# LIFE - RIGHT TO - GENERAL

## III. JURISPRUDENCE

## ICCPR

- *de Guerrero v. Colombia* (R.11/45), ICCPR, A/37/40 (31 March 1982) 137 at paras. 13.1-13.3 and 14.

...
13.1 Article 6(1) of the Covenant provides:

> Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

The right enshrined in this article is the supreme right of the human being. It follows that the deprivation of life by the authorities of the State is a matter of the utmost gravity. This follows from the article as a whole and in particular is the reason why paragraph 2 of the article lays down that the death penalty may be imposed only for the most serious crimes. The requirements that the right shall be protected law and that no one shall be arbitrarily deprived of his life mean that the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State.

13.2 In the present case, it is evident from the fact that seven persons lost their lives as a result of the deliberate action of the police that the deprivation of life was intentional. Moreover, the police action was apparently taken without warning to the victims and without giving them any opportunity to surrender to the police patrol or to offer any explanation of their presence or intentions. There is no evidence that the action of the police was necessary in their own defence or that of others, or that it was necessary to effect the arrest or prevent the escape of the persons concerned. Moreover, the victims were no more than suspects of the kidnapping which had occurred some days earlier and their killing by the police deprived them of all the protection of due process of law laid down by the Covenant.

13.3 For these reasons it is the Committee's view that the action of the police resulting in the death of Mrs. María Fanny Suárez de Guerrero was disproportionate to the requirements of law enforcement in the circumstances of the case and that she was arbitrarily deprived of her life contrary to article 6, paragraph 1, of the International Covenant on Civil and Political Rights. Inasmuch as the police action was made justifiable as a matter of Colombian law..., the right to life was not adequately protected by the law of Colombia as required by article 6(1).

14. It is not necessary to consider further alleged violations, arising from the same facts, of other articles of the Covenant. Any such violations are subsumed by the even more serious

violation of article 6.

- *Barbato v. Uruguay* (84/1981) (R.21/84), ICCPR, A/38/40 (21 October 1982) 124 at paras. 9.2, 10 and 11.

...
9.2 ...While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody...the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6(1) of the Covenant.
...
10. The Human Rights Committee...is of the view that the communication discloses violations of the Covenant, in particular:

(a) With respect to Hugo Haroldo Dermit Barbato:

> of article 6, because the Uruguayan authorities failed to take appropriate measures to protect his life while he was in custody...

...
11. The Committee, accordingly, is of the view that the State party is under an obligation to take effective steps (a) to establish the facts of Hugo Dermit's death, to bring to justice any persons found to be responsible for his death and to pay appropriate compensation to his family...

- *Baboeram et al. v. Suriname* (146 and 148-154/1983), ICCPR, A/40/40 (4 April 1985) 187 (CCPR/C/24/D/146/1983) at paras. 13.2, 14.3, 15 and 16.

...
13.2 In the early hours of 8 December 1982, 15 prominent persons in Paramaribo, Suriname, including journalists, lawyers, professors and businessmen, were arrested in their respective homes by Surinamese military police and subjected to violence. The bodies of these 15 persons, among them eight persons whose close relatives are the authors of the present communications, were delivered to the mortuary of the Academic Hospital, following an announcement by Surinamese authorities that a coup attempt had been foiled and that a number of arrested persons had been killed while trying to escape. The bodies were seen by family members and other persons who have testified that they showed numerous wounds. Neither autopsies nor official investigations of the killings have taken place.

...
14.3 Article 6 (1) of the Covenant provides:

> "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

The right enshrined in this article is the supreme right of the human being. It follows that the deprivation of life by the authorities of the State is a matter of the utmost gravity. This follows from the article as a whole and in particular is the reason why paragraph 2 of the article lays down that the death penalty may be imposed only for the most serious crimes. The requirements that the right shall be protected by law and that no one shall be arbitrarily deprived of his life mean that the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State. In the present case it is evident from the fact that 15 prominent persons lost their lives as a result of the deliberate action of the military police that the deprivation of life was intentional. The State party has failed to submit any evidence proving that these persons were shot while trying to escape.

15. The Human Rights Committee...is of the view that the victims were arbitrarily deprived of their lives contrary to article 6 (1) of the International Covenant on Civil and Political Rights. In the circumstances, the Committee does not find it necessary to consider assertions that other provisions of the Covenant were violated.

16. The Committee therefore urges the State party to take effective steps (i) to investigate the killings of December 1982; (ii) to bring to justice any persons found to be responsible for the death of the victims) (iii) to pay compensation to the surviving families; and (iv) to ensure that the right to life is duly protected in Suriname.

- *Miango v. Zaire* (194/1985), ICCPR, A/43/40 (27 October 1987) 218 at paras. 8.2, 10 and 11.

...
8.2 Mr. Jean Miango Muiyo, a Zairian citizen, was kidnapped and taken to the military camp at Kokolo, Kinshasa, on 20 or 21 June 1985. There, he was subjected to torture by members of the armed forces (*forces armies zairoises* ((FAZ)). Later, he was seen in a precarious physical condition by a friend of the family at Mama Yemo Hospital in Kinshasa. The author's relatives were unable to locate the victim alive; they were, however, taken to the hospital morgue to identify the victim's body. Contrary to the report of the traffic police, the victim did not succumb to the consequences of a road accident he allegedly suffered on 18 June 1985, but died as the result of traumatic wounds probably caused by a blunt instrument.

This conclusion is buttressed by a report from a forensic physician dated 11 July 1985, which states that the victim's death seems to have been the result of the use of violence and not of a road accident. The author's family has requested the Office of the Public Prosecutor to conduct an inquiry into the death of Mr. Miango Muiyo, in particular asking that the military officer who delivered the victim to the hospital be summoned for questioning. This officer, however, with the consent of his superiors, has refused to be questioned.

...

10. The Human Rights Committee...is of the view that these facts disclose a violation of articles 6 and 7, paragraph 1, of the Covenant. Bearing in mind the gravity of these violations the Committee does not find it necessary to consider whether other provisions of the Covenant have been violated.

11. The Committee therefore urges the State party to take effective steps (a) to investigate the circumstances of the death of Jean Miango Muiyo, (b) to bring to justice any person found to be responsible for his death, and (c) to pay compensation to his family.

- *Herrera Rubio v. Colombia* (161/1983), ICCPR, A/43/40 (2 November 1987) 190 at paras. 10.3 and 11.

...

10.3 Whereas the Committee considers that there is reason to believe, in light of the author's allegations, that Colombian military persons bear responsibility for the deaths of José Herrera and Emma Rubio de Herrera, no conclusive evidence has been produced to establish the identity of the murderers. In this connection, the Committee refers to its General Comment No. 6 (16) concerning article 6 of the Covenant, which provides, *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 impartial body, cases of missing and disappeared persons in circumstances which may involve a violation of the right to life...

...

11. The Human Rights Committee...is of the view that the facts as found by the Committee disclose violations of the Covenant with respect to:

> Article 6, because the State party failed to take appropriate measures to prevent the disappearance and subsequent killings of José Herrera and Emma Rubio de Herrera and to investigate effectively the responsibility for their murders...

- *V. M. R. B. v. Canada* (236/1987), ICCPR, A/43/40 (18 July 1988) 258 at paras. 6.3. and

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7(a).

...
6.3 ...With regard to the author's allegation that his right to life under article 6 of the Covenant...[has] been violated, the Committee finds that he has not substantiated...[the] allegation...[T]he author has merely expressed fear for his life in the hypothetical case that he should be deported to El Salvador. The Committee cannot examine hypothetical violations of Covenant rights which might occur in the future; furthermore, the Government of Canada has publicly stated on several occasions that it would not extradite the author to El Salvador and has given him the opportunity to select a safe third country...

7. The Human Rights Committee therefore decides:

> (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol because the author's claims are either unsubstantiated or incompatible with the provisions of the Covenant...

- *Arévalo v. Colombia* (181/1984), ICCPR, A/45/40 vol. II (3 November 1989) 31 at paras. 10 and 11.

...
10. ...In adopting its views, the Committee stresses that it is not making any finding on the guilt or innocence of the Colombian officials who are currently under investigation for possible involvement in the disappearance of the Sanjuán brothers. The Committee limits itself to expressing its views on the question of whether any of the Covenant rights of the Sanjuán brothers have been violated by the State party, in particular articles 6 and 9. In this connection the Committee refers to its General Comment No. 6 (16) concerning article 6 of the Covenant, which provides, *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 impartial body, cases of missing and disappeared persons in circumstances which may involve a violation of the right to life...

11. The Human Rights Committee notes that the parents of the Sanjuán brothers received indications that their sons had been arrested by agents of the "F2". The Committee further notes that in none of the investigations ordered by the Government has it been suggested that the disappearance of the Sanjuán brothers was caused by persons other than Government officials. In all these circumstances, therefore, the Committee...finds that the right to life enshrined in article 6 of the Covenant and the right to liberty and security of the person laid down in article 9 of the Covenant have not been effectively protected by the State of Colombia.

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*For dissenting opinion in this context, see Arévalo v. Colombia* (181/1984), ICCPR, A/45/40 vol. II (3 November 1989) 31 at Individual Opinion by Mr. Nisuke Ando, 37.

- *Mojica v. Dominican Republic* (449/1991), ICCPR, A/49/40 vol. II (15 July 1994) 142 (CCPR/C/51/D/449/1991) at paras. 2.1, 2.2, 5.5, 5.6, 6 and 7.

  ...
  2.1 The author is a well-known labour leader. His son, Rafael Mojica, a dock worker in the port of Santo Domingo, was last seen by his family in the evening of 5 May 1990...Witnesses affirm that he...boarded a taxi in which other, unidentified men, were travelling.

  2.2 [Barbarín Mojica] contends that during the weeks prior to his son's disappearance, Rafeael Mojica had received death threats from some military officers of the Dirección de Bienes Nationales...
  ...
  5.5 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 impartial body, cases of missing and disappeared persons in circumstances that may involve a violation of the right to life.

  5.6 ...In the circumstances, the Committee finds that the right to life enshrined in article 6 has not been effectively protected by the Dominican Republic, especially considering that this is a case where the victim's life had previously been threatened by military officers.
  ...
  6. The Human Rights Committee...is of the view that the facts as found by the Committee reveal a violation by the State party of articles 6, paragraph 1...of the Covenant.

  7. Under article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy. The Committee urges the State party to investigate thoroughly the disappearance of Rafael Mojica, to bring to justice those responsible for his disappearance, and to pay appropriate compensation to his family.

- *Bautista v. Colombia* (563/1993), ICCPR, A/51/40 vol. II (27 October 1995) 132 (CCPR/C/55/D/563/1993) at paras. 8.2, 8.3, 9 and 10.

  ...
  8.2 ...[P]urely 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 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.

...

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.

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 N. Bautista's family from harassment...[T]he 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.

- *Celis Laureano v. Peru* (540/1993), ICCPR, A/51/40 vol. II (25 March 1996) 108 (CCPR/C/56/D/540/1993) at paras. 8.3, 8.4, 9 and 10.

...

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 measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. States parties should also 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 which may involve a violation of the right to life.

8.4 In the instant case, the Committee notes that the State party concedes that Ms. Laureano remains unaccounted for since the night of 13 August 1992 and does not deny that military or special police units in Huaura or Huacho may have been responsible for her disappearance, a conclusion reached, *inter alia*, by a judge on the Civil Court in Huacho. No material evidence has been advanced to support the State party's contention that a unit of Shining Path may have been responsible for her abduction. In the circumstances of the case, the Committee finds that Ana R. Celis Laureano's right to life enshrined in article 6, read together with article 2, paragraph 1, has not been effectively protected by the State party. The Committee recalls in particular that the victim had previously been arrested and detained by the Peruvian military on charges of collaboration with Shining Path, and that the life of Ms. Laureano and of members of her family had previously been threatened by a captain of the military base at Ambar, who in fact confirmed to Ms. Laureano's grandmother that Ana R. Celis Laureano had already been killed. 2/

...

9. The Human Rights Committee...is of the view that the facts before the Committee reveal violations of articles 6, paragraph 1; 7; and 9, paragraph 1, all *juncto* article 2, paragraph 1...of the Covenant.

10. Under article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the victim and the author with an effective remedy. The Committee urges the State party to open a proper investigation into the disappearance of Ana Rosario Celis Laureano and her fate, to provide for appropriate compensation to the victim and her family, and to bring to justice those responsible for her disappearance, notwithstanding any domestic amnesty legislation to the contrary.

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Notes

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2/ This statement, contained in a deposition made by the victim's grandmother on 30 September 1992, indicates in graphic terms that Celis Laureano had in fact been eliminated.

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- *Arhuacos v. Colombia* (612/1995), ICCPR, A/52/40 vol. II (29 July 1997) 173 (CCPR/C/60/D/612/1995) at paras. 8.3 and 9.

...

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

Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres, in violation of article 6 of the Covenant.

...

9. The Human Rights Committee...is of the view that the facts before it reveal a violation by the State party...of articles 6, 7 and 9 of the Covenant in the case of the three leaders Luis Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres.

- *Chongwe v. Zambia* (821/1998), ICCPR, A/56/40 vol. II (25 October 2000) 137 at paras.2.1-2.3, 2.8, 2.13, 2.14, 5.2, 6 and 7.

...

2.1 The author, a Zambian advocate and chairman of a 13-party opposition alliance, states that in the afternoon of 23 August 1997, he and Dr. Kenneth Kaunda, for 27 years the President of Zambia, were shot and wounded by the police. The author states that the incident occurred in Kabwe, a town some 170 kilometres north of Lusaka, while the author and Dr. Kaunda were to attend a major political rally to launch a civil disobedience campaign. He annexes reports by Human Rights Watch and Inter-African Network for Human Rights and Development as part of his communication.

2.2 The author states that the police fired on the vehicle on which he was travelling, slightly wounding former President Kaunda and inflicting a life threatening wound on the author. The police force subsequently promised to undertake its own investigation. The Zambian Human Rights Commission was also said to be investigating the incident; but no results of any investigations have been produced.

2.3 He further refers to the Human Rights Watch Report for May 1998, Vol. 10, No 2 (A), titled "Zambia, no model for democracy") which includes 10 pages on the so-called "Kabwe shooting", confirming the shooting incident that took place by quoting witness statements and medical reports.

...

2.8 According to the Human Rights Watch report, President Chiluba on 26 August 1997, denied that the Kabwe shooting was a state-sponsored assassination plot. He said that the Zambian police had instigated an investigation and that Nungu Sassasali, the commanding officer at Kabwe, was suspended. However, he rejected calls for an independent inquiry into the incident. The report refers to the ZNBC radio, stating that on 28 August, President Chiluba said the government would not apologise over the Kabwe shooting as it could not be held responsible for it.

...

2.13 Secondly, in its report, submitted by the author, on the investigation of the Kabwe-shooting, the Inter-African Network for Human Rights and Development concluded

that the shooting incident took place, and that an international tribunal should investigate the assassination attempt on the former President Kenneth Kaunda. This report, which is based on evidence taken from persons directly concerned in the incident, shows that the car in which the author was travelling, had left the centre of Kabwe. Before it did so, there is evidence that the local police commander had given orders to his men to fire on the car without giving any details as to the objective of such shooting; this information was relayed on the police radio network. At a roundabout at the outskirts of Kabwe, a police vehicle whose registration number and driver have been identified attempted to block the path of the car. The car's driver evaded this attempt, and there is evidence that two policemen standing on the back of the police vehicle opened fire on the car.

2.14 The author claims that on 28 November 1997, while on board a British Airways plane in Harare, he was told by airport and airline personnel that there was a VIP plane on the runway sent by the Zambian Government to collect him. He decided not to go back to Zambia, and has since this incident been residing in Australia. He will not return to Zambia, as he fears for his life.

...

5.2 The Committee observes that article 6, paragraph 1, entails an obligation of a State party to protect the right to life of all persons within its territory and subject to its jurisdiction. In the present case, the author has claimed, and the State party has failed to contest before the Committee that the State party authorised the use of lethal force without lawful reasons, which could have led to the killing of the author. In the circumstances, the Committee finds that the State party has not acted in accordance with its obligation to protect the author's right to life under article 6, paragraph 1, of the Covenant.

...

6. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 6, paragraph 1, and 9, paragraph 1, of the Covenant.

7. Under article 2, paragraph 3(a), of the Covenant, the State party is under the obligation to provide Mr. Chongwe with an effective remedy and to take adequate measures to protect his personal security and life from threats of any kind. The Committee urges the State party to carry out independent investigations of the shooting incident, and to expedite criminal proceedings against the persons responsible for the shooting. If the outcome of the criminal proceedings reveals that persons acting in an official capacity were responsible for the shooting and hurting of the author, the remedy should include damages to Mr Chongwe. The State party is under an obligation to ensure that similar violations do not occur in the future.

- *Jiménez Vaca v. Colombia* (859/1999), ICCPR, A/57/40 vol. II (25 March 2002) 187 (CCPR/C/74/D/859/1999) at paras. 2.1-2.14, 7.1-7.4, 8 and 9.

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...
2.1 Mr. Jiménez Vaca was a practising trial lawyer in the city of Medellín and in the region of Urabá, based for his work in the municipality of Turb...

2.2 From 1980 onwards, the author was a member of the various commissions set up by the Government to find a solution to the social and labour conflicts and the violence in the region, including the Tripartite Commission, the Special Commission for Urabá, the Commission on Permanent Guarantees in Urabá and the High-Level Commission. The author was also a member of the national and regional executive of the *Frente Popular* opposition political party until his exile in 1988.

2.3 In 1980, because of his professional activities on behalf of the unions, the author began to be summoned, harassed and temporarily detained by the Voltígeros military battalion. The arbitrary detention of workers became common practice, as did the presence of soldiers at union meetings, and prior authorization from the military commander was required for union activities.

2.4 On 15 December 1981, at a *Sintagro* meeting in Turbo municipality, a military patrol detained the participants, including the author, questioned them and photographed them. Some of them were taken to the Voltígeros battalion quarters, where they were tortured in various ways. The author was released after three hours of detention on condition that he should report to the chief of military intelligence in five days' time. When he did so, the author was interrogated and urged to "collaborate" with the military authorities in order to "avoid problems in the future".

2.5 Between 1984 and 1985, the author advised *Sintagro* in the negotiation of over 150 collective agreements it signed with the banana companies. During the negotiations, soldiers, police officers and secret agents kept the author and his residence and office under constant surveillance. The author received death threats and was harassed with phone calls and written messages telling him to leave the area and asking where he would like to die, with a warning that the authors knew where his family lived.

2.6. As a result, the author submitted a criminal complaint regarding the death threats to the second circuit court in Turbo. The court notified the Antioquia administrative court on 22 October 1990 that the proceedings for extortion practised on the *Sindebras* board of directors, in which the author was registered as an aggrieved party, had been transmitted. The author claims that he never learned of the outcome of these proceedings. The author also claims to have no knowledge of the outcome of the investigations regarding the criminal complaint he had filed with the regional procurator's office in Turbo in mid-1984.

2.7 In September 1984, the author lodged a complaint for death threats with the regional

office of the administrative security department in Turbo, but was never informed of the outcome of the investigation.

2.8 On 26 August 1985, pamphlets were delivered under the doors of a number of houses, asking "Are you a member of Sintagro? Doesn't it bother you to belong to a group of hired assassins and murderers of the people, drug bandits led by Argemiro Correa, Asdrúbal Jiménez and Fabio Villa?" A few days later, another pamphlet was circulated, in which the author was warned to avoid certain areas if he did not want to follow his colleagues to the cemetery. Some time afterwards one of the author's brothers disappeared and another was murdered.

2.9 In December 1985, the author, together with other Sintagro leaders, reported the Voltígeros battalion's intervention in labour conflicts to the Procurator-General and called for an investigation of the soldiers involved in the harassment and threats. The author was never informed of the outcome.

2.10 In October 1986, the author lodged a complaint with the *Foro por el Derecho a la Vida* (Forum for the Right to Life), with the assistance of several authorities, including the Procurator-General and the National Director of Pre-Trial Proceedings.

2.11 At the beginning of 1987, as a result of the wave of violence against workers and the population, the Government set up a high-level commission, of which the author was a member alongside civil, military and security authorities. When the Commission met in February 1987, the author lodged complaints for the death threats and harassment to which he was being subjected. After he had worked with the Commission, the author was forced to leave Urabá and take refuge in Medellín for safety.

2.12 On 6 September 1987, the author again asked the authorities for protection as he was receiving death threats more frequently since becoming involved in the High-Level Commission. He then received a number of visits from unknown men, and this led him to close the Medellín office for good in November 1987 and move to Bogotá. He was subsequently urged to leave the country.

2.13 On 4 April 1988, as the author was travelling with Sonia Roldán in a taxi from the airport to Medellín, two men dressed in civilian clothes and riding a bicycle fired pistol shots at the taxi, hitting the author twice. The men fled after the attack thinking that the author was dead. After five days in hospital, the author was transferred for security reasons to another hospital. He stayed there until he was well enough to travel to the United Kingdom, where he requested asylum on 20 May 1988. He was granted refugee status on 4 January 1989. This assault left the author with, *inter alia*, permanent damage to his motor and gastrointestinal systems and impaired circulation in one leg.

2.14 On 9 February 1990, the author submitted, by proxy, a claim for damages to the administrative court on the grounds that the authorities had failed to protect his life and to ensure his right to practise as a lawyer, but this claim was dismissed on 8 July 1999.1/ Criminal Court No. 28 in Medellín officially undertook the criminal investigation into the attempt on the author's life, but the author knows nothing of the outcome.

...

7.1 The author claims that article 9, paragraph 1, of the Covenant has been violated, insofar as the State party was obligated, in view of the death threats that had been made against him, to take the necessary measures to ensure his personal safety and did not do so. The Committee recalls its jurisprudence3/ regarding article 9, paragraph 1, and reiterates that the Covenant also protects the right to security of persons not deprived of their liberty. An interpretation of article 9 which would allow a State party to ignore known threats to the lives of persons under its jurisdiction solely on the grounds that those persons are not imprisoned or detained would render the guarantees of the Covenant totally ineffective.

7.2 In the case in question, Mr. Jiménez Vaca had an objective need for the State to take steps to ensure his safety, given the threats made against him. The Committee takes note of the State party's observations, set out in paragraph 5.1, but notes that the State party does not refer to the complaint which the author claims to have filed with the regional procurator's office in Turbo or before the regional office of the administrative security department of Turbo, nor does it offer any argument to show that the so-called "extortion" did not begin as a result of the complaint concerning death threats which the author filed with the Turbo second criminal circuit court. The Committee must also consider the fact that the State party does not deny the author's allegations that there was no reply to his request that the threats should be investigated and his protection guaranteed. The attempt on the author's life subsequent to the threats confirms that the State party did not take, or was unable to take, adequate measures to guarantee Mr. Asdrúbal Jiménez's right to security of person as provided for in article 9, paragraph 1.

7.3 With regard to the author's claim that article 6, paragraph 1, was violated insofar as the very fact that an attempt was made on his life is a violation of the right to life and the right not to be arbitrarily deprived of life, the Committee points out that article 6 of the Covenant implies an obligation on the part of the State party to protect the right to life of every person within its territory and under its jurisdiction. In the case in question, the State party has not denied the author's claims that the threats and harassment which led to an attempt on his life were carried out by agents of the State, nor has it investigated who was responsible. In the light of the circumstances of the case, the Committee considers that there has been a violation of article 6, paragraph 1, of the Covenant.

7.4 With regard to the author's claims that paragraphs 1 and 4 of article 12 have been violated, the Committee notes the observations of the State party whereby the State cannot

be held responsible for the loss of other rights which may be indirectly affected as a result of violent acts. Nevertheless, considering the Committee's view that the right to security of person (art. 9, para. 1) was violated and that there were no effective domestic remedies allowing the author to return from involuntary exile in safety, the Committee concludes that the State party has not ensured to the author his right to remain in, return to and reside in his own country. Paragraphs 1 and 4 of article 12 of the Covenant were therefore violated. This violation necessarily has a negative impact on the author's enjoyment of the other rights ensured under the Covenant.

8. The Human Rights Committee...is of the view that the facts before it disclose violations of article 6, paragraph 1, article 9, paragraph 1, and article 12, paragraphs 1 and 4.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Luis Asdrúbal Jiménez Vaca with an effective remedy, including compensation, and to take appropriate measures to protect his security of person and his life so as to allow him to return to the country. The Committee urges the State party to carry out an independent inquiry into the attempt on his life and to expedite the criminal proceedings against those responsible for it. The State party is also under an obligation to try to prevent similar violations in the future.

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Notes

1/ As is apparent from the decision of the Antioquia Administrative Court of 8 July 1999, in his claim the author alleges that his right to freedom and security was violated as a result of the threats to which he was subjected and because of which he himself requested protection, and on account of the attack he later suffered.

...

3/ Communication No. 195/1985, *William Eduardo Delgado Páez v. Colombia*, Views adopted on 12 July 1990.

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- *Lantsova v. Russian Federation* (763/1997), ICCPR, A/57/40 vol. II (26 March 2002) 96 (CCPR/C/74/763/1997) at paras. 2.1-2.7, 9.2, 10 and 11.

...

2.1 In August 1994, Mr. Lantsov, during an argument, inflicted injuries on another person, as a consequence of which both criminal and civil charges were pressed against him. On 1 March 1995, he made full reparation to the plaintiff for damages determined in the civil case. Awaiting his criminal trial, set for 13 April 1995, Mr. Lantsov was initially released. However, on 5 March 1995, after failing to appear for a meeting with the investigator, he was

placed pre-trial detention at Moscow's pre-trial detention centre, "Matrosskaya Tishina", where he died on 6 April 1995, at the age of 25.

2.2 Mrs. Lantsova submits that her son was healthy when he first entered Matrosskaya Tishina, but that he fell ill due to the very poor conditions at the prison. She complains that her son was given no medical treatment despite repeated requests. Finally, she complains that the Russian Federation has failed to bring those responsible to justice.1/

2.3 The author submits that the conditions at Moscow's pre-trial detention centres are inhuman, in particular because of extreme overcrowding, poor ventilation, inadequate food and appalling hygiene. She refers to the 1994 report of the Special Rapporteur against torture to the Commission on Human Rights.2/ Regarding access to health care, the report states that overcrowding exacerbates the inability of the staff to provide food and health care, and notes the high incidence of disease in the centres.3/ Matrosskaya Tishina is held out for particular criticism in the report: "The conditions are cruel, inhuman and degrading; they are torturous".4/

2.4 According to Mrs. Lantsova, based on statements from other detainees in the cell with her son, shortly after he was brought to Matrosskaya Tishina his physical and mental state began to deteriorate. He began to lose weight and developed a temperature. He was coughing and gasping for breath. Several days before his death he stopped eating and drank only cold water. He became delirious at some point and eventually lost consciousness.

2.5 It appears that other detainees requested medical assistance for Mr. Lantsov some time after the first week of his detention, that a medical doctor attended to him once or twice in the cell and that he was given aspirin for his temperature. However, between 3 and 6 April, during what was a rapid and obvious deterioration in his condition, he received no medical attention, despite repeated requests for assistance by the other detainees. On 6 April, after the other detainees cried out for assistance, medical personnel arrived with a stretcher. Mr. Lantsov died later that day in the prison clinic. His death certificate identifies the cause of death as "acute cardiac/circulatory insufficiency, intoxication, cachexia of unknown etiology".

2.6 With regard to the exhaustion of domestic remedies the author states that decision to open a criminal investigation into Mr. Lantsov's death is within the competence of the chief of the pre-trial detention centre. A final decision on the matter lies with the procurator's office. Mrs. Lantsov has made timely and repeated applications for a criminal investigation to be opened, but these were consistently denied. She therefore concludes that she has exhausted domestic remedies.

2.7 The procurator's decisions refusing to open a criminal investigation are based on the

conclusion that the death in this case resulted from a combination of pneumonia and the stressful conditions of confinement, and that under these circumstances it would be impossible to find the detention centre personnel liable.

...

9.2 Concerning the death of Mr. Lantsov, the Committee notes the author's allegations, on the strength of testimony by several fellow detainees, that after the deterioration of the health of the author's son, he received medical care only during the last few minutes of his life, that the prison authorities had refused such care during the preceding days and that this situation caused his death. It also takes note of the information provided by the State party, namely that several inquiries were carried out into the causes of the death, i.e. acute pneumonia leading to cardiac insufficiency, and that Mr. Lantsov had not requested medical assistance. The Committee affirms that it is incumbent on States to ensure the right of life of detainees, and not incumbent on the latter to request protection. The stated intention of the State party to improve conditions has no impact in the assessment of this case. The Committee notes that the State party has not refuted the causal link between the conditions of the detention of Mr. Lantsov and the fatal deterioration of his state of health. Further, even if the Committee starts from the assertion of the State party that neither Mr. Lantsov himself nor his co-detainees had requested medical help in time, the essential fact remains that the State party by arresting and detaining individuals takes the responsibility to care for their life. It is up to the State party by organizing its detention facilities to know about the state of health of the detainees as far as may be reasonably expected. Lack of financial means cannot reduce this responsibility. The Committee considers that a properly functioning medical service within the detention centre could and should have known about the dangerous change in the state of health of Mr. Lantsov. It considers that the State party failed to take appropriate measures to protect Mr. Lantsov's life during the period he spent in the detention centre. Consequently, the Human Rights Committee concludes that, in this case, there has been a violation of paragraph 1 of article 6 of the Covenant.

...

10. The Human Rights Committee...is of the view that the State party failed in its obligation to ensure the protection of Mr. Lantsov, who lost his life as a direct result of the existing prison conditions. The Committee finds that articles 6, paragraph 1, and article 10, paragraph 1 of the Covenant were violated.

11. The Committee is of the view that Mrs. Lantsova is entitled, under article 2, paragraph 3 (a) of the Covenant, to an effective remedy. The State party should take effective measures: (a) to grant appropriate compensation (b) to order an official inquiry into the death of Mr. Lantsov; and (c) to ensure that similar violations do not recur in the future, especially by taking immediate steps to ensure that conditions of detention are compatible with the State party's obligation under articles 6 and 10 of the Covenant.

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Notes

1/ The communication also indicates that notification of Mr. Lantsov's death was not given to the family or to the local registry office until 11 April 1995, after Mr. Lantsov's lawyer had discovered the fact of his death while at the detention centre to meet with him. This matter was apparently examined by the chief of the pre-trial detention centre (according to the letter of 10 July 1995 from the deputy city procurator, provided with the communication), but the results of this investigation are unknown.

2/ *Report of the Special Rapporteur, Mr. Nigel S Rodley*, submitted pursuant to Commission on Human Rights resolution 1994/37 (E/CN.4/1995/34/Add.1).

3/ *Ibid*, para. 41.

4/ *Ibid*, para. 71.

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- *Coronel et al. v. Colombia* (778/1997), ICCPR, A/58/40 vol. II (24 October 2002) 40 (CCPR/C/76/D/778/1997) at paras. 2.1-2.4, 2.8, 2.10-2.15, 9.3, 9.8 and 10.

...

2.1 Between 12 and 14 January 1993, troops of the "Motilones" Anti-Guerrilla Battalion (No. 17), attached to the Second Mobile Brigade of the Colombian National Army, conducted a military operation in the indigenous community of San José del Tarra (municipality of Hacari, department of Norte Santander) and launched a search operation in the region, making incursions into a number of neighbouring settlements and villages. During these operations, the soldiers raided several houses and arrested a number of people, including Ramón Villegas Téllez, Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Ramón Emilio Sánchez, Ramón Emilio Quintero Ropero and Luis Honorio Quintero Ropero. Both the raids and the arrests were carried out illegally, since the soldiers did not have the judicial warrants prescribed by Colombian law on criminal procedure to conduct searches or make arrests.

2.2 Ramón Villegas Téllez, Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Ramón Emilio Sánchez, Ramón Emilio Quintero Ropero, Luis Honorio Quintero Ropero and others were tortured by the soldiers, and some of them were forced to put on military uniforms and go on patrol with the members of the "Motilones" Anti-Guerrilla Batallion (No. 17). All of them were "disappeared" between 13 and 14 January 1993.

2.3 On 26 January 1993, Luis Ernesto Ascanio Ascanio, aged 16, disappeared while on his way home, abducted by soldiers... Luis Ernesto Ascanio Ascanio was seen for the last time some 15 minutes away from the family home. On the same day, members of the Ascanio

family heard shouts and shots coming from outside the house. On 27 January, two of the brothers of Luis Ernesto Ascanio Ascanio succeeded in evading the military guards and fled to Ocaña, where they advised the local authorities and submitted a complaint to the Provincial Office of the Attorney-General. Once the military patrol had withdrawn, the search for Luis Ernesto Ascanio Ascanio began; the outcome was the discovery of a pocket knife belonging to him some 300 metres away from the house.

2.4 The Second Mobile Brigade reported various alleged armed clashes with guerrillas of the Revolutionary Armed Forces of Colombia (FARC) - the first on 13 January 1993, the second on 18 January 1993 and two incidents on 27 January 1993. The version given by the military authorities was that during the clashes the regular troops had killed a number of guerrillas. On 13 January 1993, three bodies were removed by the judicial police (SIJIN) in Ocaña, one of which was identified as the body of Gustavo Coronel Navarro. On 18 January, the soldiers deposited at the hospital the bodies of four alleged guerrillas "killed in combat". The SIJIN removed these corpses and confirmed the deaths of Luis Honorio Quintero Ropero, Ramón Emilio Quintero Ropero, Nahún Elías Sánchez Vega and Ramón Emilio Sánchez. On 29 January 1993, the Second Mobile Brigade brought in the bodies of four persons killed in the alleged clashes of 27 January 1993; again the SIJIN removed the bodies. On 21 May 1993, the bodies of the last four dead were exhumed in the cemetery of Ocaña; one of these was the body of Luis Ernesto Ascanio Ascanio, which was recognized by his relatives. The forensic report stated that one of the bodies brought to the hospital on 18 January contained a number of bullet entry holes with powder burns. In the records relating to the removal of the bodies on 21 May 1993, SIJIN officials stated that the bodies were clothed in uniforms used exclusively by the National Police.

...

2.8 The military criminal jurisdiction undertook various preliminary investigations into the facts as described. Judge No. 47 of the Military Criminal Investigation Unit, attached to the Second Mobile Brigade, opened preliminary inquiries Nos. 27, 30 and 28, 2/ the findings of which are contained in file No. 979, throughout which the incidents are referred to as "deaths in combat".

...

2.10 The authors state that the Special Investigations Unit in the National Office of the Attorney-General opened a file (No. 2291-93/DH) on the incidents in question following complaints submitted by the relatives to the Provincial Office of the Attorney-General in Ocaña, and officials were appointed to conduct the investigation. On 22 February 1993, a preliminary report from the officials in charge of the investigation drew attention to contradictions between the versions of the relatives and those of the military, and also to the way in which the judge in charge of Court No. 47 in the Military Criminal Investigation Department had hampered and obstructed them in their task. They suggested that further evidence should be sought and that disciplinary investigation proceedings should be instituted against Judge No. 47 of the Military Criminal Investigation Department.

2.11 The director of the Special Investigations Unit ordered a new investigation, including an investigation into the conduct of Judge No. 47 of the Military Criminal Investigation Department. The investigating officials submitted several reports to the director; one of them, relating to Luis Honorio Quintero Ropero, Ramón Emilio Ropero Quintero, Nahún Elías Sánchez Vegas and Ramón Emilio Sánchez, stated that "it is fully demonstrated that material responsibility lies with anti-guerrilla section C of battalion 17 ('Motilones') of the Second Mobile Brigade under the command of Captain Serna Arbelaez Mauricio".

2.12 On 29 June 1994, in their final report, the officials confirmed that it was fully proved that the peasants had been detained by members of anti-guerrilla battalion No. 17 ("Motilones") of the Second Mobile Brigade, on the occasion of a military operation carried out in compliance with operation order No. 10 issued by the commander of that military unit; that the peasants were last seen alive when in the hands of the soldiers and appeared to have died later in the course of two alleged clashes with units of the military. They also established that Luis Ernesto Ascanio Ascanio, a minor, was last seen alive heading home some 15 minutes' walk from home and that the boy was found dead after another alleged clash with the military. The officials identified the commanders, officers, non-commissioned officers and privates who formed part of the patrols that captured the peasants and occupied the dwelling of the Ascanio family. The report concluded that, "on the basis of the evidence advanced, the allegation of combats in which the victims could have taken part is discredited, since they were already being held by troops of the National Army, in a manner which was, moreover, irregular; some of them bear marks on the skin that demonstrate even more clearly the defenceless condition they were in …". The report recommended that the case should be referred to the Armed Forces Division in the Procurator's Office.

2.13 On 25 October 1994, the Armed Forces Division in the Attorney-General's Office referred the file to the Human Rights Division of the same office on jurisdictional grounds. The transmission document indicates that "the following has been established … the state of complete defencelessness of the victims …, the close range at which the bullets that killed them were fired and the fact that they had been detained before they died; the foregoing, together with other evidence, disproves the existence of an alleged combat that allegedly was the central circumstance causing the deaths recorded".

2.14 On 28 November 1994, the Human Rights Division opened disciplinary proceedings file No. 008-153713 and began preliminary investigations. On 26 April 1996, it informed one of the NGOs that the proceedings were still at the preliminary inquiry stage.

2.15 On 13 January 1995, the families of the victims lodged a claim against Colombia in the administrative court for the deaths of Luis Honorio Quintero Ropero, Ramón Emilio Quintero Ropero, Ramón Emilio Sánchez, Luis Ernesto Ascanio Ascanio, Nahún Elías Sánchez Vega and Ramón Villegas Téllez; the claims were declared admissible between 31

January and 24 February 1995.

...

9.3 With regard to the authors' claim that there was a violation of article 6, paragraph 1, of the Covenant, the Committee notes that, according to the authors, the Special Investigations Unit of the Attorney-General's office established, in its final report of 29 June 1994, that State officials were responsible for the victims' detention and disappearance. Moreover, in its decision of 27 February 1998, which the Committee had before it, the Human Rights Division of the Attorney-General's Office acknowledged that State security forces had detained and killed the victims. Considering, furthermore, that the State party has not refuted these facts and that it has not taken the necessary measures against the persons responsible for the murder of the victims, the Committee concludes that the State did not respect or guarantee the right to life of Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Ramón Emilio Sánchez, Ramón Emilio Quintero Ropero, Luis Honorio Quintero Ropero, Ramón Villegas Téllez and Luis Ernesto Ascanio Ascanio, in violation of article 6, paragraph 1, of the Covenant.

...

9.8 The Human Rights Committee...is of the view that the facts that have been set forth constitute violations of article 6, paragraph 1; article 7 in respect of Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Luis Ernesto Ascanio Ascanio and Luis Honorio Quintero Ropero; article 9; and article 17 of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party has an obligation to provide the victims' relatives with effective remedy, including compensation. The Committee urges the State party to conclude without delay the investigations into the violation of articles 6 and 7 and to speed up the criminal proceedings against the perpetrators in the ordinary criminal courts. The State party is also obliged to take steps to prevent similar violations from occurring in the future.

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2/ On 25 January, 2 February and 10 February 1993, respectively.

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- *Sarma v. Sri Lanka* (950/2000), ICCPR, A/58/40 vol. II (16 July 2003) 248 (CCPR/C/78/D/950/2000) at paras. 2.1-2.6, 9.2, 9.3, 9.6 and 11.

...

2.1 The author alleges that, on 23 June 1990, at about 8.30 a.m., during a military operation, his son, himself and three others were removed by army members from their family residence in Anpuvalipuram, in the presence of the author's wife and others. The group was then

handed over to other members of the military, including one Corporal Sarath, at another location (Ananda Stores Compound Army Camp). The author's son was apparently suspected of being a member of the LTTE (Liberation Tigers of Tamil Eelam) and was beaten and tortured. He was thereafter taken into military custody at Kalaimagal School allegedly after transiting through a number of other locations. There, he was allegedly tortured, hooded and forced to identify other suspects.

2.2 In the meantime, the author and other persons arrested were also transferred to Kalaimagal School, where they were forced to parade before the author's hooded son. Later that day, at about 12.45 p.m., the author's son was taken to Plaintain Point Army Camp, while the author and others were released. The author informed the Police, the International Committee of the Red Cross (ICRC) and human rights groups of what had happened.

2.3 Arrangements were later made for relatives of missing persons to meet, by groups of 50, with Brigadier Pieris, to learn about the situation of the missing ones. During one of these meetings, in May 1991, the author's wife was told that her son was dead.

2.4 The author however claims that, on 9 October 1991 between 1:30 and 2 p.m., while he was working at "City Medicals Pharmacy", a yellow military van with license plate No. 35 Sri 1919 stopped in front of the pharmacy. An army officer entered and asked to make some photocopies. At this moment, the author saw his son in the van looking at him. As the author tried to talk to him, his son signalled with his head to prevent his father from approaching.

2.5 As the same army officer returned several times to the pharmacy, the author identified him as star class officer Amarasekara. In January 1993, as the "Presidential Mobile Service" was held in Trincomalee, the author met the then Prime Minister, Mr. D. B. Wijetunghe and complained about the disappearance of his son. The Prime Minister ordered the release of the author's son, wherever he was found. In March 1993, the military advised that the author's son had never been taken into custody.

2.6 In July 1995, the author gave evidence before the "Presidential Commission of Inquiry into Involuntary Removals and Disappearances in the Northern and Eastern Provinces" (The Presidential Commission of Inquiry), without any result. In July 1998, the author again wrote to the President, and was advised in February 1999 by the Army that no such person had been taken into military custody. On 30 March 1999, the author petitioned to the President, seeking a full inquiry and the release of his son.

...

9.2 With regard to the author's claim in respect of the disappearance of his son, the Committee notes that the State party has not denied that the author's son was abducted by an officer of the Sri Lankan Army on 23 June 1990 and has remained unaccounted for since

then. The Committee considers that, for purposes of establishing State responsibility, it is irrelevant in the present case that the officer to whom the disappearance is attributed acted *ultra vires* or that superior officers were unaware of the actions taken by that officer13/. The Committee therefore concludes that, in the circumstances, the State party is responsible for the disappearance of the author's son.

9.3 The Committee notes the definition of enforced disappearance contained in article 7, paragraph 2 (i) of the Rome Statute of the International Criminal Court14/: *"Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time*. Any act of such disappearance constitutes a violation of many of the rights enshrined in the Covenant, including the right to liberty and security of person (art. 9), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (art. 7), and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (art. 10). It also violates or constitutes a grave threat to the right to life (art. 6).15/

...

9.6 As to the possible violation of article 6 of the Covenant, the Committee notes that the author has not asked the Committee to conclude that his son is dead. Moreover, while invoking article 6, the author also asks for the release of his son, indicating that he has not abandoned hope for his son's reappearance. The Committee considers that, in such circumstances, it is not for it to appear to presume the death of the author's son. Insofar as the State party's obligations under paragraph 11 below would be the same with or without such a finding, the Committee considers it appropriate in the present case not to make any finding in respect of article 6.

...

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author and his family with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the author's son, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for the violations suffered by the author's son, the author and his family. The Committee considers that the State party is also under an obligation to expedite the current criminal proceedings and ensure the prompt trial of all persons responsible for the abduction of the author's son under section 356 of the Sri Lankan Penal Code and to bring to justice any other person who has been implicated in the disappearance. The State party is also under an obligation to prevent similar violations in the future.

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13/ See article 7 of the Draft articles on Responsibility of States for internationally wrongful acts adopted by the International Law Commission at its fifty-third session 2001 and article 2, paragraph 3 of the Covenant.

14/ Text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and corrected by *procès-verbaux* of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002.

15/ See article 1, paragraph 2 of the Declaration on the Protection of All Persons from Enforced Disappearances, General Assembly Resolution 47/133, 47 UN GAOR Supp. (No. 49) at 207, U.N. Doc. A/47/49 (1992). Adopted by General Assembly resolution 47/133 of 18 December 1992.

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- *Baumgarten v. Germany* (960/2000), ICCPR, A/58/40 vol. II (31 July 2003) 261 (CCPR/C/78/D/960/2000) at paras. 2.1, 2.2, 3.1, 3.2, 4.1, 4.2 and 9.2-9.5.

...

2.1 From 1979 until his retirement in February 1990, the author was Deputy Minister of Defence and Head of Border Troops (*Chef der Grenztruppen*) of the former German Democratic Republic (GDR).

2.2 On 10 September 1996, the Regional Court of Berlin (*Landgericht Berlin*) convicted the author of homicide2/ and attempted homicide in several cases occurring between 1980 and 1989, sentencing him to a prison term of six years and six months. The Court found that the author was responsible for the killing or attempted killing of the persons concerned, who, upon attempting to cross the border between the former GDR and the Federal Republic of Germany (FRG) including West Berlin, were shot by border guards or set off mines. On 30 April 1997, the Federal Court (*Bundesgerichtshof*) dismissed the author's appeal. The Federal Constitutional Court (*Bundesverfassungsgericht*) rejected his constitutional motion on 21 July 1997, holding that the previous court decisions did not violate constitutional law.

...

3.1 Between 1949 and 1961, approximately two and a half million Germans fled from the German Democratic Republic to the Federal Republic of Germany, including West Berlin. To stop this flow of refugees, the GDR started construction of the Berlin Wall on 13 August 1961 and reinforced security installations along the inner-German border, in particular by installing landmines, later replaced by SM-70 fragmentation mines. Hundreds of persons lost their lives attempting to cross the border, either because they set off mines, or because they were shot by East German border guards.

3.2 Following German reunification, public prosecutors started to investigate the killings of persons at the former inner-German border on the basis of the Treaty on the Establishment of a Unified Germany of 31 August 1990 (*Einigungsvertrag)*. The Unification Treaty, taken together with the Unification Treaty Act of 23 September 1990 declares, in the transitional provisions relating to the Criminal Code (articles 315 to 315c of the Introductory Act to the Criminal Code), that, as a rule, the law of the place where an offence was committed remains applicable for acts that occurred prior to the time when unification became effective. For offences committed in the former GDR, the Criminal Code of the former GDR remains applicable. Pursuant to section 2, paragraph 3, of the Criminal Code (FRG), the law of the FRG is applicable only if it is more lenient than that of the GDR.

...

4.1 The Berlin Regional Court, in its judgment of 10 September 1996, found that, based on the provisions on homicide of the GDR Criminal Code, the author was responsible for the deaths or injuries inflicted on persons trying to cross the border at the inner-German border or, respectively, the Berlin Wall, by virtue of his annual orders, triggering a chain of subsequent orders and, thereby, inciting the acts committed by border guards in the cases at issue. While the Court recognized that it was not the author's direct intention to cause the death of border violators, it argued that he was fully aware, and accepted, that, as a direct consequence of the application of these orders, persons attempting to cross the border could lose their lives. It rejected the author's claim that he had erred about the prohibited nature of his orders, since such error was avoidable, given his high military rank, his competencies and the fact that his orders manifestly violated the right to life, thereby infringing the criminal laws of the GDR. It held that the author's acts were neither justified by the pertinent service regulations issued by the Minister of National Defence, nor under article 27, paragraph 2, of the State Border Act, arguing that these legal justifications were invalid because they manifestly violated basic principles of justice and internationally protected human rights, as enshrined in the International Covenant on Civil and Political Rights.

4.2 The Court argued that, by giving priority to the inviolability of the GDR's state borders over the right to life of unarmed fugitives who attempted to cross the inner-German border, these grounds of justification violated legal principles based on the intrinsic worth and dignity of the human person and recognized by the community of nations. The Court concluded that in such a case, the positive law had to be superseded by considerations of justice. Such a finding did not constitute a breach of the principle of non-retroactivity in article 103, paragraph 2, of the German Basic Law (*Grundgesetz*), since the expectation that the law, as applied in GDR state practice, would continue to be applied so as to broadly construe a legal justification contrary to human rights, did not merit protection of the law. The Court dismissed order no. 101 as a lawful excuse, holding that under article 258, paragraph 1, of the Criminal Code (GDR), criminal responsibility was not excluded where the execution of an order manifestly violated recognized rules of public international law or a criminal statute. In assessing the punishment, the Court balanced the following aspects:

(1) the totalitarian structure of the GDR which left the author only with a limited scope of action, (2) the author's high age and his expressions of regret for the victims, (3) the considerable lapse of time since the commission of the acts, (4) his (albeit avoidable) error as to the unlawfulness of his acts (in his favor), and (5) his participation, at a high level of hierarchy, in the maintenance and increased sophistication of the system of border control (to his detriment). Based on the relevant provisions of the Criminal Code (FRG), which were more lenient than the corresponding norms of the Criminal Code (GDR), the Court decided to impose a reduced sentence.

...

9.2 As regards the author's claim under article 15, the Committee is called upon to determine whether the conviction of the author for homicide and attempted homicide by the German courts amounts to a violation of that article.

9.3 At the same time, the Committee notes that the specific nature of any violation of article 15, paragraph 1, of the Covenant requires it to review whether the interpretation and application of the relevant criminal law by the domestic courts in a specific case appear to disclose a violation of the prohibition of retroactive punishment or punishment otherwise not based on law. In doing so, the Committee will limit itself to the question of whether the author's acts, at the material time of commission, constituted sufficiently defined criminal offences under the criminal law of the GDR or under international law.

9.4 The killings took place in the context of a system which effectively denied to the population of the GDR the right freely to leave one's own country. The authorities and individuals enforcing this system were prepared to use lethal force to prevent individuals from non-violently exercising their right to leave their own country. The Committee recalls that even when used as a last resort lethal force may only be used, under article 6 of the Covenant, to meet a proportionate threat. The Committee further recalls that States parties are required to prevent arbitrary killing by their own security forces.27/ It finally notes that the disproportionate use of lethal force was criminal according to the general principles of law recognized by the community of nations already at the time when the author committed his acts.

9.5 The State party correctly argues that the killings violated the GDR's obligations under international human rights law, in particular article 6 of the Covenant. It further contends that those same obligations required the prosecution of those suspected of responsibility for the killings. The State party's courts have concluded that these killings violated the homicide provisions of the GDR Criminal Code. Those provisions required to be interpreted and applied in the context of the relevant provisions of the law, such as section 95 of the Criminal Code excluding statutory defences in the case of human rights violations...and the Border Act regulating the use of force at the border...The State party's courts interpreted the provisions of the Border Act on the use of force as not excluding from the scope of the crime

of homicide the disproportionate use of lethal or potentially lethal force in violation of those human rights obligations. Accordingly, the provisions of the Border Act did not save the killings from being considered by the courts as violating the homicide provisions of the Criminal Code. The Committee cannot find this interpretation of the law and the conviction of the author based on it to be incompatible with article 15 of the Covenant.

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2/ The English translations of these excerpts are based on the translations provided by the State party.

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27/ Human Rights Committee, sixteenth session (1982), general comment No. 6: article 6, at paragraph. 3.

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- *Cabal and Pasini v. Australia* (1020/2002), ICCPR, A/58/40 vol. II (7 August 2003) 346 (CCPR/C/78/D/1020/2002) at para. 7.7.

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7.7 With respect to the authors' claim of a violation of their right to health, the Committee shares the State party's view that there is no such right protected *specifically* by provisions of the Covenant. The Committee considers that a failure to separate detainees with communicable diseases from other detainees could raise issues primarily under articles 6, paragraph 1, and 10, paragraph 1.22/ However, in the instant case the Committee considers that the authors have failed to substantiate their claim, which is therefore inadmissible, under article 2 of the Optional Protocol.

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22/ *Lantsova v. The Russian Federation,* Case No. 736/1997, Views adopted on 26 March 2002.

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- *Fabrikant v. Canada* (970/2001), ICCPR, A/59/40 vol. II (6 November 2003) 443 (CCPR/C/79/D/970/2001) at paras. 2.1, 5.3 and 9.3.

...

2.1 In May 1998, the author suffered a heart attack. Angiography showed that four of his

arteries were blocked - two almost totally - and allegedly indicated the need for intervention. According to the author, there is no available treatment in Quebec, but there is in British Columbia 1/. He alleges that he has been in contact with a doctor there who is willing to perform the operation but that the prison authorities refuse to transfer him. He lodged a series of internal complaints which he says have been ignored.

...

5.3 In addition, the author provides an update on his situation, stating that on 12 December 2001, he was transferred to British Columbia to receive angioplasty which was performed on 7 January 2002. Angioplasty was also performed on 19 July 2002. He claims that the fact that this procedure was eventually performed proves that his complaint against Canada is valid. He adds that he would be prepared to withdraw his complaint if the State party can find a doctor to open the remaining three blocked arteries (apparently, angioplasty only managed to open one artery) or grant him access to such a doctor if he should find one, and if it accepts that prisoners themselves and not prison doctors should be permitted to decide which medical procedure they undergo.

...

9.3 The Committee notes the author's claim that he is being denied medical treatment in being refused a transfer to British Columbia to undergo surgery known as "angioplasty". It observes that, the author was transferred to British Columbia on three occasions for the purposes of undergoing angioplasty - a fact which the State party claims renders the communication moot. In his final comments to the Committee, the author claims that he needs angioplasty again and that he will require such treatment regularly in the future. Without considering the issue of whether a detainee has a right to choose or refuse a particular medical treatment, the Committee observes that at any rate the State party remains responsible for the life and well-being of its detainees, and that on at least three previous occasions the State party did transfer the author to British Columbia to undergo the requested procedure. In addition, the Committee notes that insufficient information has been provided to suggest that the authorities have ever failed to determine the most appropriate treatment in accordance with professional medical standards. Thus, on the basis of the information provided, the Committee finds that the author has failed to substantiate for purposes of admissibility his allegation that the State party has violated any articles of the Covenant in his regard. The communication is therefore inadmissible under article 2 of the Optional Protocol.

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Notes

1/ The author provides letters from three surgeons who claim that on the basis of his medical chart they would be able to operate and a letter from another doctor with a different opinion.

_____

# LIFE - RIGHT TO - GENERAL

- *Telitsin v. Russian Federation* (888/1999), ICCPR, A/59/40 vol. II (29 March 2004) 60 at paras. 2.1-2.4, 7.3-7.7, 8 and 9.

...
2.1 On 13 February 1994, Vladimir Nikolayevich Telitsin died as a result of acts of violence while serving a sentence in Correctional Labour Centre No. 349/5, in the town of Nizhny Tagil, in the Urals.

2.2 The author says that her son was brutally beaten, hung by a wire and left hanging inside the compound of the Centre. She disputes the view taken by the Correctional Centre authorities and the Nizhny Tagil procurator's office that the death was suicide. She also alleges that in the expert report these authorities deliberately glossed over the violent acts committed against her son. She claims to have seen in person, at the funeral, how her son's body had been mutilated - his nose had been broken and was hanging limply, a piece of flesh had been torn from the right side of his chin, his brow was swollen on the right, blood was coming out of his right ear, the palm of his right hand had been grazed and was a dark purple colour, his spine and back were damaged and his tongue was missing. The author has produced a petition signed by 11 persons who attended the funeral, confirming the condition of the deceased's body as reported above.

2.3 The author requested the Nizhny municipal procurator's office to investigate the circumstances of her son's death. On 13 April 1994, the procurator's office told the author that there was no evidence to support her claims that her son had died as a result of acts of violence, and that it had therefore decided not to initiate criminal proceedings. The author appealed against this decision on three occasions (on 26 April 1994, 20 June 1994 and 1 August 1994), but these appeals were rejected by the Sverdlovsk regional procurator's office in its decisions of 25 May 1994, 30 June 1994 and 31 August 1994, respectively.

2.4 The author also applied to have her son's body exhumed in order to obtain a second opinion, as the conclusions of the initial expert report had, according to Mrs. Telitsina, failed to mention the injuries described above. On 27 October 1994, the Nizhny Tagil procurator's office told the author that any exhumation was subject to the initiation of criminal proceedings, under article 180 of the Criminal Code of the Russian Federation. In the case in point, the author's request could not be met, according to the procurator's office, as the decision of 13 April 1994 by the Nizhny Tagil procurator's office was under review by the Procurator General of the Russian Federation, following an appeal lodged by Mrs. Telitsina.
....
7.3 [The Committee]...notes that the State party maintains the theory of suicide on the basis of the report by the forensic medical expert, an inspection of the scene of the incident, a study of the photographs of the deceased and statements by prison staff and prisoners. It also takes note of the author's arguments rebutting the suicide explanation, particularly the absence of

photographs of the place and manner of her son's death by hanging and the production by the authorities of photographs that Mrs. Telitsina claims have been manipulated.

7.4 The Committee observes that the State party has not responded to all the arguments put forward by the author in her communication. In particular, the State party has not commented on the testimony of 11 persons who attended Mr. Telitsin's funeral (cf. paragraph 2.2). Nor has the State party produced any document to support its assertion that the photographs of the deceased show no sign of physical injury except for a graze on the chin...despite the specific allegations made by the author about her son's mutilated body. Finally, the Committee takes note of the claim that the author was not permitted to read the medical report and also of the failure to exhume the body of the deceased.

7.5 The Committee regrets that the State party did not respond to or provide the necessary clarification on all the arguments put forward by the author. As far as the burden of proof is concerned, the Committee, in accordance with its jurisprudence, considers that the burden of proof cannot rest solely with the author of the communication, especially when the author and the State party do not have equal access to the evidence and when the State party is often in sole possession of the relevant information, such as the medical report in the case in point.

7.6 Consequently, the Committee cannot do otherwise than accord due weight to the author's arguments in respect of her son's body as it was handed over to the family, which raise questions about the circumstances of his death. The Committee notes that the authorities of the State party have not carried out a proper investigation into Mr. Telitsin's death, in violation of article 6, paragraph 1, of the Covenant.

7.7 In view of the findings under article 6, paragraph 1, of the Covenant, the Committee finds that there was a violation of article 7, as well as of the provisions of article 10, paragraph 1, of the Covenant.

8. The Human Rights Committee...finds that the State party violated article 6, paragraph 1, article 7 and article 10, paragraph 1, of the Covenant.

9. Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the author, who has lost her son, is entitled to an effective remedy. The Committee invites the State party to take effective measures (a) to conduct an appropriate, thorough and transparent inquiry into the circumstances of the death of Mr. Vladimir Nikolayevich Telitsin; and (b) to grant the author appropriate compensation. The State party is, moreover, under an obligation to take effective measures to ensure that similar violations do not occur again.

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- *Mulezi v. Democratic Republic of the Congo* (962/2001), ICCPR, A/59/40 vol. II (6 July 2004) 159 at paras. 5.4, 6 and 7.

  ...
  5.4 With regard to alleged violations of articles 6, paragraph 1, and 23, paragraph 1, of the Covenant, the Committee notes the author's statement that his wife was beaten by soldiers, that Commander Mortos refused her request to travel to Bangui to receive medical attention, and that she died three days later. The Committee considers that these statements, which the State party has not contested although it had the opportunity to do so, and which the author has sufficiently substantiated, warrant the finding that there have been violations of articles 6, paragraph 1, and 23, paragraph 1, of the Covenant as to the author and his wife.

  6. The Human Rights Committee...is of the view that the facts before it reveal violations by the Democratic Republic of the Congo of articles 6, paragraph 1; 7; 9, paragraphs 1, 2 and 4; 10, paragraph 1; and 23, paragraph 1, of the Covenant.

  7. Under article 2, paragraph 3 (a), of the Covenant, the State party has an obligation to ensure that the author has an effective remedy available. The Committee therefore urges the State party (a) to conduct a thorough investigation of the unlawful arrest, detention and mistreatment of the author and the killing of his wife; (b) to bring to justice those responsible for these violations; and (c) to grant Mr. Mulezi appropriate compensation for the violations. The State party is also under an obligation to take effective measures to ensure that similar violations do not occur in future.

- *Burrell v. Jamaica* (546/1993), ICCPR, A/51/40 vol. II (18 July 1996) 121 (CCPR/C/53/D/546/1993) at para. 9.5. For text of communication, see **LIFE - RIGHT TO - DEATH PENALTY**.

**CEDAW**

- *A. T. v. Hungary* (2/2003), CEDAW, A/60/38 part I (26 January 2005) 80 at paras. 2.1-2.7, 3.1 and 9.2-9.6.

  ...
  2.1 The author states that for the past four years she has been subjected to regular severe domestic violence and serious threats by her common law husband, L. F., father of her two children, one of whom is severely brain-damaged. Although L. F. allegedly possesses a firearm and has threatened to kill the author and rape the children, the author has not gone to a shelter, reportedly because no shelter in the country is equipped to take in a fully

disabled child together with his mother and sister. The author also states that there are currently no protection orders or restraining orders available under Hungarian law.

2.2 In March 1999, L. F. moved out of the family apartment. His subsequent visits allegedly typically included battering and/or loud shouting, aggravated by his being in a drunken state. In March 2000, L. F. reportedly moved in with a new female partner and left the family home, taking most of the furniture and household items with him. The author claims that he did not pay child support for three years, which forced her to claim the support by going to the court and to the police, and that he has used this form of financial abuse as a violent tactic in addition to continuing to threaten her physically. Hoping to protect herself and the children, the author states that she changed the lock on the door of the family's apartment on 11 March 2000. On 14 and 26 March 2000, L. F. filled the lock with glue and on 28 March 2000, he kicked in a part of the door when the author refused to allow him to enter the apartment. The author further states that, on 27 July 2001, L. F. broke into the apartment using violence.

2.3 L. F. is said to have battered the author severely on several occasions, beginning in March 1998. Since then, 10 medical certificates have been issued in connection with separate incidents of severe physical violence, even after L. F. left the family residence, which, the author submits, constitute a continuum of violence. The most recent incident took place on 27 July 2001 when L. F. broke into the apartment and subjected the author to a severe beating, which necessitated her hospitalization.

2.4 The author states that there have been civil proceedings regarding L. F.'s access to the family's residence, a 2 and a half room apartment (of 54 by 56 square metres) jointly owned by L. F. and the author. Decisions by the court of the first instance, the Pest Central District Court (*Pesti Központi Kerületi Bíróság*), were rendered on 9 March 2001 and 13 September 2002 (supplementary decision). On 4 September 2003, the Budapest Regional Court (*Fővărosi Bíróság*) issued a final decision authorizing L. F. to return and use the apartment. The judges reportedly based their decision on the following grounds: (a) lack of substantiation of the claim that L. F. regularly battered the author; and (b) that L. F.'s right to the property, including possession, could not be restricted. Since that date, and on the basis of the earlier attacks and verbal threats by her former partner, the author claims that her physical integrity, physical and mental health and life have been at serious risk and that she lives in constant fear. The author reportedly submitted to the Supreme Court a petition for review of the 4 September 2003 decision, which was pending at the time of her submission of supplementary information to the Committee on 2 January 2004.

2.5 The author states that she also initiated civil proceedings regarding division of the property, which have been suspended. She claims that L. F. refused her offer to be compensated for half of the value of the apartment and turn over ownership to her. In these

proceedings the author reportedly submitted a motion for injunctive relief (for her exclusive right to use the apartment), which was rejected on 25 July 2000.

2.6 The author states that there have been two ongoing criminal procedures against L. F., one that began in 1999 at the Pest Central District Court (*Pesti Központi Kerületi Bíróság*) concerning two incidents of battery and assault causing her bodily harm and the second that began in July 2001 concerning an incident of battery and assault that resulted in her being hospitalized for a week with a serious kidney injury. In her submission of 2 January 2004, the author states that there would be a trial on 9 January 2004. Reportedly, the latter procedure was initiated by the hospital *ex officio*. The author further states that L. F. has not been detained at any time in this connection and that no action has been taken by the Hungarian authorities to protect the author from him...

2.7 The author also submits that she has requested assistance in writing, in person and by phone, from the local child protection authorities, but that her requests have been to no avail since the authorities allegedly feel unable to do anything in such situations.

*The Claim*

3.1 The author alleges that she is a victim of violations by Hungary of articles 2 (a), (b) and (e), 5 (a) and 16 of the Convention on the Elimination of All Forms of Discrimination against Women for its failure to provide effective protection from her former common law husband. She claims that the State party passively neglected its "positive" obligations under the Convention and supported the continuation of a situation of domestic violence against her.
...
9.2 The Committee recalls its general recommendation No. 19 on violence against women, which states that "...[T]he definition of discrimination includes gender-based violence" and that "[G]ender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence". Furthermore, the general recommendation addresses the question of whether States parties can be held accountable for the conduct of non-State actors in stating that "...discrimination under the Convention is not restricted to action by or on behalf of Governments..." and "[U]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation". Against this backdrop, the immediate issue facing the Committee is whether the author of the communication is the victim of a violation of articles 2 (a), (b) and (e), 5 (a) and 16 of the Convention because, as she alleges, for the past four years the State party has failed in its duty to provide her with effective protection from the serious risk to her physical integrity, physical and mental health and her life from her former common law husband.

9.3 With regard to article 2 (a), (b), and (e), the Committee notes that the State party has admitted that the remedies pursued by the author were not capable of providing immediate protection to her against ill-treatment by her former partner and, furthermore, that legal and institutional arrangements in the State party are not yet ready to ensure the internationally expected, coordinated, comprehensive and effective protection and support for the victims of domestic violence. While appreciating the State party's efforts at instituting a comprehensive action programme against domestic violence and the legal and other measures envisioned, the Committee believes that these have yet to benefit the author and address her persistent situation of insecurity. The Committee further notes the State party's general assessment that domestic violence cases as such do not enjoy high priority in court proceedings. The Committee is of the opinion that the description provided of the proceedings resorted to in the present case, both the civil and criminal proceedings, coincides with this general assessment. Women's human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy. The Committee also takes note that the State party does not offer information as to the existence of alternative avenues that the author might have pursued that would have provided sufficient protection or security from the danger of continued violence. In this connection, the Committee recalls its concluding comments from August 2002 on the State party's combined fourth and fifth periodic report, which state "...[T]he Committee is concerned about the prevalence of violence against women and girls, including domestic violence. It is particularly concerned that no specific legislation has been enacted to combat domestic violence and sexual harassment and that no protection or exclusion orders or shelters exist for the immediate protection of women victims of domestic violence". Bearing this in mind, the Committee concludes that the obligations of the State party set out in article 2 (a), (b) and (e) of the Convention extend to the prevention of and protection from violence against women, which obligations in the present case, remain unfulfilled and constitute a violation of the author's human rights and fundamental freedoms, particularly her right to security of person.

9.4 The Committee addressed articles 5 and 16 together in its general recommendation No. 19 in dealing with family violence. In its general recommendation No. 21, the Committee stressed that "the provisions of general recommendation 19...concerning violence against women have great significance for women's abilities to enjoy rights and freedoms on an equal basis with men". It has stated on many occasions that traditional attitudes by which women are regarded as subordinate to men contribute to violence against them. The Committee recognized those very attitudes when it considered the combined fourth and fifth periodic report of Hungary in 2002. At that time it was concerned about the "persistence of entrenched traditional stereotypes regarding the role and responsibilities of women and men in the family...". In respect of the case now before the Committee, the facts of the communication reveal aspects of the relationships between the sexes and attitudes towards women that the Committee recognized *vis-à-vis* the country as a whole. For four years and

continuing to the present day, the author has felt threatened by her former common law husband, the father of her two children. The author has been battered by this same man, her former common law husband. She has been unsuccessful, either through civil or criminal proceedings, to temporarily or permanently bar L. F. from the apartment where she and her children have continued to reside. The author could not have asked for a restraining or protection order since neither option currently exists in the State party. She has been unable to flee to a shelter because none are equipped to accept her together with her children, one of whom is fully disabled. None of these facts have been disputed by the State party and, considered together, they indicate that the rights of the author under articles 5 (a) and 16 of the Convention have been violated.

9.5 The Committee also notes that the lack of effective legal and other measures prevented the State party from dealing in a satisfactory manner with the Committee's request for interim measures.

9.6 Acting under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the rights of the author under article 2 (a), (b) and (e) and article 5 (a) in conjunction with article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, and makes the following recommendations to the State party:

*I. Concerning the author of the communication*

(a) Take immediate and effective measures to guarantee the physical and mental integrity of A. T. and her family;

(b) Ensure that A. T. is given a safe home in which to live with her children, receives appropriate child support and legal assistance as well as reparation proportionate to the physical and mental harm undergone and to the gravity of the violations of her rights;

*II. General*

(a) Respect, protect, promote and fulfil women's human rights, including their right to be free from all forms of domestic violence, including intimidation and threats of violence;

(b) Assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women;

(c) Take all necessary measures to ensure that the national strategy for the prevention and effective treatment of violence within the family is promptly implemented and evaluated;

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...
(e) Implement expeditiously and without delay the Committee's concluding comments of August 2002 on the combined fourth and fifth periodic report of Hungary in respect of violence against women and girls, in particular the Committee's recommendation that a specific law be introduced prohibiting domestic violence against women, which would provide for protection and exclusion orders as well as support services, including shelters;

(f) Investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards;

(g) Provide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure them available, effective and sufficient remedies and rehabilitation;
...