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Communication No. 2134/2012

Views adopted by the Committee at its 114th session (29 June-24 July 2015)

Submitted by:	Rosa María Serna, Hubert Eduardo Molina Serna, Rubén Darío Molina Serna, Yovanni Molina Serna, Leidy Molina Serna, Luz Elena Usuga Usuga, Astrid Elena Anzola Usuga, Leidy Yakeline Anzola Usuga, Isabel Johana Anzola Usuga (represented by the Colombian Commission of Jurists)
Alleged victim:	The authors, Julio Eduardo Molina Arias, Guillermo Anzola Grajales and Karol Juliana Anzola Usuga
State party:	Colombia
Date of communication:	1 September 2011
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Date of adoption of Views:	9 July 2015
Subject matter:	Enforced disappearance by paramilitary groups
Procedural issues:	Abuse of the right to submit a communication
Substantive issues:	Right to life; right to liberty and security of person
Articles of the Covenant:	2 (para. 3), 6 (para. 1), 7, 9, 10, 16, 17 and 23 (para. 1)
Articles of the Optional Protocol:	3

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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 (114th session)

concerning

Communication No. 2134/2012*

Submitted by:	Rosa María Serna, Hubert Eduardo Molina Serna, Rubén Darío Molina Serna, Yovanni Molina Serna, Leidy Molina Serna, Luz Elena Usuga Usuga, Astrid Elena Anzola Usuga, Leidy Yakeline Anzola Usuga, Isabel Johana Anzola Usuga (represented by the Colombian Commission of Jurists)
Alleged victim:	The authors, Julio Eduardo Molina Arias, Guillermo Anzola Grajales and Karol Juliana Anzola Usuga
State party:	Colombia
Date of communication:	1 September 2011

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

Meeting on 9 July 2015,

Having concluded its consideration of communication No. 2134/2012, submitted to the Human Rights Committee 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:

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

1. The authors of the communication are Rosa María Serna, Hubert Eduardo Molina Serna, Rubén Darío Molina Serna, Yovanni Molina Serna, Leidy Molina Serna, Luz Elena Usuga Usuga, Astrid Elena Anzola Usuga, Leidy Yakeline Anzola Usuga and Isabel Johana Anzola Usuga, all of whom are Colombian nationals. They

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Sarah Cleveland, Mr. Olivier de Frouville, Mr. Yuji Iwasawa, Ms. Ivana Jelić, Mr. Duncan Laki Muhumuza, Ms. Photini Pazartzis, Mr. Mauro Politi, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Mr. Dheerujlall Seetulsingh, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

The texts of two individual opinions by Committee members are appended to the present Views: one by Mr. Shany (partly concurring and partly dissenting) and one by Mr. Rodríguez-Rescia and Mr. Salvioli (concurring).

are submitting the communication in their own name, on behalf of their disappeared relatives, Julio Eduardo Molina Arias and Guillermo Anzola Grajales, and on behalf of the deceased daughter of Luz Elena Usuga Usuga and Guillermo Anzola Grajales, Karol Juliana Anzola Usuga. They claim that their disappeared relatives' rights under articles 2 (para. 3), 6 (para. 1), 7, 9, 10, 16, 17 and 23 (para. 1) of the International Covenant on Civil and Political Rights have been violated. Regarding themselves and Karol Juliana Anzola Usuga, they claim that they are victims of violations of articles 2 (para. 3), 7, 17 and 23 of the Covenant. The authors are represented by Federico Andreu Guzmán and Camilo Eduardo Umaña Hernández of the Colombian Commission of Jurists.

The facts as presented by the authors

2.1 The authors and their disappeared relatives were residents of Medellín (department of Antioquia). On 7 March 1995, Guillermo Anzola Grajales asked Julio Eduardo Molina Arias to accompany him by car to Puerto Triunfo, a municipality in Antioquia in the region known as Middle Magdalena, where Mr. Anzola had to go to see a notary following the death of his father. On 8 March, they arrived in Puerto Triunfo, where Mr. Anzola conducted his business at the notary's office, and they informed their relatives that they would stay at the house of Mr. Anzola's deceased father and set out on the return journey the following day. On 9 March, Mr. Molina called his wife to tell her that he would be back that afternoon. In the absence of any subsequent contact, their relatives called the house of Mr. Anzola's deceased father. The domestic worker who answered told them that Mr. Anzola and Mr. Molina had left at 7 a.m. The relatives checked whether there had been any road traffic accidents and went to hospitals and the morgue, but were unable to establish the whereabouts of Mr. Anzola and Mr. Molina.

2.2 On 10 March 1995, Luz Elena Usuga Usuga and Rosa María Serna, the wives of Mr. Anzola and Mr. Molina, respectively, travelled to Puerto Triunfo. On 11 March, Ms. Usuga reported Mr. Anzola and Mr. Molina missing to the police in Doradal, Puerto Perales and Puerto Boyacá, which are all municipalities in the Middle Magdalena region. On 18 March, she lodged a criminal complaint with the Puerto Triunfo public prosecutor's office, which opened preliminary investigation case No. 560. On 25 October 1996, however, the office decided to shelve the case because it "could not find sufficient grounds to initiate a criminal investigation, as it had been unable to identify the perpetrators of the act".

2.3 The authors point out that, despite all the complaints submitted, the only information that they received regarding the fate of their disappeared relatives came from a friend of Mr. Anzola's uncle, who claimed that, on 16 June 1995, he had seen Mr. Anzola and Mr. Molina leaving a bank in Bucaramanga (department of Santander) in the company of armed men who put them in a car.

2.4 The authors allege that while Ms. Usuga and Ms. Serna were making inquiries in the Middle Magdalena region, they were told by a police officer, who was unwilling to give his name, that "in that area, paramilitary groups were stopping people to check their identity and were disappearing persons from outside the region". The officer told them that the police could do nothing about it because "they did not have control in that area", adding, by way of warning, that they should stop looking as "all people from outside the area who arrived there were checked by them [the paramilitary groups] and subsequently disappeared". Upon hearing this, Ms. Usuga and Ms. Serna decided to leave Puerto Triunfo for fear of being disappeared. On the journey back, they were pursued by a van carrying six men. Taking advantage of a traffic jam on the motorway, three men got out of the van and ordered the driver of the car in which Ms. Usuga and Ms. Serna were travelling to turn off the motorway. The driver did not

comply but continued on his way, moving into the middle of a convoy of vehicles that was headed in the same direction as a protective measure.

2.5 On 17 March 1995, the car in which Mr. Anzola and Mr. Molina had been travelling was found abandoned in San Francisco (department of Antioquia). According to a report dated 17 August 2005 and issued by the Puerto Triunfo public prosecutor's office, the vehicle had been found with no trace of the occupants other than Mr. Anzola's identity card. However, the only article to be sent to Mr. Anzola's wife was the identity card of Mr. Anzola's deceased father. The police informed Ms. Usuga that the car, which it had seized, had been found intact. When it was returned to her, however, it had been ransacked.

2.6 The facts of the case were brought to the attention of the Association of Relatives of Detainees and Disappeared Persons (ASFADDES) and the Colombian Commission of Jurists. On behalf of the authors, ASFADDES filed complaints with the police in Doradal (11 March 1995); the Attorney General's Office (18 March 1995); the Counsel General's Office, the Ombudsman's Office, the municipal ombudsman's office in Medellín, the District Directorate of Prosecution Services in Antioquia and the District Directorate of Judicial Investigations of the National Police (5 April 1995); the Provincial Office of the Attorney General (10 and 14 July 1995); and the Office of the President of the Republic (15 April 1996).

2.7 On 15 March and 5 July 2005, ASFADDES submitted two requests for urgent action to the Working Group on Enforced or Involuntary Disappearances and to international NGOs.

2.8 Through ASFADDES, the authors exercised their right of petition,[1] requesting information on the status of investigations from the armed forces (the army) (25 June and 23 July 1995), the Provincial Office of the Attorney General (11 July 1995), the public prosecutor's office in Puerto Triunfo (30 October 1995, 24 August 1998, 4 September 2001, 25 April 2005, 17 August 2005, 25 July 2006 and 11 April 2007), the municipal ombudsman in Puerto Triunfo (2 February 1996), the Technical Investigation Corps in Antioquia (5 July 1996), the Puerto Berrío Enforced Disappearance Unit, which is part of the Attorney General's Office (4 June 1996), the public prosecutor's office in Puerto Berrío (31 October 1996) and the Institute of Legal Medicine and Forensic Science (30 August 2000).

2.9 On 3 June 1996, ASFADDES submitted a petition to the armed forces regarding a stone quarry near the military base that was allegedly being operated to fund the paramilitary group Autodefensas Campesinas del Magdalena Medio (Campesino Self-Defence Forces of Middle Magdalena) led by Commander Ramón Isaza, and where approximately 300 persons were being made to work against their will and without their families' knowledge.

2.10 On 24 June 1996, the armed forces — through the commander of the Fourteenth Brigade — responded to the petition from ASFADDES, stating that they were not aware of the existence of any paramilitary groups and that intelligence activities had been carried out but no trace of the stone quarry had been found.

2.11 On 18 September 2001, Ms. Molina filled out the disappeared persons search request form used by the Attorney General's Office.

2.12 Under Act No. 975 of 2005 (known as the Justice and Peace Act), several members of Autodefensas Campesinas del Magdalena Medio were demobilized and availed themselves of the special procedure established pursuant to the Act. In their

[1] Article 23 of the Colombian Constitution establishes that "every person has the right to submit respectful petitions to the authorities for reasons of general or private interest and to obtain a prompt response".

versión libre statements before the special court for justice and peace, none of them acknowledged the disappearance of Mr. Anzola and Mr. Molina. During the proceedings, Commander Isaza claimed that he had "developed Alzheimer's" and had forgotten everything about alleged human rights violations. The authors note that the Human Rights Committee, the Committee against Torture and the Committee on the Rights of the Child have all expressed concern over Act No. 975 and its compatibility with the Colombian State's obligation to investigate serious violations and try and punish the perpetrators.

2.13 The Colombian Commission of Jurists, meanwhile, submitted petitions on behalf of the authors, requesting information about the enforced disappearance of Mr. Anzola and Mr. Molina. The petitions were addressed to the Justice and Peace Unit of the Attorney General's Office (23 September 2010 and 18 January 2011), the Executive Directorate of the Military Criminal Justice System (22 September 2010), the Counsel General (24 September 2010), the Attorney General's Office (18 January 2011) and the Puerto Triunfo District Office of the Attorney General (12 January 2011).

2.14 On 17 November 2010, the Fourteenth Brigade of the army replied that information had been sought from the commander of Infantry Battalion No. 3, which had been operating in the area where the enforced disappearance of Mr. Anzola and Mr. Molina took place, but no details had been forthcoming and no disciplinary investigation had been conducted in that connection.

2.15 On 11 October 2010, the Ministry of Defence replied that, as the offence had not been committed in the line of duty, it fell outside the jurisdiction of the military criminal courts.

2.16 On 30 September 2010, the Counsel General's Office stated that there was no disciplinary investigation into the enforced disappearance of Mr. Anzola and Mr. Molina.

2.17 The authors submit that, even though numerous complaints were lodged with the police and the public prosecutor's office and proceedings were instituted before the disciplinary and criminal justice authorities at the local, departmental and national levels, the case has not been properly investigated.

Context: Enforced disappearances by paramilitary groups in the Middle Magdalena region

2.18 The authors point out that there is a heavy military presence in the Middle Magdalena region. With the emergence in the region of the guerrilla forces of Ejército de Liberación Nacional (National Liberation Army) and the arrival of various factions of the guerrilla group Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia), the armed forces decided to give priority to the region in a process of militarization that reached its peak in the 1980s. The armed forces committed crimes against the population, with the support of paramilitary groups which claimed responsibility for the crimes using various names (MAS, Macetos, Los Tiznados, among others). According to investigations conducted by the Counsel General's Office and criminal court judges, these groups were formed and/or supported by the Colombian army[2] and their legitimacy was recognized publicly by the highest-ranking officials in the armed forces. The groups developed and associated themselves with legally constituted organizations such as the Middle Magdalena Campesino Farmers Association (ACDEGAM) [3] and even a political party,

[2] *El proceso de paz en Colombia, 1982–94 – Compilación de documentos, Tomo I, Biblioteca de la Paz,* Office of the High Commissioner for Peace, Bogotá, 1998, pp. 510-514.

[3] According to the Amnesty International report of 1994 entitled *Violencia política en Colombia: mito y realidad* (Political violence in Colombia: myth and reality), in late 1989 judicial police

Movimiento de Renovación Nacional (National Renewal Movement), which was later outlawed. From the mid-1980s onwards, the paramilitary groups grew in the region and stepped up their criminal activities against the civilian population, turning the Middle Magdalena region into the paramilitary hub of Colombia. The Inter-American Court of Human Rights stated that "in the 1980s, it was well known that the goals of many 'self-defense groups' changed and they became criminal groups, usually known as 'paramilitary groups'. They operated, above all, in the Magdalena Medio region and gradually extended to other regions of the country."[4]

2.19 The authors indicate that, in the 1990s, there was a drive to create private armed groups through the enactment of legislation such as Decree No. 356 of 1994, which opened the way for private agents to be equipped with restricted-use firearms. In 1995, the Office of the Superintendent of Private Security and Surveillance issued a decision establishing special private security and surveillance services, known as Convivir (Living Together) groups, through which paramilitary activities were developed and expanded as a clear policy of the State.[5]

2.20 The Working Group on Enforced or Involuntary Disappearances has identified paramilitary groups as having been the main perpetrators of enforced disappearances in Colombia since 1988, acting with the complicity or the passive acquiescence of the security forces (E/CN.4/1989/18/Add.1, para. 126).

2.21 According to data from the Regional Office of the Attorney General in Antioquia, between June 1995 and June 1996, 348 allegations of enforced disappearance were made in the region. This prompted the People's Training Institute in Antioquia to conclude that enforced disappearance is a repressive measure commonly used in Antioquia by certain groups or members of the security forces and parastatal bodies to cause anxiety among populations in areas particularly affected by armed conflict and require the community to take sides, which obliges the civilian population to become actively involved in the conflict.[6]

2.22 The authors point out that there were numerous reports about Autodefensas Campesinas del Magdalena Medio operating with the acquiescence of the Colombian army (Infantry Battalion No. 42 of the Fourteenth Brigade) in the Middle Magdalena region, specifically on the road from Medellín to Bogotá, along which the disappeared relatives were travelling. According to the accounts of campesino farmers living in the area, the army battalions present in the area supported Autodefensas Campesinas del Magdalena Medio by providing it with weapons, training and cover.[7]

The complaint

3.1 The authors claim that there has been a violation of article 2, paragraph 3, of the Covenant, inasmuch as, despite the complaints lodged with the police and the public

captured Luis Antonio Meneses Báez, a former army officer who had helped create the paramilitary organization based in Puerto Boyacá in the Middle Magdalena region, which operated under cover of ACDEGAM and was responsible for widespread abuses against the civilian population, including numerous killings and disappearances. In his sworn statement before the Directorate of Judicial and Investigatory Police, Luis Antonio Meneses declared that the groups had been created on the orders of army high command, were an integral part of the Government's counter-insurgency strategy and were controlled by the S-2 intelligence unit of the Bárbula Battalion and by ACDEGAM.

[4] Inter-American Court of Human Rights, *Case of the 19 Merchants v. Colombia*, judgement of 5 July 2004, series C, No. 109, para. 84 (c).

[5] Database of human rights and political violence, Research and Popular Education Centre (CINEP), *Deuda con la humanidad: Paramilitarismo de Estado en Colombia*, *1988-2003*, p. 258.

[6] People's Training Institute, *¿Hacia dónde va Colombia? Una mirada desde Antioquia,* Medellín, May 1997, pp. 132-135.

[7] Report of the Colombia section of the Andean Commission of Jurists, *Nordeste Antioqueño y Magdalena Medio*, Bogotá, 1993, p. 106.

prosecutor's office, the case was neglected by the competent investigative bodies. Since then, despite the many proceedings instituted, no serious or effective investigation into the facts of the case has been carried out by any judicial authority, nor has any disciplinary investigation been launched by the army or the Counsel General's Office. The regular criminal investigation was shelved. There is no record of any investigation having been carried out by military criminal courts or the National Unit for Justice and Peace of the Attorney General's Office. The authors submit that, even though the details of the time, manner and place in which the disappearances of Mr. Anzola and Mr. Molina occurred all fit in with the modus operandi of paramilitary groups, the public prosecutor's office did not focus its investigations on the paramilitary group that was operating in the region at the time. The information supplied by the families and NGOs and the car in which the victims had been travelling were not examined in depth during the investigation. The authors add that no one other than the notary or the relatives of the disappeared persons was ever questioned and yet that was considered a sufficient basis for the public prosecutor's office to dismiss the case.

Alleged violations of Mr. Anzola's and Mr. Molina's rights

3.2 The authors claim that the enforced disappearance of Mr. Anzola and Mr. Molina violated their right, under article 6, paragraph 1, of the Covenant, not to be arbitrarily deprived of their lives.

3.3 The authors also claim that there has been a violation of article 7 of the Covenant. They cite the Committee's case law, according to which enforced disappearance is inseparably linked to treatment that amounts to a violation of article 7,[8] given that the degree of suffering involved in being held indefinitely without contact with the outside world amounts to torture for the disappeared person.

3.4 The authors claim that there has been a violation of articles 9 and 10 of the Covenant. They highlight the Committee's established jurisprudence that enforced disappearance constitutes a violation of multiple rights, including the right to liberty and security of the person (art. 9) and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (art. 10).[9]

3.5 The authors submit that enforced disappearance violates the right of all human beings to recognition as a person before the law,[10] as established in article 16 of the Covenant. They state that one of the defining elements of enforced disappearance is the placement of an individual outside the protection of the law, as stated in the Declaration on the Protection of All Persons from Enforced Disappearance, the Inter-American Convention on Forced Disappearance of Persons and the International Convention for the Protection of All Persons from Enforced Disappearance.

3.6 The authors submit that articles 17 and 23, paragraph 1, of the Covenant were also violated.

[8] The authors cite, among others, the Committee's Views in communications No. 1078/2002, *Norma Yurich v. Chile*, Views adopted on 2 November 2005; No. 449/1991, *Rafael Mojica v. Dominican Republic*, Views adopted on 15 July 1994; No. 950/2000, *Jegatheeswara Sarma v. Sri Lanka*, Views adopted on 16 July 2003; and No. 440/1990, *El-Megreisi v. Libya*, Views adopted on 23 March 1994.

[9] See the Committee's Views in communication No. 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006; and *Jegatheeswara Sarma v. Sri Lanka*.

[10] See the Committee's concluding observations on Kuwait (CCPR/CO/69/KWT, para. 11) and on Algeria (CCPR/C/79/Add.95, para. 10).

Alleged violations of the authors' rights

3.7 The authors claim that they are victims of a violation of article 7 of the Covenant. They point out that the disappearance of their relatives and the lack of a judicial investigation have caused them great sorrow and had a negative impact on their lives, with the psychological and psychosocial effects of the disappearances continuing to the present day. Their psychosocial problems have not received attention from the State and they have thus had to resort to private services. Ms. Usuga went through a deep depression that led to alcohol abuse, and she suffers from clinical depression and suicidal thoughts and is taking psychiatric medication. Her physical health has also been affected: she has ailments of the colon and respiratory tract, as well as problems with her blood pressure. Her daughters experienced profound sadness and depression. Karol Juliana Anzola Usuga, who was 9 years old at the time, experienced a particularly profound sense of distress, thinking of death as a way of being reunited with her father. On 3 April 1998, as she was leaving the house of a friend in Medellín, an armed man shot her four times and killed her. Isabel Johana Anzola Usuga is currently receiving psychiatric treatment and taking medication because of the enforced disappearance of her father and the subsequent violent death of her sister. All of this is evidence of the psychosocial impact on the family.

3.8 The authors point out that the effects of enforced disappearance on the relatives of missing persons are widely recognized internationally, including in the Declaration on the Protection of All Persons from Enforced Disappearance. International jurisprudence is unanimous in considering the anguish and stress caused to families by the disappearance of a loved one and by the continuing uncertainty about the person's fate and whereabouts as a form of cruel and inhuman treatment. The Human Rights Committee,[11] the European Court of Human Rights,[12] the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have all stated as much.

3.9 The authors allege that there have been violations of articles 17 and 23, paragraph 1, of the Covenant.

State party's observations on admissibility

4.1 On 14 May 2012, the State party submitted its observations on the admissibility of the communication, requesting that the issue of admissibility be considered separately.

4.2 The State party submitted that it was not for the Committee to substitute for domestic judicial decisions on the facts, evidence and investigation of a case; instead, it should ensure that States provide legal proceedings that are in conformity with the rules of due process. According to the State party, the authors of the communication were asking the Committee to act as a review body with competence to weigh the facts and evidence gathered by the State party.

4.3 The State party added that, from the account given of the events, it cannot be established with sufficient certainty that the alleged enforced disappearance of Mr. Anzola and Mr. Molina was a criminal act perpetrated by illegal armed groups that may have been in the area at the time or that the disappearances were directly linked to the modus operandi of these groups or the operation of an alleged stone quarry controlled by paramilitaries. These are investigative assessments that do not fall

[11] The authors cite, among others, the Committee's Views on communications No. 107/1981, *Quinteros v. Uruguay*, of 21 July 1983; No. 542/1993, *Katombe v. Zaire*, of 25 March 1996; No. 540/1996, *Laureano v. Peru*, of 25 March 1996; *Jegatheeswara Sarma v. Sri Lanka*; and *Bousroual v. Algeria*.

[12] *Kurt v. Turkey*, case No. 15/1997/799/1002.

within the purview of the Committee. The Committee may only hear the present case to establish whether the decision to shelve the investigation was arbitrary and not in accordance with the law or due process rules or that justice had been denied.

4.4 The State party, furthermore, asserted that the communication amounted to an abuse of the right to submit communications, inasmuch as the authors had deliberately submitted unclear information to the Committee. According to the State party, there is no clear connection between the death of Karol Juliana Anzola Usuga at the hands of a criminal group in Medellín and the alleged disappearance of her father. It seemed that the authors were trying to mislead the Committee by portraying those events as connected to one another. The same would apply to the police statements by police officers who allegedly claimed that illegal armed groups had control over the territory in question. These assertions were unfounded and were intended to have the Committee make incursions into the investigative sphere.

4.5 Lastly, the State party argued that the submission of the complaint 16 years after the fact was also an abuse of the right to submit communications, in the absence of a reasonable explanation from the authors that would make it possible to determine the reasons that kept them from submitting the complaint earlier.

Authors' comments on the State party's observations

5.1 On 26 June 2012, the authors submitted that, given the severity of the violations of the Covenant and the passage of time, the Committee should address the issue of admissibility and the merits together.

5.2 The authors noted that, in the procedure established pursuant to the Optional Protocol, the parties have ample opportunity to present their factual and legal arguments regarding both the admissibility and the merits of the case. They pointed out that the joint consideration of the admissibility and merits of a communication is a procedural norm generally accepted by international human rights bodies, whereas their separate consideration is a possibility offered on an exceptional basis, as indicated in the Committee's rules of procedure.

5.3 The authors stressed that paramilitary groups systematically engaged in enforced disappearances in the region where and at the time when Mr. Anzola and Mr. Molina were subjected to enforced disappearances. Specifically, the paramilitary group Autodefensas Campesinas del Magdalena Medio, operating under the command of Ramón Isaza and with the acquiescence of the military forces of the Bombona Battalion and the Fourteenth Brigade, based in Puerto Berrío, was active in the area of the Medellín-Bogotá motorway.

5.4 The authors stressed that the fear of being made victims of enforced disappearance themselves caused the wives of the disappeared men to give up their inquiries in the area, although the women nonetheless obtained information that implicated paramilitary groups in the disappearances and that information was brought to the notice of the prosecutor's office. However, the disappearance of Mr. Anzola and Mr. Molina was not seriously and thoroughly investigated by the office, as indicated in the initial communication.

5.5 The authors cited the Committee's jurisprudence to the effect that all States parties are under a duty "to investigate thoroughly alleged violations of human rights, and in particular forced disappearances of persons and violations of the right to life"[13] and "to criminally prosecute, try and punish those deemed responsible for such

[13] See the Committee's Views on communications No. 563/1993, *Bautista de Arellana v. Colombia*, of 13 November 1995, para. 8.6; and No. 612/1995, *Villafañe Chaparro et al. v. Colombia*, of 29 July 1997, para. 8.8.

violations".[14] The Committee has also established that a State party's failure to investigate allegations of violations can be a breach of the Covenant in and of itself.[15] The Inter-American Court of Human Rights has found that the prohibition of enforced disappearance and the corresponding duty to investigate it and punish those responsible have become principles from which no derogation is possible.[16]

5.6 The authors submitted that the reference to the dismissal decision issued by the Puerto Triunfo prosecutor's office on 26 October 1996 was not intended to ask the Committee to act as a court of fourth instance and to review and overturn the decision but rather to provide evidence to determine whether the State party had fulfilled its duty to conduct a serious and comprehensive investigation into the enforced disappearance of Mr. Anzola and Mr. Molina.

5.7 As to the State party's allegation that the communication constituted an abuse of process because the information in it is unclear, the authors stated that the violent death of the minor Karol Juliana Anzola Usuga is described in an effort to demonstrate the psychosocial distress experienced by Mr. Anzola's family as a result of his enforced disappearance. The authors had in no way insinuated that there was a connection, in terms of the State party's international responsibility, between Mr. Anzola's disappearance and his daughter's violent death.

5.8 With regard to the inclusion of information obtained by Ms. Usuga and Ms. Serna from a member of the police who refused to identify himself, the authors submitted that the information illustrates the tremendous difficulties faced by Ms. Usuga and Ms. Serna in their search for their missing family members.

5.9 With regard to the submission of the complaint 16 years after the fact, the authors pointed out that neither the Optional Protocol nor the rules of procedure of the Committee set deadlines for the submission of communications. In addition, the rights of the authors and of Mr. Anzola and Mr. Molina are still being violated, since these persons are still missing and their families have not been officially informed about their fate or whereabouts, nor have they been given access to justice, the truth or redress.

Additional observations of the State party[17]

6.1 On 22 November 2013, the State party reiterated its request to the Committee for the admissibility of the communication to be considered separately.

6.2 The State party reiterated its arguments concerning the inadmissibility of the communication on the ground that the Committee is not competent to evaluate the facts of the case. The State party pointed out that the Puerto Triunfo prosecutor's office examined the facts and decided to dismiss the case because the perpetrators of the act could not be identified, in accordance with the criminal procedure legislation in force.

6.3 The State party submitted that, while there is no specific time frame for submitting communications to the Committee, in the past the Committee has declared a number of communications to be inadmissible on the ground of abuse of the above-mentioned right, since the communications were submitted after a long period of time or the information submitted was intentionally vague. The State party maintained that,

[14] See the Committee's Views on communication No. 1588/2007, *Benaziza v. Algeria*, of 26 July 2010, para. 8.3.

[15] General comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant, paras. 15 and 18.

[16] *Goiburú et al. v. Paraguay*, judgement of 22 September 2006, series C, No. 153, para. 84.

[17] The Committee rejected the State party's request for the admissibility of the communication to be considered separately from the merits in a note verbale dated 11 July 2012.

in this case, a long period of time, namely, 16 years, had elapsed between the dismissal order being issued by the Puerto Triunfo prosecutor's office and the communication being submitted to the Committee, for no apparent reason.

Additional observations of the authors

7.1 On 1 April 2014, the authors noted that the State party had not submitted its observations on the merits, as requested by the Committee, but had merely reiterated its observations on the communication's admissibility.

7.2 The authors reiterated their arguments in response to the questions of admissibility raised by the State party and referred to the Committee's jurisprudence, which states that "it is generally for the domestic courts … to evaluate facts and evidence in a particular case, unless it can be ascertained that this evaluation was clearly arbitrary or amounted to a denial of justice".[18] They added that, in the instant case, the ordinary criminal procedure legislation in force when the acts occurred in March 1995 did not allow the authors to file as civil parties to the prosecution at the preliminary investigation or inquiry stage, also known as the pretrial phase. Under the Code of Criminal Procedure of 2000, the authors were not empowered to file as civil parties at the preliminary stage of the criminal proceedings either. This restriction was removed by the Constitutional Court in April 2002. By then, the legal case in Colombia had been shelved. Therefore, the authors were unable to file as civil parties at the preliminary stage of the criminal proceedings, which is a clear case of denial of justice. The authors also maintained that the investigation was not conducted in a rigorous manner for the reasons set out previously.

7.3 The authors reiterated their comments concerning the continuing nature of the enforced disappearance, in keeping with national and international jurisprudence. They stated that Colombian law also obliges the State to take all necessary measures to ascertain the whereabouts of the victim, to establish the reasons for his or her disappearance and to inform the members of the family accordingly. The Working Group on Enforced or Involuntary Disappearances has made it clear that the obligation to investigate is closely linked to the continuing nature of the enforced disappearance and to the right of family members to the truth.[19] The authors concluded that there was no abuse whatsoever of the right to submit communications, as violations stemming from the enforced disappearance of Mr. Anzola and Mr. Molina in 1995 of the rights of both the disappeared persons and the members of their family, as well as the obligation of the State to investigate and ascertain the fate and whereabouts of the disappeared persons still obtain today.

7.4 Lastly, the authors cited the Committee's jurisprudence and reaffirmed that the burden of proof cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information. In cases where the allegations are corroborated by evidence submitted by the author and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider the author's allegations as adequately substantiated, in the absence of satisfactory evidence and explanation to the contrary submitted by the State party.[20]

[18] See the Committee's Views on communication No. 903/1999, *Van Hulst v. The Netherlands*, of 1 November 2004, para. 6.5.

[19] See the Working Group's general comment on enforced disappearance as a continuous crime (A/HRC/16/48, para. 39).

[20] See the Committee's Views on communication No. 1196/2003, *Boucherf v. Algeria*, of 30 March 2006; and *Bousroual v. Algeria*.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

8.2 The Committee has ascertained, as required under article 5, paragraph 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 also notes that domestic remedies have been exhausted, as required under article 5, paragraph 2 (b), of the Optional Protocol.

8.4 The Committee notes that the State party challenges the admissibility of the communication on the ground that the Committee is not competent to evaluate facts and evidence already examined by the domestic judicial authorities. The Committee also takes note of the statements by the authors to the effect that the enforced disappearance of Mr. Anzola and Mr. Molina was not subject to a rigorous or exhaustive investigation by the judicial authorities and that the authors were unable to file as civil parties in the criminal proceedings, which amounts to a denial of justice. The Committee considers this question to be closely related to the merits of the alleged violations and therefore decides to consider the merits.

8.5 The State party alleges that the communication is inadmissible on the grounds of abuse of the right to submit communications and argues that the authors have purposely submitted misleading information regarding the death of Karol Juliana Anzola Usuga and the alleged statements made by the police to the effect that paramilitary groups had control of the area. In this regard, the authors state that the death of Karol Juliana Anzola Usuga is only described for the purposes of demonstrating the psychosocial trauma suffered by the family members of Mr. Anzola and not to insinuate that there is some kind of connection between her death and the responsibility of the State for the latter's disappearance. As to the police statements, the authors maintain that this information illustrates the great difficulties encountered by Ms. Usuga and Ms. Serna in the search for their missing loved ones. The Committee finds the information in question to contain no misleading elements, as the purpose of providing it has been clearly enunciated by the authors. The Committee thus finds that there is no abuse of the right to submit a communication.

8.6 Lastly, the State party alleges that the communication is inadmissible on the ground that it was submitted 16 years after the dismissal order had been issued by the Puerto Triunfo prosecutor's office, which amounts to an abuse of the right to submit communications. The Committee observes that the present communication was submitted to it on 1 September 2011 and that its new rule 96 (c) is applicable to communications received by the Committee after 1 January 2012. The Committee further observes that the Optional Protocol does not establish time limits within which a communication should be submitted and that the period of time elapsing before such a submission, other than in exceptional circumstances, does not in itself constitute an abuse of the right to submit a communication.[21] In the meantime, the Committee applies its jurisprudence which allows for finding an abuse where an exceptionally long period of time has elapsed before the submission of the communication without

[21] See, for example, communications No. 1223/2003, *Tsarjov v. Estonia*, Views adopted on 26 October 2007, para. 6.3; No. 1434/2005, *Fillacier v. France*, decision of inadmissibility adopted on 27 March 2006, para. 4.3; and No. 787/1997, *Gobin v. Mauritius*, decision of inadmissibility adopted on 16 July 2001, para. 6.3.

sufficient justification.[22] In determining what constitutes an excessive delay, each case must be decided on its own merits. The authors have argued that the violation still persists, on account of the lack of official information on the fate and whereabouts of Mr. Anzola and Mr. Molina and the consequent absence of truth, justice and redress for their disappearance in spite of all the legal action taken, which the State party has not disputed. The Committee notes, in particular, that the authors filed numerous legal and administrative complaints between March 1995 and January 2011, but these complaints did not result in any clarification of the circumstances in which Mr. Anzola and Mr. Molina disappeared or in any action to locate their remains or to determine responsibility for their disappearance. In the light of the above, the Committee is of the view that the communication is admissible under article 3 of the Optional Protocol.

8.7 As all admissibility requirements have been met, the Committee declares the communication admissible and proceeds to its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

9.2 In the absence of comments from the State party regarding the merits of the complaint, the Committee will give due weight to the authors' allegations.

9.3 The Committee notes the authors' claims relating to the enforced disappearance on 9 March 1995 of Mr. Anzola and Mr. Molina in an area that was under the control of paramilitary forces at the time, specifically on a road controlled by the group Autodefensas Campesinas del Magdalena Medio. The Committee observes that, according to the extensive information provided by the authors and available as well from bodies of the United Nations human rights system, the State party encouraged the establishment of "self-defence" groups — according them legal recognition — to assist law enforcement bodies in fighting insurgents and provided them subsequently with training, weapons, logistical support and, in some instances, active involvement by the military in their operations.[23] The Committee also notes that enforced disappearance was a widespread practice used by paramilitary groups beginning in 1988, with the complicity of the Colombian armed forces, according to a broad range of information from national and international sources, including the Working Group on Enforced or Involuntary Disappearances, and available to the Committee.[24] The authors point out that the group Autodefensas Campesinas del Magdalena Medio controlled parts of the Middle Magdalena region, including the Medellín-Bogotá motorway where Mr. Anzola and Mr. Molina were disappeared, and that the group operated with the acquiescence of the Colombian army, which had provided training,

[22] Ibid.

[23] In its concluding observations on the fifth periodic report of Colombia, the Committee reiterated its concern about "links involving extensive violations of articles 6, 7 and 9 of the Covenant between elements of the armed forces and State security forces, on the one hand, and illegal paramilitary groups. on the other" and recommended that the State party should "take effective measures to terminate the links between elements of the security services and illegal paramilitary groups" (CCPR/CO/80/COL, para. 12). In its concluding observations on the sixth periodic report of Colombia, the Committee reiterated its concern at the "collusion between the armed forces and paramilitary groups" (CCPR/C/COL/CO/6, para. 8). See, in this same vein, the judgement of the Inter-American Court of Human Rights, *Case of the 19 Merchants v. Colombia*, paras. 84 (b) and 116-118.

[24] See the report of the United Nations High Commissioner for Human Rights to the Human Rights Commission on the situation in Colombia (E/CN.4/1998/16), paras. 41-43.

weapons and cover for the group's actions.[25] The Committee observes that the State party provided no information refuting the involvement of paramilitary groups in the reported disappearances or the link of these groups with the military. It notes as well the failure of the investigative authorities to exercise due diligence in response to the numerous complaints filed by the authors, as no investigation of Autodefensas Campesinas del Magdalena Medio was launched despite the fact that the events coincided with the area, time and mode of action of that group. In view of the foregoing, the Committee finds that the authors have provided sufficient evidence — and that the State party has not refuted — that the forced disappearances of Mr. Anzola and Mr. Molina are attributable to the Colombian State.

9.4 The authors allege that the enforced disappearance of Mr. Anzola and Mr. Molina is in itself a violation of numerous rights recognized under the Covenant, including the right not to be arbitrarily deprived of life, the right not to be subjected to torture and ill-treatment and the right to liberty and security of person. The Committee recalls that, while the Covenant does not explicitly use the term "enforced disappearance" in any of its articles, enforced disappearance constitutes a unique and integrated series of acts that represents continuing violation of various rights recognized in that treaty.[26] In the present case, 21 years have passed since the disappearance of Mr. Anzola and Mr. Molina without the State party making the least progress in its investigations into their fate and whereabouts or in determining who was criminally responsible. This is despite numerous reports and appeals presented by the authors and indications that the enforced disappearances took place at the hands of identified paramilitary groups operating in the area where the events occurred. In the light of the foregoing, and in the general context of violations of human rights that occurred, particularly in the form of enforced disappearance, at the time and place of the events, as indicated in the extensive information provided by the authors, the Committee considers that the State party has violated the rights of Mr. Anzola and Mr. Molina under articles 6, 7 and 9 of the Covenant.

9.5 The authors argue that enforced disappearance is also a violation of the right of everyone to be recognized as a person before the law, as established in article 16 of the Covenant, since one of the elements characteristic of enforced disappearance is the placing of the person outside the protection of the law, as recognized inter alia under article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. The Committee is of the view that the intentional removal of a person from the protection of the law constitutes a refusal to recognize that person as a person before the law, in particular if the efforts of his or her relatives to obtain access to effective remedies have been systematically impeded. In the absence of information from the State party on this point, the Committee considers that there has been a violation of article 16 of the Covenant in respect of the disappeared persons.

9.6 The Committee notes the authors' allegations regarding the lack of a thorough and effective investigation by the State into the disappearance of Mr. Anzola and Mr. Molina, in violation of their right to an effective remedy as recognized in article 2, paragraph 3, of the Covenant. The Committee recalls its general comment No. 31 (CCPR/C/21/Rev.1/Add.13), according to which a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant; cessation of an ongoing violation is an essential element of the right to an effective remedy (para. 15). These obligations arise notably in respect of those violations recognized as criminal, such as enforced disappearance (para. 18).

[25] See the judgement of the Inter-American Court of Human Rights, *Case of the 19 Merchants v. Colombia*, paras. 84 (d) and 86 (b).

[26] Committee's Views on communication No. 2000/2010, *Yuba Kumari Katwal v. Nepal*, adopted on 1 April 2015, para. 11.3.

9.7 The Committee observes that in the present case the authors attribute the lack of any effective and rigorous investigation specifically to the absolute lack of any investigation of paramilitary groups operating in the area with the acquiescence of the armed forces. The Attorney General's Office allegedly questioned only the authors and the notary in Puerto Triunfo, without at any time including or taking into consideration the irregular armed groups present in the region, despite the fact that, according to extensive information provided by the authors, the events and the timing and mode of disappearance were consistent with the modus operandi of those groups. The Committee further observes that although the authors have submitted numerous reports and requests for information to the various police, criminal and administrative authorities with competence for the case since March 1995, they have so far received no official information about the fate or whereabouts of their disappeared family members. Moreover, the State party has not provided convincing arguments to justify its delay in completing the investigation and bringing those responsible to justice. In the light of the foregoing, the Committee considers that the State party has not provided an effective remedy to the authors in respect of the disappearance of their family members, as required under article 2, paragraph 3, of the Covenant. Consequently, the Committee concludes that the actions in question constitute a violation of article 2, paragraph 3, read in conjunction with articles 6, 7, 9 and 16.

9.8 The authors maintain that they themselves and their families have suffered deeply and experienced severe stress as a result of the disappearance of their loved ones and the uncertainty surrounding their fate and whereabouts, which would constitute prohibited treatment under article 7 of the Covenant. The Committee also observes that the State has reportedly not made the requisite effort to investigate the disappearance of Mr. Anzola and Mr. Molina, to prosecute those responsible and to provide redress to the authors and that the State party has not contested this assertion. Consequently, the Committee concludes that the events in question constitute a violation of article 7 of the Covenant and of article 2, paragraph 3, read in conjunction with article 7.

9.9 Having concluded that the above provisions have been violated, the Committee considers that it is not necessary to take a decision on the allegations relating to articles 10, 17 and 23, paragraph 1, of the Covenant.

10. The 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 before it reveal a violation of articles 6, 7, 9 and 16 and of article 2, paragraph 3, read in conjunction with articles 6, 7, 9 and 16, of the Covenant, in respect of Mr. Anzola and Mr. Molina, and of article 7 and of article 2, paragraph 3, read in conjunction with article 7, of the Covenant, in respect of the authors.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including: (a) the performance of an independent, thorough and effective investigation of the disappearance of Mr. Anzola and Mr. Molina and prosecution and punishment of those responsible; (b) the release of Mr. Anzola and Mr. Molina should they still be alive; (c) if they are dead, the hand-over of their remains to their family; and (d) effective reparation, including adequate compensation, medical and psychological rehabilitation and appropriate measures of satisfaction for the authors for the violations suffered. The State party is also under an obligation to prevent similar violations from occurring in the future and to ensure that any forced disappearances give rise to a prompt, impartial and effective investigation.

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 or not and that, pursuant to article 2 of the Covenant,

the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is further requested to publish the Views and to have them translated into the official language of the State party and widely distributed.

Appendix I

Individual opinion by Committee member Yuval Shany (partly concurring and partly dissenting)

1. I agree with the rest of Committee that the authors have substantiated the claim that the State party failed to take the necessary measures to protect Mr. Anzola and Mr. Molina in the period of time that followed their disappearance, and that it has not adequately investigated their disappearance until this very day. Hence, the State party should indeed have been found in breach of its positive obligations under articles 6, 7 and 9 of the Covenant and in breach of its duty to provide an effective remedy under article 2 (para. 3) in conjunction with articles 6, 7 and 9. I do not believe, however, that the authors were able to establish that the State party intentionally removed Mr. Anzola and Mr. Molina from the protection of the law. As a result, I also do not consider that it was shown that article 16 was violated in the circumstances of the case.

2. According to the facts alleged by the authors, Mr. Anzola and Mr. Molina disappeared on 9 March 1995 in or around Puerto Triunfo. On 17 March 1995, their car was found abandoned in the district of Aquitania, San Francisco, in the department of Antioquia. According to an unnamed police officer "in that area, paramilitary groups were stopping people to check their identity and were disappearing persons from outside the region" (Views of the Committee, para. 2.4). There have also been some reports that some disappeared persons were working in a stone quarry controlled by paramilitaries near the town of Doradal, and a friend of Mr. Anzola's uncle subsequently claimed that, on 16 June 1995, he had seen Mr. Anzola and Mr. Molina leaving a bank in Bucaramanga, in the department of Santander, in the company of armed men who put them in a car. The authors finally claimed that the "paramilitary groups, with the acquiescence of the 42nd Infantry Battalion of the Fourteenth Brigade, operated on the road from Medellín to Bogotá, along which the disappeared relatives were travelling" (Views of the Committee, para. 2.22).

3. Although the said information may certainly suggest that there is a real possibility that Mr. Anzola and Mr. Molina were forcibly disappeared by paramilitary groups operating with the support and complicity of the State party, nothing in the facts of the case rules out other explanations for the disappearance, as other militant and criminal groups have been operating in the same area, and it is possible that groups such as the fourth front of FARC-EP Magdalena Medio or one of the local drug cartels were responsible for the victims' disappearance. Significantly, there is no information suggesting that Mr. Anzola and Mr. Molina were persons of interest to the paramilitaries because of any political affiliation, and it looks as if they were forcibly disappeared by a paramilitary group or another group for economic or other reasons or fell victim to a random act of violence.

4. When allegations that Mr. Anzola and Mr. Molina were disappeared by State-affiliated paramilitaries had been made by the authors to numerous State authorities, the latter responded that "it cannot be established with sufficient certainty that the alleged enforced disappearance of Mr. Anzola and Mr. Molina was a criminal act perpetrated by illegal armed groups that may have been in the area at the time or that the disappearances were directly linked to the modus operandi of these groups or the operation of a stone quarry controlled by paramilitaries that was allegedly found near the town of Doradal" (Views of the Committee, para. 4.3). Although this assertion is in itself indicative of an inadequate investigation into the disappearances and cannot

serve as an excuse for the State's failure to protect the victims, it is not inconsistent with the possibility that State authorities or State-controlled groups were not directly implicated in the tragic fate of Mr. Anzola and Mr. Molina.

5. It should be emphasized that the facts of the present case differ significantly from those of other enforced disappearance cases, in which the Committee directly attributed the disappearance to the relevant State authorities and was thus able to find an intentional removal from the protection of the law, i.e., an article 16 violation. In these previous cases, there existed specific evidence which directly tied the disappearances to the State party or one of its organs, such as arrest of the victim by State officials or evidence of the victim being in the custody of the State.[a] In the absence of such evidence, the Committee found only a violation of the State party's positive obligations to protect the victims and to investigate the crime.[b] A similar evidentiary standard — a requirement for specific evidence connecting the disappearance to the State party for a direct violation finding, and for circumstantial evidence in order to make an indirect or procedural violation finding — has also been applied in enforced disappearance cases adjudicated by other international courts.[c] Regrettably, the findings of the Committee in the present case on the issue of intentional removal from the protection of the law are based on a combination of conjectures, which fall short, I believe, of the level of substantiation required in order to establish a direct involvement by the State party in the victims' disappearance, which would amount to an intentional removal from the protection of the law. Hence, I cannot join the Committee in finding a violation of article 16 of the Covenant

[a] See, inter alia, communication No. 1780/2008, *Aouabdia v. Algeria*, Views adopted on 22 March 2011, para. 7.

[b] See, for example, communication No. 1447/2006, *Amirov v. Russian Federation*, Views adopted on 2 April 2009, para. 11.5.

[c] See, for example, *Velasquez Rodriguez v. Honduras*, judgement of 29 July 1988, Inter-American Court of Human Rights (Ser. C) No. 4 (1988), paras. 115 and 147; and *Varnava and Others v. Turkey*, judgement of the European Court of Human Rights of 18 September 2009, para. 186.

Appendix II

[*Original: Spanish*]

Individual opinion by Committee members Víctor Rodríguez-Rescia and Fabián Omar Salvioli (concurring)

1. The present opinion concurs in all respects with the Committee's decision concerning the enforced disappearance of Mr. Anzola and Mr. Molina, namely that the State party has violated their rights under articles 6, 7, 9 and 16 of the Covenant and that it has not provided effective remedy to the authors for the disappearance of their family members or made the requisite effort to investigate and prosecute the perpetrators and offer appropriate reparation to the authors. The foregoing constitutes a violation of article 2, paragraph 3, read in conjunction with articles 6, 7, 9 and 16, as well as a violation of article 7 and of article 2, paragraph 3, read in conjunction with article 7, of the Covenant with regard to the family members.

2. The foregoing notwithstanding, the Committee should have elaborated more on its arguments with regard to State responsibility for acts committed by third parties given the central role played by non-State agents in the specific circumstances of the instant case.

3. Bearing in mind the Committee's finding in paragraph 9.3 of the Views, the following facts have been shown:

(a) That Mr. Anzola and Mr. Molina disappeared on 9 March 1995 in an area that at the time was under the control of paramilitary groups, specifically a road under the control of the group Autodefensas Campesinas del Magdalena Medio;

(b) That, according to the extensive information provided by the authors and available as well from bodies of the United Nations human rights system, the State party encouraged the establishment of "self-defence" groups — according them legal recognition — to assist law enforcement bodies in fighting insurgents and provided them subsequently with training, weapons, logistical support and, in some instances, active involvement by the military in their operations;

(c) That enforced disappearance was a practice used regularly as from 1988 by paramilitary groups with the acquiescence of the Colombian military;

(d) That Autodefensas Campesinas del Magdalena Medio controlled areas in the Middle Magdalena region, including the road connecting Medellín and Bogotá where Mr. Anzola and Mr. Molina were disappeared, and that said group operated with the acquiescence of the Colombian army, which is reported to have provided training, weapons and cover for the group's actions.

4. In the light of these facts, there can be no denying that these irregular armed groups were acting as de facto agents of the State at the time the events occurred. This is the conclusion that emerges from the ample information provided in paragraph 9.3.

5. The international responsibility that States parties bear under the Covenant becomes effective as from the moment it is shown that there has been a specific violation of the general obligations to respect and ensure the rights set forth in article 2, paragraph 1, of the Covenant. These general obligations, which are erga omnes by their nature, give rise to a specific duty to prevent individuals from engaging in acts that could create an international responsibility for the State from a human rights standpoint owing to an act or omission by a public authority. In the instant case, both the acts and the omissions of the State, in a setting marked by structural violence,

point clearly to a violation of the aforementioned general duty to ensure those rights. The State's objective responsibility derives equally from its having established paramilitary structures and from its failure to effectively eliminate those structures; this created a situation of high and constant risk in the region where the authors were disappeared.

6. The Committee should also have laid greater stress on the probative value it attached to the general context and circumstantial evidence in deciding on responsibility. In cases such as this one, it falls to the State to show that it held no responsibility for the enforced disappearance and that it had conducted a prompt, thorough and effective investigation to ascertain the facts and punish the perpetrators.

7. The task of properly assessing the evidence — giving the necessary weight to each element, including the specificities of circumstance and context — in such complex situations as this one is a duty that is incumbent upon international protection bodies and procedures such as the Committee in pursuance of the objectives and purpose of the human rights treaties.