



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision of the Human Rights Committee under the Optional Protocol regarding communication No. 2491/2014* **

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<i>Alleged victims:</i>	The authors
<i>State party:</i>	Plurinational State of Bolivia
<i>Date of communication:</i>	31 March 2014
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 8 December 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	21 July 2017
<i>Subject matter:</i>	Prosecution and conviction of commanders-in-chief of the Armed Forces for the crime of genocide
<i>Procedural issues:</i>	Exhaustion of domestic remedies; abuse of the right to submit communications; insufficient substantiation of the allegations; international <i>lis alibi pendens</i>
<i>Substantive issues:</i>	Right to due process; right to a hearing by a competent, independent and impartial tribunal; right to the presumption of innocence
<i>Articles of the Covenant:</i>	14 (1), (2), (3) (a) and (e) and (5)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (a) and (b)

1.1 The authors of the communication are José Oswaldo Quiroga Mendoza and Luís Alberto Aranda Granados, Bolivian citizens born in 1948 and 1950, respectively. They claim to be victims of a violation by the State party of article 14 (1), (2), (3) (a) and (e) and (5) of the Covenant. They are represented by counsel. The Optional Protocol entered into force for the State party on 12 November 1982.

* Adopted by the Committee at its 120th session (3-28 July 2017).

** The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamarian Koita, Marcia V.J. Kran, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.



1.2 On 2 June 2015, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, rejected the State party's request that the admissibility of the communication be considered separately from its merits.

The facts as submitted by the authors

2.1 The authors were commanders-in-chief of the Bolivian Air Forces and Navy during the second term of President Gonzalo Sánchez de Lozada y Sánchez Bustamante (2002-2003). In 2003 a number of anti-government demonstrations in various Bolivian cities left dozens dead and hundreds wounded. During January and February 2003, in particular, a series of protests against various tax provisions were held that involved marches and the barricading of highways. The national police backed the protesters, sparking a confrontation between the police and the armed forces that ultimately led to a gunfight in the Presidential Palace and the evacuation of the then President Sánchez de Lozada. This social turmoil escalated into what became known as the "gas war" of September and October 2003, which was triggered by the Government's decision to export natural gas to the United States of America and Mexico. Campesinos and workers blocked the highway between the country's two largest cities, El Alto and La Paz, for days and called a nationwide strike. The blockades also resulted in a fuel shortage in La Paz. The Government sent detachments made up of both military personnel and police officers to the areas where the protests were occurring, notably the city of El Alto, where they clashed with the protesters. The conflict left 60 dead and 432 wounded¹ and forced Sánchez de Lozada to resign on 17 October 2003 and to go into exile in the United States. His place was taken by the then Vice-President, Carlos Mesa Gisbert.

2.2 The authors claim that the 2003 protests were instigated by "subversive rebel groups with ties to drug cartels and far-left Governments in other Latin American countries" that were seeking to "destabilize the Bolivian Government and the rule of law". They contend that the political representative of these groups was the Movimiento al Socialismo (MAS), led by Evo Morales.

2.3 On 22 October 2003, Evo Morales filed a criminal complaint against former President Sánchez de Lozada and a number of his former ministers for the deaths that had occurred during the protests. On 22 December 2003, the Bolivian Workers Confederation² also charged that the former president, his cabinet of ministers and a number of senior military commanders, including the authors, were guilty of genocide and other crimes.

2.4 On 31 October 2003, the Administration of the new president, Carlos Mesa, adopted a supreme decree of general amnesty covering the events of September and October 2003. On 4 November 2003, it adopted another supreme decree which limited the amnesty to persons who had taken part in the protests against the decisions and policies of the Bolivian Government between 5 August and 4 November 2003 (the "amnesty decree"). The authors state that, because of this second decree, neither Evo Morales nor his "allies" were put on trial for their participation in those events.

2.5 On 21 November 2003, the Attorney General opened a criminal investigation into the actions of former President Sánchez de Lozada and his cabinet, on the basis of the charges filed by Evo Morales and the Bolivian Workers Confederation, and assigned three prosecutors to the case. On 28 July 2004, those prosecutors set aside the charges, stating that the amnesty decree prevented them from fully investigating the events of September and October 2003. The authors assert that, although that decision should have put an end to the investigation once and for all, President Mesa dismissed the three prosecutors who had been assigned to the case and, in violation of Bolivian law, named a new Attorney General who, on 10 September 2004, filed an application for formal charges to be brought against the former president and his cabinet.

¹ According to a number of international reports, these squads used military arms to fire upon the protesters in the city of El Alto while shots were also directed at the roofs of houses from helicopters in what was described as a "massacre" of the civilian population.

² The Bolivian Workers Confederation describes itself as an umbrella association of workers that brings together all sectors of labour, including manual workers, campesinos, professionals and wage workers in rural areas.

2.6 On 28 September 2004, the Supreme Court requested authorization from Congress to open proceedings against former President Sánchez de Lozada and his cabinet of ministers in accordance with the legal requirements in place at the time.³ On 13 October 2004, Congress voted against authorizing the initiation of legal proceedings. The authors claim that that round of voting was annulled, that another vote was called a few hours later and that, on the second occasion, the results were in favour of authorization. By a decision adopted on 14 October 2004, Congress authorized the opening of legal proceedings and actually added the names of other ministers to the list submitted by the Attorney General.

2.7 On 15 October 2004, the Supreme Court requested that Congress should expand the investigation concerning former President Sánchez de Lozada and his cabinet to include other crimes. That request was denied by a decision issued on 8 December 2005.

2.8 On 22 November 2004, one of the ministers who had been charged appealed against the congressional decision authorizing the prosecution; Congress found that the appeal lacked merit and rejected it. On 20 April 2005, the same minister submitted a challenge to the Constitutional Court in which he claimed that the lodging of criminal charges by the Supreme Court was unconstitutional, since that function could only be performed by the Prosecution Service. On 8 June 2005, the Constitutional Court found that there were no grounds to uphold the claim of unconstitutionality.

2.9 On 19 February 2005, the Attorney General filed formal charges against former President Sánchez de Lozada and his cabinet ministers. Charges were not brought against military personnel. However, in the indictment dated 7 October 2005, the Attorney General included charges against the former president, his cabinet of ministers and a number of senior military commanders, including the authors. Those charges covered the following offences under the Criminal Code: genocide (art. 138), homicide (art. 251), murder (art. 252), infliction of injury (arts. 270 and 271), infliction of injury leading to death (art. 273), deprivation of liberty (art. 292), ill-treatment or torture (art. 295), unlawful entry (arts. 298 and 299) and issuance of unconstitutional or unlawful directives (art. 153). The authors say that the same charges were brought against all of those indicted, without any specification of exactly what actions served as a foundation for the lodging of those charges against each individual. Furthermore, two of the generals who were charged, one of whom was General José Oswaldo Quiroga Mendoza, were in the United States for part of the period during which the events in question occurred and therefore did not take part in the events with which they were charged.

2.10 In January 2007, one of the ministers under indictment submitted an application for the disqualification of two of the Supreme Court judges assigned to the case on the grounds of their manifest friendship with President Evo Morales and the fact that they had been appointed by him. This request was denied by the same judges who were named in the request.

2.11 The authors submitted an application for exemption from criminal responsibility based on the complexity of the case, the number of persons charged and the fact that the case involved crimes against humanity, which are not subject to a statute of limitations. On 8 August 2007, Criminal Court Division No. 1 of the Supreme Court denied the application.

2.12 After the composition of the panel of judges presiding in Supreme Court Division No. 1 had been changed, another of the former ministers who were under indictment filed an application for the disqualification of the two new judges on the grounds that they maintained a manifest friendship with President Evo Morales and that they had made statements in public concerning the trial. The judges named in the application refused to recuse themselves in a decision dated 9 August 2007. On 7 September 2007, other co-defendants challenged one of the judges assigned to the case on the basis of statements made during the *Micrófono Abierto* (open microphone) show on the Panamericana radio station, according to which some of the appeals in the case were just “monkey wrenches thrown into the works” (as a way of hindering the progress of the trial). In a letter to the

³ Article 118 (5) of the 1967 Constitution, with the amendments of 1994 in force at that time, is developed in greater detail by Act No. 2445 of 13 March 2003. This article requires congressional authorization for the prosecution of a president or minister of State.

Supreme Court dated 11 September 2007, the judge in question denied having expressed any opinion about the case.

2.13 On 16 October 2007, former President Sánchez de Lozada, his ministers and the authors were placed on trial. Supreme Court Division No. 1 was convened as a court of impeachment under article 118 (5) of the Constitution in force at the time.⁴

2.14 In late 2008, the President of the Supreme Court, who was one of the judges assigned to the case, was instructed by the Government to move up the trial, which was the fifth on the Court's docket. The President of the Supreme Court disputed those instructions and, as a consequence of his refusal, the Government and the counsel of the civil parties to the case filed criminal charges against him. In January 2009, the President of the Supreme Court requested that he should be allowed to recuse himself from the case, but that request was denied by a decision of the Court of Impeachment dated 17 February 2009. Nonetheless, that judge was then taken off the case some time later on the instruction of the Government.⁵

2.15 The oral proceedings in the trial began in 2009 and were concluded in 2011. During that time, 380 witnesses testified; 35 of those were witnesses for the defence. The authors contend that many of the witnesses were also civil parties to the proceedings, as they had been involved in or affected by the violence that had erupted in September and October 2003. In some cases, witnesses were attacked and threatened. In particular, charges of "destruction of documentary evidence" or of giving "false testimony" were brought against witnesses for the defence after they left the witness stand.⁶

2.16 The Court of Impeachment was initially presided over by a 10-judge panel. As of 2009, however, there were only seven judges because three of the judges who were initially assigned to the case withdrew and were not replaced. Counsel for the civil parties then filed a motion to stay by reason of procedural defects with the Supreme Court, arguing that the Court of Impeachment lacked the minimum number of votes required to hand down any convictions, as that minimum was set by Act No. 2445 at two thirds of the members of the Supreme Court (i.e., eight members).⁷ On 23 September 2009, the Supreme Court denied the motion based on an interpretation of the relevant provision whereby it required the votes of two thirds of the judges presiding over the Court of Impeachment. Mr. Aranda also filed an application for an "explanation, supplementation and amendment" of the ruling of 23 September 2009. This application was rejected by the Supreme Court on 24 September 2009. Mr. Quiroga then submitted a motion to stay by reason of procedural defects in respect of the decision of 23 September 2009, in which he argued that the Supreme Court's interpretation of the relevant provision was arbitrary. That motion was denied by the Court on 23 November 2009. Mr. Quiroga then entered an appeal for annulment of the denial of the latter motion. That appeal was denied by the Court on 25 November 2009.

2.17 Throughout the trial, the Government and civil society "pressured" the Supreme Court to speed up the proceedings. This pressure was stepped up in July 2011 when civil society organizations demonstrated in front of the Supreme Court Building. Then, in late July, the association of victims of the events of 2003, with the cooperation of the Government, hung a clock in the Chamber of the Supreme Court. The clock set a deadline

⁴ Article 118 (5) of the Political Constitution establishes that the Supreme Court is responsible for handing down decisions in trials of impeachment of the President or Vice-President of the Republic, ministers of State or prefects of departments for offences committed in the course of the performance of their duties. Such trials are to be initiated at the instruction of the Attorney General of the Republic, subject to the legally substantiated authorization of Congress, which must be approved by a two-thirds majority vote of all its members. If authorization is given, the pretrial proceedings are the responsibility of the Criminal Division of the Court.

⁵ The authors provide no further information to back up this statement.

⁶ The authors provide no further information to back up this statement.

⁷ Article 3.I, fifth paragraph, of Act No. 2445 of 2003, which deals with the substantiation and resolution of trials of impeachment of the President of the Republic, the Vice-President of the Republic, Ministers of State or Department Prefects for offences committed in the course of their performance of their duties, establishes that convictions shall be handed down by two thirds of the total number of members of the Supreme Court.

of 30 August 2011 for the issuance of a verdict, and that was the exact date on which the Court handed down a conviction. Before the judgment was issued, the President of the Supreme Court was assaulted in front of the courthouse and at his residence.⁸

2.18 The conviction was read out in public in September 2011. The authors were sentenced to 11 years in prison as “indirect perpetrators” of the “crime of genocide in the form of mass bloodshed”.⁹ The judgment stated that the decision was not subject to appeal. Notwithstanding that stipulation, Mr. Quiroga filed an application for *amparo* citing the fact that he was unable to appeal his conviction, argued that the judgment was unfounded, contested the rejection of the application of the statute of limitations and contended that the decision was insufficiently reasoned. That application was denied on 5 April 2012 by the Court of Chuquisaca Department. Without entering into the merits of the author’s arguments concerning violations of due process, the Court stated that, since he was incarcerated, he should have filed an application for a writ of habeas corpus rather than an application for *amparo*. The authors also joined the application for *amparo* lodged by a co-defendant, which was based on the following arguments: (a) the conviction had been handed down by a court without the minimum number of votes required by law; (b) the conviction was not open to appeal; (c) the court had continued its deliberations, without jurisdiction or competence, during the court recess; and (d) there were a number of absolute defects in the judgment. This was the only application for *amparo* that was accepted for consideration by the Court of Chuquisaca Department, but it was then rejected on 28 March 2013, and its rejection was upheld by the Constitutional Court on 21 May 2013. Regarding the unavailability of any remedy of appeal against the judgment, the Court held that the authors had been aware, prior to the start of criminal proceedings against them, that the Court of Impeachment was to serve as the sole and final instance, yet they had failed to file an application with the Criminal Division of the Supreme Court as constituted at the time, the Court of Impeachment or the Constitutional Court to challenge their prosecution under impeachment proceedings.

The complaint

3.1 The authors state that they are victims of a violation of the right to equality before the courts as set forth in article 14 (1) of the Covenant. They contend that the amnesty decree of 4 November 2003 criminalized the government forces and public officials who “defended the city” and that it ensured the impunity of the subversive forces that were really to blame for the violence. Because of that decree, Evo Morales and Felipe Quispe were not put on trial even though they had instigated the anti-government demonstrations. Furthermore, the amnesty for the “leaders of the subversives” has made it impossible to conduct a full investigation into the events or to determine the responsibility that lies with one of the parties — or, therefore, to examine the actions of the government forces in that light. Their right to due process has therefore been infringed. During the trial, the Court of Impeachment determined the circumstances surrounding the deaths of only 20 persons with any certainty: 9 who were killed by subversive groups and 11 by military forces. The Court was unable to determine who was responsible for the other deaths — approximately 40 in number — that occurred during the clashes.

3.2 The authors allege a violation of their right to be heard by a competent, independent and impartial tribunal under article 14 (1) of the Covenant. They contend that the judiciary in the Plurinational State of Bolivia is subject to the executive branch, particularly when dealing with cases of great political importance.¹⁰ Its lack of independence stems from the practice of appointing judges on a provisional basis and the consequent instability of their positions.¹¹ In the present case, only two of the judges sitting on the Court of Impeachment held permanent appointments. What is more, the principal plaintiff in the case against the authors, President Evo Morales, was the one who had appointed the judges and prosecutors

⁸ No additional information was provided to back up this statement.

⁹ The Court deemed the other charges against the authors to be subsumed within the crime of genocide.

¹⁰ The authors state that the judiciary’s lack of independence, particularly in politically sensitive cases, was noted by the Inter-American Commission on Human Rights during its visit to the country in 2006.

¹¹ During its visit in 2006, the Inter-American Commission observed that more than half of the judges sitting on the Constitutional Court and the Supreme Court had provisional appointments.

in charge of the case. In addition, an application had been filed for the disqualification of the judges assigned to the case on the grounds of their manifest friendship with the President, and those same judges had rejected that application.

3.3 The executive branch's interference in the authors' trial also took the form of the political persecution of the President of the Supreme Court, who was the target of a smear campaign mounted by the Government and against whom criminal charges were brought for obstruction of justice. As a result of those charges, the judge was immediately suspended pursuant to Act No. 007 of 2010. That law, which made various changes in the penal system, empowers the National Council of the Judiciary, whose members are appointed directly by the President, to suspend judges if any charge is made against them.

3.4 Because of the pressure being exerted by the Government and civil society, the Court decided, in violation of the law, to work through the court recess from 11 to 30 July in order to advance the proceedings.

3.5 The authors note that the Court of Impeachment lacked the minimum number of voting members required by law. Six judges voted in favour of the judgment. This was at odds with article 3 of Act No. 2445, which states that a conviction may be handed down only by a vote of two thirds of the total number of members of the Supreme Court. Furthermore, one of the six judges had withdrawn, but the Court decided that he would continue to figure as one of the presiding judges until such time as a decision was issued.¹²

3.6 The authors allege a violation of their right to be presumed innocent under article 14 (2) of the Covenant. The Court that convicted them did as it was directed to do by the Government, which is headed by the same person who instigated and coordinated the uprising against the Administration of President Sánchez de Lozada, without consideration for the constitutional mandate of the armed forces. The Court did not take into account the lack of discretionary authority of the military commanders to decide whether or not to follow the President's instruction to maintain public order. Nor did it take account of the fact that the authors were not involved in the defence of the city of La Paz against subversive groups in September and October 2003, since they were in charge of the air force and the navy.

3.7 The authors allege a violation of their right to be informed of the causes of the charges against them under article 14 (3) (a) of the Covenant. They contend that the investigation conducted by the Prosecution Service was limited in scope and did not entail a narration of the events in question, since such a narration would have had to include the fact that the subversive forces opened fire on the police first. That was why the Attorney General did not identify the specific offences with which each of the authors was charged or specify the deaths for which they were supposedly responsible. Since the Attorney General was unable to determine the circumstances surrounding the events of September and October 2003, he fell back on the theory of the "indirect commission" of an offence in order to incriminate the authors. In turn, the Supreme Court did not instruct the Attorney General to submit more detailed evidence. The final judgment runs counter to the principle of personal criminal responsibility, inasmuch as it does not refer to any specific events or facts that would have justified the invocation of the crime of genocide of which they were convicted, but instead states that the charges were based on a "widespread situation of unrest and violence".

3.8 The authors claim that they are victims of a violation of article 14 (3) (e) of the Covenant because due weight was not given to the evidence in the case. In particular, no forensic studies were conducted to determine whether the victims died as a consequence of actions taken by the national police, the armed forces or subversive groups. Only 35 of the 380 witnesses were proposed by the defence, while the rest were family members of victims of the conflict. Those witnesses were also civil parties to the case who had an interest in obtaining economic compensation.

¹² The authors contend that this conduct runs counter to article 122 of the Constitution, which states that the acts of persons who usurp functions which are not rightfully theirs or who exercise jurisdiction or authority that is not granted to them by law are null and void.

3.9 Finally, the authors allege a violation of their right to have their conviction and sentence reviewed in accordance with article 14 (5) of the Covenant because they were convicted by the nation's highest court and given no opportunity to appeal that judgment. The conviction handed down at first instance in the impeachment trial was not appealable by virtue of article 123 of the Code of Criminal Procedure.¹³

State party's observations on admissibility

4.1 In its observations dated 9 February 2015, the State party contends that the communication is inadmissible on the grounds of a failure to exhaust domestic remedies. The authors could have filed an appeal for review of the judgment, as provided for by article 421 of the Code of Criminal Procedure, which would have been the proper and effective avenue for them to take in order to remedy any alleged violations that they are bringing before the Committee.¹⁴ This exceptional review procedure exists for the purpose of invalidating a decision based on judicial error; there is no time limit for requesting it and it therefore remains open to the authors.

4.2 The State party maintains that the communication constitutes an abuse of the right of submission of communications because the intention is to use the Committee as a court of fourth instance and to prevail upon it to review the Supreme Court's evaluation of the facts and evidence in the case.

4.3 The State party asserts that the communication is also inadmissible under article 5 (2) (a) of the Optional Protocol because the office of the United Nations High Commissioner for Human Rights in the Plurinational State of Bolivia has already issued an opinion regarding the impeachment hearing conducted by the Supreme Court, which it characterized as a "historic [...] judgment" in the fight against impunity in the High Commissioner's annual report to the Human Rights Council.¹⁵ That statement is based on the office's mandated work in monitoring the human rights situation in the country.

4.4 Finally, the State party claims that the communication has not been sufficiently substantiated. The burden is on the authors to corroborate the allegations that they make in the communication, particularly those relating to the supposed violation of the right to be heard by an independent and impartial judge, which are based on subjective, biased and ill-intentioned assertions.

Authors' comments on the State party's submission concerning admissibility

5.1 In their comments dated 3 May 2015, the authors argue that the appeal for review referred to by the State party is not an effective remedy because it would not permit them to assert the allegations regarding violations of judicial guarantees that they have presented to the Committee.

5.2 With regard to the prior statement made by the Office of the United Nations High Commissioner for Human Rights, the authors point out that only judicial or quasi-judicial

¹³ The authors refer, *inter alia*, to general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 47.

¹⁴ Article 421 establishes that an appeal for review of convictions handed down as executory judgments shall be available in the following cases: (1) when the facts or events serving as the basis for the judgment are incompatible with those established by another executory judgment in a criminal case; (2) when the conviction that is being challenged is based on evidence found to be false in a subsequent executory judgment; (3) when the conviction was issued as a consequence of offences committed by the judiciary whose commission has been substantiated by a subsequent executory judgment; (4) when, after the judgment has been issued, new facts, pre-existing facts or evidence come to light that demonstrate that (a) the offence was not committed, (b) the convicted person did not commit or participate in the commission of the offence or (c) the acts in question are not punishable; (5) when a more lenient provision of criminal law is applicable retroactively; (6) when a decision of the Constitutional Court has the effect of nullifying the provision of criminal law on which the conviction was based.

¹⁵ Report of the United Nations High Commissioner for Human Rights on the activities of her office in the Plurinational State of Bolivia (A/HRC/22/17/Add.2), para. 61.

mechanisms that consider the same complaint lodged by the same authors constitute “the same matter” in the sense used in article 5 (2) (a) of the Optional Protocol.¹⁶

5.3 Finally, the State party has not substantiated its claims regarding a supposed abuse of the right of submission of communications or the failure to substantiate the complaint.

State party’s observations on the merits

6.1 In its observations of 7 October 2015, the State party maintains that a number of episodes of State violence directed against the civilian population occurred in 2003, including what became known as the “gas war”. Social protests — in the form of peaceful marches — in September and October 2003 were prompted by the adoption of a number of political and economic measures by the Administration of former President Sánchez de Lozada. Contrary to what has been stated by the authors, the instigators of these protests were not “subversive rebel groups with ties to drug cartels and far-left movements” but rather Bolivian civil society as a whole, including the unions representing workers, miners, campesinos and students. The Government reacted to the protests by sending out combined detachments of police and members of the armed forces, thus militarizing the city of El Alto. These forces, commanded by the authors, used lethal military armaments — including tank-mounted machine guns — to fire upon the demonstrators, killing 63 and wounding 432, most of whom were civilians and many of whom were of indigenous origin. The Government decided to have the armed forces intervene without abiding by its constitutional duty to declare a state of siege prior to any such action. On 11 October 2003, a state of national emergency was decreed. On 15 October, various print media outlets reported that government officials had confiscated copies of issues that reported on the violence. Radio and television stations also temporarily suspended broadcasts after receiving threats.

6.2 The State party notes that impeachment hearings constitute a special forum for the prosecution of senior public officials for violations of individual rights or guarantees. The constitutionality of the law establishing the procedure was confirmed by the Constitutional Court on 16 April 2012. By virtue of the “principle of the absorption of jurisdiction”, the prosecution of senior dignitaries of the State by the highest court in the land — the Supreme Court — absorbs the jurisdiction of lower courts when there are other defendants in the same trial.

6.3 As for the crime of genocide, covered under article 138 of the Criminal Code, any person, including a public official or authority, may be charged with that crime. The legal requirement included in the definition of the offence that a number of people must have taken part in its commission makes it necessary for investigators to differentiate between persons who ordered that the offence should be committed and those who actually carried it out. The form of genocide defined as “mass bloodshed” refers to violent action taken by the State to suppress social protests being carried out by unarmed persons.

6.4 The State party notes that the Attorney General sent two requests for indictment to the Supreme Court so that it could proceed to request authorization from Congress to put President Sánchez de Lozada and his ministers on trial. The Court forwarded both requests for indictment to Congress, which forwarded them to the Joint Constitutive Commission. The Commission then examined the two requests and issued a single report. The Movimiento Nacionalista Revolucionario submitted a draft text that it proposed should be substituted for the Joint Commission’s draft resolution of authorization for the prosecution of the former president and his cabinet of ministers. Congress, sitting in plenary session, voted on the submission of the Joint Commission but failed to obtain enough yeas for its approval. A few hours later, a vote on the text submitted by the Movimiento Nacionalista Revolucionario received 126 votes in favour, which was sufficient for resolution 004/04-05 of 14 October 2004 to pass. That resolution gave authorization for the impeachment hearing of President Sánchez de Lozada and his cabinet ministers. It was not

¹⁶ The authors cite, inter alia, the Committee’s Views on communication No. 75/1980, *Duilio Fanali v. Italy*, para. 7.2.

that the vote was repeated, as suggested by the authors, but rather that two votes were taken on two different texts.

6.5 The impeachment trial began on 18 May 2009 with a panel which, because a number of judges were disqualified or asked to recuse themselves by the defendants, ended up being composed of a smaller but still sufficient number of judges: two sitting judges and seven associate judges.¹⁷ After three of the associate judges left the panel (one died, one became ill and one resigned), counsel for the victims entered a motion to stay by reason of procedural defects; that motion was denied by the Supreme Court on 23 September 2009. In line with its interpretation of the relevant provision during earlier impeachment hearings, the Supreme Court stated that it was its understanding that the two-thirds rule set out in article 3 of Act No. 2445 referred to the total number of members presiding over the Court of Impeachment. All six members presiding over the latter adopted its decision unanimously. In addition, the authors tacitly recognized the competence of the Court as it was ultimately constituted, since they did not object at the time.

6.6 The State party contends that the authors have not substantiated their complaint concerning the adjudicating court's alleged lack of impartiality and independence.

6.7 The State party goes on to say that the amnesty decrees established a limited amnesty for persons who had participated in the social protests of September and October 2003, while excluding State agents, and applied only to a specified list of offences that did not include any human rights violations.¹⁸

6.8 With regard to the responsibility borne by the authors, the adjudicating Court examined the evidence submitted during the trial and concluded that President Sánchez de Lozada had issued a presidential directive, which was transmitted by the Commander-in-Chief of the Armed Forces to the authors, in which he ordered that a "joint task force" should be formed to conduct "operations to defend the integrity of the territory". The authors were convicted as accomplices ("indirect perpetrators") because they were the ones who, making use of their positions as the superior officers of the military forces under their command, ordered, planned, coordinated and supervised the disproportionate military response that led to such a large number of deaths and injuries. In addition, they were provided with reports that kept them abreast of the outcomes of those operations. More specifically, Mr. Quiroga, as Commander of the Air Force, ordered the deployment of his troops and authorized the transfer of troops and aircraft from elsewhere in the country. The shots fired on civilians by military personnel from the Lama helicopter and a small plane caused death and injury. Mr. Aranda, as Commander of the Navy, ordered the deployment of his troops in the area under his command in La Paz and El Alto, authorized the transfer of troops elsewhere in the country and ordered the military police to deploy to Río Seco, actions that resulted in death and injury. The judgment clearly identified the specific ways in which the authors took part in the illegal, illegitimate and disproportionate repression of the demonstrators. The orders that were issued to quell the protests led to deaths and injuries. Protesters were fired upon over the course of several days in an operation whose timing and location was the result of a deliberate decision and plan to use military force, as is demonstrated by the means used (weapons of war, firearms, warplanes, military helicopters) and the identities of the persons who carried those orders out (military officers). The authors took part in the repression of the civilian population voluntarily and decisively, without regard for article 13 (3) of the Military Criminal Code, which obligates military personnel to refrain from acting upon orders from a superior officer if they constitute a clear violation of the Constitution.

6.9 The authors were informed promptly and in detail of the nature and causes of the charges brought against them by the Public Prosecution Service, as attested to by the

¹⁷ The position of associate judge is provided for in article 80 of the Judicial Organization Act of 1993. Associate judges are practising lawyers who have been appointed by the Supreme Court to act as substitutes for judges who are unable to serve or when there are not enough judges available to issue a judgment.

¹⁸ Removal, manufacture, purchase or sale, or possession of explosives or asphyxiants, attacks on means of transportation, attacks on public utilities or other public services, assault, assault resulting in death, theft and extortion.

personal notification provided on 6 September 2008. They therefore had adequate time and facilities for the preparation of their defence, as is demonstrated by the defence briefs that they submitted.

6.10 As for the taking of evidence, the authors availed themselves of their right to question witnesses for the prosecution and to submit evidence in their defence. The Public Prosecution Service submitted 2,764 pieces of witness evidence and entered 650 pieces of expert evidence,¹⁹ 4,927 pieces of documentary evidence and 167 pieces of physical evidence (on-site inspection). The authors proposed 23 witness statements or witnesses to testify on their behalf, 19 pieces of documentary evidence and 10 pieces of expert evidence. This evidence was admitted and examined. The witnesses for the defence were examined and cross-examined in the same manner as the witnesses for the prosecution were.

6.11 In conclusion, the State party asserts that the authors have not sufficiently substantiated either their claim that they were not informed of the charges against them or their claim that the consideration of the evidence was legally flawed or arbitrary.

6.12 The State party contends that the decision of the Court of Impeachment is not subject to appeal for two reasons: (a) the use, in view of the public positions held by the defendants, of a series of legal and political filtering mechanisms throughout the proceedings, starting with the proposal of charges and continuing on up to the issuance of a decision; and (b) the fact that the constitutionally mandated objective of an impeachment trial is to repair the harm done to victims and the collective interest. The authors did not file any petition for severance of the proceedings. On the contrary, on 13 March 2009, the authors expressly recognized the jurisdiction of the Court of Impeachment when they petitioned the Court, in writing, to dismiss the “procedural adjustment” proposal submitted by some of their co-defendants seeking trial under ordinary proceedings rather than impeachment proceedings. In that petition, the authors waived the jurisdiction of the ordinary courts when they stated that “binding me over for ordinary trial would not afford any benefit in terms of my defence and I therefore reject that proposal in no uncertain terms, since I find that such a court would have no jurisdiction over the events in question”.²⁰ The authors — unlike other military personnel who were convicted by the same judgment — did not file an application for constitutional *amparo*²¹ in support of their fundamental rights and constitutional guarantees. Nor did they raise the issue of a right to a second hearing as a collateral issue. It is therefore to be understood that the authors gave their consent to have the impeachment proceedings serve as the sole and final instance.

Authors’ comments on the State party’s observations on the merits

7.1 In comments dated 4 January 2016, the authors reiterate that they were tried on criminal charges at first and sole instance and that the applications for *amparo* against their convictions were all denied (see para. 2.18 above).

7.2 The authors reiterate their arguments concerning the amnesty decrees, which provided for discriminatory treatment of the persons involved in the events of September and October 2003 by exempting persons from punishment who had committed serious

¹⁹ The expert evidence consisted of 105 reconstructive ballistics laboratory reports, 467 surveys and photographs, 23 forensic toxicology and chemical clinical laboratory reports, 47 forensic biological laboratory reports and a psychiatric report.

²⁰ In submissions dated 12 and 13 March 2009, the authors petitioned the Supreme Court to dismiss the “application for procedural adjustment” submitted by some of their co-defendants, who were seeking severance of the impeachment proceedings and the conversion of their trial to ordinary proceedings on the basis of the new Constitution adopted in 2009. In their submissions, the authors asserted that the jurisdiction of the Court of Impeachment was based on the principles of non-retroactivity and absorption by a higher jurisdiction. The authors also claimed that their co-defendants should have challenged the jurisdiction of the Court of Impeachment by means of an objection to jurisdiction requesting that their trial be assigned to an ordinary court.

²¹ Article 129 (I) of the Constitution establishes that the remedy of *amparo* shall obtain in cases where no other legal avenue or recourse is available for the immediate protection of rights or guarantees that have been violated. That remedy may be applied at any time within six months of the commission of the alleged violation.

violations that resulted in a large number of deaths and injuries. The State party contends that none of the offences covered by the amnesty constitute human rights violations. However, the offence of “infliction of injury leading to death” is clearly a violation of human rights. The commission of the offences covered by the amnesty can therefore not be considered to be a legitimate form of social protest.

7.3 The authors reiterate their arguments regarding the adjudicating court’s lack of competence and independence given the fact that the judges and prosecutors assigned to the case were appointed directly by the main plaintiff, President Evo Morales; the use of criminal suits to pressure judges who were not appointed by the executive branch; the social pressure — instigated and supported by the executive branch — put on the Supreme Court to reach a guilty verdict more swiftly; and the adjudicating court’s lack of a quorum. The authors deny having accepted the jurisdiction of the Court of Impeachment voluntarily, noting that criminal proceedings cannot be waived.

7.4 The authors state that the Supreme Court failed to examine evidence that they put forward, did not call key witnesses and barely listened to the witnesses testifying for the defence. They repeat that it was never stated exactly which deaths or what specific acts they were being held personally responsible for. They assert that the theory of “indirect commission” does not exist in Bolivian criminal law and that, under the Criminal Code, the soldiers and sailors that allegedly committed the massacre would have to be identified and then the chain of command leading back to the authors would have to be established. The prosecution started off from the assumption that Bolivian soldiers were responsible for the deaths, but it did not prove that. There are no valid or credible ballistic analyses that prove who was responsible for the deaths in question. What is more, no soldier has been found criminally responsible for the events, and therefore no military commander could possibly be held responsible for the indirect commission of such a crime. In particular, the prosecution could not explain how Mr. Aranda could be responsible for deaths occurring in El Alto when he was the Commander of the Navy. The authors deny that Mr. Quiroga was in control of the helicopter passes being flown by the armed forces and point out that he was out of the country between 12 and 23 September.

7.5 As for the two-hearing principle, the State party itself has acknowledged that the judgment of the Court of Impeachment is not appealable. Criticism of these proceedings has prompted the preparation of a bill that would modify the current law governing impeachments, to make such judgments subject to appeal.²²

State party’s additional observations

8.1 On 31 October 2016, the State party reiterated its arguments regarding a failure to exhaust domestic remedies, and contended that the events of September and October 2003 were the result of the neo-liberal social and economic policies implemented in the country during the preceding years, including the liberalization of water distribution and natural resource development in ways that benefited transnational companies, which triggered a severe social crisis.

8.2 The State party maintains that the amnesty declared in respect of the events of September and October 2003 was designed to balance out the inequality existing between the civilian population and the combined armed forces that suppressed the protests through the use of military weaponry and the disproportionate use of force.

8.3 The State party asserts that President Evo Morales, in fulfilment of the relevant provision of the Constitution, appointed two of the judges to Division No. 1 of the Supreme Court by a decree dated 30 December 2006. Those two judges served for a very short time, having ceased to do so in accordance with a decision of the Constitutional Court in 2007. On 24 July 2007, four new judges, who were selected using the regular evaluation

²² The bill on the modification of the Act on the Impeachment of the President and/or Vice-President, Senior Authorities of the Supreme Court, Agro-environmental Court, Council of the Judiciary, Plurinational Constitutional Court or the Attorney General of 8 October 2010 (Act No. 44, which replaces Act No. 2445) was approved by the Senate on 19 November 2015 and is awaiting discussion in Congress.

procedures for that purpose, were assigned to the Supreme Court. Consequently, the judges appointed by President Morales did not take part in reaching the judgment whereby the authors were convicted.

8.4 As for the identification of the victims of the events of September and October 2003, the formal charges prepared by the Public Prosecution Service included a list of the 60 persons who died and the 432 who were wounded, the persons suspected of having been responsible for those deaths and injuries, and a narrative of the circumstances and causes of those deaths based on the findings of numerous expert analyses and a review of the documentary evidence, including certified forensic reports.

8.5 As for the responsibility borne by Mr. Aranda as the Commander of the Navy, since the State party is landlocked, the forces under his command were posted throughout the country, and the combined forces deployed in September 2003 included members of the army, air force and navy.

8.6 With regard to the right to a second hearing, a bill is currently under discussion in Congress that would modify the law governing impeachment proceedings. Members of the opposition have taken issue with that bill, however, and have announced that they will challenge its constitutionality. Nonetheless, the bill has again been placed on the congressional agenda.

Issues and proceedings before the Committee

Consideration of admissibility

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

9.2 The Committee takes note of the State party's claim that the communication is inadmissible because the office of the United Nations High Commissioner for Human Rights in the Plurinational State of Bolivia has already issued an opinion regarding the impeachment proceedings in which the authors were involved in the High Commissioner's 2012 report to the Human Rights Council. However, the Committee observes that, although the High Commissioner included information on the proceedings against the authors in her report on the activities of her office in the Plurinational State of Bolivia, the purpose of that report was not to establish whether or not the State party had fulfilled its obligations under the Covenant. Furthermore, the High Commissioner is not an entity charged with conducting a procedure of international investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol. Consequently, the Committee finds that this poses no obstacle to the admissibility of the communication under article 5 (2) (a) of the Optional Protocol.

9.3 The Committee takes note of the State party's claim that the authors have not exhausted domestic remedies because they have not made use of the exceptional procedure for entering an appeal for review of the judgment provided for in article 421 of the Code of Criminal Procedure, whereby a decision may be invalidated on grounds of judicial error. The authors dispute the validity of this argument, claiming that it is not an effective remedy because it does not admit consideration of the violation of judicial guarantees.

9.4 The Committee also observes that the authors have already submitted to the national courts essentially the same allegations brought to the attention of the Committee. Mr. Quiroga filed an application for *amparo* in respect of his conviction which was rejected by the Court of Chuquisaca Department on 5 April 2012, and the rejection was confirmed on appeal by the Constitutional Court on 21 May 2013. In that application, the author presented his arguments concerning the absence of a second hearing and the insufficient substantiation of the judgment. The authors also joined an application for *amparo* filed by a co-defendant which cited a number of issues, including the questions concerning the Court's lack of a quorum, procedural defects and the absence of a second hearing. Both authors also entered motions regarding the lack of a quorum in the Court of Impeachment. In the light of the information provided by the authors and in the absence of information from the State party indicating the existence of an effective remedy or refuting the authors'

claims regarding the exhaustion of domestic remedies, the Committee finds that this poses no obstacle to the admissibility of the communication under article 5 (2) (b) of the Optional Protocol.

9.5 The Committee takes note of the authors' claims under article 14 (1) of the Covenant regarding the lack of judicial independence. Specifically, the authors claim that the executive branch has interfered generally in the work of the judiciary, in this case by exerting political pressure to speed up the consideration of the case and by engaging in political persecution of the President of the Supreme Court, which, the authors say, was the reason for his suspension for obstruction of justice. The authors also call into question the provisional appointment of certain judges to the Court of Impeachment and the appointment of two judges by President Morales. The Committee notes, however, that the authors have provided no specific information or evidence concerning government interference of any kind with the work of the judges serving on the Court of Impeachment, nor have they shown how the trial, which lasted over two years, might have been affected by improper pressure from the executive branch to force an expedited ruling. Further, the authors have not substantiated their claim that the suspension of the President of the Supreme Court was the direct result of alleged interference by the executive branch, nor have they demonstrated that the suspension tilted the proceedings in favour of the executive branch. With respect to the authors' allegations concerning the appointment of judges to the Court of Impeachment, the Committee takes note of the State party's contention that the two judges appointed by President Morales did not take part in reaching the judgment whereby the authors were convicted, since they ceased to serve on the panel of judges in 2007, and that the regular evaluation procedures were used to appoint new judges. Consequently, in the absence of information from the authors that would refute these statements, the Committee finds that this part of the complaint has not been sufficiently substantiated and declares it inadmissible in accordance with article 2 of the Optional Protocol.

9.6 With respect to the authors' other claims under article 14 (1) of the Covenant regarding the adjudicating court's lack of a quorum as defined in Bolivian law, the Committee recalls its jurisprudence in that regard, which establishes that it is generally for the courts of the State party to review the application of domestic legislation unless it can be shown that such application was clearly arbitrary or amounted to a manifest error or denial of justice.²³ In the present case, the Committee observes that the question as to the presence or absence of the quorum required under Bolivian law and its implications regarding the competence of the adjudicating court was considered by the Supreme Court when it examined the motion entered by counsel for the civil parties to the proceedings. At that time, the Court found that, in accordance with its own jurisprudence, the provision on the required quorum for issuing a judgment should be interpreted as referring to the members of the Court of Impeachment, not to the members of the Supreme Court. The Committee observes that the authors have not shown that the Supreme Court's interpretation of the provision of domestic law is arbitrary or that it amounts to a manifest error or denial of justice. The authors likewise have not shown that the quorum established by Bolivian law deprived them of due process under article 14 (1) of the Covenant. Consequently, the Committee finds that the authors have not sufficiently substantiated this complaint and declares it inadmissible in accordance with article 2 of the Optional Protocol.

9.7 The Committee takes note of the authors' claims that the amnesty decree of 4 November 2003 violated their right to equality before the courts as set forth in article 14 (1) of the Covenant because it made it impossible to conduct a full investigation into the events and thus to determine what responsibility might lie with the authors for those events. The authors also claim that the amnesty decree amounts to unequal treatment because it provides that some of the persons involved in the violence of September and October 2003 are to be relieved of all responsibility while others are to be punished. The Committee observes, however, that the authors have not shown how the amnesty applying to other persons presumed to have committed offences in the course of the events of September and October 2003 impinged on the investigation into the authors' participation in those events

²³ See the Committee's general comment No. 32, para. 26.

or the attribution of responsibility to them. The Committee notes in this connection that the Court of Impeachment found that 9 of the deaths were attributable to persons who were not acting in the name of the State and 11 were attributable to State forces. The Committee also considers that the authors have not shown how the amnesty decree, by exempting some of the persons allegedly responsible for the violence of September and October 2003 from prosecution, has violated the authors' right to equality before the courts and tribunals under article 14 (1) of the Covenant. Consequently, the Committee finds that the authors have not sufficiently substantiated this complaint and declares it inadmissible in accordance with article 2 of the Optional Protocol.

9.8 The Committee takes note of the authors' claims that the adjudicating court violated their right to the presumption of innocence by failing to take into account the constitutional mandate of the armed forces and the authors' lack of discretionary authority in carrying out the orders they received. The State party has asserted that the authors were fully aware of what they were doing and participated in the events in question voluntarily and that, in accordance with the Military Code in force, they should have refrained from following those orders because they were clearly in violation of the Constitution. The Committee considers that the right to the presumption of innocence under article 14 (2) of the Covenant does not exempt individuals from criminal responsibility under domestic law for obeying orders to carry out acts that are manifestly contrary to the Covenant, such as use of military weaponry against unarmed civilians, and that their right to the presumption of innocence has not been breached. Consequently, the Committee finds that this part of the communication has not been sufficiently substantiated and declares it inadmissible in accordance with article 2 of the Optional Protocol.

9.9 The Committee takes note of the authors' claim under article 14 (3) (a) of the Covenant concerning their right to be informed of the causes of the charges against them. The authors contend that neither the specific offences with which they were charged nor the actual deaths for which they were said to be responsible were identified, and that they were instead convicted as accomplices, or "indirect perpetrators", of the crime of genocide in the form of "mass bloodshed". The State party has stated that the authors were promptly and fully informed of the nature and causes of the charges against them and that, under Bolivian law, persons who order the commission of the crime of genocide and the material authors of that crime are both held criminally responsible. The Court of Impeachment, after considering the evidence before it, concluded that the authors wilfully ordered, planned and supervised the deployment of military forces using lethal weapons under their command, while aware of the high level of risk entailed in using the armed forces to control social conflicts and while being kept abreast of the outcomes of that action; and that the judgment by which the authors were convicted specified the actual actions taken by the authors and the relationship that those actions bore to the deaths and injuries that resulted. The Committee recalls its jurisprudence in that regard, which establishes that it is generally for the courts of the State party to review the application of domestic legislation unless it can be shown that such application was clearly arbitrary or amounted to a manifest error or denial of justice.²⁴ The Committee notes, in the light of the State party's observations, that the authors have not explained in what way the adjudicating court's application of domestic legislation governing the offence with which they were charged was arbitrary or constituted a violation of article 14 (3) (a) of the Covenant, and consequently declares this part of the communication inadmissible in accordance with article 2 of the Optional Protocol.

9.10 The Committee takes note of the authors' claims, with regard to article 14 (3) (e) of the Covenant, that due weight was not given to the evidence, that no forensic studies were conducted to determine the causes of death, that only 35 of the 380 witnesses were proposed by the defence, that key witnesses were not called to testify, that many of the witnesses for the prosecution were also civil parties to the proceedings and that Mr. Quiroga was in the United States for part of the period during which the events in question took place. The Committee observes that, as asserted by the State party and as shown in the judgment, the authors had the opportunity to examine and cross-examine the witnesses against them and to obtain the attendance of witnesses for the defence, and that all of the

²⁴ Ibid.

evidence and all of the witness statements were admitted and considered. The Committee recalls its jurisprudence in that regard, which establishes that it is generally for the courts of the State party to review facts and evidence unless it can be shown that such evaluation was clearly arbitrary or amounted to a denial of justice.²⁵ The Committee also recalls that the right set forth in article 14 (3) (e) of the Covenant is not an unlimited right to obtain the attendance of any and all witnesses requested by the accused or his or her counsel. Instead, it simply establishes the right of accused persons to have witnesses admitted that are relevant for the defence and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.²⁶ The Committee takes note of the information provided by the State party on the evidence considered, including forensic evidence. The Committee also notes, from the information submitted to it, that the authors have not specified what key witnesses were not admitted, nor have they shown that the Supreme Court's examination or evaluation of the evidence was arbitrary or manifestly unjust. Consequently, the Committee finds that this part of the communication has not been sufficiently substantiated and declares it inadmissible in accordance with article 2 of the Optional Protocol.

9.11 Lastly, the Committee takes note of the authors' claim that they were convicted of criminal offences by the highest court in the State party, with no possibility of appealing against that judgment, in violation of article 14 (5) of the Covenant. The Committee recalls that where the highest court of a country acts as first and sole instance, the absence of any right to review by a higher tribunal is not offset by the fact of being tried by the supreme tribunal of the State party concerned; rather, such a system is incompatible with the Covenant, unless the State party concerned has made a reservation to this effect.

9.12 In the present case, the State party has acknowledged that decisions taken in impeachment proceedings are not open to appeal, and the judgment by which the authors were convicted explicitly states that the decision is final. The authors' application for *amparo*, which was based inter alia on the fact that they were unable to file an appeal against the judgment, was accordingly denied. The State party has pointed out that a bill is under discussion in the legislature that would establish a second instance for the review of judgments handed down in impeachment proceedings. That bill has not yet been passed, however, and is therefore not applicable to the present case. The Committee also takes note of the State party's assertion that the authors voluntarily and specifically asked to remain under the jurisdiction of the Supreme Court, acting as a Court of Impeachment, in preference to that of the ordinary courts. The Committee notes in particular the State party's assertion — which the authors have not disputed — to the effect that the authors did not seek the severance of the charges against them from the charges brought against other high-ranking officials being tried under proceedings at sole instance. On the contrary, in March 2009 the authors expressly, and in writing, waived ordinary criminal jurisdiction by declining to join the application submitted by some of their co-defendants for the severance of the trial of military personnel from the impeachment proceedings and the transfer of the cases involving military defendants to the ordinary courts. What is more, the authors petitioned the Supreme Court to reject that application, claiming that their co-defendants should have submitted an objection to jurisdiction, and they categorically rejected the proposal that they should be tried by the ordinary courts. The Committee also observes that the citation of the unavailability of appeal as one of the grounds for the *amparo* application joined by the authors was rejected on the grounds that the authors had been duly informed that the Court of Impeachment was to serve as the sole and final instance, yet they had not filed any application with the Criminal Division of the Supreme Court, the Court of Impeachment or the Constitutional Court to challenge their prosecution under impeachment proceedings. The Committee finds that, by categorically insisting on being tried by the Court of Impeachment and by declining to challenge those proceedings when they had the opportunity to do so, the authors — who were represented by counsel and expressed no concerns about the qualification or effectiveness of those representing them — waived their

²⁵ Ibid.

²⁶ See the Committee's general comment No. 32, para. 39.

right of appeal.²⁷ In the light of the circumstances of the case, the Committee finds that the authors' claim of a violation of their right under article 14 (5) of the Covenant has not been sufficiently substantiated and declares it inadmissible in accordance with article 2 of the Optional Protocol.

10. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
 - (b) That this decision shall be transmitted to the State party and to the authors of the communication.
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²⁷ In this regard, see the Views adopted by the Committee on communication No. 1004/2001, *Estevill v. Spain*, para. 6.2.