

HUMAN RIGHTS COMMITTEE

Bautista v. Colombia

Communication No. 563/1993

27 October 1995

CCPR/C/55/D/563/1993

VIEWS

Submitted by: Federico Andreu (representing the family of Mrs. Nydia Erika Bautista de Arellana)

Victim: Mrs. Nydia Erika Bautista de Arellana

State party: Colombia

Date of communication: 14 June 1993 (initial submission)

Date of decision on admissibility: 11 October 1994

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

Meeting on 27 October 1995,

Having concluded its consideration of communication No. 563/1993 submitted to the Human Rights Committee by Mr. Federico Andreu, representing the family of Mrs. Nydia Erika Bautista de Arellana, 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 the State party,

Adopts its

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

1. The author of the communication is Federico Andreu, a Colombian lawyer residing in

Brussels. He is instructed by the relatives and the family of Nydia Erika Bautista de Arellana, a Colombian citizen who disappeared on 30 August 1987, and whose body was subsequently recovered. It is submitted that she is the victim of violations by Colombia of articles 2, paragraph 3; 6, paragraph 1; 7 and 14 of the International Covenant on Civil and Political Rights.

The facts as submitted by the author:

2.1 On 25 August 1986, N.E. Bautista de Arellana, a member of the 19 April Movement ("M-19"), was detained in Cali, Colombia, by a military unit of the Third Brigade. She was kept incommunicado for three weeks and allegedly tortured during this period. Upon signing a statement that she had been well treated during detention, she was released. Reference is made to other cases of forced disappearances of M-19 activists, which took place prior and subsequent to Nydia Bautista's arrest.

2.2 On 30 August 1987, Nydia Bautista was abducted from the family home in Bogota. According to eyewitnesses, she was pulled into a Suzuki jeep by eight men, who were armed but dressed as civilians. An eyewitness identified the jeep's license plate.

2.3 Ms. Bautista's abduction was immediately brought to the attention of the local authorities by the Association of Solidarity with Political Prisoners. On 3 September 1987, her father filed a formal complaint with the Human Rights Division of the Attorney-General's Office (Procuraduría Delegada para los Derechos Humanos). Together with the Division's director, her father enquired about Nydia's whereabouts in various police and military offices, as well as with the intelligence services, to no avail. On 14 September 1987, an official in the Attorney-General's Office assigned to investigate the case, recommended that the information he had obtained during the investigation should be sent to the competent judge.

2.4 On 25 September 1987, the case was referred to the Magistrate's Court No. 53. A preliminary hearing was held in November 1987. On 10 February 1988, the examining magistrate discontinued the proceedings and referred the case to the Technical Corps of the Judicial Police (Cuerpo Técnico de la Policía Judicial).

2.5 In the meantime, on 12 September 1987, the body of a woman had been found in the municipality of Guayabetal, Cundinamarca, Colombia. The death certificate, which had been drawn up before the body was buried at the cemetery of Guayabetal, indicated that it concerned a 35-year old woman "wearing a white dress with blue spots and a white hand-bag, blindfolded, the hands tied together, face mutilated". According to the autopsy, the deceased had been shot in the head. No other efforts were made to identify the body. On 14 September 1987, the mayor of Guayabetal gave the death certificate to the municipality's examining magistrate; on 8 October 1987, the latter started his own investigations in the case.

2.6 On 22 December 1987, the examining magistrate of Guayabetal referred the case to the District's section of the Technical Corps of the Judicial Police. On 30 June 1988, the chief of the Preliminary Inquiry Unit of this authority ordered all potential witnesses to be heard.

On 8 July 1988, he instructed the commander of the district's police force to take the necessary steps to clarify the events and to identify the perpetrators of the crime. Two police officers were assigned to carry out the investigations. On 17 August 1988, these two officers reported to the Preliminary Inquiry Unit that they "had been unsuccessful in tracking the perpetrators, or in establishing a motive for the crime, since the place where the body was discovered lent itself to the purpose of such offence ...". They were further unable to establish the victim's identity, as no fingerprints had been taken in September 1987, and concluded that the perpetrators and the victim came from another region, i.e. Bogota or Villavivencio. The case was then suspended.

2.7 Early in 1990, Nydia Bautista's family learned about the unidentified woman buried in Guayabetal whose known characteristics corresponded to those of Nydia. After much pressure from the family, the Special Investigations Division of the Attorney-General's Office ordered the exhumation of the body on 16 May 1990, which was carried out on 26 July 1990. Nydia's sister identified the pieces of cloth, bag and earring and, on 11 September 1990, a detailed report of forensic experts confirmed that the remains were those of Nydia Bautista.

2.8 On 22 February 1991, a sergeant of the 20th Brigade of the military's Intelligence and Counterintelligence Unit, Bernardo Alfonso Garzón Garzón, testified before the chief of the Special Investigations Division that Nydia Bautista had been abducted by members of the 20th Brigade, acting either with the consent or on order of the highest commanding officer, one (then) Colonel Alvaro Velandia Hurtado. He further revealed that Sgt. Ortega Araque drove the jeep in which Nydia Bautista was abducted, and added that she had been held for two days in a farm before taken to Quebradablanca, where she was killed.

2.9 Nydia Bautista's father filed a request for institution of disciplinary proceedings against those held to be responsible for the disappearance of his daughter. For a year thereafter, the family was kept unaware whether the Special Investigations Division or the Division of Human Rights had in fact initiated criminal or disciplinary proceedings in the case. Counsel for the family wrote numerous letters to the Minister of Defence and the Attorney-General, requesting information on the outcome of the investigations, if any, and on the status of the case before the courts. On 29 January 1992, a prosecutor in the Division of Human Rights informed him that the case had been referred back to the competent prosecutor's office, so as to complete investigations in the case. On 3 February 1992, the Secretary-General of the Ministry of Defence indicated that the case was not under investigation before the military courts.

2.10 Counsel argued that at the time of Nydia's abduction, her family could not file for amparo, as one of the requirements for a petition for amparo is that the petitioner must indicate where and by which authority the person is detained. The family was also unable to join the proceedings as a civil party, as the examining magistrates in charge of the case had referred it to the Technical Corps of the Judicial Police, where it was kept pending.

2.11 Counsel contends that the Colombian authorities displayed serious negligence in the handling of Nydia Bautista's case. He observes that the authorities at no time adequately

investigated the events, and that coordination between the different authorities involved was either poor or non-existent. Thus, once the Chief of the Special Investigations Division was removed from office, no follow-up was given to the case, in spite of the testimony of Mr. Garzón Garzón. For several years, Nydia Bautista's family relied on non-governmental organizations to obtain information about any steps taken to prosecute the perpetrators. In this context, it is noted that in February 1992, a non-governmental organization received information to the effect that the case had been reopened, that disciplinary and criminal proceedings against Colonel Velandia Hurtado had started, and that investigations into the alleged involvement of other people had also been initiated.

2.12 Finally, counsel notes that Nydia Bautista's family, and he himself, have received death threats and are subject to intimidation, because of their insistence in pursuing the case.

The complaint:

3. It is submitted that the facts outlined above amount to violations by Colombia of articles 2, paragraph 3; 6, paragraph 1; 7 and 14 of the Covenant.

State party's admissibility information and observations:

4.1 The State party submits that its authorities have been doing, and are doing, their utmost to bring to justice those held responsible for the disappearance and death of Nydia Bautista. It adds that available domestic remedies in the case have not been exhausted.

4.2 The state of disciplinary proceedings in the case is presented as follows:

Disciplinary proceedings were first initiated by the Division of Special Prosecutions, Office of the Attorney-General (Procuraduría General). This office appointed an investigator of the Judicial Police (Policía Judicial). When the net result of his investigations proved inconclusive, the case was placed before the ordinary tribunals.

In 1990, the Division of Special Investigations took up the case again, after the victim's body had been found. On 22 February 1991, this office heard the testimony of Mr. Garzón Garzón, then a member of the Colombian National Army. According to the State party, his testimony could never be corroborated. The State party notes that Mr. Garzón Garzón's whereabouts are currently unknown [1].

After this deposition, the Special Investigations Division sent three communications to Nydia Bautista's sister, to which no reply was given.

Given the lack of evidence, the Division then filed the case, but nevertheless referred the file to the National Delegate for Human Rights (Delegado para los Derechos Humanos). This office examined the possibility of instituting disciplinary proceedings against Mr. Velandia Hurtado and Sergeant Ortega Araque, both of whom had been heavily implicated by Mr. Garzón Garzón's testimony.

4.3 The State party gives the following summary of so-called administrative proceedings in the case: On 24 July 1992, the Bautista family filed an administrative complaint against the Ministry of Defence, claiming compensation before the Administrative Tribunal of Cundinamarca. The case was registered under file No. 92D-8064, in compliance with article 86 of the Code of Administrative Procedure (Código Contencioso Administrativo). On 18 August 1992, this complaint was declared admissible, and the Ministry presented oral replies to the charges on 3 November 1992. On 27 November 1992, the Administrative Tribunal ordered the gathering of further evidence; according to the State party, this evidence is still being sought, more than 18 months after the order.

4.4 The State party affirms that measures will be taken to prevent the practice of forced disappearances. In particular, it notes that it is now considering to introduce legislation punishing this crime under the Colombian Criminal Code.

The Committee's admissibility decision:

5.1 During its 52nd session, the Committee examined the admissibility of the communication. With respect to the exhaustion of available domestic remedies, it noted that immediately after Ms. Bautista's disappearance, her father had filed a complaint with the Human Rights Division of the Attorney-General's Office. Recapitulating the chronology of events after the discovery of the victim's body and the activities of the various judicial bodies involved in the case, the Committee noted that more than seven years after the victim's disappearance, no criminal proceedings had been instituted, nor had those responsible for Ms. Bautista's disappearance been identified, arrested or tried. The Committee deemed this delay in the judicial proceedings "unreasonable" within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

5.2 The Committee considered the author's claims under articles 6, 7 and 14 of the Covenant to have been sufficiently substantiated, for purposes of admissibility, and noted that the facts as submitted also appeared to raise issues under articles 9 and 10.

5.3 On 11 October 1994, therefore, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 6, paragraph 1, 7, 9, 10 and 14, paragraph 3(c), of the Covenant.

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

6.1 In its initial submission under article 4, paragraph 2, of the Optional Protocol, dated 30 May 1995, the State party observes that the proceedings in the case remain pending and requests the Committee to take this situation into account in the adoption of any final decision.

6.2 As far as disciplinary proceedings are concerned, the State party indicates that the case against Messrs. Velandia Hurtado and Ortega Araque is pending under file No. 008-147452 before the National Delegate for Human Rights. The formal procedure was initiated on 3 March 1994. According to the National Delegate, the case was still proceeding as of 17 April

1995.

6.3 As to criminal proceedings, the State party notes that the prosecutor's office of Caqueza (Cundinamarca) (Unidad de Fiscalías de Caqueza) was (initially) handling the case, under the authority of prosecutor Myriam Aida Saha Hurtado. A formal criminal investigation was only launched by decision of 17 March 1995 (Resolución de Apertura de la Instrucción) of a prosecutor in the Cundinamarca District (Fiscal Seccional 2ª de la Unidad Delegada ante los Jueces del Circuito de Caqueza (Cundinamarca)), who considered that the file contained sufficient evidence to indict Mr. Velandia Hurtado and others. However, by decision of 5 April 1995, the file, consisting of twelve folders, was transmitted to the Joint Secretariat of the Regional Prosecutors' Directorate in Bogota (Secretaría Común de la Dirección Regional de Fiscalías de Santafé de Bogota), considered to be competent in the case.

6.4 Finally, concerning the administrative proceedings initiated by Nydia Bautista's family against the Ministry of Defence, the State party observes that they are in their final stages before the Administrative Tribunal of Cundinamarca. After two procedural decisions of 27 February and 4 April 1995 (".. se decretaron pruebas de oficio mediante autos del 27 de febrero y 4 de abril de 1995"), the matter has been reserved for judgment.

6.5 In a further submission dated 14 July 1995, the State party forwards copies of the decision of the National Delegate for Human Rights of 5 July 1995, as well as of the judgment of the Administrative Tribunal of Cundinamarca of 22 June 1995.

6.6 The salient points of the decision of the National Delegate for Human Rights (entitled "Resolución 13 de Julio 5 de 1995 mediante la cual se falla el proceso disciplinario 008-147452"), after recalling the facts and the procedure from 3 March 1994 to the spring of 1995, are the following:

The Delegate rejects Col. (now Brigadier General) Velandia Hurtado's defence that disciplinary action against him falls under the applicable statute of limitations, and that the National Delegate for Human Rights was not competent to hear the case. Similar defence arguments put forth by Sgt. Ortega Araque are equally rejected.

The Delegate characterizes the phenomenon of forced disappearance in general as a violation of the most basic human rights enshrined in international human rights instruments, such as the right to life and the right to liberty and personal physical integrity, considered to be part of jus cogens and/or of customary international law.

On the basis of the evidence placed before it, the Delegate considers the abduction and subsequent detention of Nydia Bautista as illegal ("la captura de Nydia E. Bautista fue abiertamente ilegal por cuanto no existía orden de captura en su contra y no fue sorprendida en flagrancia cometiendo delito alguno").

The disappearance must be attributed to State agents, who failed to inform about the victim's apprehension and her whereabouts, in spite of investigations of the military authorities to locate Ms. Bautista: "The victim's abduction was not brought to the attention of any authority

and is not certified in any register" ("... sobre su retención no se informó a ninguna autoridad y tampoco apareció registrada in ning&n libro").

The Delegate qualifies as credible and beyond reasonable doubt the evidence of Nydia Bautista's violent death, after being subjected to ill-treatment, in particular on the basis of the report prepared by the Office of Special Investigations (Oficina de Investigaciones Especiales) after the exhumation of her remains (pp. 18 to 20 of the decision).

Despite the challenges to the testimony of Bernardo Garzón Garzón put forward by Messrs. Velandia Hurtado and Ortega Araque, the Delegate attaches full credibility to the deposition of Mr. Garzón Garzón made on 22 February 1991 (pp. 21 to 26 of decision).

The Delegate rejects as unfounded the defendants' charge that the disciplinary procedure did not meet all the requirements of due process. In particular, she dismisses Mr. Velandia's Hurtado's defence that since he did not give the order for the victim's disappearance and death, he should not be held responsible. Rather, the Delegate concludes that as the commanding officer for intelligence and counterintelligence activities of his military unit, Mr. Velandia Hurtado "had both the duty, the power and the opportunity to prevent this crime against humanity" (... "tenía el deber, y poder y la oportunidad de evitar que se produjera este crimen contra la humanidad").

The Delegate concludes that by virtue of his failure to prevent Nydia Bautista's disappearance and assassination, Mr. Velandia Hurtado violated her rights under articles 2, 5, 11, 12, 16, 28, 29 and 30 of the Colombian Constitution, under articles 3, 4, 6, 7 and 17 of the American Convention on Human Rights and articles 6, 9, 14 and 16 of the International Covenant on Civil and Political Rights. By his action, Mr. Velandia Hurtado further violated his duties as a military official and contravened article 65, Section B) lit. a) and article 65, Section F) lit. a) of the Rules of Military Discipline of the Armed Forces (Reglamento Disciplinario para las Fuerzas Armadas).

Similar conclusions are reached for the responsibility of Sgt. Ortega Araque. In particular, the Delegate rejects Mr. Ortega's defence that he was only carrying out the orders of a superior, since obedience "cannot be blind" ("la obediencia no puede ser ciega").

6.7 As the Delegate found no mitigating circumstances for the acts respectively omissions of Messrs. Velandia Hurtado and Ortega Araque, she requested their summary dismissal from the Armed Forces. The decision was transmitted to the Minister for the Armed Forces.

6.8 The principal points made in the Judgment of the Administrative Tribunal of Cundinamarca of 22 June 1995 may be summarized as follows:

The Tribunal considers the complaint filed by Nydia Bautista's family admissible in its form. It rejects the argument of the Ministry of Defence that the charges fall under the applicable statute of limitations (five years), since the case concerns not only the victim's disappearance but also her torture and death; on the latter, there could only have been certainty after exhumation of the body in July 1990.

The Tribunal considers it established that Nydia Bautista was abducted on 30 August 1987, and that she was tortured and assassinated thereafter. It concludes that the evidence before it firmly establishes the responsibility of the armed forces in the events leading to the victim's death. Reference is made in this context to the procedure pending before the National Delegate for Human Rights.

Like the National Human Rights Delegate, the Tribunal attaches full credibility to the deposition made by Mr. Garzón Garzón on 22 February 1991, which corroborates, in all essential points, the claims made by Nydia Bautista's family since August 1987 (pages 9 to 12 of the judgment); this relates, for example, to the make and the license plate of the jeep in which Nydia Bautista was abducted. The Tribunal notes that Mr. Garzón Garzón requested police protection for himself and his family after his deposition.

The Tribunal concludes that the State party's authorities involved in the victim's illegal disappearance and death are fully responsible. As a result, it awards the equivalent of 1000 grams in gold to both parents, the husband and the son of Nydia Bautista, and the equivalent of 500 grams in gold to her sister. The Ministry of Defence is further directed to pay a total of 1,575,888.20 pesos plus interest and inflation-adjustment to Nydia Bautista's son for the moral prejudice suffered.

6.9 Under cover of a Note dated 2 October 1995, the State party forwards a copy of Presidential Decree No. 1504 dated 11 September 1995, which stipulates that Mr. Velandia Hurtado is dismissed from the armed forces with immediate effect. In an explanatory press communiqué, it is noted that it remains open to Mr. Velandia Hurtado to challenge the decree or to take such other action as he considers appropriate before the competent administrative tribunal.

7.1 In his initial comments, counsel notes that Mr. Velandia Hurtado sought to challenge the competence of the National Delegate for Human Rights handling the case, Dr. Valencia Villa, in March 1995, and that he sought to file criminal charges against her, presumably for defamation. On the basis of recent reports about further instances of intimidation of Nydia Bautista's sister by agents of the military's intelligence service, counsel expresses concern about the physical integrity of the National Delegate for Human Rights.

7.2 In further comments dated 27 July 1995, counsel notes that efforts to notify Resolution No. 13 of 5 July 1995 personally to Mr. Velandia Hurtado or Mr. Ortega Araque have so far failed, as neither they nor their lawyers replied to the convocation issued by the Ministry of Defence. Faced with this situation, the Office of the National Delegate for Human Rights sent the notification by registered mail, requesting the Ministry of Defence to comply with the law and respect the terms of Resolution No. 13. Mr. Velandia Hurtado, in turn, filed a request for protection of his constitutional rights (*acción de tutela*) with the Tribunal Superior of Cundinamarca, on the ground that the guarantees of due process had not been respected in his case. Counsel adds that the family of Nydia Bautista and in particular her sister continue to be subjected to acts of intimidation and harassment. In this context, he notes that the family's first lawyer, Dr. A. de Jesus Pedraza Becerra, disappeared in Bogota on 4 July 1990, a disappearance which was condemned by the Inter-American Commission

on Human Rights seized of the case [2].

7.3 Counsel acknowledges receipt of the judgment of the Administrative Tribunal of Cundinamarca of 22 June 1995 and notes that this judgment, together with Resolution No. 13 handed down by the National Human Rights Delegate, constitute irrefutable proof of the responsibility of State agents in the disappearance and subsequent death of Nydia Bautista.

7.4 As to the state of criminal investigations, counsel notes that the case still remains with the Regional Prosecutors' Directorate of Bogota (Dirección Regional de Fiscalías de Santafé de Bogota), where the case has been assigned to one of the - recently created - human rights units of the Chief Prosecutor's office. According to counsel, these human rights units are still inoperative - thus, when Nydia Bautista's family sought to obtain information about the state of criminal proceedings, it learned that the building supposed to house the human rights units was still unoccupied. Counsel further observes that in accordance with article 324 of the Colombian Code of Criminal Procedure, preliminary investigations must be initiated once the identity of those presumed to be responsible of a criminal offence is known, and formal investigations following an indictment must start within two months. In the instant case, since the identity of those responsible for Nydia Bautista's disappearance and death were known at the very latest after the deposition of Mr. Garzón Garzón on 22 February 1991, counsel concludes that the terms of article 324 have been disregarded.

7.5 In the latter context, counsel once again points to what he perceives as unacceptable negligence and delays in the criminal investigations. At least once, on 30 June 1992, the office of Examining Magistrate 94 (Juzgado 94 de Instrucción Criminal) ordered the closure of the investigation, in spite of the deposition of Mr. Garzón Garzón. The magistrate justified his decision under the terms of Law 23 of 1991 ("Ley de Decongestión de Despachos Judiciales"), whose article 118 provides for the closure of those preliminary enquiries in which more than two years have gone by without the identification of a suspect. This decision, counsel notes, had no basis in reality, given the evidence of Mr. Garzón Garzón. Counsel concludes that almost eight years have passed since the date - 5 November 1987 - on which Magistrate's Court 53 (Juzgado 53 de Instrucción Criminal) first opened preliminary criminal investigations (Indagación Preliminar No. 280). Over a period of almost eight years, the order to dismiss Messrs. Velandia Hurtado and Ortega Araque constitute the first true sanction, a sanction which has still not been implemented.

7.6 By letter of 29 August 1995, counsel complains that the State party's government continues to stall in implementing the order of dismissal pronounced against Mr. Velandia Hurtado. The latter indeed appealed against the decision of the National Human Rights Delegate to notify the decision of 5 July 1995 by registered mail (Acción de tutela, see paragraph 7.2 above). On 2 August 1995, the Administrative Tribunal of Cundinamarca decided in his favour, on the ground that the mode of notification chosen by the Human Rights Delegate's Office had been illegal. It ordered the Office to notify Resolution No. 13 personally to Mr. Velandia Hurtado.

7.7 With this decision of the Administrative Tribunal, counsel contends, Resolution No. 13 of 5 July 1995 cannot be implemented. Since the remains of Nydia Bautista were recovered

on 26 July 1990 and under the terms of the applicable disciplinary procedure, a statute of limitations of five years begins to run from the day of the "final constituent act of the offence" ("último acto constitutivo de la falta" - Law No. 24 of 1975, article 12), it is now likely that the case will be filed because of prescription of the offences attributed to Messrs. Velandia Hurtado and Ortega Araque.

7.8 Counsel further points out that far from ordering the dismissal of Mr. Velandia Hurtado from the armed forces, the authorities promoted him to Brigadier General and, during the first week of August 1995, awarded him the Order for Military Merit "José María Cordova" - this award was made pursuant to a decree signed by the President of the Republic. This award, according to counsel, constitutes an act of defiance vis-à-vis the Colombian judicial organs and a reward for Mr. Velandia Hurtado's past activities. In short, it can only be interpreted in the sense that the Colombian Executive is prepared to tolerate and let go unpunished even serious human rights violations. This attitude is said to have been confirmed by the so-called Defensor del Pueblo in his second report to the Colombian Congress, in which he criticizes that human rights violators in Colombia can expect to benefit from total impunity.

7.9 Finally, counsel refers to an incident on 31 August 1995, which is said to confirm that nothing is, or will be, done to bring those responsible for Nydia Bautista's death to justice. On this day, Ms. Bautista's family and members of the Association of Relatives of Disappeared Prisoners (ASFADDES) met in a popular restaurant in Bogotá, to demonstrate on the occasion of the 8th anniversary of Nydia's disappearance. Soon after their arrival, an individual in civilian clothes entered the restaurant and occupied a table next to theirs. All those present identified Brigadier General Velandia Hurtado, who continued to monitor the group throughout the meeting. The presence of Mr. Velandia Hurtado, who otherwise commands the Third Army Brigade in Cali, on those particular premises on that particular day, is considered to be yet another instance of intimidation of Nydia Bautista's family.

Examination of the merits:

8.1 The Human Rights Committee has examined the present case on the basis of the material placed before it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

8.2 In its submission of 14 July 1995, the State party indicates that Resolution 13 of 5 July 1995 pronounced disciplinary sanctions against Messrs. Velandia Hurtado and Ortega Araque, and that the judgment of the Administrative Tribunal of Cundinamarca of 22 June 1995 granted the claim for compensation filed by the family of Nydia Bautista. The State party equally 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 decisions constitute an effective remedy for the family of Nydia Bautista. The Committee does not share this view, because 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, notably in the event of an alleged violation of the right

to life.

8.3 In respect of the alleged violation of article 6, paragraph 1, the Committee recalls its General Comment 6[16] on article 6 which states, inter alia, that States parties should take specific and effective measures to prevent the disappearance of individuals and establish effective facilities and procedures to investigate, thoroughly, by an appropriate and impartial body, cases of missing and disappeared persons in circumstances that may involve a violation of the right to life. In the instant case, the Committee notes that both Resolution No. 13 of the National Delegate for Human Rights of 5 July 1995 and the judgment of the Administrative Tribunal of Cundinamarca of 22 June 1995 clearly establish the responsibility of State agents for the disappearance and subsequent death of Nydia Bautista. The Committee concludes, accordingly, that in these circumstances the State party is directly responsible for the disappearance and subsequent assassination of Nydia E. Bautista de Arellana.

8.4 As to the claim under article 7, the Committee has noted the conclusions contained in Resolution No. 13 of 5 July 1995 and in the judgment of the Administrative Tribunal of Cundinamarca of 22 June 1995, to the effect that Nydia Bautista was subjected to torture prior to her assassination. Given the findings of these decisions and the circumstances of Ms. Bautista's abduction, the Committee concludes that Nydia Bautista was tortured after her disappearance, in violation of article 7.

8.5 The author has alleged a violation of article 9. Both decisions referred to above conclude that Nydia Bautista's abduction and subsequent detention were "illegal" (see paragraphs 6.6 and 6.8 above), as no warrant for her arrest had been issued and no formal charges against her were known to exist. There has, accordingly, been a violation of article 9, paragraph 1.

8.6 The author has finally claimed a violation of article 14, paragraph 3(c), on account of the unreasonable delays in the criminal proceedings instituted against those responsible for the death of Nydia Bautista. As the Committee has repeatedly held, the Covenant does not provide a right for individuals to require that the State criminally prosecute another person [3]. The Committee nevertheless considers that the State party is 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, and to prosecute criminally, try and punish those held 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 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 by the State party of articles 6, paragraph 1, 7, and 9, paragraph 1, of the Covenant.

10. Under article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the family of Nydia Bautista with an appropriate remedy, which should include damages and an appropriate protection of members of N. Bautista's family from harassment. In this regard, the Committee expresses its appreciation for the content of Resolution 13,

adopted by the National Delegate for Human Rights on 5 July 1995, and of the judgment of the Administrative Tribunal of Cundinamarca of 22 June 1995, which provide an indication of the measure of damages that would be appropriate in the instant case. Moreover, although the Committee notes with equal appreciation the promulgation of Presidential Decree No. 1504 of 11 September 1995, the Committee urges the State party to expedite the criminal proceedings leading to the prompt prosecution and conviction of the persons responsible for the abduction, torture and death of Nydia Bautista. The State party is further under 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 an effective and enforceable remedy in case 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.

Footnotes

(1) The file reveals that Mr. Garzón Garzón requested special police protection for himself and his family after giving his testimony.

(2) Case No. 10581.

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

[Adopted in English, French and Spanish, the English 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.]