

EFFECTIVE REMEDIES - SPECIAL MEASURES

III. JURISPRUDENCE

ICCPR

- *Bautista v. Colombia* (563/1993), ICCPR, A/51/40 vol. II (27 October 1995) 132 (CCPR/C/55/D/563/1993) at paras. 8.3 and 9.

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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.

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9. The Human Rights Committee...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.

- *Ahani v. Canada* (1051/2002), ICCPR, A/59/40 vol. II (29 March 2004) 260 at paras. 1.2, 8.1 and 8.2.

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1.2 On 11 January 2002, the Committee, acting through its Special Rapporteur on new communications, pursuant to rule 86 of the Committee's rules of procedure, requested the State party, in the event that the Supreme Court's decision expected the same day would permit the author's deportation, "to refrain from deportation until the Committee has had an opportunity to consider the allegations, in particular those that relate to torture, other inhuman treatment or even death as a consequence of the deportation". By note of 17 May 2002, the Committee, having been informed by counsel of a real risk that the State party would not comply with the Committee's request for interim measures of protection, reiterated its request. On 10 June 2002, the State party deported the author to Iran.

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8.1 The Committee finds, in the circumstances of the case, that the State party breached its obligations under the Optional Protocol, by deporting the author before the Committee could

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address the author's allegation of irreparable harm to his Covenant rights. The Committee observes that torture is, alongside the imposition of the death penalty, the most grave and irreparable of possible consequences to an individual of measures taken by the State party. Accordingly, action by the State party giving rise to a risk of such harm, as indicated *a priori* by the Committee's request for interim measures, must be scrutinized in the strictest light.

8.2 Interim measures pursuant to rule 86 of the Committee's rules adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Protocol. Flouting of the rule, especially by irreversible measures such as the execution of the alleged victim or his/her deportation from a State party to face torture or death in another country, undermines the protection of Covenant rights through the Optional Protocol.