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Sixtieth session
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VIEWS

Communication No. 612/1995

Submitted by:	José Vicente and Amado Villafañe Chaparro, Dioselina Torres Crespo, Hermes Enrique Torres Solis and Vicencio Chaparro Izquierdo [represented by Mr. Federico Andreu]
Victims:	José Vicente and Amado Villafañe Chaparro, Luís Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres
State party:	Colombia
Date of communication:	14 June 1994 (initial submission)
Date of adoption of Views:	29 July 1997

On 29 July 1997, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 612/1995. The text of the Views is appended to the present document.

[Annex]

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* Made public by decision of the Human Rights Committee.

Annex * **

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

concerning

Communication No. 612/1995

Submitted by:	José Vicente and Amado Villafañe Chaparro, Dioselina Torres Crespo, Hermes Enrique Torres Solis and Vicencio Chaparro Izquierdo [represented by Mr. Federico Andreu]
Victims:	José Vicente and Amado Villafañe Chaparro, Luís Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres
State party:	Colombia
Date of communication:	14 June 1994 (initial submission)
Date of admissibility decision:	14 March 1996

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

Meeting on 29 July 1997,

Having concluded its consideration of communication No. 612/1995, submitted to the Human Rights Committee on behalf of Mr. José Vicente and Mr. Amado Villafañe Chaparro, Mr. Luís Napoleón Torres Crespo, Mr. Angel María Torres Arroyo and Mr. Antonio Hugues Chaparro Torres 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, their counsel and the State party,

Adopts the following:

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* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Praffullachandra N. Bhagwati, Mr. Thomas Buergenthal, Lord Colville, Mrs. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mrs. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Julio Prado Vellejo, Mr. Martin Scheinin, Mr. Danilo Türk and Mr. Maxwell Yalden.

** In accordance with rule 85 of the rules of procedure, one member of the Committee, Mrs. Pilar Gaitan de Pombo, did not take part in the adoption of the Views.

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

1. The authors of the communication are José Vicente Villafañe Chaparro and Amado Villafañe Chaparro, filing a complaint on their own behalf, and Dioselina Torres Crespo, Hermes Enrique Torres Solis and Vicencio Chaparro Izquierdo, acting on behalf of their respective deceased fathers, Luís Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres. The authors are all members of the Arhuaco community, a Colombian indigenous group, residing in Valledupar, Department of Cesar, Colombia. It is submitted that they are victims of violations by Colombia of articles 2, paragraph 3; 6, paragraph 1; 7; 9; 14; and 27 of the International Covenant on Civil and Political Rights. They are represented by a lawyer, Mr. Federico Andreu Guzmán.

Facts as submitted by the authors

2.1 On 28 November 1990, at about 1 p.m., Luís Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres boarded a bus in Valledupar for Bogotá, where they were scheduled to attend various meetings with government officials. The same day, at about 11 p.m., José Vicente Villafañe and his brother, Amado Villafañe, were arrested by soldiers from the No. 2 Artillery Battalion “La Popa” stationed in Valledupar. Lieutenant-Colonel Luís Fernando Duque Izquierdo, Commander of the Battalion, had issued a warrant to search the Villafañe brothers' houses, ordering that the search be carried out by Lieutenant Pedro Fernández Ocampo and four soldiers. The search warrant had been authorized on the basis of military intelligence to the effect that the two men were members of a support unit for the Guerrilla Group ELN (“Ejército de Liberación Nacional”), and that they were storing arms and material reserved exclusively for the use of the armed forces. The brothers were released on 4 December 1990, after considerable pressure had been brought to bear by the Arhuaco community.

2.2 Manuel de la Rosa Pertuz Pertuz was also arrested on 28 November 1990, when he left his house to help the Villafañe brothers; he was taken to the “La Popa” barracks, where he was allegedly ill-treated, blindfolded and interrogated by military officers. He was released on 29 November at about 7.15 p.m. Amarilys Herrera Araujo, the common-law wife of Amado Villafañe Chaparro, was also arrested on the night of 28 November 1990, taken to “La Popa” and interrogated. She was released at about 1 a.m. on 29 November 1990. In the last two cases, there was no arrest warrant, but both were deprived of the possibility of obtaining legal assistance.

2.3 It soon transpired that the Arhuaco leaders never reached their destination in Bogotá. On 12 December 1990, a delegation of the Arhuacos went to Curumani to verify the information they had received regarding the abduction of their leaders. It appeared that on 28 November 1990, the driver of the bus (on which the Arhuaco leaders had travelled) had reported to the police in Curumani that, at about 4 p.m., after stopping at a restaurant in Curumani, four armed men had forced three indigenous passengers to board a car; the police, however, had not followed up on the complaint.

2.4 On 13 December 1990, in the municipality of Bosconia, the Arhuaco delegation was informed that, on 2 December 1990, three corpses had been

recovered in the vicinity of Bosconia; one in Bosconia itself, a second in the municipality of El Paso, and a third in Loma Linda near the river Arguari. No attempt had been made to identify the bodies, but the clothes and other characteristics listed on the death certificates indicated that the bodies were those of Luis Napoleon Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres. The death certificates further revealed that the three bodies showed traces of torture. The examining magistrate of Valledupar ordered the exhumation of the bodies. The first two bodies were exhumed on 14 December 1990, the third on 15 December. Members of the Arhuaco community called to identify the bodies confirmed that they were those of Luis Napoleon Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres. The necropsy revealed that they had been tortured and then shot in the head.

2.5 Still on 14 December 1990, the Arhuaco community arranged a meeting with government officials and the media in Valledupar. At this meeting, José Vicente Villafañe testified that when he and his brother were being held by the Battalion “La Popa”, they were subjected to psychological and physical torture, and interrogated about the abduction, by a guerrilla group, of a landowner, one Jorge Eduardo Mattos. José Vicente Villafañe identified the commander of “La Popa”, Lieutenant-Colonel Luis Fernando Duque Izquierdo, and the chief of the battalion Intelligence Unit, Lieutenant Pedro Antonio Fernández Ocampo, as those responsible for his and his brother's ill-treatment. He further testified that, during interrogation and torture, they (the officers) claimed that “three other persons had been detained who had already confessed”, and threatened him that “if he did not confess they would kill other Indians”. Furthermore, on one day he was interrogated by the brother of Jorge Eduardo Mattos, Eduardo Enrique Mattos, who first offered him money in exchange for information on his brother's whereabouts, and then threatened that if he did not confess within 15 days they would kill more individuals of Indian origin. According to José Vicente Villafañe, it was clear from the fact that his arrest and the disappearance of the Arhuaco leaders took place on the same day, and from the threats he received, that Lieutenant Fernández Ocampo and Lieutenant-Colonel Duque Izquierdo were responsible for the murders of the three Arhuaco leaders, and that Eduardo Enrique Mattos had paid them to do so.

2.6 The Arhuaco community further accused the Director of the Office of Indigenous Affairs in Valledupar, Luis Alberto Uribe, of being an accessory to the crime, as he had accompanied the Arhuaco leaders to the bus station and was one of the very few who knew of the purpose and destination of the journey; furthermore, he had allegedly obstructed the community's efforts to obtain the immediate release of the Villafañe brothers.

2.7 As to the exhaustion of domestic remedies, it transpires that preliminary investigations in the case were first carried out by the examining magistrate of Court No. 7 of Valledupar (Juzgado 7° de Instrucción Criminal Ambulante de Valledupar); on 23 January 1991, the case was referred to the examining magistrate of Court No. 93 in Bogotá (Juzgado 93° de Instrucción Criminal Ambulante de Bogotá), and on 14 March 1991 to Court No. 65 in Bogotá. On 30 May 1991, the Commander of the Second Brigade of Barranquilla, in his capacity as judge on the military tribunal of first instance, requested the examining magistrate of Court No. 65 to discontinue the proceedings in respect

of Lieutenant-Colonel Duque Izquierdo and Lieutenant Fernández Ocampo, as Military Court No. 15 (Juzgado 15° de Instrucción Penal Militar) had begun its own investigation in the case; furthermore, since the alleged offences had been committed in the course of duty by the officers concerned, i.e. in their military capacity, they fell exclusively within military jurisdiction.

2.8 The examining magistrate of Court No. 65 refused and asked the Disciplinary Tribunal to rule on the matter; on 23 July 1991, the Disciplinary Tribunal decided that the competence to try Lieutenant-Colonel Duque Izquierdo and Lieutenant Fernández Ocampo was indeed with the military courts, i.e. the Second Brigade of Barranquilla. There was one dissenting vote, as one magistrate considered that the conduct of the two officers was not directly related to their military status. It is stated that military criminal proceedings against the two accused were discontinued on 30 April 1992, with respect to the allegation made by the Villafañe brothers, and on 5 May 1992 with respect to the disappearance and subsequent murders of the three indigenous leaders. These decisions were confirmed by the High Military Court (Tribunal Superior Militar) on 8 March 1993 and in July 1993.

2.9 Meanwhile, the part of the criminal proceedings in which charges were brought against Eduardo Enrique Mattos and Luis Alberto Uribe had been referred to Court No. 93; on 23 October 1991, the Court acquitted both accused and ordered all criminal proceedings against them to be discontinued. Counsel then appealed to the High Court in Valledupar, which confirmed the decision of 23 October 1991; it found that the evidence against Luis Alberto Uribe was insufficient to prove any involvement in the murders, and also took into consideration the fact that Eduardo Enrique Mattos had died in the meantime.

2.10 The Human Rights Division of the Attorney-General's Office (Procuraduría Delegada para la Defensa de los Derechos Humanos) initiated independent disciplinary proceedings in the case. In a decision dated 27 April 1992, it found Lieutenant-Colonel Duque Izquierdo and Lieutenant Fernández Ocampo guilty of torturing José Vicente and Amado Villafañe, and of having participated in the triple murder of Luis Napoleon Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres. It ordered their summary dismissal from the army. The Director of the Office of Indigenous Affairs was, however, acquitted. Counsel submits that the findings of the Human Rights Division of the Attorney-General's Office have been consistently ignored by the Colombian authorities, as evidenced by Major-General Hernando Camilo Zuñiga Chaparro on 3 November 1994, in his reply to a request for information made by the Colombia section of the Andean Commission of Jurists. In this reply, he stated that the two officers had retired from the army, in December 1991 and September 1992, at their own request.

The complaint

3.1 It is submitted that the above situation reveals that the members of the Arhuaco community, Luis Napoleon Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres, as well as the two Villafañe brothers, have been victims of violations by Colombia of articles 2, paragraph 3; 6, paragraph 1; 7; 9; 14 and 27 of the Covenant.

3.2 Counsel claims that the disappearance, on 28 November 1990, and subsequent execution of the three indigenous leaders, by members of the armed forces, constitutes a violation of article 6 of the Covenant.

3.3 Counsel claims that the abduction and subsequent murder of the three indigenous leaders, without so much as a warrant for their arrest, is a violation of article 9 of the Covenant.

3.4 The Villafañe brothers claim that the ill-treatment they were subjected to at the hands of the armed forces while detained at the No. 2 Battalion “La Popa”, which included blindfolding and dunking in a canal, etc., constitutes a violation of article 7.

3.5 Furthermore, the interrogation of the Villafañe brothers, members of the indigenous community, by members of the armed forces in total disregard of the rules of due process, by denying them the assistance of a lawyer, and the execution of the three indigenous persons in blatant violation of the Colombian legal system, which expressly prohibits the imposition of the death penalty, is a violation of article 14 of the Covenant.

3.6 Finally, the Villafañe brothers claim that the arbitrary detention and torture inflicted on two members of the Arhuaco indigenous community and the disappearance and execution of three other members of this community, two of whom were spiritual leaders of the community, constitute a violation of the cultural and spiritual rights of the Arhuaco community within the meaning of article 27 of the Covenant.

The State party's information and observations

4.1 By submission of 22 March 1995, the State party submits that its authorities have been doing, and are doing, everything possible to bring to justice those responsible for the disappearance and murder of Luis Napoleon Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres. The State party contends that domestic remedies have not been exhausted in the case.

4.2 The State party summarizes the state of the disciplinary proceedings in the case as follows:

> Disciplinary proceedings were first instituted by the Human Rights Division of the Attorney-General's Office for the torture to which the Villafañe brothers were subjected and subsequently for the abduction and triple murder of Luis Napoleon Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres. The result of this investigation was a recommendation that the two officers should be dismissed and that Alberto Uribe Oñate, Director of the Office of Indigenous Affairs in Valledupar, should be acquitted. The decision was appealed, but, on 27 October 1992, the ruling of the lower court was upheld.
>
> Criminal proceedings were initiated by Court No. 65 in Bogotá and by Military Court No. 15; the conflict of jurisdiction was settled in favour of the military's jurisdiction. The State party notes that a special agent was named from the Attorney-General's Office to appear in

the proceedings. On 5 May 1993, the military court held that there was insufficient evidence to indict Lieutenant-Colonel Luis Fernando Duque Izquierdo and Lieutenant Pedro Fernández Ocampo (by then Captain) and that proceedings should be discontinued. This decision was upheld by the High Military Court.

Meanwhile, on 23 October 1991, Criminal Court No. 93 had ordered the case against Alberto Uribe Oñate and Eduardo Enrique Mattos to be shelved; it also decided that the case should be sent back to the Valledupar Judicial Police for further investigations. In accordance with article 324 of the Code of Penal Procedure, preliminary investigations must continue until such time as there is sufficient evidence either to indict or to clear those allegedly responsible for a crime.

4.3 In his reply, counsel submits that the State party's allegation that domestic remedies exist is a fallacy, since, under the Colombian Military Code, there are no provisions enabling the victims of human rights violations or their families to institute criminal indemnity proceedings before a military court.

4.4 In a further submission of 8 December 1995, the State party observes that, when ruling on the appeal against the sentence of 26 August 1993 handed down by the Administrative Tribunal in Valledupar in respect of the participation of members of the military in the disappearance and subsequent murder of the three indigenous leaders, the Third Section of the Administrative Chamber of the State Council upheld the decision of the lower court that there was no evidence that they had taken part in the murder of the three leaders.

The Committee's admissibility decision

5.1 At its fifty-sixth session, the Committee examined the admissibility of the communication and took note of the State party's request that the communication should be declared inadmissible. With regard to the exhaustion of available domestic remedies, the Committee noted that the victims' disappearance was reported immediately to the police in Curumani by the bus driver, that the complaint filed with the Human Rights Division of the Attorney-General's Office clearly indicated which army officers were held responsible for the violations and should be punished and that further proceedings were instituted in Criminal Court No. 93. Notwithstanding this material evidence, a military investigation was conducted during which the two officers were cleared and not brought to trial. The Committee considered that there were doubts about the effectiveness of remedies available to the authors in the light of the decision of Military Court No. 15. In these circumstances, it must be concluded that the authors diligently, but unsuccessfully, filed applications for remedies aimed at the criminal prosecution of the two military officers held to be responsible for the disappearance of the three Arhuaco leaders and the torture of the Villafañe brothers. More than five years after the occurrence of the events dealt with in the present communication, those held responsible for the death of the three Arhuaco leaders have not been indicted let alone tried. The Committee

concluded that the authors had fulfilled the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

5.2 It had to be decided whether the disciplinary and administrative proceedings could be regarded as effective domestic remedies within the meaning of article 5, paragraph 2 (b). The Committee recalled that domestic remedies must not only be available, but also effective, and that the term "domestic remedies" must be understood as referring primarily to judicial remedies. The Committee considered that the effectiveness of a remedy also depended on the nature of the alleged violation. In other words, if the alleged offence is particularly serious, as in the case of violations of basic human rights, in particular the right to life, purely administrative and disciplinary remedies cannot be considered adequate and effective. This conclusion applies in particular in situations where, as in the present case, the victims or their families may not be party to or even intervene in the proceedings before military jurisdictions, thereby precluding any possibility of obtaining redress before these jurisdictions.

5.3 With regard to the complaint under article 27, the Committee considered that the authors had failed to substantiate how the actions attributed to the military and to the authorities of the State party violated the right of the Arhuaco community to enjoy its own culture or to practise its own religion. Accordingly, that part of the complaint was declared inadmissible.

5.4 In the light of paragraphs 5.1 and 5.2 above, the Committee considered that the authors had met the requirements of article 5, paragraph 2 (b), of the Optional Protocol. Their complaints under articles 6, paragraph 1; 7; 9 and 14 of the Covenant were sufficiently substantiated, and could be considered on their merits.

The State party's information and observations on the merits and counsel's comments thereon

6.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 14 November 1996, the State party observes that difficulties of an internal nature arose in obtaining the information needed to reply to the Committee in the case at hand. It considers that the case should be declared inadmissible because of failure to exhaust available domestic remedies and indicates that it would be willing to reopen the case if new evidence warranting such a course came to light.

6.2 As far as the criminal proceedings are concerned, the State party submits that the first proceedings instituted against Mr. Eduardo Enrique Mattos and Mr. Alberto Uribe after the murders of the indigenous leaders were unsuccessful and it was not possible to identify those responsible. On 18 January 1995, the investigation was assigned to the Seventeenth Public Prosecutor's Office attached to the Valledupar District Court and under article 326 of the Code of Criminal Procedure, it suspended the proceedings, as no new evidence had come to light since 30 June 1992. On 23 March 1995, the Seventeenth Public Prosecutor reopened the proceedings for the purpose of considering the possibility of securing the cooperation of an alleged witness to the events. On 9 May 1995, the witness was interrogated by a psychologist on the staff of the Technical Investigation Unit in Bucaramanga. On

1 November 1995, the psychologist issued a report on the witness's credibility. In view of the contradictions between the witness's statements to the prosecutor and the psychologist, the Public Prosecutor decided that the witness lacked credibility. On 2 September 1996, he ordered the case temporarily suspended, also pursuant to article 326 of the Code of Criminal Procedure.

6.3 In connection with the disciplinary proceedings and the dismissals of Lieutenant-Colonel Luis Fernando Duque Izquierdo and Lieutenant Fernández Ocampo, they went into retirement at their own request, on the basis of decisions of December 1991 and September 1992, as upheld by a decision of 7 November 1996.

7.1 In his comments on the criminal proceedings, counsel states that the proceedings have taken place in two spheres: ordinary jurisdiction and military jurisdiction. The ordinary criminal proceedings have been conducted in a tortuous manner: on 30 June 1992, the investigation was halted by decision of the Valledupar High Court; on 23 March 1995, the investigation was reopened, by decision of the Attorney-General of the Nation; on 2 September 1995, the investigation was temporarily suspended at the request of the Seventeenth Public Prosecutor in Valledupar. In six years of investigation, both sets of proceedings led to the closure of the case.

7.2 Counsel states that the criminal proceedings are in contrast with the clear and forceful action taken by the Human Rights Division of the Attorney-General's Office. In Decision No. 006 of 27 April 1992, the Human Rights Division considered the following facts to have been substantiated:

> That the indigenous leaders of the Arhuaco community, Luis Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres, were detained on 28 November 1990 by Colombian army units near Curumani, Department of César.
>
> That also on 28 November, at about 10 p.m., the brothers José Vicente and Amado Villafañe Chaparro, members of the indigenous community, and Manuel de la Rosa Pertuz were detained in Valledupar, Department of César, by military units headed by Lieutenant Pedro Antonio Fernández Ocampo in an operation ordered by Military Court No. 15, and later taken to the No. 2 Artillery Battalion “La Popa” barracks, where they were tortured (sheets 12 and 13). That, in the view of the Human Rights Division, “there is no doubt that Lieutenant-Colonel Duque Izquierdo played an active role in the events under investigation” (sheet 13).
>
> That José Vicente Villafañe Chaparro was transported, against his will and after being tortured, in a helicopter to a place in the mountains by military personnel (sheets 14 and 17), where he was tortured by units of No. 2 Artillery Battalion “La Popa”, as part of an investigation

> conducted by military personnel attached to Military Court No. 15 to determine the whereabouts of Mr. José Eduardo Mattos, who had been abducted by an insurgent group.
>
> That, while in detention in the military barracks and in the presence of military personnel, the Villafañe Chaparro brothers were interrogated and tortured by Eduardo Enrique Mattos, a civilian and brother of the abducted person. Eduardo Enrique Mattos threatened the Villafañe brothers that he would kill indigenous people if they did not reveal his brother's whereabouts and said, “to prove it, they were already holding three of them” (sheet 31).
>
> That the military operations which led to the detention of indigenous leaders Luis Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres, on the one hand, and the Villafañe Chaparros brothers and Manuel de la Rosa Pertuz, according to the evidence gathered by the Human Rights Division, were coordinated from Valledupar and almost certainly from No. 2 Artillery Battalion “La Popa” (sheet 19).

7.3 In the above-mentioned decision of 1992, the Human Rights Division considered, in the following terms, that the two officers' participation in the events had been established:

> “Luis Fernando Duque Izquierdo and Pedro Antonio Fernández Ocampo took part in both the physical and psychological torture inflicted on José Vicente and Amado Villafañe Chaparro, members of the Arhuaco indigenous community, and on a civilian, Manuel de la Rosa Pertuz Pertuz, and also the abduction and subsequent killing of Angel María Torres, Luis Napoleón Torres and Antonio Hugues Chaparro” (sheet 30).

On the basis of the evidence gathered by the Human Rights Division, counsel rejects the Colombian Government's argument justifying the delays and standstill in the investigations.

7.4 Counsel submits that the disciplinary procedure which led to the ordering of the two sanctions was not judicial, but administrative in nature - a “disciplinary investigation”, which is aimed at “preserving the orderly conduct of the public service and protecting the principle of legality infringed by State agents who commit minor administrative offences”. By virtue of his disciplinary powers, the Attorney-General of the Nation may, once the disciplinary procedure has been completed, order administrative sanctions if necessary. Private individuals cannot be parties to a disciplinary investigation nor can they institute criminal indemnity proceedings. Neither can persons injured as a result of an administrative offence use the disciplinary procedure to obtain appropriate compensation for the injury suffered. The purpose of disciplinary proceedings is not to provide compensation for the injury caused by the behaviour of the State agent or to restore the infringed right. In this connection, counsel refers to the previous decisions by the Committee. [1]

7.5 Counsel reiterates that domestic remedies were exhausted when the relevant criminal complaint was lodged with the competent ordinary court and

also when criminal indemnity proceedings were instituted. The proceedings were closed. There has been unjustified delay in the proceedings.

Examination of the merits:

8.1 The Human Rights Committee has examined the present communication in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

8.2 In its submission of 14 November 1996, the State party indicates that Lieutenant Fernández Ocampo and Lieutenant-Colonel Izquierdo retired from the army at their own request, on the basis of decisions 7177 of 7 September 1992 and 9628 of 26 December 1991, respectively. Moreover, the recommendation by the Human Rights Division of the Attorney-General's Office that these two persons should be dismissed was not implemented, since they retired from the army at their own request. The State party also reiterates its desire to guarantee fully the exercise of human rights and fundamental freedoms. These observations would appear to indicate that, in the State party's opinion, the above-mentioned decision constitutes an effective remedy for the families of the deceased indigenous leaders and for the Villafañe brothers. The Committee does not share this view: purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies within the meaning of article 2, paragraph 3, of the Covenant, in the event of particularly serious violations of human rights, especially when violation of the right to life is alleged, as it indicated in its decision on admissibility.

8.3 In respect of the alleged violation of article 6, paragraph 1, the Committee observes that decision No. 006/1992 of the Human Rights Division of 27 April 1992 clearly established the responsibility of State agents for the disappearance and subsequent death of the three indigenous leaders. The Committee accordingly concludes that, in these circumstances, the State party is directly responsible for the disappearance and subsequent murder of Luis Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres, in violation of article 6 of the Covenant.

8.4 As to the claim under article 7 in respect of the three indigenous leaders, the Committee has noted the results of the autopsies, and also the death certificates, which revealed that the indigenous leaders had been tortured prior to being shot in the head. Given the circumstances of the abduction of Mr. Luis Napoleón Torres Crespo, Mr. Angel María Torres Arroyo and Mr. Antonio Hugues Chaparro Torres, together with the results of the autopsies and the lack of information from the State party on that point, the Committee concludes that Mr. Luis Napoleón Torres Crespo, Mr. Angel María Torres Arroyo and Mr. Antonio Hugues Chaparro Torres were tortured after their disappearance, in violation of article 7.

8.5 As to the Villafañe brothers' claim under article 7, the Committee has noted the conclusions contained in the decision of 27 April 1992, to the effect that the brothers were subjected to ill-treatment by soldiers from the No. 2 Artillery Battalion “La Popa”, including being blindfolded and dunked in a canal. The Committee concludes that José Vicente and Amado Villafañe were tortured, in violation of article 7 of the Covenant.

8.6 Counsel has alleged a violation of article 9 in respect of the three murdered indigenous leaders. The above-mentioned decision of the Human Rights Division concluded that the indigenous leaders' abduction and subsequent detention were illegal (see paras. 7.2 and 7.3 above), as no warrant for their arrest had been issued and no formal charges had been brought against them. The Committee concludes that the authors' detention was both unlawful and arbitrary, violating article 9 of the Covenant.

8.7 Counsel has claimed a violation of article 14 of the Covenant in connection with the interrogation of the Villafañe brothers by members of the armed forces and by a civilian with military authorization without the presence of a lawyer and with total disregard for the rules of due process. As no charges were brought against the Villafañe brothers, the Committee considers it appropriate to speak of arbitrary detention rather than unfair trial or unfair proceedings within the meaning of article 14. The Committee accordingly concludes that José Vicente and Amado Villafañe were arbitrarily detained, in violation of article 9 of the Covenant.

8.8 Lastly, the Committee has repeatedly held that the Covenant does not provide that private individuals have a right to demand that the State criminally prosecute another person. [2] The Committee nevertheless considers that the State party has a duty to investigate thoroughly alleged violations of human rights, particularly enforced disappearances and violations of the right to life, and to criminally prosecute, try and punish those deemed responsible for such violations. This duty applies a fortiori in cases in which the perpetrators of such violations have been identified.

9. The Human Rights Committee, acting in conformity with 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 by the State party of articles 7 and 9 of the Covenant in the case of the Villafañe brothers and of articles 6, 7 and 9 of the Covenant in the case of the three leaders Luis Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres.

10. Under article 2, paragraph 3, of the Covenant, the State party has an obligation to ensure that Mr. José Vicente and Mr. Amado Villafañe and the families of the murdered indigenous leaders shall have an effective remedy, which includea compensation for loss and injury. The Committee takes note of the content of decision No. 029/1992, adopted by the Human Rights Division on 29 September 1992, upholding decision No. 006/1192 of 27 April, but urges the State party to expedite the criminal proceedings for the prompt prosecution and trial of the persons responsible for the abduction, torture and death of Mr. Luis Napoleón Torres Crespo, Mr. Angel María Torres Arroyo and Mr. Antonio Hugues Chaparro Torres and of the persons responsible for the abduction and torture of the Villafañe brothers. The State party also has an obligation to ensure that similar events do not occur in the future.

11. 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 and subject to its jurisdiction the rights

recognized in the Covenant and to provide effective remedies in cases where a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

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

Notes

1.Communication No. 563/1993 (Nydia Bautista de Arellana v. Colombia), Views adopted on 27 October 1995, para. 8.2.

2.See the Views adopted in cases No. 213/1986 (H.C.M.A. v. the Netherlands), adopted 30 March 1989, para. 11.6; No. 275/1988, (S.E. v. Argentina), adopted 26 March 1990, para. 5.5; Nos. 343-345/1988 (R.A., V.N. et al. v. Argentina), adopted 26 March 1990, para. 5.5.
