad.<sup>7</sup> Although these acts are attributable to paramilitary groups, the authors consider that the State party cannot be cleared of responsibility either for collusion with these groups<sup>8</sup> or, by omission, for having allowed the situation to exist in the first place.<sup>9</sup> The Committee itself has expressed concern at the involvement of agents of the State party in the commission of acts against trade union leaders and at the apparent impunity of the perpetrators of such acts.<sup>10</sup>

7.4 With regard to the State party's assertion that it provided adequate protection to Mr. Múnera López despite the fact that he did not submit the requested information, the authors stress that this assistance was granted thanks to the diligence and insistence of the Committee of Solidarity with Political Prisoners and SINALTRAINAL in view of the serious risk he faced. The assistance arrived almost five months after the application was made, and a risk-level technical study was not undertaken, contrary to the applicable protocol. The authors claim that the State party had resources and programmes that would have enabled it to provide material and judicial protection by investigating the threats that Mr. Múnera López had received, which he had been reporting for five years without any investigation being carried out. The authors consider that protection should be proportional to the risk inherent in each individual's activity and that, as a trade unionist, Mr. Múnera López required enhanced protection. In the judgment of the Fifth Criminal Court of the Barranquilla Circuit of 28 March 2005, which convicted the perpetrator of the murder, the Court stated that it was clear that the motive for the murder had been the victim's position as a trade union and community leader, combined with his real or presumed role as a subversive with ties to the Colombian guerrilla (a belief that was, in any case, examined and dismissed by the Court). In addition, other community leaders in Mr. Múnera López's area had been murdered by hired killers, which should have added to the perception of the risk he faced. The authors also consider that there was a lack of coordination between the State bodies responsible for providing protection, in particular the Attorney General's Office, the National Police and the Ombudsman's Office.

7.5 With regard to the alleged violations of articles 9 (1) and 17 of the Covenant, the authors claim that the search entailed the improper and arbitrary use of legal procedures, as it was carried out with the illegitimate aim of stigmatizing Mr. Múnera López. The authors state that, according to Mr. Múnera López's testimony, he learned that during the search of the vans of the multinational company for which he worked, representatives of the company had assisted the authorities by giving them his address and threatening his family. Furthermore, they recall that the authorities did not revoke the arrest warrant and precautionary measure voluntarily, but as a result of the action brought by Mr. Múnera López, and that this did not happen until more than two years after the search. The search

<sup>6</sup> According to the authors, the source is the National Institute of Forensic Medicine and Science.

<sup>7</sup> See "*Dinámica reciente de la violencia en Barranquilla*", Observatory of the Presidential Programme for Human Rights and International Humanitarian Law, p. 51.

<sup>8</sup> See CCPR/CO/80/COL, para. 12.

<sup>9</sup> See judgment against Edgar Ignacio Fierro aka "Don Antonio" of the Criminal Cassation Chamber of 6 June 2012.

<sup>10</sup> See CCPR/CO/80/COL, para. 11.

and arbitrary criminal investigation of Mr. Múnera López and his home, with the involvement of State agencies, interfered with Mr. Múnera López's privacy and created the risk that led to his death.

7.6 With regard to the alleged violation of article 22 of the Covenant, the authors consider that Mr. Múnera López's dismissal was prompted by the State party's actions, in particular that of identifying him as a potential guerrilla fighter, which meant that he was unable to go to work for security reasons and therefore ended up being dismissed. His right to freedom of association was infringed by other factors, in particular by the fact that his safety was at risk, to which the State party committed an omission by failing to respond. In addition, the Constitutional Court only recognized Mr. Múnera López's salary rights, but did not establish a remedy for SINALTRAINAL for the impact of the persecution of one of its leaders.

7.7 With respect to the alleged violation of article 2 (3), the authors reiterate that, as a trade union leader, Mr. Múnera López should have enjoyed special protection, which was not recognized in the judgment handed down against the murderer or the decision of the Atlántico Administrative Court. His status as a union leader also heightens the obligation to investigate his murder. The relevance of his status as a union leader as a motive for the murder was highlighted by the prosecution when it laid charges before the Fifth Criminal Court.<sup>11</sup> In addition, the Fifth Criminal Court itself, in convicting the perpetrator of the murder, had recognized that he had acted as a hired killer and that the murder was not an isolated incident but, on the contrary, was motivated by a purposeful desire to kill him, just as other community and/or union leaders had been killed who had been branded and denounced as members of guerrilla groups but who had not been successfully prosecuted because the Prosecutor's Office had acquitted them of that crime. The authors therefore consider that the murder should have been further investigated in order to identify the person or persons who instigated the murder, noting that this would have contributed to a recognition of their right to the truth, as well as helping to reduce the existing levels of impunity in Colombia. The authors also consider that the refusal of the Atlántico Administrative Court to grant them reparation was not an effective remedy.

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

### *Consideration of admissibility*

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes that the authors allege a violation of the right to freedom of association of SINALTRAINAL, which is represented before the Committee by its president. The Committee recalls that, according to its general comment No. 31, the beneficiaries of the rights recognized in the Covenant are individuals. Although, with the exception of article 1, the Covenant does not mention the rights of legal persons or similar entities or collectivities, the right to freedom of association, among other rights, may be

<sup>11</sup> The document, which is attached, states: "First, his status as an active community leader in the El Bosque neighborhood of this city, and, second, the reports from the intelligence agencies identifying him as a subversive militant, could be motives that led to the murder of Múnera López; the first because this could have become an obstacle for those who, in one way or another, put individual interests over collective ones, and the second due to the prevailing polarization that has marked the internal armed conflict in the country. Most likely someone else did not believe that Múnera López shared the approach and ideals that he or she defended, coupled with the fact that, as has already been mentioned several times, he was a union leader in the company [...], an organization in which he was involved in disputes to defend the workers' rights, and that some time before his murder he was dismissed from that multinational company, so he was making the relevant arrangements with the labour authorities for his reinstatement, which stigmatized him in relation to his political views."

enjoyed in community with others. The fact that the competence of the Committee to receive and consider communications is restricted to those submitted by or on behalf of individuals (article 1 of the Optional Protocol) does not prevent an individual from claiming that actions or omissions that concern a legal person or similar entity amount to a violation of his or her own rights. The Committee notes that, in the present case, the authors do not argue that the alleged acts violated the right to freedom of association of the president of SINALTRAINAL, but of the union itself, as a legal person. It therefore finds the allegation concerning the violation of the union's rights inadmissible under article 1 of the Optional Protocol.

8.4 The Committee takes note of the State party's claim that the authors' allegations have not been sufficiently substantiated, as required under article 2 of the Optional Protocol. According to the State party, the search warrant was issued in accordance with the laws in force and the precautionary measure against Mr. Múnera López was subsequently revoked. The Committee also takes note of the authors' allegations that the search warrant was arbitrary, since its aim was in fact to stigmatize Mr. Múnera López. However, the Committee notes that the authors do not explain why they consider the decision to have been arbitrary or provide any evidence in this regard. Although the authors provide a report by the Prosecutor's Office that finds a correlation between accusations and murders, which is reaffirmed by the Fifth Criminal Court, this does not mean that the accusations were made with the aim of stigmatizing the person, but rather that the persons who were accused were subsequently victims of harassment, threats and violence. The Committee further notes that Mr. Múnera López was never detained. The Committee therefore considers that the authors have not sufficiently substantiated the alleged arbitrary nature of the search warrant and precautionary measure and finds the allegations under article 17 of the Covenant inadmissible, in accordance with article 2 of the Optional Protocol. For the same reasons, and also noting that, in subsequent arguments, the authors claim violations of article 9 (5) and article 14 (6) of the Covenant without specifying the nature of those allegations and that Mr. Múnera López was never convicted in a final judgment, the Committee considers that the allegations made under article 9 (5) and article 14 (6) are inadmissible by reason of their lack of substantiation under article 2 of the Optional Protocol.

8.5 The State party also considers that the authors' allegations that Mr. Múnera López's right to freedom of association was violated by his dismissal have not been substantiated, since the authorities acknowledged the violation of that right and ordered financial compensation for the heirs of the deceased. In this regard, the authors claim that the decision did not refer to the anti-unionist nature of the dismissal or the fact that the dismissal was prompted by the actions of the public authorities themselves, as it resulted from Mr. Múnera López's continued failure to go to work as a consequence of the criminal prosecution opened against him by the State party. The Committee reiterates the claim that the search and accusation of Mr. Múnera López were arbitrary has not been sufficiently substantiated and notes that the authorities acknowledged that his dismissal was improper. It therefore considers that the authors' allegations of a violation of article 22 (1) of the Covenant due to Mr. Múnera López's improper dismissal are inadmissible by reason of their lack of substantiation under article 2 of the Optional Protocol.

8.6 In addition, the Committee notes that, according to the State party, the authors have not sufficiently substantiated their allegations regarding the violation of his rights to life and security of person because Mr. Múnera López was granted protection but disregarded the requirement that he not visit the area where he would be at risk. The Committee notes that Mr. Múnera López was threatened and subsequently killed because of his position as a trade union leader, as confirmed by the State party's judicial authorities, and therefore considers that the authors' allegations that the protection afforded was not sufficient to protect his rights under articles 6 and 9 (1) of the Covenant have been sufficiently substantiated and must be examined on the merits.

8.7 The Committee also takes note of the State party's claim that the communication constitutes an abuse of the right of submission due to the amount of time that has passed since the events occurred. Rule 99 (c) of the Committee's rules of procedure establishes that:

An abuse of the right of submission is not, in principle, a basis of a decision of inadmissibility *ratione temporis* on grounds of delay in submission. However, a communication may constitute an abuse of the right of submission, when it is submitted five years after the exhaustion of domestic remedies by the author of the communication, or, where applicable, three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication.

The Committee notes that the decision of the Atlántico Administrative Court, which dealt with general aspects of the allegations made in the present instance, dates from 24 November 2010, and that the communication was received by the Committee on 9 September 2015, that is, less than five years after the last decision taken by the Colombian courts. As a result, the Committee considers that the communication does not constitute an abuse of the right of submission.

8.8 The Committee notes that the authors claim a violation of the right to reparation under article 2 (3) of the Covenant in reference to the decision of the Atlántico Administrative Court regarding their application for a declaration of State responsibility for its failure to protect a person at risk who, as a trade union leader, should have been afforded special protection. It is therefore the Committee's understanding that the authors invoke article 2 (3), read in conjunction with article 6 (1), of the Covenant. The Committee notes that the authors did not appeal this decision. The Committee also notes that the State party has not argued that these allegations are inadmissible on the grounds of a failure to exhaust remedies. In addition, the authors consider that such a remedy could not be considered effective in the event of a particularly serious human rights violation such as a violation of the right to life. The Committee recalls its jurisprudence on this point, according to which purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies within the meaning of article 2 (3) of the Covenant in the event of particularly serious violations of human rights, especially when a violation of the right to life is alleged.<sup>12</sup> The Committee therefore considers, under the specific circumstances existing in this case, that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering these claims under article 2 (3), read in conjunction with article 6 (1) of the Covenant.

8.9 The Committee finds no further impediment to declaring these claims admissible and therefore proceeds to the consideration of the merits of the authors' claims under articles 6 (1) and 9 (1) and under article 2 (3), read in conjunction with article 6 (1), of the Covenant.

#### *Consideration of the merits*

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

9.2 The Committee notes the authors' claim that the State party is responsible for the violation of Mr. Múnera López's rights to security of person, life and freedom of association because it did not provide him with sufficient protection against the threats he received and reported. The Committee recalls that, according to its general comment No. 36 (2018) on the right to life,<sup>13</sup> the duty to protect this right also includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including from threats emanating from private persons and entities. States parties are thus under a due diligence obligation to take reasonable, positive measures that do not impose disproportionate burdens on them in response to reasonably foreseeable threats to life originating from private persons and entities whose conduct is not attributable to the State. The duty to protect the right to life requires States parties to take special measures of protection for persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns

<sup>12</sup> See *Bautista de Arellana v. Colombia*, para. 8.2.

<sup>13</sup> Paras. 7 and 21.

of violence. Such persons include human rights defenders and trade unionists. States parties must respond urgently and effectively in order to protect individuals who find themselves under a specific threat. The Committee notes the State party's allegation that it provided sufficient protection to Mr. Múnera López but that this protection was conditional on his refraining from going to the area where he would be at risk, a condition with which Mr. Múnera López did not comply, thus endangering his life and leading to the fatal outcome. The Committee notes that it is an undisputed fact that Mr. Múnera López went to Barranquilla, where he was killed, just two weeks after receiving financial assistance for his move, in violation of the conditions attached to the protection received.

9.3 In the light of the above, the Committee stresses that the State party's obligation is to take reasonable, positive measures and that, in the specific circumstances of this case, the State party considered that the first reasonable step it should take was to ensure that Mr. Múnera López could remain outside the area where he would be at risk and to provide him with financial assistance to that end. However, Mr. Múnera López did not comply with this measure and was killed in the area where he was at risk. As a result, the information available to the Committee does not allow it to conclude that the State party failed in its duty of due diligence in protecting the rights to security of person and to life of Mr. Múnera López, as set out in articles 6 (1) and 9 (1) of the Covenant.

9.4 The Committee also notes the authors' claim that the State party violated article 2 (3), read in conjunction with article 6 (1), of the Covenant because it failed to guarantee the right to an effective remedy by not investigating who instigated the murder. In this regard, the Committee recalls that, according to its general comment No. 36, an important element of this right is the obligation of States parties, when they are aware or should have been aware of potentially unlawful instances of the deprivation of life, to investigate and, as appropriate, prosecute those responsible for such incidents. This obligation is implicit in the obligation to protect and is reinforced by the general duty to ensure the rights recognized in the Covenant, which is provided for in article 2 (1) when read in conjunction with article 6 (1), and the duty to provide an effective remedy to victims of human rights violations and their relatives, which is stipulated in article 2 (3), read in conjunction with article 6 (1), of the Covenant. Investigations and prosecutions of potentially unlawful instances of the deprivation of life should be undertaken in accordance with relevant international standards,<sup>14</sup> and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. States parties need to take, among other things, appropriate measures to establish the truth relating to events leading to the deprivation of life, including the reasons and legal basis for targeting certain individuals and the procedures employed by State forces before, during and after the time at which the deprivation occurred, and to identify the bodies of the individuals who have lost their lives.

9.5 In the present case, the Committee notes that the Fifth Criminal Court of the Barranquilla Circuit found that the motive was clearly the victim's status as a trade union and community leader and (whether real or presumed) his role as a subversive with ties to the Colombian guerrilla (a claim that, in any case, was examined and dismissed by the Court) and that the facts led it to accept, or at least to consider, the conclusion that Mr. Múnera López was murdered by a hired killer or someone who acted like one. Therefore, according to the judicial authorities, Mr. Múnera López was murdered because of his work as a trade union leader and it was highly probable that one or more persons planned and ordered the murder. In addition, numerous murders of trade unionists and other community leaders took place in this region during the same period, which should have aroused suspicions that somebody had instigated this and the other murders. In this regard, the report by the Attorney General's Office which was submitted by the authors notes, in its

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<sup>14</sup> Including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, para. 25: "Investigations must, at a minimum, take all reasonable steps to: [...] (e) Determine who was involved in the death and their individual responsibility for the death" and para. 26: "The investigation must determine whether or not there was a breach of the right to life. Investigations must seek to identify not only direct perpetrators but also all others who were responsible for the death, including, for example, officials in the chain of command who were complicit in the death."

concluding section, that there has been no investigation aimed at identifying the persons who instigated these murders and recommends that investigative measures be taken to identify and convict those “who instigated or convinced, persuaded or ordered others to carry out the acts in question”.<sup>15</sup> The Committee notes that the State party has responded to this allegation of failure to investigate the murder by recalling that the perpetrator of the murder has been convicted. However, it does not provide any information on steps taken to undertake an investigation aimed at identifying the person or persons who instigated the murder. Therefore, in the absence of any information indicating that the State party has fulfilled its duty of due diligence in establishing the truth about the facts and events leading up to Mr. Múnera López’s murder, the Committee concludes that the State party violated the rights of Mr. Múnera López and those of his family members who are the authors of this communication under article 2 (3), read in conjunction with article 6 (1), of the Covenant.<sup>16</sup>

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of article 2 (3), read in conjunction with article 6 (1), of the Covenant in relation to Mr. Múnera López and those of his family members who are the authors of this communication.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to: (a) promptly conduct a thorough, effective, impartial, independent and transparent investigation into the circumstances surrounding Mr. Múnera López’s murder in order to establish the truth of the matter; (b) provide those of Mr. Múnera López’s family members who are the authors of this communication with detailed information about the results of this investigation; and (c) provide adequate compensation to the family members who are the authors of this communication, including sufficient compensation to cover the reasonable legal expenses they have incurred. The State party is also under an obligation to prevent similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to 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, the Committee wishes to receive information from the State party within 180 days about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

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<sup>15</sup> “*Judicialización de los Crímenes contra Sindicalistas. Análisis de las Sentencias Proferidas de 2000 a 2011 por la Justicia Colombiana*” (Prosecution of crimes against trade unionists. Analysis of decisions handed down by the Colombian courts from 2000 to 2011), p. 60.

<sup>16</sup> See *Japalali v. Philippines* (CCPR/C/125/D/2536/2015), para. 7.9.