

## HUMAN RIGHTS COMMITTEE

### Arhuaco v. Colombia

Communication No. 612/1995

14 March 1996

CCPR/C/56/D/612/1995\*

### ADMISSIBILITY

*Submitted by:* Jose Vicente and Amado Villafañe Chaparro, Dioselina Torres Crespo, Hermes Enrique Torres Solis and Vicencio Chaparro Izquierdo [represented by counsel]

*Alleged victims:* Jose Vicente and Amado Villafañe Chaparro, Luis Napoleon Torres Crespo, Angel María Torres Arroyo and Antonio Hughes Chaparro Torres

*State party:* Colombia

*Date of communication:* 14 June 1994 (initial submission)

*Documentation references:* Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the state party on 10 January 1995 (not issued in document form)

*Date of present decision:* 14 March 1996

The Human Rights Committee, acting through its working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

### **Decision on admissibility**

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

## Facts as submitted by the authors

2.1 On 28 November 1990, at about 1:00 p.m., Luis Napoleon Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres boarded a bus in Valledupar for Bogotá, where they were scheduled to attend various meetings with governmental officials. The same day, at about 11:00 p.m., Jose Vicente Villafañe and his brother, Amado Villafañe, were arrested by soldiers from the No. 2 Artillery Battalion, “La Popa”, stationed in Valledupar. Colonel Luis Fernando Duque Izquierdo, Commander of the Battalion, had issued a warrant to search the Villafañe brothers’ houses, ordering that the search be carried out by Lieutenant Pedro Fernández Ocampo and four soldiers. The search warrant had been authorized on the basis of military intelligence to the effect that the two men were members of a support unit for the Guerilla Group ELN (“Ejército de Liberación Nacional”), and that they were storing arms and material reserved exclusively for the use of the armed forces. The brothers were released on 4 December 1990.

2.2 Manuel de la Rosa Pertuz was also arrested on 28 November 1990, when he left his house to help the Villafañe brothers; he was taken to the “La Popa” barracks, where he was allegedly ill-treated, blindfolded and interrogated by military officers. He was released on 29 November at about 7:15 p.m. Amarilys Herrera Araujo, the common-law wife of Amado Villafañe Chaparro, was also arrested on the night of 28 November 1990, taken to “La Popa” and interrogated. She was released at about 1:00 a.m., 29 November 1990. In the last two cases, there was no arrest warrant, but both were deprived of the possibility of obtaining legal assistance.

2.3 It soon transpired that the Arhuaco leaders never reached their destination in Bogotá. On 12 December 1990, a delegation of the Arhuacos went to Curumani to verify the information they had received regarding the abduction of their leaders. It appeared that on 28 November 1990, the driver of the bus (on which the Arhuaco leaders had travelled) had reported to the police in Curumani that, at about 4:00 p.m., after stopping at a restaurant in Curumani, four armed men had forced three indigenous passengers to board a car; the police, however, had not followed up on the complaint.

2.4 On 13 December 1990, in the municipality of Bosconia, the Arhuaco delegation was informed that, on 2 December 1990, three corpses had been recovered in the vicinity of Bosconia; one in Bosconia itself, a second in the municipality of El Paso, and a third in Loma Linda near the river Arguari. No attempt had been made to identify the bodies, but the clothes and other characteristics, indicated that the bodies were those of Luis Napoleon Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres. The death certificates further revealed that the three bodies showed traces of torture. The examining magistrate of Valledupar ordered the exhumation of the bodies. The first two bodies were exhumed on 14 December 1990, the third on 15 December. Members of the Arhuaco community called to identify the bodies confirmed that they were those of Angel María Torres Arroyo, Antonio Hugues Chaparro Torres and Luis Napoleon Torres Crespo. The necropsy revealed that they had been tortured and then shot in the head.

2.5 Still on 14 December 1990, the Arhuaco community arranged a meeting with government officials in Valledupar. At this meeting, Jose Vicente Villafañe testified that when he and his brother were held by the Battalion “La Popa”, they were subjected to torture, and interrogated about the abduction, by a guerilla group, of a landowner, one Jorge Eduardo Mattos. Jose Vicente Villafañe identified the commander of “La Popa”, one colonel Luis Fernando Duque Izquierdo, and

the chief of the battalion Intelligence Unit, Lieutenant Pedro Antonio Fernández Ocampo, as those responsible for his and his brother's ill-treatment. He further testified that, during interrogation and torture, they (the officers) claimed that "three other persons had been detained who had already confessed", and threatened him that "if he did not confess they would kill other Indians". Furthermore, on the day he was interrogated by the brother of Jorge Eduardo Mattos, Eduardo Enrique Mattos, who first offered him money in exchange for information on his brother's whereabouts, and then threatened that if he did not confess within 15 days they would kill more individuals of Indian origin. According to Jose Vicente Villafañe, it was clear from the fact that his arrest and the disappearance of the Arhuaco leaders took place on the same day, and from the threats he received, that Lieutenant Fernández Ocampo and Colonel Duque Izquierdo were responsible for the murders of the three Arhuaco leaders, and that Eduardo Enrique Mattos had paid them to do so.

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

2.7 As to the exhaustion of domestic remedies, it transpired that preliminary investigations in the case were first carried out by the examining magistrate of Court No. 7 of Valledupar (Juzgado 7° de Instrucción Criminal Ambulante de Valledupar); on 23 January 1991, the case was referred to the examining magistrate of Court No. 93 in Bogotá (Juzgado 93° de Instrucción Criminal Ambulante de Bogotá), and on 14 March 1991 to Court No. 65 in Bogotá. On 30 May 1991, the Commander of the Second Brigade of Barranquilla, in his function as judge on the military tribunal of first instance, requested the examining magistrate of Court No. 65 to discontinue the proceedings in respect of Colonel Duque Izquierdo and Lieutenant Fernández Ocampo, as Military Court No. 15 (Juzgado 15° de Instrucción Penal Militar) had begun its own investigation in the case; furthermore, since the alleged offences had been committed in the course of duty by the officers concerned, i.e. in their military capacity, they fell exclusively within military jurisdiction.

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

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

consideration that Eduardo Enrique Mattos had died in the meantime.

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

### The complaint

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

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

3.3 The authors claim that the ill-treatment they were subjected to at the hands of the armed forces at the No. 2 Battalion "La Popa", which included blindfolding and dunking in a waterway, etc., constitutes a violation of article 7.

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

3.5 Furthermore, the interrogation of the members of the indigenous community by members of the armed forces in total disregard of the requirements of due process, by denying them the assistance of a lawyer, and the subsequent execution of three of them in blatant violation of the Colombian legal system, which expressly forbids the imposition of the death penalty, amounts to a violation of article 14 of the Covenant.

3.6 Finally, the authors claim that the arbitrary detention and torture inflicted on 2 members of the Arhuaco indigenous community, and the disappearance and execution of three other members of this community, two of which were spiritual leaders of the community, constitutes a violation of the cultural and spiritual rights of the Arhuaco community, within the meaning of article 27 of the Covenant.

## The State party's information and observations

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

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

- Disciplinary proceedings were first initiated by the Human Rights Division of the Attorney-General's Office for the torture to which the Villafañe brothers were subjected and subsequently for the abduction and triple murder of Luis Napoleon Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres. The result of this investigation was a recommendation that the two officers be dismissed (solicitud de destitución del cargo) and that Alberto Uribe Oñate, Director of the Office of Indigenous Affairs in Valledupar, be acquitted. The decision was appealed, but on 27 October 1992, the findings of the lower court were confirmed.

- Criminal proceedings were initiated by Court No. 65 of Bogotá and by Military Court No. 15; the conflict of jurisdiction was resolved in favour of the military's jurisdiction. The State party notes that a special agent was named from the Attorney-General's office, to appear in the proceedings. On 5 May 1993, the military court held that there was insufficient evidence to indict Colonel Luis Fernando Duque Izquierdo and Lieutenant Pedro Fernández Ocampo (by then Captain), and that proceedings be discontinued. This decision was confirmed by the Superior Military Tribunal (Tribunal Militar Superior).

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

4.3 In his reply, counsel submits that the State party's allegation that domestic remedies exist is a fallacy since, under the Colombian Military Code, there is no provision for the victims of human rights violations or their families to become an intervening party (constituirse en parte civil) in any proceedings before a military court.

4.4 In a further submission of 8 December 1995, the State party observes that the Third Section of the Administrative Chamber of the State Council (La Sección Tercera de la Sala de lo Contencioso Administrativo del Consejo de Estado), when deciding on the appeal against the sentence of 26 August 1993 handed down by the Administrative Tribunal of Valledupar, confirmed the decision of the lower court that there was no evidence that members of the armed forces had taken part in the murder of the three indigenous leaders.

## Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has taken note of the State party's request that the communication be declared inadmissible. With regard to the requirement of exhaustion of available domestic remedies, the Committee notes that the victims' disappearance was reported immediately to the police of Curumani by the bus driver, that the complaint filed with the Human Rights Division of the Attorney-General's office clearly indicated which army officers were held responsible for the violations and should be punished, and that further proceedings were initiated before Criminal Court No. 93. Notwithstanding this material evidence, a military investigation was initiated, in the course of which the two officers were cleared and not indicted. The Committee considers that doubts as to the effectiveness of remedies available to the authors arise in the light of the decision of Military Court No. 15, which held that there was not enough evidence even to indict the suspects, without explaining its conclusion. In the circumstances of the case, it must be concluded that the authors pursued remedies aimed at the criminal prosecution of the two military officers held to be responsible for the disappearance of the three Arhuaco leaders and the torture of the Villafañe brothers diligently but unsuccessfully. More than five years after the occurrence of the events at the basis of the present communication, those held responsible for the death of the three Arhuaco leaders have not been indicted let alone tried. The Committee concludes that the authors have fulfilled the requirements of article 5, paragraph 2 (b), of the Optional Protocol.

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

5.4 Concerning the claim under article 27, the Committee considers that the authors have failed to substantiate how the actions ascribed to the military and to the State party's authorities violated the right of the Arhuaco community to enjoy its own culture or to practice its own religion. Accordingly, this claim is inadmissible under the Optional Protocol.

5.5 In the light of paragraphs 5.2 and 5.3 above, the Committee considers that the authors have met the requirements of article 5, paragraph 2 (b), of the Optional Protocol. Their claims under articles 6, paragraph 1; 7; 9 and 14 of the Covenant have been sufficiently substantiated, for purposes of admissibility, and should be considered on their merits.

6. The Committee therefore decides:

(a) that the communication is admissible;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments which she may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party, to the authors and to their counsel.

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