Article 10, paragraph 1, because he was subjected to inhuman prison conditions until his release in December 1984; and

Article 14, paragraph 1, paragraph 3 (c) and paragraph 3 (g), because he was compelled to testify against himself and was denied a fair and public hearing, without undue delay, by an independent and impartial tribunal.

11.1 The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy the violations which Raúl Cariboni has suffered and, in particular, to grant his adequate compensation.

11.2 The Committee expresses its appreciation for the measures taken by the State party since March 1985 to ensure observance of the Covenant and co-operation with the Committee.

B. Communication No. 161/1983, Herrera Rubio v. Colombia (Views adopted on 2 November 1987 at the thirty-first session)

Submitted by: Joaquín Herrera Rubio

Alleged victim: The author and his deceased parents, José Herrera and Emma Rubio de Herrera

State party concerned: Colombia

Date of communication: 1 December 1983 (date of initial letter)

Date of decision on admissibility: 26 March 1985

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

Meeting on 2 November 1987,

Having concluded its consideration of communication No. 161/1983, submitted to the Committee by Joaquín Herrera Rubio 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 author of the communication and by the State party concerned,

Adopts the following:

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

1.1 The author of the communication (initial letter dated 1 December 1983 and subsequent letter dated 4 October 1986) is Jaoquín David Herrera Rubio, born on 3 December 1958, a Colombian citizen, living in Bogota, Colombia. He submits the communication on his own behalf and in respect of his deceased parents, José Joaqin Herrera and Emma Rubio de Herrera.

1.2 The author alleges that on 17 March 1981 he was arrested in Cartagena del Chairá, Colombia, by members of the armed forces, taken to a military camp and subjected to torture in an attempt to extract from him information about a guerrilla movement. The author describes in detail the tortures to which he was allegedly subjected, including being hanged by his arms and beaten until he lost consciousness and being thrown into the river Caguán inside a sack until he nearly drowned. He states that he did not have any information concerning the movement, but that his interrogators kept on insisting and he was severely beaten. After three days he was transferred to the military barracks of Doncello and again subjected to torture ("submarine", "hanging" and beatings). In addition, he was told that his parents would be killed if he refused to sign a confession prepared by his captors. After several days he was moved to the military barracks of Juananbú in the city of Florencia. He was again beaten (the name of the responsible officer is given) and threatened with his parents' possible death. He was then taken before Military Tribunal No. 35 and allegedly forced to sign a confession, pleading guilty, inter alia, of having kidnapped a man called Vicente Baquero who later declared that he had never been kidnapped.

1.3 On 5 April 1981, the author was taken to the prison in Florencia and informed that his parents had been killed. At his request, he was immediately brought again before the military judge, before whom he retracted his "confession" and denounced the death threats received earlier concerning his parents. His new declaration allegedly disappeared from his dossier.

1.4 The author states that on 13 December 1982 he was released from prison due to Amnesty Law No. 35 of 1982 concerning political detainees.

1.5 With regard to his parents' deaths, the author states the following:

His father, José Joaquin Herrera, 54 years old, was treasurer of the Council of Community Action (Junta de Acción Comunal) in the village of Gallineta belonging to the municipality of Doncello; his mother, Emma Rubio de Herrera, 52 years old, had been elected town Councillor for the Frente Democrático; they were both farmers. In February 1981, his parents' home was searched by approximately 20 members of the armed forces and the author's father was ordered to follow them. He returned one hour later bearing signs of beatings.

One week later the same group, part of the Battallón Colombia, led by a captain, a lieutenant and a corporal (their names are given), detained his father for several hours during which he was subjected to torture. The same happened the following day.

On 27 March 1981, at 3 a.m., a group of individuals in military uniforms, identified as members of the "counter-guerrilla", arrived at the home of the author's parents and ordered his father to follow them. When his mother objected, she was also obliged to follow them.

The author's brothers reported the disappearance of their parents immediately afterwards to the Tribunal of Doncello. One week later they were called by the authorities of Doncello to identify the bodies of their parents; their father's body was decapitated and his hands tied with a rope.

1.6 With regard to the question of exhaustion of domestic remedies, the author states that from prison he wrote to the President of Colombia, to the Office of the

Attorney-General and to the responsible military authorities, but never received a reply. He further states that the copies which he had kept of these letters were removed from his cell by the prison authorities during a search. He adds that all incidents complained of occurred in a region under military control where violations of the rights of the civilian population have allegedly become general practice.

1.7 The author claims that his communication reveals violations of articles 6, 7, 9, 10 and 17 of the International Covenant on Civil and Political Rights. He indicates that the present case is not being examined under another procedure of international investigation or settlement.

2. By its decision of 22 March 1984, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. The Working Group also requested the State party to provide the Committee with (a) copies of any court orders or decisions relevant to the case of Joaquin David Herrera Rubio and (b) copies of the death certificates and medical reports and of the reports of whatever inquiry was held in connection with the deaths of José Joaquín Herrera and Emma Rubio de Herrera.

3. No reply was received from the State party in this connection. The time-limit established by the Working Group's decision expired on 15 July 1984.

4. The Committee found, on the basis of the information before it, that is was not precluded by article 5, paragraph 2 (a), of the Optional Protocol from considering the communication. The Committee was also unable to conclude that, in the circumstances of the case, there were effective domestic remedies which had not been exhausted. Accordingly the Committee found that the communication was not inadmissible under article 5, paragraph (b), of the Optional Protocol.

5. On 26 March 1985 the Human Rights Committee therefore decided:

(a) That, in addition to acting on his own behalf, the author was justified in raising the case of his deceased parents, José Joaquín Herrera and Emma Rubio de Herrera;

(b) That the communication was admissible;

(c) That in accordance with article 4, paragraph 2, of the Optional Protocol, the State party should be requested to submit to the Committee, within six months of the date of the transmittal to it of the current decision, written explanations or statements clarifying the matter and the remedy, if any, that might have been taken by it;

(d) That the State party again be requested to furnish the Committee with (i) copies of any court orders or decisions taken against Joaquín David Herrera Rubio and (ii) copies of the death certificates and autopsy reports and of the reports of whatever inquiry was held in connection with the deaths of José Joaquín Herrera and Emma Rubio de Herrera.

6.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 11 August 1986, the State party indicates that the killings of José Herrera

and Emma Rubio de Herrera were duly investigated and that no evidence was found to support charges against military personnel. The investigation was therefore closed by order of the Attorney-General delegate for the Armed Forces, dated 15 August 1984. In a subsequent letter of the Attorney-General delegate for the Armed Forces to the Colombian Attorney-General, dated 20 October 1985, it is stated that the dossier was closed:

> "... because it was established that no member of the armed forces took part in those events. The report includes telegram No. 5047, dated 24 May 1984, signed by the commanding officer of the Ninth Brigade with headquarters in Neiva, stating that the Honourable Disciplinary Court had on 29 March 1984 ascribed jurisdiction to investigate these murders to the Third High Court of Florencia (Caquetá) which, by telegram No. 157 of 18 September 1986 addressed to this office, reported that proceedings to date had revealed no involvement of any member of the armed forces and that the dossier had been temporarily closed in conformity with article 473 of the Code of Criminal Procedure."

6.2 The State party also forwarded the text of a decision of the Penal Chamber of the Superior Court of Florencia, dated 18 February 1983, finding, after a judicial investigation lasting from 24 September 1982 to 25 January 1983, that the killings had been perpetrated by armed persons, without, however, being able to determine to which group they belonged. This decision also quotes the testimony of the author's brother Luis Herrera Rubio, who stated that his parents had no enemies in the community and that they had only had problems with members of the Colombian army, who had repeatedly searched their home and detained his father on a previous occasion.

6.3 With respect to the criminal proceedings instituted against the author and to the author's allegations that he had been subjected to torture, the Attorney-General Delegate for the Armed Forces stated that:

> "The Military Court of Criminal Investigation No. 37 [hereinafter: Court No. 37] attached to the Juanabú Battalion (Florencia), acting on a report dated 17 February 1981, signed by the officer commanding the Colombia Airborne Battalion, opened on 18 February 1981 a criminal investigation against Alvaro Hurtatis and others on the charge of rebellion (involvement in the FARC (Fuerzas Armadas Revolucionarias de Colombia) rebel group), in connection with events that occurred in Caquetá in the years 1979, 1980 and 1981. During this investigation, the accused's statement given on 3 April 1981 implicated Joaquín Herrera Rubio (alias El Guara), who was arrested by a patrol of the Colombia Battalion on 17 March 1981 in Cartagena del Chiará (Caquetá). By decision dated 8 April 1981, Court No. 37 ordered the pre-trial detention of Joaquín Herrera Rubio on the charge of rebellion. In applications dated 7 May and 11 June 1981, Joaquín Herrera Rubio requested the permission of Court No. 37 to make an addition to his unsworn statement. In this statement to the Court on 15 June 1981 he gave an account of the tortures to which he had been subjected by members of the Colombia Battalion. The charges of torture were also made on oath during the inquiry and Court No. 37 also received a sworn statement about them during its proceedings. Joaquín Herrera Rubio stated that the torture described in the reports of the Office of the Attorney-General of the nation and in those in the possession of the United Nations Human Rights Committee were inflicted on him in the Colombia Battalion, that he did not know the names of the soldiers who tortured him since they blindfolded him first, that he brought no charges

against the Military Court but that he did bring charges against military personnel, namely, Captain Péres and Lieutenant Moncaleano.

"By decision dated 24 June 1982, the Command of the Ninth Brigade - the Court of First Instance - referred the proceedings to the Florencia High Court (Allocation Division) as having jurisdiction. By prior decision No. 44 dated 20 April 1981, issued by the Command of the Ninth Brigade, Joaquín Herrera Rubio had been sentenced to three years' imprisonment for breach of article 10, paragraph 2, of Decree 1923/78.

"The Florencia High Court, according to the photocopy of the register annexed, by court order dated 23 June 1983,* declared the amnesty applicable to the investigation by virtue of the provisions of Act 35/82 and consequently ordered that all proceedings against Joaquín Herrera Rubio and others on the charges of rebellion, extortion and aggravated theft should be stayed. The court decision ... made no reference to and did not investigate the torturing of Joaquín David Herrera Rubio."

6.4 On 21 March 1986, the Attorney-General Delegate for the Armed Forces decided not to open a formal investigation with regard to the allegations of torture in the author's case. The decision reads in part:

"Mr. Herrera Rubio complained of the alleged tortures to Court No. 37 in additions, made on 15 June 1981 and 28 October 1981, to his statement as an accused person. These statements assert that, when he was arrested on 17 March 1981, army personnel from the Doncello Military Base and the Cartagena del Chairá Military Base tortured him, but as they blindfolded him before doing so, he could not identify them.

"The Florencia regional office of the Attorney-General was instructed to take a further statement from the complainant but it was not possible to discover his whereabouts in the Department of Caquetá; it was stated that he was possibly living in Puerto Lleras.

"Inquiries were ordered to be made at the Municipal Prison into the physical condition of the complainant on his arrival there. The medical officer in charge of prisons under the HighjCourt states that, since medical records for each inmate had begun to be kept only from the last three months of 1983, he cannot substantiate the allegation.

"On the index card kept by the legal counsel's office, relating to Herrera Rubio held on a charge of rebellion, there is no record that he entered the prison with marks of torture or injuries. It states that he entered the prison of the judicial district on 11 August 1981.

"In view of the difficulties of obtaining evidence about events which happened five years ago, this office can take a decision only on the basis of the account given by the alleged victim to Court No. 37 in 1981.

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* The author states in paragraph 1.4 above that he had already been released from imprisonment on 13 December 1982.

"His statement on the alleged acts of torture are not credible in view of the fact that three months elapsed from the time of the alleged ill-treatment before the complainant reported it to the Court. On witnessing his statement as an accused person made on 3 April 1981, this office put on record that 'the accused appeared normal physically and mentally ...'; the person in question under investigation for rebellion had been sentenced for illegally carrying weapons. Finally, his charges contain no specific details."

7.1 In his comments, dated 4 October 1986, the author dismisses the State party's response as "a prime example of the various legal subterfuges used by the armed forces, with the collusion of the other branches of government, to safeguard their impunity".

7.2 The author refutes the State party's arguments in the following way:

"In its reply concerning the murder of my parents, the Colombian Government totally absolves the armed forces from blame, claiming that the fact of wearing military uniform is in no way proof of the presence of members of the armed forces and insinuating that the crime might have been committed by the FARC guerrilla group.

"This reply is completely at odds with the facts of the case, as reported to the committee; members of the armed forces repeatedly searched the home of my parents, tortured my father and repeatedly told me, while I was in prison, that they would kill my parents, as indeed they did.

"The complaint submitted to the committee gives the names of various serving members of the armed forces responsible for the searches, torture and threats, yet the Attorney-General has nothing to say on the subject.

"...

"The insinuation that a guerrilla group such as FARC carried out these killings is absolutely inconsistent with other information in the case. One of the documents attached by the Attorney-General states that I was charged with rebellion because of my alleged links with FARC. It also notes that my mother was a councillor for the Democratic Front, a political organisaton enjoying FARC support in the region. It would therefore be absurd to imagine that FARC could have committed this crime, when it thereby have been killing its own sympathisers.

"Regarding the torture of which I was a victim, the Attorney-General states that the investigation into this matter was also closed because, inter alia:

"At the time, prisoners were not given a medical examination;

"There are difficulties in obtaining evidence about events which happened five years ago;

"It was only three months after the ill-treatment that the injured party decided to report it.

"The Attorney-General fails to explain why the petitions written by me in prison and addressed to the Office of the President of the Republic, the office of the Attorney-General and the Ninth Army Brigade went unanswered.

"...

"The Attorney-General would also appear to be unaware of the psychological presure on a prisoner who has been subjected to cruelty and harassment and lacks any means of defence. Such prisoners often decide not to file a complaint so as to save themselves or their families from further and even more cruel acts in retaliation. So it was with me, in deciding to report the torture and threats which I had suffered only when I learned that my parents had been killed by the armed forces and could not therefore be subjected to further criminal reprisals.

"Lastly, in order to understand the nature of this crime, the Committee needs to have some idea of its context.

"In 1981, the Department of Caquetá was the scene of a military counter-insurgency operation under cover of which all kinds of crimes were committed.

"Since this is a semi-forest area somewhat isolated from the centre of the country and with poor communications, this operation was largely passed over in silence by the media.

"Most villages in the area were subjected to stringent controls by the armed forces on the supposition that every peasant was 'collaborating with the guerrillas'. Most of the population suffered searches, intimidation, plunder of their household goods, crops and cattle, and cruel, inhuman and degrading treatment; torture was widely and systematically practised and there were numerous disappearances and killings. Many peasants were arrested and then taken by military helicopter to villages where they were not known; there they were killed and their bodies thrown on to a road or into a river (the number of persons killed may approach 1,000).

"This array of premeditated crimes had the full backing of the various branches of Government. That is why domestic complaints were useless and all these crimes have so far gone absolutely unpunished."

8.1 The author's comments were transmitted to the State party on 27 November 1986.

8.2 In view of the conflicting statements by the parties, the Working Group of the Human Rights Committee, at a special session in December 1986, decided to request more detailed information from the State party. By note verbale of 18 December 1986, the following specific questions were formulated:

(a) What investigations have been undertaken with regard to those military officers who have been specifically named by the author and accused of having committed torture, carried out raids and made threats?

(b) What investigations are now being carried out with regard to the deaths of the parents of Mr. Herrera Rubio and with regard to his allegations of torture?

(c) Have charges been brought against anyone?

9.1 Under cover of a note dated 22 January 1987, the State party forwarded copies of various documents relating to the investigation of the author's case, but did not provide specific answers to the questions posed by the Working Group. No reference was made to the specific issues raised by the author in his comments of 4 October 1986.

9.2 The documents forwarded by the State party appear to confirm that no further investigations have been undertaken or are pending in the Herrera case.

9.3 By a further letter, dated 8 July 1987, the Ministry of Foreign Affairs of Colombia confirmed that the investigations in the author's case have been concluded and that no legal proceedings against military personnel could be initiated because of lack of sufficient evidence. The State party therefore requests the committee to consider the explanations and statements already submitted in adopting its views in the case.

10.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts and considerations.

10.2 Joaquín Herrera Rubio was arrested on 17 March 1981 by members of the Colombian armed forces on suspicion of being a "guerrillero". He claims that he was tortured ("submarine", "hanging" and beatings) by Colombian military authorities who also threatened him that unless he signed a confession his parents would be killed. On 27 March 1981, persons in civilian clothes and others wearing military uniforms, identifying themselves as members of the counter-guerrilla, came to the home of the author's parents and led them away by force. One week later the bodies of José Herrera and Emma Rubio de Herrera were found in the vicinity. At that time the District of Caquetá is reported to have been the scene of a military counter-insurgency operation, during which most villages in the area were subjected to stringent controls by the armed forces. The State party has shown that a judicial investigation of the killings was carried out from 24 September 1982 to 25 January 1983, and claims that is was established that no member of the armed forces had taken part in the killings. With respect to the author's allegations of torture, the State party contends that they are not credible in view of the fact that three months elapsed from the time of the alleged ill-treatment before the author's complaint was brought to the attention of the Court.

10.3 Whereas the Committee considers that there is reason to believe, in the light of the author's allegations, that Colombian military persons bear responsibility for the deaths of José Herrera and Emma Rubio de Herrera, no conclusive evidence has been produced to establish the identity of the murderers. In this connection the Committee refers to its general comment No. 6 (16) concerning article 6 of the Covenant, which provides, inter alia, that States parties should take specific and effective measures to prevent the disappearance of individuals and establish effective facilities and procedures to ivestigate thoroughly, by an appropriate impartial body, cases of missing and disappeared persons in circumstances which may involve a violation of the right to life. The Committee has duly noted the State party's submissions concerning the investigations carried out in this case, which, however, appear to have been inadequate in the light of the State party's obligations under article 2 of the Covenant.

10.4 With regard to the author's allegations of torture, the Committee notes that the author has given a very detailed descripton of the ill-treatment to which he was subjected and has provided the names of members of the armed forces allegedly responsible. In this connection, the Committee observes that the initial investigations conducted by the State party may have been concluded prematurely and that further investigations were called for in the light of the author's submission of 4 October 1986 and the Working Group's request of 18 December 1986 for more precise information.

10.5 With regard to the burden of proof, the Committee has already established in other cases (for example, Nos. 30/1978 and 85/1981) a/ that this cannot rest alone on the author of the communications, 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 relevant information. In the circumstances, due weight must be given to the authors' allegations. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. In no circumstances should a State party fail to investigate fully allegations of ill-treatment when the person or persons allegedly responsible for the ill-treatment are identified by the author of a communication. The State party has in this matter provided no precise information and reports, inter alia, on the questioning of military officials accused of maltreatment of prisoners, or on the questioning of their superiors.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant of Civil and Political Rights, is of the view that the facts as found by the Committee disclose violations of the Covenant with respect to:

Article 6, because the State party failed to take appropriate measures to prevent the disappearance and subsequent killings of José Herrera and Emma Rubio de Herrera and to investigate effectively the responsibility for their murders; and

Article 7 and article 10, paragraph 1, because Joaquín Herrera Rubio was subjected to torture and ill-treatment during his detention.

12. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations that Mr. Herrera Rubio has suffered and further to investigate said violations, to take action thereon as appropriate and to take steps to ensure that similar violations do not occur in the future.