

COLOMBIA

Follow-up - Jurisprudence Action by Treaty Bodies

CCPR A/51/40, vol. I (1996)

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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429. A country-by-country breakdown of follow-up replies received or requested and outstanding as at 26 July 1996 provides the following picture:

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Colombia: Eight views finding violations; six follow-up replies challenging the Committee's findings or amounting to late submissions on the merits, one incomplete follow-up reply dated 11 August 1995, and two fully satisfactory follow-up replies, dated 9 November 1995 and 8 January 1996, received from the State Party. Follow-up consultations with the State party's Permanent Representative to the United Nations were conducted during the fifty-third and fifty-sixth sessions (see paras. 439-441).

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433. By note verbale of 31 July 1995, the Government of Colombia informed the Committee that specific enabling legislation was introduced in the Colombian Senate, under which compensation would be paid to the victims in cases in which international human rights bodies, including the Human Rights Committee, found breaches by Colombia of international human rights standards. On 27 March 1996, the Permanent Representative of Colombia to the United Nations informed the Special Rapporteur that the draft enabling legislation was in the final stages of discussion in the Colombian Congress. The Committee welcomes this development and encourages other States parties to emulate the Colombian example.

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Overview of the Special Rapporteur's follow-up consultations

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439. During the fifty-sixth (March/April 1996) session, the Special Rapporteur met with the Permanent Representative of Colombia to the United Nations. He expressed regret that no reply on follow-up on four views adopted during the mid- to late 1980s had been received from the State party. He suggested that in those cases, the State party should consider making at least an ex gratia payment to the victims and/or their families, or inform the Committee of any other steps taken to give effect to its recommendations.

440. In respect of follow-up on the views on case No. 514/1992 (Fei v. Colombia), the Special Rapporteur inquired why the State party had not given full effect to the Committee's recommendations. The Permanent Representative explained the history of the case and indicated that during August 1995, the Colombian Procuraduría para los Derechos Humanos had requested a copy of the case file from the Foreign Ministry so as to investigate the case. While the Procuraduría had not yet produced its report, its release was imminent. The author of the case was at liberty to initiate a procedure under the Colombian Civil Code to enforce her rights. The local police could also be requested to enforce the judicial orders in her favour. The Special Rapporteur requested that the result of the inquiry of the Procuraduría be made available to him as soon as possible.

441. The Special Rapporteur expressed his thanks for the State party's full and satisfactory follow-up reply to the views on case No. 563/1993 (Bautista v. Colombia).

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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524. A country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1997 provides the following picture (Views in which the deadline for receipt of follow-up information had not yet expired have not been included):

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Colombia: Eight Views finding violations: 45/1979 - Suarez de Guerrero, 46/1979 - Fals Borda, and 64/1979 - Salgar de Montejó (in Selected decisions, vol. 1); 12/ 161/1983 - Herrera Rubio (1988 Report); 11 181/1984 - San Juan Arévalo and 195/1985 - Delgado Paez (1990 Report); 14/ 514/1992 - Sandra Fei (1995 Report); 16/ 563/1993 - Bautista de Arellana (1996 Report); 10/ State party's follow-up reply, dated 21 April 1997, indicates that enabling Law No. 288 of 1996 is being applied to all cases; see also 1996 Report, paras. 439-441, and below, paras. 533-535.

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Overview of follow-up replies received and of the Special Rapporteur's follow-up consultations during the reporting period

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533. Colombia: On 1 April 1997, the Special Rapporteur met with representatives of Colombia to discuss the follow-up replies given by Colombia to the Committee's Views in several cases decided under the Optional Protocol. The State party representatives recalled that Colombia had enacted enabling legislation in the summer of 1996 (Law No. 288 of 1996 - see the 1996 Report of the Committee, 10/ para. 433), which gives legal effect to the Committee's Views, and indicated that a ministerial committee had been established, which had examined the Committee's recommendations in several Views and recommended that compensation be paid.

534. The State party representatives noted that in all those cases in which the Committee had recommended the payment of compensation to victims, the Ministerial Committee had issued

12/ International Covenant on Civil and Political Rights. Human Rights Committee. Selected decisions under the Optional Protocol (CCPR/C/OP/1) (United Nations publication, Sales No. 84.XIV.2), vol. 1.

11/ Ibid., Forty-third Session, Supplement No. 40 (A/43/40).

14/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40).

16/ Ibid., Fiftieth Session, Supplement No. 40 (A/50/40).

10/ Ibid., Fifty-first Session, Supplement No. 40 (A/51/40).

favourable recommendations. The Committee's decisions had been notified to the Ministry of

Defence, which administers budgetary appropriations for the compensation of victims of human rights violations. Upon the request by the Special Rapporteur for clarification, the State party representatives indicated that a judge cannot question the entitlement of a victim to compensation,

but must only determine the amount of compensation. All the author(s) had to do was to provide proof of identity for compensation to be effected. The State party authorities could also resort to notifying authors publicly of their compensation entitlements.

535. On 21 April 1997, Colombia forwarded the following follow-up information to the Committee:

Views on communication No. 45/1979 (Suarez de Guerrero): A ministerial Committee set up pursuant to enabling legislation No. 288/1996 has recommended that compensation be paid to the author.

Views on communication No. 46/1979 (Fals Borda): Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to enabling legislation No. 288/1996 does not recommend that compensation be paid to the victim.

Views on communication No. 64/1979 (Salgar de Montejó): Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to enabling legislation No. 288/1996 does not recommend that compensation be paid to the victim.

Views on communication No. 161/1983 (Herrera Rubio): The Ministerial Committee set up under enabling legislation No. 288/1996 has recommended that compensation be paid to the victim.

Views on communication No. 181/1984 (San Juan Arévalo brothers): Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up under enabling legislation No. 288/1996 does not recommend that compensation be paid to the family of the victims.

Views on communication No. 195/1985 (Delgado Paez): The Ministerial Committee set up under enabling legislation No. 288/1996 recommended that compensation be paid to the author of the communication.

Views on communication No. 514/1992 (Sandra Fei): The Ministerial Committee set up pursuant to enabling legislation No. 288/1996 does not make a specific finding, as the Committee did not recommend that compensation be paid to the author.

Views on communication No. 563/1993 (Bautista de Arellana): The Ministerial Committee set up pursuant to enabling legislation No. 288/1996 has recommended that compensation be paid to the family of the victim.

VIII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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486. The Committee's previous report (A/52/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1997. The list that follows shows the additional cases in respect of which follow-up information has been requested from States (Views in which the deadline for receipt of follow-up information had not yet expired have not been included). It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the previous report. This is because the resources available for the Committee's work were considerably reduced in the current year, preventing it from undertaking a comprehensive systematic follow-up programme.

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Colombia: Nine Views finding violations: for the first eight cases, see 1996 Report (A/51/40), paras. 439-441, and 1997 Report (A/52/40), paras. 533-535; 612/1995 - Arhuacos (1997 Report); no follow-up reply.

VII. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

461. The Committee's previous report (A/53/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1998. The list that follows shows the additional cases in respect of which follow-up information has been requested from States (Views in which the deadline for receipt of follow-up information had not yet expired have not been included). It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the last report. This is because the resources available for the Committee's work have been considerably reduced preventing it from undertaking a comprehensive systematic follow-up programme.

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Colombia: Nine Views finding violations: for first eight cases see A/51/40, paras. 439-441, and A/52/40, paras. 533-535; 612/1995 - Arhuacos (A/52/40); no follow-up reply.

VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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596. The Committee's previous report (A/54/40) contained a detailed country-by-country breakdown of follow-up replies received or requested and outstanding as of 30 June 1999. The list that follows shows the additional cases in respect of which follow-up information has been requested from States. (Views in which the deadline for receipt of follow-up information had not yet expired have not been included.) It also indicates those cases in which replies are outstanding. In many of these cases there has been no change since the last report. This is because the limited resources available for the Committee's work prevent it from undertaking a comprehensive or systematic follow-up programme.

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Colombia: Nine Views finding violations: For the first eight cases and follow-up replies see A/51/40, paras. 439-441, and A/52/40, paras. 533-535; 612/1995 - Arhuacos (A/52/40); no follow-up reply. Follow-up consultations were held during the sixty-seventh session (see below).

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Overview of follow-up replies received and of the Special Rapporteur's follow-up consultations during the reporting period

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Colombia. In November 1999 a meeting took place between the Special Rapporteur for the follow-up on Views and the Permanent Representative of Colombia to the United Nations Office at Geneva to discuss the lack of effective follow-up in case No. 563/1993 - Bautista.

Chapter IV. Follow-up Activities under the Optional Protocol

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180. The Committee's previous annual report (A/55/40, vol. I, chap. VI) contained a detailed country-by-country survey on follow-up replies received or requested and outstanding as of 30 June 2000. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not take into account the Committee's Views adopted during the seventy-second session, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

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Colombia: Eleven Views finding violations: For the first eight cases and follow-up replies, see A/51/40, paragraphs 439-441, and A/52/40, paragraphs 533-535; 563/1993 - Bautista (A/52/40). The Committee received a submission from the State party, dated 21 April 1997, forwarding a copy of resolution No. 11/96, adopted by a Ministerial Committee set up pursuant to enabling legislation No. 288 of 1996 on 11 September 1996, and which recommends that compensation be paid to the family of the victim. Further note dated 2 November 1999, stating that the case is pending before the Higher Military Tribunal. The State party mentions that some unspecified payment had been made to the family on an unspecified date. 612/1995 - Arhuacos (A/52/40); no follow-up reply. Follow-up consultations were held during the sixty-seventh session; 687/1996 - Rojas García (annex X, section D); deadline for follow-up reply not yet expired.

Chapter VI. Follow-up activities under the optional protocol

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228. The previous annual report of the Committee (A/56/40, vol. I, chap. VI) contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2001. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-fourth and seventy-fifth sessions, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

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Colombia: Views in 13 cases with findings of violations:

For the first eight cases and follow-up replies, see A/51/40, paragraphs 439-441, and A/52/40, paragraphs 533-535;

563/1993 - Bautista (A/52/40). The Committee received a submission from the State party, dated 21 April 1997, forwarding a copy of resolution No. 11/96, adopted by a Ministerial Committee set up pursuant to enabling legislation No. 288 of 1996 on 11 September 1996, and which recommends that compensation be paid to the family of the victim. Further note dated 2 November 1999, stating that the case is pending before the Higher Military Tribunal. The State party mentions that some unspecified payment had been made to the family on an unspecified date;

612/1995 - Arhuacos (A/52/40); no follow-up reply. Follow-up consultations were held during the sixty-seventh and seventy-fifth sessions;

687/1996 - Rojas García (A/56/40); no follow-up reply received;

848/1999 - Rodríguez Orejuela (annex IX); follow-up reply not yet due;

859/1999 - Jiménez Vaca (annex IX); follow-up reply not yet due.

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229. For further information on the status of all the Views in which follow-up information remains outstanding or in respect of which follow-up consultations have been or will be scheduled, reference is made to the follow-up progress report prepared for the seventy-fourth session of the Committee (CCPR/C/74/R.7/Rev.1, dated 28 March 2002), discussed in public session at the Committee's 2009th meeting on 4 April 2002 (CCPR/C/SR.2009). Reference is also made to the Committee's previous reports, in particular A/56/40, paragraphs 182 to 200.

CHAPTER VI. Follow-up activities under the Optional Protocol

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223. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2002. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-seventh and seventy-eighth sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

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Colombia: Views in 14 cases with findings of violations:

For the first eight cases and follow-up replies, see A/51/40, paragraphs 439-441 and A/52/40, paragraphs 533-535;

563/1993 - *Bautista* (A/52/40); follow-up reply in paragraph 229 below;

612/1995 - *Arhuacos* (A/52/40); no follow-up reply. Follow-up consultations were held during the sixty-seventh and seventy-fifth sessions;

687/1996 - *Rojas García* (A/56/40); see paragraph 230 below;

778/1997 - *Coronel et al.* (annex VI); see paragraph 231 below;

848/1999 - *Rodríguez Orejuela* (A/57/40); see paragraph 232 below;

859/1999 - *Jiménez Vaca* (A/57/40); see paragraph 233 below.

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Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

224. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties that have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

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229. **Colombia:** case No.563/1993 - *Bautista* (A/52/40): on 25 October 2002, the State party informed the Committee that in order to prevent similar violations from occurring in future, two laws were adopted (Laws 589 and 599/2000) which criminalize genocide, torture and enforced disappearance. The State party further noted that other laws and decrees had been adopted to ensure compliance with the Committee's Views, in particular Law 288/1996. A payment of damages in the amount of 36,935,300 Colombian pesos was made to the author, in compliance with the Committee's Views.

230. Case No. 687/1996 - *Rojas García* (A/56/40): the State party informed the Committee, by note verbale of 29 October 2002, that by resolution No. 1 of 3 May 2002, it decided to apply Law 288/1996 in the author's case.

231. Case No. 778/1997 - *Coronel et al.* (annex VI): the State party informed the Committee, by note verbale of 21 February 2003, that the Committee's Views were forwarded to the competent State authorities (Presidential Programme of Human Rights, Ministry of Justice, Office of the Attorney-General, Defence Ministry and National Police).

232. Case No. 848/1999 - *Rodríguez Orejuela* (A/57/40): on 5 November 2002, the State party requested the Committee to reconsider and review its decision. The State party claimed that it did not receive the last submission of the author, dated 23 April 2002, which was considered in the Committee's Views. According to the State party, its right to procedural guarantees was not respected, in violation of the Optional Protocol and rule 91, paragraph 6, of the Committee's rules of procedure. By letters of 25 November 2002 and 16 December 2002, the author informed the Committee that the State party refused to comply with the Committee's Views. Since the adoption of the Views, he was transferred to the High Security Section of Combita prison, where he alleged that he was subjected to cruel and inhuman treatment, and that he is unable to communicate confidentially with his counsel. According to the author, on 14 April 2002, a judge ordered his release on parole, but the authorities refused to implement this decision.

233. Case No. 859/1999 - *Jiménez Vaca* (A/57/40): by note of 1 November 2002, the State party disagreed with the Committee's decision and requested its reconsideration and revision. According to the State party, the Committee did not take note of its comments of 22 April 2002, in violation of the procedural guarantees offered by article 5 of the Optional Protocol and rule 94 of the Committee's rules of procedures. The State party presented new arguments and did not accept the finding of a violation of article 12 by the Committee. Author's counsel informed the Committee on 22 October 2002 and on 3 June 2003 that he and his client had received no information from the State party about the implementation of the Committee's recommendations.

Notes

1. [*Official Records of the General Assembly*], *Fifty-seventh Session, Supplement No. 40(A/57/40)*, vol. I, chap. VI.

* The document symbol A/[Session No.] /40 refers to the *Official Record of the General Assembly*

in which the case appears; annex VI refers to the present report, vol. II.

CCPR CCPR/C/80/FU/1 (2004)

Follow-Up Progress Report submitted by The Special Rapporteur for Follow-Up on Views

Follow-up progress report

I. The current report updates the previous Follow-up Progress Report, (CCPR/C/71/R.13) [*Ed. Note: CCPR/C/71/R.13 is not publicly available*] which focused on cases in which, by the end of February 2001, no or only incomplete follow-up information had been received from States parties, or where follow-up information challenged the findings and recommendations of the Committee. In an effort to reduce the size of the follow-up report, this current report only reflects cases in which information was received from either the author or the State party from 1 March 2001 to 2 April 2004. It is the intention of the Special Rapporteur to update this report on an annual basis.

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COLOMBIA:

Bautista v. Columbia, Case no. 563/1993, Views adopted on 27 October 1995

Violations found: Articles 6, paragraph 1, 7 and 9, paragraph 1

Issues of case: Disappearance and subsequent murder of a Colombian citizen

Remedy recommended: Damages and appropriate protection of members of the victim's family from harassment. The Committee expressed its appreciation for the content of Resolution 13, adopted by the National Delegate for Human Rights on 5 July 1995, and of the judgment of the Administrative Tribunal of Cundinamarca of 22 June 1995, which provide an indication of the measure of damages that would be appropriate in the instant case. Moreover, although the Committee noted with equal appreciation the promulgation of Presidential Decree No. 1504 of 11 September 1995, it urged 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.

Deadline for State party follow-up information: Not available

Follow-up information received from State party: See previous follow-up report (CCPR/C/71/R.13) or the Committee's Annual Report (A/57/40, Vol. 1, para. 229). By note verbale of 25 October 2002, the State party informed the Committee that it is taking measures to ensure that no similar events will happen in the future. Before the House of Representatives, the

Government submitted two draft bills, which became Law 589 and 599 of 2000. Genocide, torture and enforced disappearances are now considered criminal offences. The State party also describes measures enacted into laws and decrees, which were implemented after the Committee's views, such as Law 288 of 1996. The State party also informs the Committee that it had ratified the Statute of the International Criminal Court. The State party notes that a payment of damages of 36.935.300 Colombian pesos was paid to the victim, in compliance with the Committee's views.

Follow-up information received from author: See previous follow-up report (CCPR/C/71/R.13)

Special Rapporteur's recommendations: No further consideration under the follow-up procedure, as the State party has complied with the Views.

Rojas García v. Columbia, Case no. 687/1996, Views adopted on 3 April 2001

Violations found: Articles 7, and 17, paragraph 1

Issues of case: Raid on family home

Remedy recommended: Compensation to author and his family

Deadline for State party follow-up information: 4 September 2001

Follow-up information received from State party: By note verbale of 29 October 2002, the State party informed the Committee that, by virtue of resolution N.1 of 3 May de 2002, it decided to apply Law 288 of 1996 in favor of the author.

Follow-up information received from author: None

Special Rapporteur's recommendations: Request for further information from the State party on the issue of payment of compensation.

Coronel et al v. Colombia, Case no. 778/1997, Views adopted on 24 October 2002

Violations found: Article 6, paragraph 1; and 7 in respect of Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Luis Ernesto Ascanio Ascanio and Luis Honorio Quintero Roperero; article 9; and article 17 of the Covenant.

Issues of case: Right to life; freedom from torture; arbitrary detention; freedom from arbitrary interference with family life.

Remedy recommended: Compensation, and to conclude without delay the investigations into the violation of articles 6 and 7; to speed up the criminal proceedings against the perpetrators in the ordinary criminal courts.

Deadline for State party follow-up information: 10 February 2003

Follow-up information received from State party: By note verbale of 21 February 2003, the State party informed the Committee that its Views were forwarded to the competent State authorities (Presidential Program of Human Rights, Ministry of Justice, Office of the Attorney General, Defence Ministry, and National Police). By note verbale of 14 April 2003, it informed the Committee that the Committee of Ministers decided to implement the Committee's Views and to pay the author's family damages. It intends to update the Committee on this matter.

Follow-up information received from author: None

Special Rapporteur's recommendations: Request for information from the State party on the issue of payment of compensation and the outcome of the criminal proceedings against the perpetrators.

Rodríguez Orejuela v. Colombia, Case no.848/1999, Views adopted on 23 July 2002

Violations found: Article 14

Issues of case: "Faceless" courts applying extraordinary procedure; change of tribunal between commission of crime and trial.

Remedy recommended: An "effective remedy" to the author.

Deadline for State party follow-up information: 24 October 2002

Follow-up information received from State party: By note verbale of 5 November 2002, the State party requested the Committee to reconsider and review its decision. The State party claims it did not receive the last communication from the author dated 23 April 2002, which was considered in the Committee's Views, and that, consequently, its right to procedural guarantees was violated, under the Optional Protocol and the Committee's Rules of Procedure.

Follow-up information received from author: By letters of 25 November 2002 and 16 December 2002, the author informed the Committee that the State party had refused to implement the Committee's Views. The author notes that the Colombian Government has ordered his transfer from the National Prison of Palmira to the High Security Section of the National Prison of Combita, where he is subjected to cruel and inhuman treatment. He could not communicate confidentially with his counsel. By resolution N.1058, of 14 April 2002, the Second Judge for

execution of punishment and security measures (*Ejecución de Penas y Medidas de seguridad*) of Tunja, Boyacá, ordered the author's parole, under article 64 of the Criminal Code. Nevertheless, the Government has failed to serve the judge's order on the author.

Consultations with State party: On 6 November 2003, the Special Rapporteur met with the Permanent Representative of the State party. He referred to the current case, as well as Jiménez Vaca v. Colombia (below) and requested of the State representatives whether they had any update on the implementation in these cases. They provided detailed reasons why both of these cases should be "re-considered" by the Committee and provided submissions from the State party to this effect. The Rapporteur confirmed that the information therein would be provided to the Committee during the discussion of its follow-up report and a decision taken thereon.

Special Rapporteur's recommendations: There is no provision under the Committee's rules to re-consider its Views. The State party's challenge to its findings is simply noted.

Jiménez Vaca v. Colombia, Case no. 859/1999, Views adopted on 25 March 2002

Violations found: Articles 6, paragraph 1, 9, paragraph 1, and 12, paragraphs 1 and 4.

Issues of case: Obligation to investigate attempts on life; ensuring personal safety; freedom of movement; arbitrary interference with correspondence.

Remedy recommended: Compensation, and to take appropriate measures to protect the author's life, so as to allow him to return to his own country; carry out an independent inquiry into the attempt on his life and to expedite criminal proceedings against those responsible for it.

Deadline for State party follow-up information: 26 September 2002

Follow-up information received from State party: By letter of 1 November 2002, the State party disagreed with the Committee's decision and requested its reconsideration and revision. According to the State party, the Committee did not take note of its comments of 22 April 2002, in violation of the procedural guarantees of the Optional Protocol and the Committee's rules of procedures. The State party presented new arguments and challenges the finding of a violation of article 12 by the Committee.

Follow-up information received from author: By letter of 22 October 2002 and 3 June 2003, counsel informed the Committee that neither he nor his client had received any information from the State party on the implementation of the Views. By letter of 13 March 2003, the author referred to the State party's challenge to Views.

Consultations with State party: On 6 November 2003, the Special Rapporteur met with the representatives of the State party. He referred to the current case, as well as Orejuela v. Colombia (above) and requested whether the State party had any update on the implementation

of the Views. He was given reasons why both cases should be "re-considered" by the Committee, and given submissions from the State party to this effect. The Special Rapporteur confirmed that the information therein would be provided to the Committee during the discussion of its follow-up report, and a decision taken thereon.

Special Rapporteur's recommendations: There is no provision under the Committee's rules to re-consider its Views. The State party's challenge to its findings is simply noted.

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CCPR, CCPR/C/SR.2194 (2004)

Human Rights Committee
Eightieth session

Summary record of the second part (public) of the 2194th meeting
Held at Headquarters, New York,
on Friday, 2 April 2004, at 10 a.m.

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Follow-up on Views under the Optional Protocol

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3. **Mr. Scheinin** said that, with regard to reconsideration, if the State party complained that the Committee was mistaken as to the facts, the answer should be that the Committee's decision was made only on the basis of the facts provided by the parties. The Special Rapporteur for follow-up on Views under the Optional Protocol could discuss with the State party and with the Committee the possible effect of the corrected facts with respect to the remedy, but the Views would stand nonetheless. If, on the other hand, the State party was contesting the interpretation of the law, the Special Rapporteur should stand firm, since the interpretation had been arrived at through an adversarial proceeding between the parties. However, he might suggest to the State party that it could raise such issues of law in a general way in its next periodic report.

4. In the face of a failure or refusal to implement the Views, it must be admitted that the Committee itself had little power to induce compliance and would need to call for political support from the United Nations and the other States parties to the Protocol. The Organization as a whole should discuss what mechanisms could be developed.

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6. Mr. Solari Yrigoyen said that the principle should be made clear that there was no procedure for reconsideration of the Committee's Views except in case of obvious error. In case No. 701/1996 (*Gómez Vásquez v. Spain*), the Committee's firmness had ultimately led the State party to change its legislation. With regard to case No. 848/1999 (*Rodríguez Orejuela v. Colombia*) and case No. 859/1999 (*Jiménez Vaca v. Colombia*), he found it odd that the State party was awaiting the Committee's response before implementing the Views. He recalled that in the consideration of the State party's report concerns had been expressed about the Committee of Ministers that had the power to recommend whether or not to implement the Committee's Views. In case No. 633/1995 (*Gauthier v. Canada*) it appeared that the State party had not complied with the Committee's Views. He agreed that such cases should be mentioned in the Committee's report.

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CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

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230. The previous annual report of the Committee¹ contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2003. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the eightieth and eighty-first sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

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Colombia: Views in 14 cases with findings of violations:

For the first eight cases and follow-up replies, see A/51/40, paragraphs 439-441 and A/52/40, paragraphs 533-535;

563/1993 - *Bautista* (A/52/40); follow-up reply in A/58/40 paragraph 229.

In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that this case should not be considered further under the follow-up procedure as the State party has complied with the Views;

612/1995 - *Arhuacos* (A/52/40); no follow-up reply received despite follow-up consultations having been held during the sixty-seventh and seventy-fifth sessions;

687/1996 - *Rojas García* (A/56/40); see A/58/40, paragraph 230; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a request be made to the State party for information on the issue of compensation;

778/1997 - *Coronel et al.* (A/58/40); see A/58/40, paragraph 231 and paragraph 237 below; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a request be made to the State party for information on the issue of compensation and the criminal proceedings against the perpetrators;

848/1999 - *Rodríguez Orejuela* (A/57/40); see A/58/40, paragraph 232 and 859/1999 - *Jiménez Vaca* (A/57/40); see A/58/40, paragraph 233 and paragraph 238 below for follow-up reply from the author; follow-up consultations were held during the seventy-ninth session, during which

the State party representatives provided detailed reasons why both of these cases should be “reconsidered” by the Committee and provided submissions from the State party to this effect; in the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur noted the State party’s objections to the Committee’s Views and explained that there is no provision for their reconsideration.

...

OVERVIEW OF FOLLOW-UP REPLIES RECEIVED DURING THE REPORTING PERIOD, SPECIAL RAPPORTEUR’S FOLLOW-UP CONSULTATIONS AND OTHER DEVELOPMENTS

231. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

...

240. Colombia: as to case No. 778/1997 - *Coronel et al.* (A/58/40): on 14 April 2003, the State party informed the Committee that the Committee of Ministers decided to implement the Committee’s Views and to pay the author’s family damages. It intends to update the Committee on this matter.

241. Case No. 859/1999 - *Jiménez Vaca* (A/57/40): on 4 March 2004, the author replied that he had filed a constitutional action before the High Tribunal of the Judicial District of Bogotá and an appeal before the Supreme Court of Colombia, complaining about the State party’s failure to comply with the Committee’s Views. Both petitions were rejected. He submits that the domestic tribunals have accepted the State party’s arguments that the Committee did not take into account the State party’s submissions of 22 April 2002 and thus made a finding of violations unfairly.

Notes

1/ *Ibid.*, *Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I, chap. VI.

* The document symbol A/[session No.]/40 refers to the *Official Records of the General Assembly* in which the case appears; annex IX refers to the present report, volume II.

...

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

224. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for the follow-up on Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

225. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights. A total of 391 Views out of the 503 Views adopted since 1979 concluded that there had been a violation of the Covenant.

228. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party has in fact given effect to the Committee's recommendations, even though the State party did not itself provide that information.

229. The present annual report adopts a different format for the presentation of follow-up information compared to previous annual reports. The table below displays a complete picture of follow-up replies from States parties received as of 28 July 2005, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of complying with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

230. Follow-up information provided by States parties and by petitioners or their representatives since the last annual report is set out in a new annex VII, contained in Volume II of the present annual report. This, more detailed, follow-up information also indicates action still outstanding in those cases that remain under review.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location ^a	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response	Follow-up dialogue ongoing
...						
Colombia (13)	45/1979, <i>Suárez de Guerrero</i> Fifteenth session Selected Decisions, vol. 1	X A/52/40	X			
	46/1979, <i>Fals Borda</i> Sixteenth session Selected Decisions, vol. 1	X A/52/40*		X		X
	*Note: In this case, the Committee recommended adequate remedies and for the State party to adjust its laws in order to give effect to the right set forth in article 9 (4) of the Covenant. The State party stated that given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to enabling legislation No. 288/1996 does not recommend that compensation be paid to the victim.					
	64/1979, <i>Salgar de Montejo</i> Fifteenth session Selected Decisions, vol. 1	X A/52/40*		X		X
	*Note: In this case the Committee recommended adequate remedies and for the State party to adjust its laws in order to give effect to the right set forth in article 14 (5) of the Covenant. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.					
	161/1983, <i>Herrera Rubio</i> Thirty-first session Selected Decisions, vol. 2	X A/52/40*				X
	*Note: The Committee recommended effective measures to remedy the violations that Mr. Herrera Rubio had suffered and further to investigate the violations, to take action thereon as appropriate and to take steps to ensure that similar violations do not occur in the future. The State party provided compensation to the victim.					
	181/1984, <i>Sanjuán Arévalo brothers</i> A/45/40	X A/52/40*		X		X
	*Note: The Committee took this opportunity to indicate that it would welcome information on any relevant measures taken by the State party in respect of the Committee's Views and, in particular, invited the State party to inform the Committee of further developments in the investigation of the disappearance of the Sanjuán brothers. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.					
	195/1985, <i>Delgado Paez</i>	X				X

	A/45/40	A/52/40*				
	*Note: In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to take effective measures to remedy the violations suffered by the author, including the granting of appropriate compensation, and to ensure that similar violations do not occur in the future. The State party provided compensation.					
	514/1992, <i>Fei</i> A/50/40	X A/51/40*		X		X
	*Note: The Committee recommended that the author be provided with an effective remedy. In the Committee's opinion, this entailed guaranteeing the author's regular access to her daughters, and the State party ensuring that the terms of the judgements in the author's favour were complied with. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.					
	563/1993, <i>Bautista de Arellana</i> A/52/40	X A/52/40, A/57/40, A/58/40, A/59/40	X			
	612/1995, <i>Arhuacos</i> A/52/40				X	X
	687/1996, <i>Rojas García</i> A/56/40	X A/58/40, A/59/40				X
	778/1997, <i>Coronel et al.</i> A/58/40	X A/59/40				X
	848/1999, <i>Rodríguez Orejuela</i> A/57/40	X A/58/40, A/59/40		X		X
	859/1999, <i>Jiménez Vaca</i> A/57/40	X A/58/40, A/59/40		X		X

^a The location refers to the document symbol of the *Official Records of the General Assembly, Supplement No. 40*, which is the annual report of the Committee to the respective sessions of the Assembly.

CCPR, CCPR/C/SR.2366 (2006)

Human Rights Committee

Eighty-sixth session

Summary record of the second part (public)* of the 2366th meeting

Held at Headquarters, New York, on Thursday, 30 March 2006, at 3 p.m.

Follow-up on Views under the Optional Protocol

Progress report of the Special Rapporteur for Follow-up on Views

1. Mr. Ando (Special Rapporteur for Follow-up on Views) introduced his report, which compiled information received during the eighty-fifth and eighty-sixth sessions of the Committee. He wished to request decisions from the plenary in relation to two cases.

...

28. Mr. Solari Yrigoyen requested clarification on the status of a number of cases that were not included in the report, most notably the Colombian case submitted by Mr. Jiménez Vaca.

29. Mr. Schmidt (Team Leader, Petitions Unit) said that that case had been mentioned in a press release and at the end-of-session press conference in October, and notes verbales had accordingly been sent to the Government. However, no information had been received since then from the Government, and the progress report dealt only with information received since the last session. However, the Colombian case, and others not mentioned in the interim report, would be included in the chapter on follow-up in the annual report.

...

...

CHAPTER VI FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

227. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

228. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

229. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or only relate to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

230. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

231. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

232. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2006, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of

case entries convey an idea of the difficulties in categorizing follow-up replies.

233. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/60/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue ongoing
...						
Colombia (14)	45/1979, <i>Suárez de Guerrero</i> Fifteenth session Selected Decisions, vol. 1	X A/52/40*				X
<p><i>*Note:</i> In this case the Committee recommended that the State party should take the necessary measures to compensate the husband of Mrs. Maria Fanny Suárez de Guerrero for the death of his wife and to ensure that the right to life is duly protected by amending the law. The State party stated that the Ministerial Committee set up pursuant to enabling legislation No. 288/1996 recommended that compensation be paid to the author.</p>						
	46/1979, <i>Fals Borda</i> Sixteenth session Selected Decisions, vol. 1	X A/52/40*		X		X
<p><i>*Note:</i> In this case, the Committee recommended adequate remedies and for the State party to adjust its laws in order to give effect to the right set forth in article 9 (4) of the Covenant. The State party stated that given the absence of a specific remedy recommended by the Committee the Ministerial Committee set up pursuant to enabling legislation No. 288/1996 does not recommend that compensation be paid to the victim.</p>						
	64/1979, <i>Salgar de Montejo</i> Fifteenth session	X A/52/40*		X		X

Selected Decisions, vol. 1					
<p><i>*Note:</i> In this case the Committee recommended adequate remedies and for the State party to adjust its laws in order to give effect to the right set forth in article 14 (5) of the Covenant. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.</p>					
161/1983, <i>Herrera Rubio</i> Thirty-first session Selected Decisions, vol. 2	X A/52/40*				X
<p><i>*Note:</i> The Committee recommended effective measures to remedy the violations that Mr. Herrera Rubio has suffered and further to investigate said violations, to take action thereon as appropriate and to take steps to ensure that similar violations do not occur in the future. The State party provided compensation to the victim.</p>					
181/1984, <i>Sanjuán Arévalo brothers</i> A/45/40	X A/52/40*		X		X
<p><i>*Note:</i> The Committee takes this opportunity to indicate that it would welcome information on any relevant measures taken by the State party in respect of the Committee's Views and, in particular, invites the State party to inform the Committee of further developments in the investigation of the disappearance of the Sanjuán brothers. Given the absence of a specific remedy recommended by the Committee the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.</p>					
195/1985, <i>Delgado Paez</i> A/45/40	X A/52/40*				X
<p><i>*Note:</i> In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to take effective measures to remedy the violations suffered by the author, including the granting of appropriate compensation, and to ensure that similar violations do not occur in the future. The State party provided compensation.</p>					
514/1992, <i>Fei</i>	X		X		X

A/50/40	A/51/40*				
<p>*Note: The Committee recommended to provide the author with an effective remedy. In the Committee's opinion, this entails guaranteeing the author's regular access to her daughters, and that the State party ensure that the terms of the judgements in the author's favour are complied with. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.</p>					
563/1993, <i>Bautista de Arellana</i> A/52/40	X A/52/40, A/57/40, A/58/40, A/59/40	X			
612/1995, <i>Arhuacos</i> A/52/40				X	X
687/1996, <i>Rojas García</i> A/56/40	X A/58/40, A/59/40				X
778/1997, <i>Coronel et al.</i> A/58/40	X A/59/40				X
848/1999, <i>Rodríguez Orejuela</i> A/57/40	X A/58/40, A/59/40		X		X
859/1999, <i>Jiménez Vaca</i> A/57/40	X A/58/40, A/59/40, A/61/40		X		X
1298/2004, <i>Becerra</i> A/61/40	Not due				
...					

CCPR, A/61/40 vol. II (2006)

...

Annex VII

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/60/40).

...

State party	COLOMBIA
Case	Jiménez Vaca, 859/1999
Views adopted on	25 March 2002
Issues and violations found	Security of person not deprived of their liberty - articles 6, paragraph 1, 9, paragraph 1, 12, paragraphs 1 and 4
Remedy recommended	An effective remedy, including compensation; take appropriate measures to protect the author's security so as to allow him to return to the country; carry out an independent inquiry into the attempt on the author's life and expedite the criminal proceedings against those responsible for it.
State party response	Follow-up consultations were held during the seventy-ninth session. See CCPR/C/80/FU1.
Author's response	By letter dated 26 September 2005 the author reiterates the information he had already provided on 4 March 2004, i.e. that, following the adoption of the Committee's Views, he filed a petition first to the Superior Court of the Judicial District of Bogotá and then to the Supreme Court alleging the lack of implementation of the Views. Both remedies were rejected. The Superior Court stated that: (i) the Committee's Views lacks legally binding character; (ii) the Committee of Ministers issued a non-favourable opinion on the issue of implementation; and iii) Colombia's government petitioned the Committee to reconsider its decision.

The author adds that he also filed an appeal with the Constitutional Court which was rejected on 12 April 2005. According to the Court,

there was no evidence that the author was currently at risk of being a victim of violations of his rights to life and physical integrity, should he return to Colombia. There was no evidence either that the author had been prevented from using the appropriate domestic remedies in order to pursue those responsible for the facts alleged and obtain reparation. At the same time, the Court requested the Ministry for Foreign Affairs to inform the author about the mechanisms available in order to protect his life, should he receive threats in the future, and that the authorities would take the necessary measures in order to facilitate his return to the country.

The author asks the Committee to intervene with the State Party in order to obtain reparation for the violations found in the Committee's Views and guarantees that would allow him to return safely to his country.

CCPR, CCPR/C/SR.2450 (2007)

Human Rights Committee

Eighty-ninth session

Summary record of the 2450th meeting

Held at Headquarters, New York, on Thursday, 29 March 2007, at 10 a.m.

...

Follow-up to concluding observations on State reports and to Views under the Optional Protocol

Progress report of the Special Rapporteur for follow-up on Views (CCPR/C/89/R.5)

1. *Mr. Shearer* (Special Rapporteur for follow-up on Views) introduced his report, which compiled information received during the eighty-eighth and eighty-ninth sessions of the Committee...

...

30. *Mr. Schmidt* (Team Leader, Petitions Unit) pointed out that legislation granting pension rights to surviving same-sex partners in Colombia was due to be adopted very shortly...

...

...

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

213. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

214. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 452 Views out of the 570 Views adopted since 1979 concluded that there had been a violation of the Covenant.

215. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or only relate to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

216. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

217. In many cases, the Committee secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

218. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2007, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up

replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

219. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/61/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

<i>State party and number of cases with violation</i>	<i>Communication number, author and location</i>	<i>Follow-up response received from State party and location</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue ongoing</i>
...						
Colombia (15)	45/1979, <i>Suárez de Guerrero</i> Fifteenth session Selected Decisions, vol. 1	X A/52/40*				X
<p><i>*Note:</i> In this case the Committee recommended that the State party should take the necessary measures to compensate the husband of Mrs. Maria Fanny Suárez de Guerrero for the death of his wife and to ensure that the right to life is duly protected by amending the law. The State party stated that the Ministerial Committee set up pursuant to enabling legislation No. 288/1996 recommended that compensation be paid to the author.</p>						
	46/1979, <i>Fals Borda</i> Sixteenth session Selected Decisions, vol. 1	X A/52/40*		X		X
<p><i>*Note:</i> In this case, the Committee recommended adequate remedies and for the State party to adjust its laws in order to give effect to the right set forth in article 9 (4) of the Covenant. The State party stated that given the absence of a specific remedy recommended by the Committee the Ministerial Committee set up pursuant to enabling legislation No. 288/1996 does not recommend that compensation be paid to the victim.</p>						
	64/1979, <i>Salgar de Montejo</i> Fifteenth session Selected Decisions, vol. 1	X A/52/40*		X		X
<p><i>*Note:</i> In this case the Committee recommended adequate remedies and for the State party to adjust its laws in order to give effect to the right set forth in article 14 (5) of the Covenant. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.</p>						

<i>State party and number of cases with violation</i>	<i>Communication number, author and location</i>	<i>Follow-up response received from State party and location</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue ongoing</i>
	161/1983, <i>Herrera Rubio</i> Thirty-first session Selected Decisions, vol. 2	X A/52/40*				X
<p><i>*Note:</i> The Committee recommended effective measures to remedy the violations that Mr. Herrera Rubio has suffered and further to investigate said violations, to take action thereon as appropriate and to take steps to ensure that similar violations do not occur in the future. The State party provided compensation to the victim.</p>						
	181/1984, <i>Sanjuán Arévalo brothers</i> A/45/40	X A/52/40*		X		X
<p><i>*Note:</i> The Committee takes this opportunity to indicate that it would welcome information on any relevant measures taken by the State party in respect of the Committee's Views and, in particular, invites the State party to inform the Committee of further developments in the investigation of the disappearance of the Sanjuán brothers. Given the absence of a specific remedy recommended by the Committee the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.</p>						
	195/1985, <i>Delgado Paez</i> A/45/40	X A/52/40*				X
<p><i>*Note:</i> In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to take effective measures to remedy the violations suffered by the author, including the granting of appropriate compensation, and to ensure that similar violations do not occur in the future. The State party provided compensation.</p>						
	514/1992, <i>Fei</i> A/50/40	X A/51/40*		X		X
<p><i>*Note:</i> The Committee recommended to provide the author with an effective remedy. In the Committee's opinion, this entails guaranteeing the author's regular access to her daughters, and that the State party ensure that the terms of the judgements in the author's favour are complied with. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.</p>						
	563/1993, <i>Bautista de</i>	X				

<i>State party and number of cases with violation</i>	<i>Communication number, author and location</i>	<i>Follow-up response received from State party and location</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue ongoing</i>
	<i>Arellana</i> A/52/40	A/52/40, A/57/40, A/58/40, A/59/40	X			
	612/1995, <i>Arhuacos</i> A/52/40				X	X
	687/1996, <i>Rojas García</i> A/56/40	X A/58/40, A/59/40				X
	778/1997, <i>Coronel et al.</i> A/58/40	X A/59/40				X
	848/1999, <i>Rodríguez Orejuela</i> A/57/40	X A/58/40, A/59/40		X		X
	859/1999, <i>Jiménez Vaca</i> A/57/40	X A/58/40, A/59/40, A/61/40		X		X
	1298/2004, <i>Becerra</i> A/61/40	X A/62/40				X A/62/40
	1361/2005, <i>Casadiago</i> A/62/40	Not yet due				
...						

CCPR, CCPR/C/SR.2480 (2007)

HUMAN RIGHTS COMMITTEE

Ninetieth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 2480th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 26 July 2007, at 3 p.m.

...

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO
VIEWS UNDER THE OPTIONAL PROTOCOL (agenda item 7)

Report of the Special Rapporteur for follow-up on Views (CCPR/C/90/R.4, distributed in the
meeting room in English only)

6. The CHAIRPERSON invited the Special Rapporteur to present his report.

7. Mr. SHEARER (Special Rapporteur for follow-up on Views) said that the report covered
communications for which the Committee had received information between its eighty ninth
session (12-30 March 2007) and its ninetieth session (9-27 July 2007)...

...

10. In the case Becerra Barney v. Colombia (communication No. 1298/2004), on 2 May
2007, the author had responded to the State party's submission, noting that his right to a public
hearing had been violated, as had been his right to be present during the trial held against him,
and had requested an effective remedy and adequate compensation. The author's comments had
been sent to the State party on 14 June 2007. Although the two-month deadline for the State
party to respond had not yet expired, in view of the categorical refusal to compensate the author
as indicated in a previous submission, it was highly unlikely that the author would receive a
different response. The Special Rapporteur therefore recommended that the Committee should
state that it regretted the State party's refusal to accept its Views and that it considered the
dialogue ongoing.

...

19. The CHAIRPERSON thanked the Special Rapporteur for his report on a very important
aspect of the Committee's work. If he heard no objection, he would take it that the Committee
wished to adopt the report.

20. It was so decided.

Annex IX

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/61/40).

...

State party COLOMBIA

Case Becerra Barney, 1298/2004

Views adopted on 11 July 2006

Issues and violations found Right to a fair trial, faceless judges - Article 14.

Remedy recommended An effective and appropriate remedy.

Due date for State party response 26 October 2006

Date of reply 31 January 2007

State party response On 31 January 2007, the State Party submitted the following information. It recalls that Law 288 of 1996 established instruments to ensure compensation for victims of human rights violations. This law was adopted principally in order to expedite reparations when an international organ adopts a decision in individual communications presented to it against the State of Colombia. Article 2 of this law established that cases where decisions have been adopted by international human rights organs will be submitted to the Committee of Ministers which is constituted by the Ministers of the Interior, Justice and Law, External Affairs, and National Defence. This Committee may adopt a favourable recommendation in the event that certain elements of fact and law, and the Constitution, are present. This Committee may also adopt a negative recommendation when it considers that these elements are not present. Such was the finding in

this particular case. The Committee's decision is based on constitutional principles and concluded that the State of Colombia afforded the author all of his fundamental constitutional rights, in particular that of due process that were at the time possible. With regard to the Law of Public Order or Regional Justice (*Ley de Orden Público o Justicia Regional*) the Committee of Ministers took into account that this law was, at the time, considered constitutional by the Constitutional Court of Colombia.

The State party submits that the violation that is attributed to the State of Colombia of the author's right to a public hearing is not in itself a breach, as the non-public character of the procedure was at the time indispensable to preserve the interests of justice. Such a situation is provided for in other human rights treaties to which Colombia is party, for example article 8 paragraph 5 of the American Convention on Human Rights. The State party recalls that at the time of the procedure against Mr. Becerra Barney under the Law of Regional Justice, the country was confronting a grave public security situation, in particular because of the multiple attacks against officials of the judiciary perpetrated by the drug cartels. The State party also recalls that once the situation had subsided, this Law, which had been considered constitutional by the country's Constitutional Court, was repealed as had been recommended by different international human rights organs.

Author's comments

On 2 May 2007, the author responded to the State party's submission. He notes that not only his right to a public hearing was violated but also his right to be present during the trial held against him. He further notes that article 8.5 of the American Convention on Human Rights, which provides for the "interests of justice", as an exception to the public hearing rule, does not allow the sentencing of a person in absentia. He observes that the State party misinterprets Law 288 of 1996, which was specifically adopted in order to enforce the Committee's Views. Article 2 states that the decision of the Committee of Ministers shall be favorable when a decision has been previously adopted by the Human Rights Committee and the Inter-American Commission. He stresses the State party's obligation to provide him with an effective remedy and adequate compensation.

Committee's Decision

The Committee regrets the State party's refusal to accept the Committee's Views and considers the dialogue ongoing.

CCPR, CCPR/C/SR.2533 (2008)

Human Rights Committee
Ninety-second session

Summary record of the 2533rd meeting
Held at Headquarters, New York,
on Wednesday, 2 April 2008, at 11 a.m.

...

Progress report of the Special Rapporteur for follow-up on Views (CCPR/C/92/R.5)

34 Mr. Shearer (Special Rapporteur for follow-up on Views) introduced his progress report (CCPR/C/92/R.5), which compiled information received since the ninety-first session of the Committee.

...

39. [Mr. Shearer] Turning to the case of *C. v. Colombia* (Communication No. 1361/2005), he suggested inserting a hyphen in the word "resent", appearing in the last sentence of the first paragraph of the section on the State party's response, for clarity's sake.

...

42. *The recommendations contained in the progress report of the Special Rapporteur for follow-up on Views, as amended, were approved.*

The meeting rose at 1.05 p.m.

VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

187. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

188. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

189. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

190. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

191. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

192. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2008, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special

Rapporteur for follow-up to Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

193. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/62/40) is set out in annex VII to volume II of the present annual report.

...						
Colombia (15)	45/1979, <i>Suárez de Guerrero</i> Fifteenth session Selected Decisions, vol. 1	X A/52/40*				X
<p>*<i>Note.</i> In this case, the Committee recommended that the State party should take the necessary measures to compensate the husband of Mrs. Maria Fanny Suárez de Guerrero for the death of his wife and to ensure that the right to life is duly protected by amending the law. The State party replied that the Ministerial Committee set up pursuant to enabling legislation No. 288/1996 had recommended that compensation be paid to the author.</p>						
Colombia (<i>cont'd</i>)	46/1979, <i>Fals Borda</i> Sixteenth session Selected Decisions, vol. 1	X A/52/40*		X		X
<p>*<i>Note.</i> In this case, the Committee recommended adequate remedies and for the State party to adjust its laws in order to give effect to the right set forth in article 9 (4) of the Covenant. The State party responded that, given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to enabling legislation No. 288/1996 did not recommend that compensation should be paid to the victim.</p>						
	64/1979, <i>Salgar de Montejo</i> Fifteenth session Selected Decisions, vol. 1	X A/52/40*		X		X
<p>*<i>Note.</i> In this case, the Committee recommended adequate remedies and for the State party to adjust its laws in order to give effect to the right set forth in article 14 (5) of the Covenant. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did</p>						

not recommend that compensation be paid to the victim.

161/1983, <i>Herrera Rubio</i> Thirty-first session Selected Decisions, vol. 2	X A/52/40*				X
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**Note.* The Committee recommended effective measures to remedy the violations that Mr. Herrera Rubio has suffered and further to investigate said violations, to take action thereon as appropriate and to take steps to ensure that similar violations do not occur in the future. The State party provided compensation to the victim.

181/1984, <i>Sanjuán Arévalo</i> brothers A/45/40	X A/52/40*		X		X
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**Note.* The Committee takes this opportunity to affirm that it would welcome information on any relevant measures taken by the State party in respect of the Committee's Views and, in particular, invites the State party to inform the Committee of further developments in the investigation of the disappearance of the Sanjuán brothers. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.

Colombia (<i>cont'd</i>)	195/1985, <i>Delgado Paez</i> A/45/40	X A/52/40*			X
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**Note.* In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to take effective measures to remedy the violations suffered by the author, including the granting of appropriate compensation, and to ensure that similar violations do not occur in the future. The State party provided compensation.

514/1992, <i>Fei</i> A/50/40	X A/51/40*		X		X
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**Note.* The Committee recommended that the State party provide the author with an effective remedy. In the Committee's opinion, this entails guaranteeing the author regular access to her daughters, and that the State

party ensure that the terms of the judgements in the author's favour are complied with. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.

	563/1993, <i>Bautista de Arellana</i> A/52/40	X A/52/40, A/57/40 A/58/40, A/59/40 and A/63/40	X			
	612/1995, <i>Arhuacos</i> A/52/40				X	X
	687/1996, <i>Rojas García</i> A/56/40	X A/58/40, A/59/40				X
	778/1997, <i>Coronel et al.</i> A/58/40	X A/59/40				X
	848/1999, <i>Rodríguez Orejuela</i> A/57/40	X A/58/40, A/59/40		X		X
	859/1999, <i>Jiménez Vaca</i> A/57/40	X A/58/40, A/59/40, A/61/40		X		X
Colombia (<i>cont'd</i>)	1298/2004, <i>Becerra</i> A/61/40	X A/62/40				X A/62/40
	1361/2005, <i>Casadiago</i> A/62/40	X A/63/40				X
...						

Annex VII

FOLLOW UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/62/40).

...

<i>State party</i>	<i>COLOMBIA</i>
<i>Case</i>	<i>Nydia Erika Bautista, 563/1993</i>
<i>Views adopted on</i>	27 October 1995
<i>Issues and violations found</i>	Abduction, detention incommunicado and subsequent disappearance of the victim - articles 2, paragraph 3, 6, paragraph 1, 7, 9, 10 and 14, paragraph 3 (c).
<i>Remedy recommended</i>	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the victim's family with an appropriate remedy, which should include damages and an appropriate protection of family members from harassment. The Committee urged 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 the victim.
<i>Date of reply</i>	The State party responded on 21 April 1997 and 2 November 1999.
<i>State party response</i>	The State party claimed that the case was pending before the Higher Military Tribunal. Some unspecified payment had been made to the family on an unspecified date.
<i>Author's comments</i>	Counsel has informed the Committee on several occasions of the lack of implementation of the Committee's recommendations. In a

letter dated 19 July 2007 he indicates that the case was transferred from the military to civilian jurisdiction in 2000. The Public Prosecutor's Office carried out investigations against a number of military officers allegedly involved in the crime, however, in January 2004, it decided to drop the charges for lack of evidence. That decision was appealed by the family on 5 February 2004, but the appeal was rejected by the Superior Court of Bogota in February 2006. As a result, no further investigation will be possible.

The decision to drop penal charges is however inconsistent with a judgement of the Administrative Tribunal of Cundinamarca dated 22 June 1995 which acknowledged the State's liability for the disappearance and extrajudicial execution of the victim carried out by members of the Army's XX Brigade. It is also inconsistent with Resolution No. 13 dated 5 July 1995 of the Human Rights Procurator which ordered the removal of Commander Velandia and Sergeant Ortega from the Army. That Resolution was implemented. However, on appeal, the State Council declared it null on 23 May 2002 and ordered the Commander's return to the Army.

Counsel claims that the Public Prosecutor's Office and the Superior Court of Bogota did not investigate the case properly and did not take into consideration the existing evidence against the military officers involved in the crime, some of whom had already been convicted for similar acts committed against another victim. Clearly, the investigation did not respect the minimum rules for the investigation of enforced disappearances and extrajudicial executions.

Further action taken or required

On 18 July 2008, a meeting was attended by Mr. Shearer, Special Rapporteur on follow-up, members of the secretariat, and Ms. Alma Viviana Perez Gomez, and Mr. Alvaro Ayala Melendez from the Colombian Permanent Mission.

The Rapporteur had forwarded an aide memoire to the State party prior to the meeting in an effort to assist it in its preparations and to structure the meeting. The State party's representatives attended the meeting with a response from the State party on the questions raised in the aide memoire. As to the question on the provision of compensation in three cases (45/1979, Saurez de Guerrero;

161/1983, Herrera Rubio; and 195/1985, Delgado Paez), the State party stated that it could not follow-up on these cases as it had no information on the location of the authors. The secretariat indicated to the State party that it could assist it in this regard. As to questions on the payment of compensation in four other cases (46/1079, Fals Borda; 64/1979, Salgar de Montejo; 181/1984, Freres Sanjuan Arevalo; and 514/1992, Fei), the State party states that, as the Committee did not specifically recommend compensation in these cases, under Law 288/1966, the Committee of Ministers cannot make such a recommendation. The Rapporteur stated that he would discuss this matter with the bureau to see what could be done in this regard. As to case No. 687/1996, Rojas Garcia, the State party stated that this matter is before the Council of State for the purposes of (it would appear) the consideration of the amount of compensation. As to case No. 778/1997, Coronel et al., the State party indicated that there are two procedures ongoing - one criminal in nature against the accused and one relating to compensation. As to 859/1999, Jimenez Vaca; 848/1999, Rodriguez Orejuela; and 1298/2004, Becerra Barney, the State party's representatives indicated that the State party would wish to receive a note that there is no procedure for reconsideration of these cases. As to No. 1361/2005, "C", the State party indicated that it had already responded in detail, but that it had not received the author's response which was sent on 20 February 2008. It will be resent by the secretariat with a request for comments. In any event, the State party confirmed (as stated by the author) that the new draft legislation had not passed through the Senate, but that new legislation was being considered, that in any event same sex couples were now protected through a change in the jurisprudence of the Constitutional Court and that because these precedents are not retroactive, efforts are being made to provide the author with a remedy through other means. As to case No. 563/1993, Bautista, the State party informed the Committee that (...) (around 31,700 dollars) were paid to the author.

The Rapporteur indicated his appreciation to the representatives for meeting with him and to the State party for the information provided, which he will present to the Committee during the discussion on follow-up.

Committee's Decision

The Committee considers the dialogue in relation to all of these

cases ongoing.

<i>Case</i>	<i>C., 1361/2005</i>
<i>Views adopted on</i>	30 March 2007
<i>Issues and violations found</i>	Denial of life partner's pension on basis of his sexual orientation - article 26
<i>Remedy recommended</i>	An effective remedy, including reconsideration of his request for a pension without discrimination on grounds of sex or sexual orientation.
<i>Due date for State party response</i>	30 March 2007
<i>Date of reply</i>	9 November 2007
<i>State party response</i>	<p>The State party submits that the Committee, when adopting its Views on this case, did not take into consideration all its correspondence, contrary to article 5 of the Optional Protocol. It submits that the last two letters sent to the Committee through the Permanent Mission (notes MOC 71 dated 30 Jan 2007 and MPC dated 12 April) were not taken into account when making its decision. The Permanent Mission re-sent the notes, and the secretariat acknowledged receipt.</p>

The content of those letters can be summarized as follows: administrative and judicial decisions are based on the current legal framework that protects the family; according to the legal meaning of article 23 of the Covenant and article 42 of the Colombian Constitution a family is formed by a man and a woman; the current legal framework regarding pensions has no provisions for same sex couples; sexual orientation is not one of the criteria used by the authorities to deny social security benefits; the fact that same sex couples have no access to social security benefits does not mean they are left unprotected; the concept of "family" is a longstanding one and only recently have other forms of relationships been receiving protection; in the absence of an applicable legal framework, the Constitutional Court has recently changed its jurisprudence regarding same sex couples; and

Congress has also been active in this area.

In addition, the State party states that the following measures were taken:

1. Judicial measures (a) Constitutional Court Decision c-075 of 2007: protects economic rights of same sex couples and (b) Constitutional Court decision C-811 of 2007: recognized the right of homosexual couples to health-related social security benefits.

2. Legislative measures: Draft law on social protection of homosexuals (draft 130 of 2005 (Senate), draft 152 in House of Representatives): Same sex couples can have access to social security. This draft was rejected due to the failure to fulfil certain formalities. There are currently two new drafts before the Senate. As to the provision of a remedy to the author, the State party submits that unfortunately, due to the lack of an appropriate legal framework, it is not legally in a position to reopen the case or re-examine his application. However, the Government has expressed its support for the current draft laws.

Author's comments

On 28 January 2008, the author responded as follows:

Law 288 of 1996 established a procedure to implement the Committee's Views. The Ministries of Foreign Affairs, Interior, Justice and National Defence studied the author's case and decided to comply with the Views. They drafted opinion 003 of 2007 to that effect. They later "changed their minds". According to the author, an article in the front page of a Colombian newspaper sets out why the Government decided not to comply with the Views. According to this article, when opinion 003 was ready to be signed, the Ministers received a memo signed by the Director of Social Security of the Ministry of Social Welfare who advised against the implementation of the Views. An argument between the Ministers ensued. In the end, after the intervention of the Vice-President, it was decided not to comply with the Views. The reason given was to avoid setting a precedent which would have a major economic impact.

The author responds to the arguments presented by the State party as follows: the absence of national legislation or applicable case law in Colombia does not exempt it from complying with its

international obligations; even if it is true that national decisions are in conformity with national legislation, they are not in conformity with the Covenant; the issue of “family” was indeed discussed by the Committee and was the object of two separate opinions; “efforts” made by the Supreme Court are not applicable to the author’s case and do not resolve his situation or pension issues; all law drafts had been archived, including one that has already been approved; the State party did not sponsor these drafts; despite the claim that same sex partners are not left without a pension, however, the author does not have access to any pension whatsoever; the State party could issue decrees to avoid Congress; as laws are generally not retroactive, even if the laws are changed now, it will not have an impact on the author’s situation; to date, no remedies have been provided to the author; the Views have not been made public; due to the small numbers of same sex couples in the State party, the granting of pensions to homosexuals would not have a major economic impact.

Further action taken or required See above for minutes of the meeting held between the Special Rapporteur and representatives of the State party relating to all of the cases against Colombia on 18 July 2008.

Committee’s Decision The Committee considers the dialogue ongoing.

...

VI. FOLLOW UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

230. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up on Views to this effect. Ms. Ruth Wedgwood has been the Special Rapporteur since July 2009 (ninety-sixth session).

231. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 543 Views out of the 681 Views adopted since 1979 concluded that there had been a violation of the Covenant.

232. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

233. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

234. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

235. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to the ninety-sixth session (13-31 July 2009), in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party

and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

236. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/63/40) is set out in annex IX to volume II of the present annual report.

...						
Colombia (15)	45/1979, <i>Suárez de Guerrero</i> Fifteenth session Selected Decisions, vol. 1	X A/52/40*				X
	<p>*<i>Note.</i> In this case, the Committee recommended that the State party should take the necessary measures to compensate the husband of Mrs. Maria Fanny Suárez de Guerrero for the death of his wife and to ensure that the right to life is duly protected by amending the law. The State party replied that the Ministerial Committee set up pursuant to enabling legislation No. 288/1996 had recommended that compensation be paid to the author.</p>					
	46/1979, <i>Fals Borda</i> Sixteenth session Selected Decisions, vol. 1	X A/52/40*		X		X
	<p>*<i>Note.</i> In this case, the Committee recommended adequate remedies and for the State party to adjust its laws in order to give effect to the right set forth in article 9, paragraph 4, of the Covenant. The State party responded that, given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to enabling legislation No. 288/1996 did not recommend that compensation should be paid to the victim.</p>					

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	64/1979, <i>Salgar de Montejo</i> Fifteenth session Selected Decisions, vol. 1	X A/52/40*		X		X
	<p>*Note: In this case, the Committee recommended adequate remedies and for the State party to adjust its laws in order to give effect to the right set forth in article 14, paragraph 5, of the Covenant. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.</p>					
Colombia (<i>cont'd</i>)	161/1983, <i>Herrera Rubio</i> Thirty-first session Selected Decisions, vol. 2	X A/52/40*				X
	<p>*Note: The Committee recommended effective measures to remedy the violations that Mr. Herrera Rubio has suffered and further to investigate said violations, to take action thereon as appropriate and to take steps to ensure that similar violations do not occur in the future. The State party provided compensation to the victim.</p>					
	181/1984, <i>Sanjuán Arévalo brothers</i> A/45/40	X A/52/40*		X		X
	<p>*Note: The Committee takes this opportunity to affirm that it would welcome information on any relevant measures taken by the State party in respect of the Committee's Views and, in particular, invites the State party to inform the Committee of further developments in the investigation of the disappearance of the Sanjuán brothers. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.</p>					
	195/1985, <i>Delgado Paez</i>	X				

	A/45/40	A/52/40*				X
	<p>*<i>Note:</i> In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to take effective measures to remedy the violations suffered by the author, including the granting of appropriate compensation, and to ensure that similar violations do not occur in the future. The State party provided compensation.</p>					
	514/1992, <i>Fei</i> A/50/40	X A/51/40*		X		X
	<p>*<i>Note:</i> The Committee recommended that the State party provide the author with an effective remedy. In the Committee's opinion, this entails guaranteeing the author regular access to her daughters, and that the State party ensure that the terms of the judgements in the author's favour are complied with. Given the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.</p>					
Colombia (<i>cont'd</i>)	563/1993, <i>Bautista de Arellana</i> A/52/40	X A/52/40, A/57/40 A/58/40, A/59/40, A/63/40	X			
	612/1995, <i>Arhuacos</i> A/52/40				X	X
	687/1996, <i>Rojas García</i> A/56/40	X A/58/40, A/59/40				X
	778/1997, <i>Coronel et al.</i> A/58/40	X A/59/40				X

	848/1999, <i>Rodríguez Orejuela</i> A/57/40	X A/58/40, A/59/40		X		X
	859/1999, <i>Jiménez Vaca</i> A/57/40	X A/58/40, A/59/40, A/61/40		X		X
	1298/2004, <i>Becerra</i> A/61/40	X A/62/40				X A/62/40
	1361/2005, <i>Casadiego</i> A/62/40	X A/63/40				X
...						

A/64/40 vol. II (2009)

...

Annex IX

Follow-up of the Human Rights Committee on individual communications under the Optional Protocol to the International Covenant on Civil and Political Rights

This report sets out all information provided by States parties and authors or their counsel since the last annual report (A/63/40).

...

<i>State party</i>	Colombia
<i>Case</i>	<i>Sanjuán Arévalo brothers, 181/1984</i>
<i>Views adopted on</i>	3 November 1989
<i>Issues and violations found</i>	Disappearance, arbitrary detention - articles 6 and 9.
<i>Remedy recommended</i>	Relevant measures taken by the State party in respect of the Committee's Views and, invites the State party to inform the Committee of further developments in the investigation of the disappearance of the Sanjuán brothers.
<i>Due date for State party response</i>	None. (No follow-up procedure in place at the time of adoption).
<i>Date of State party response</i>	Not known
<i>State party response</i>	On an unknown date after the adoption of the Views on 3 November 1989, the State party indicated to the Committee that in the absence of a specific remedy recommended by the Committee, the Ministerial Committee set up pursuant to Act No. 288/1996 did not recommend that compensation be paid to the victim.
<i>Author's comments</i>	On 31 July 2008, sisters of Alfredo Rafael and Samuel Humberto

Sanjuán Arévalo (Sanjuán brothers), requested the Committee to urge the State party to compensate the Sanjuán brothers' family for the damages caused due to their unlawful detention and forced disappearance. According to the authors, the State party refuses to grant any compensation, as compensation was not specifically recommended as a remedy by the Committee (resolution 15/1996, Ministry of Foreign Affairs). Apparently, the relatives of the other 11 people who were with the Sanjuán brothers and who were detained and involuntarily disappeared as well, have been compensated, because their case was presented to the Inter-American Commission of Human Rights, which concluded (report 1/92, case No. 10235) that "Colombia should grant compensation to the victims' relatives".

Consultations with the State party

The Committee members were reminded that on 18 July 2008, during the ninety-third session, a meeting was attended by Ivan Shearer, Special Rapporteur on follow-up, members of the Secretariat, Ms. Alma Viviana Perez Gomez and Mr. Alvaro Ayala Melendez from the Colombian permanent mission (see A/63/40, Vol. II, *Nydia Erika Bautista, Case No. 563/1993*, p. 523). The State party representatives responded on all of the Views adopted by the Committee. Of relevance to this case is the State party's response on compensation generally. The representatives referred to a written response from the State party (dated 18 July 2008) in which it stated in relation to the payment of compensation in four cases (*Fals Borda* No. 46/1979; *Salgar de Montejo*, No. 64/1979; *Sanjuan Arevalo brothers*, No. 181/1984; and *Fej*, No. 514/1992), that, as the Committee did not specifically recommend compensation in these cases, under Law 288/1966, the Committee of Ministers cannot make such a recommendation.

Committee's Decision

The Committee considers the dialogue ongoing.

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CCPR, CCPR/C/SR.2712 (2010)

Human Rights Committee
Ninety-eighth session

Summary record (partial) of the 2712th meeting
Held at Headquarters, New York,
on Thursday 25 March 2010, at 3pm

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Follow-up on views under the Optional Protocol

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2. *Ms. Wedgwood*, speaking as Special Rapporteur for follow-up on Views under the Optional Protocol, introduced the follow-up progress report, which included information received since the Committee's 97th session.

...

4. In case No. 1792/2008 (*Dauphin v. Canada*), she pointed out that, since she had dissented from the Committee's finding of violations of the Covenant, a Committee member who had shared the majority opinion should be present at her meeting with State party representatives, so that her dissenting view would not be cited in support of its dispute with the Committee's Views. With regard to case No. 612/1995 (*Arhuacos v. Colombia*), the Committee should reiterate its request for a response from the State party on its failure to prosecute any of the perpetrators involved in the torture and disappearance of the five authors, only two of which had received some compensation. Turning to case No. 1510/2006 (*Vojnović v. Croatia*), she suggested that the Committee should wait for a response from the author on whether he found the State party's allocation of an apartment comparable to his pre-war accommodation to be a satisfactory remedy.

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17. *The recommendations contained in the follow-up progress report of the Committee on individual communications were approved.*

The discussion covered in the summary record ended at 3.40 p.m.

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Chapter VI. Follow-up on individual communications under the Optional Protocol

202. The present chapter sets out all information provided by States parties and authors or their counsel since the last annual report (A/64/40).

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<i>State party</i>	Colombia
<i>Case</i>	<i>Arhuacos, 612/1995</i>
<i>Views adopted on</i>	29 July 1997
<i>Issues and violations found</i>	Arbitrary detention, torture, disappearance and death - articles 7 and 9 of the Covenant in the case of the Villafañe brothers and 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.
<i>Remedy recommended</i>	Effective remedy, which includes compensation for loss and injury and urges the State party to expedite the criminal proceedings for the prompt prosecution and trial of the persons responsible for the abduction, torture and death of Mr. Luis Napoleón Torres Crespo, Mr. Angel María Torres Arroyo and Mr. Antonio Hugues Chaparro Torres and of the persons responsible for the abduction and torture of the Villafañe brothers.
<i>Due date for State party response</i>	26 November 1997
<i>Date of State party response</i>	None
<i>State party response</i>	None
<i>Author's comments</i>	On 10 December 2009, the author submitted that the State Party

took proper measures regarding José Vicente and Amado Villafañe. (No further details are provided in this regard)

However, demands from the families of Luis Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres were dismissed. On 28 April 2009, the Committee of Ministers decided that the responsibility of State agents had not been proven in the death of the three people concerned. This conclusion was arrived at following an administrative judgment exonerating the agents in question. The author submitted that the State party, in failing to implement the Views, disregarded provisions of the national law, which stipulates the need for domestic instances to take into consideration actions from international organs (in this case the Human Rights Committee) when assessing cases. He also makes reference to provisions of the Vienna Convention regarding treaty law, particularly the "*pacta sunt servanda*" principle.

Committee's Decision

The Committee considers the dialogue ongoing

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