

HUMAN RIGHTS COMMITTEE

de Guerrero v. Colombia

Communication No. R.11/45

31 March 1982

VIEWS

Submitted by: Pedro Pablo Camargo on behalf of the husband of Maria Fanny Suarez de Guerrero

State party concerned: Colombia

Date of communication: 5 February 1979 (date of initial letter)

Date of decision on admissibility: 9 April 1981

The Human Rights Committee established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 31 March 1982,

Having concluded its consideration of communication No. R.11/45 submitted to the Committee by Pedro Pablo Camargo on behalf of the husband of Maria Fanny Suarez de Guerrero under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

Adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1.1 The communication (initial letter dated 5 February 1979 and further letters dated 26 June 1979, 2 June, 3 and 31 October 1980 and 2 January 1981} was submitted by Pedro Pablo Camargo, Professor of International Law of the National University of Colombia, at present residing in Quito, Ecuador. He submitted the communication on behalf of the husband of Maria Fanny Suarez de Guerrero.

1.2 The author of the Communication describes the relevant facts as follows: On 13 April 1978, the judge of the 77th Military Criminal Court of Investigation, himself a member of the police, ordered a raid to be carried out at the house at No. 136-67 Transversal 31 in the "Contador" district of Bogota. The order for the raid was issued to Major Carlos Julio Castano Rozo, the SIPEC Chief of the F-2 Police, Bogota Police Department. The raid was ordered in the belief that Miguel de German Ribon, former Ambassador of Colombia to France, who had been kidnapped some days earlier by a guerrilla organization, was being held prisoner in the house in question. Those taking part in the raid were Captains Jaime Patarroyo Barbosa and Jorge Noel Barrero Rodriguez; Lieutenants Alvaro Mendoza Contreras and Manuel Antonio Bravo Sarmiento; Corporal First Class Arturo Martin Moreno; Constables Joel de Jesus Alarcon Toro, Joaquin Leyton Dominguez, Efrain Morales Cardenas, Gustavos Ospina Rios and Jaime Quiroga, and a driver, Jose de los Santos Baquero. In spite of the fact that Miguel de German Ribon was not found, the police patrol decided to hide in the house to await the arrival of the "suspected kidnappers". They were killed as they arrived. In this way, seven innocent human beings were shot dead: Maria Fanny Suarez de Guerrero, Alvaro Enrique Vallejo, Eduardo Sabino Lloredo, Blanco Florez Vanegas, Juan Bautista Ortiz Ruiz, Omar Flores and Jorge Enrique Salcedo. Although the police stated initially that the victims had died while resisting arrest, brandishing and even firing various weapons, the report of the Institute of Forensic Medicine (Report No. 8683, of 17 April 1978), together with the ballistics reports and the results of the paraffin test, showed that none of the victims had fired a shot and that they had all been killed at point-blank range, some of them shot in the back or in the head. It was also established that the victims were not all killed at the same time, but at intervals, as they arrived at the house, and that most of them had been shot while trying to save themselves from the unexpected attack. In the case of Mrs. Maria Fanny Suarez de Guerrero, the forensic report showed that she had been shot several times after she had already died from a heart attack.

1.3 The author adds that, according to witnesses, the victims were not given the opportunity to surrender. He mentions that the police stated that they were dealing with persons with criminal records but that subsequent investigation by the police did not prove that the victims were kidnappers.

1.4 The author alleges that seven persons - including Maria Fanny Suarez de Guerrero - were arbitrarily killed by the police, that the police action was unjustified and that it has been inadequately investigated by the Colombian authorities. He claims that, at the beginning, the case was shelved under Legislative Decree No. 0070 of 20 January 1978 because the Colombian authorities considered that the police had acted within the powers granted by that Decree. He further alleges that there have been other cases of arbitrary killings by the army and the police on the pretext that they were dealing with suspicious people and that it has later been proved that the victims were either innocent or persecuted for political reasons.

1.5 Legislative Decree No. 0070* "introducing measures for the restoration of public order" amended article 25 of the Colombian Penal Code by adding a new paragraph 4. The substantive part of the Decree reads as follows:

"Article 1. For so long as public order remains disturbed and the national territory is in a

state of siege, article 25 of the Penal Code shall read as follows:

"Article 25. The [penal] act is justified if committed:

"... (4) By the members of the police force in the course of operations planned with the object of preventing and curbing the offences of extortion and kidnapping, and the production and processing of and trafficking ,n narcotic drugs".

1.6 The author states that Legislative Decree No. 0070 of 1978 has established a new ground of defence against a criminal charge so as to justify crimes committed by members of the police force when they are taking part in operations to repress certain types of offences. In other words, the otherwise penal act is justified and does not give rise to penal responsibility when it is committed by members of the police force. He further argues that, if public authorities are allowed to kill an individual because he is suspected of having committed certain types of offences specified in Decree No. 0070, it means that they are allowed to commit arbitrary acts and, by doing so, to violate fundamental human rights, in particular the most fundamental one of-all - the right to life. The author claims that Decree No. 0070 of 1978 violates articles 6, 7, 9 and 14 and 17 of the International Covenant on Civil and Political Rights because public authorities are allowed to violate the fundamental guarantees of security of person, of privacy, home and correspondence, individual liberty and integrity, and due process of law, in order to prevent and punish certain types of offences.

1.7 The author states that domestic remedies to declare Decree No. 0070 unconstitutional have been exhausted, since there is a decision of the Supreme Court of Colombia of 9 March 1980 upholding the Decree's constitutionality.

1.8 The author states that the case has not been submitted to any other procedure of international investigation or settlement.

2. On 9 August 1979, the Human Rights Committee decided to transmit the communications to the State party, under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility.

3.1 By letter dated 5 May 1980, the State party refuted the allegations made by the author of the communication that the enactment of Legislative Decree No. 0070 of 20 January 1978 constitutes a breach of articles 6, 7, 9, 14 and 17 of the Covenant.

3.2 The State party submitted that it cannot reasonably be claimed that this Decree establishes the death penalty or empowers the police to practice torture or cruel, inhuman or degrading treatment or that it infringes the rights or guarantees established by articles 9, 14 and 17 of the Covenant. It cited the ruling on the scope of the Decree given by the Supreme Court of Justice in its judgement of 9 March 1978, by which it held the Decree constitutional. The Court said in particular:

"... as can be seen, the Decree, in article 1, paragraph 2 (4), introduces a temporary addition to the current text of article 25 of the Penal Code, for the purpose of creating a new defence

to a, criminal charge; the Decree provides that it is a good defence in answer to such a charge to show that the punishable act was 'committed ... by the members of the police force in the course of operations planned with the object of preventing and curbing the offences of extortion and kidnapping and the production and processing of and trafficking in narcotic drugs'. This amendment contemplates a legal situation different from those referred to in the first three subparagraphs of 'article 25, which formerly constituted the entire article and hence has special characteristics.

"The sense in which the provision in question creates a different legal situation is that It does not deal with a case of obedience to a mandatory order given by a competent authority, nor with self-defence, nor with a state of necessity affecting an individual.

"The provision introduced' by Decree No. 70 concerns another class of circumstances to justify action taken by the police with the object of preventing or curbing the offences of extortion, kidnapping and the production and processing of and trafficking in narcotic drugs.

"On the one hand, the provision is broad in scope in that it does not limit the means of action, for under the provision both armed force and other means of coercion, persuasion or dissuasion may be used.

"On the other hand, however, the provision limits the field of action to the objectives referred to therein, namely, preventing and curbing the offences of kidnapping, extortion and the production and processing of and trafficking in narcotic drugs ..."

The Court observed that the Decree was obviously related to the fact that the national territory was in a state of siege and It further stated:

"... this is a special measure that involves a right of social defence; for, on the one hand, it is legitimate that the members of the armed forces who are obliged to take part in operations like those described and whose purpose it is to prevent or curb offences which, by their nature, are violent and are committed by means of violence against persons or property, should be protected by a justification of the punishable acts that they are constrained to commit, and, on the other hand, both the Government, acting on behalf of society, and society itself, have an interest in the defence of society and in ensuring that it is adequately defended by the agencies to which the law has entrusted the weapons for its defence".

3.3 In considering the provisions of Decree NO. 0070, the State party argued that it should be borne in mind that the new grounds do not establish a statutory presumption of justification of the act, for such a presumption must be expressed, as is required by article 232 of the Code of Criminal Procedure, which provides: "There is a statutory presumption if the law prescribes that an act shall constitute conclusive proof of another act". Accordingly, before the fourth ground in article 25 can be applied to a specific case, it is always necessary to weigh the circumstances of the act, in order to determine whether it is justifiable on that ground.

3.4 With regard to the specific incident involving the death of Maria Fanny Suarez de

Guerrero, the State party stated that: (a) in the course of a police operation on 13 April 1978 in the "Contador" district of Bogota the following persons died in the house at 136-67 Thirty-first Street: Maria Fanny Budfez de Guerrero, Alvaro Enrique Vallejo, Eduardo Sabino Lloredo, Blanca Florez Vanegas, Juan Bautista Ortiz Ruiz, Omar Florez and Jorge Enrique Salcedo; (b) the Office of the State Counsel for the national police instituted an administrative inquiry into the case and the judge of the 77th Criminal Military Court was ordered to hold a criminal investigation; (c) as a result of the criminal investigation, police captains Alvarez Mendoza Contreras and Jorge Noel Barreto Rodriguez, police lieutenant Manuel Bravo Sarmiento and officers Jesus Alarcon, Gustavo Ospina, Joaquin Dominguez, Arturo Moreno, Etrain Morales and Jose Sanchez were concerned in the criminal proceedings; (d) the trial had not yet been completed. Consequently, the State party submitted, domestic remedies of the local jurisdiction had not yet been exhausted.

4.1 In his comments dated 2 June 1980, the author stated that "the new ground included in Decree No. 0070 of 1978 does indeed establish 'a statutory presumption of justification of the act', because it is left to the police authorities themselves to determine what is justified, through the so-called 'military criminal judges' and the Higher Military Court, even if the victim or victims are civilians. Up to now all extrajudicial deaths caused by the police force have been justified by the police force itself, without any intervention of the ordinary courts".

4.2 As regards the events which took place in the "Contador" district of Bogota on 13 April 1978, the author maintained that it was the police themselves who entrusted the criminal investigation to the judge of the 77th Military Criminal Court and he, after more than two years, had not summoned those involved to appear in court: "There is no question of genuine criminal proceedings for, contrary to the principle that no one may be judge in his own cause, it is the police who have carried out the investigation with respect to themselves, and the military criminal procedure does not permit the civilian victims to be represented. Ordinary criminal procedure provides both for a criminal action and for a civil action for damages." The author further maintained that the Government of Colombia had not permitted the institution of civil proceedings on behalf of the victims in the military criminal case against the accused and he claimed that the application of domestic remedies was unreasonably prolonged.

5. On 25 July 1980 the Human Rights Committee decided to request the State party to furnish detailed information as to:

(a) How, if at all, the state of siege proclaimed in Colombia affected the present case;

(b) Whether the institution of civil proceedings for damages had been permitted on behalf of the victims of the police operation on 13 April 1978 in the "Contador" district of Bogota, and, if not, the reasons for any refusal to permit such proceedings;

(c) The reasons for the delay, for more than two years, in the adjudication of the Higher Military Court in the matter.

6.1 By letters dated 9 September and 1 October 1980 the State party submitted further information.

6.2 The State party maintained that the state of siege might affect this case if the following conditions were met:

"(a) If those responsible for the violent death of various persons in the 'Contador' district police operation invoke in justification of the act the new ground provided in Decree 0070 of 1978 promulgated in exercise of the powers conferred by article 121 of the National Constitution; and

(b) If the Military Tribunal (Oral Proceedings) (Consejo de Guerra Verbal) which is to try those responsible for the acts in question agrees that the ground mentioned is applicable thereto. If it should consider that the ground is not applicable, no effect would derive from the state of siege. Only when the decision of the Military Tribunal is delivered will it be possible to establish whether, by virtue of Decree 0070 Of 1978, the state of siege does in fact affect this case."

The State party added:

"As regards the questions of trial formalities, jurisdiction and competence, the state of siege has no effect on either the criminal or the civil proceedings or the action under administrative law that could be brought if the injured parties claimed compensation for the damage suffered."

6.3 As regards the question whether the institution of civil proceedings for damages had been permitted on behalf of the victims of the police operation, the State party affirmed that the institution of a civil action in conjunction with military proceedings was restricted to proceedings dealing with ordinary offences and that, since the present case was a military offence, no civil action could be instituted in conjunction with the military proceedings. Military offences are "those covered by the Code of Military Criminal Justice, committed by soldiers on active service and in relation to their service". However, the State party submitted that persons who have suffered loss or injury may apply to an administrative tribunal to obtain the appropriate damages on the ground of the extracontractual responsibility of the State. Such a claim may be made independently of the outcome of the criminal trial and even if it has not begun or been concluded. This is because the State must bear responsibility for the abuses and negligence of its agents when they unjustifiably result in damage. Thus the institution of a civil action in conjunction with military criminal proceedings is completely unimportant for this purpose, since another remedy is available to those suffering loss or injury. In addition, the State party explained that the Code of Military Criminal Justice contains the following provisions on compensation:

"Article 76. On any conviction for offences that result in loss or injury to any person, either natural or legal, those responsible shall be jointly sentenced to compensate for all such damage as has been caused.

6.4 As regards the reasons for the delay, for more than two years, in the adjudication of the Higher Military Court in the matter, the State party submitted that this was due to the heavy workload of all the judges and prosecutors. The Office of the State Counsel for the National Police, which is responsible for exercising judicial supervision over the system of military criminal justice with regard to proceedings against national police personnel (Decree-Law 521 of 1971) through general and special inspections (Decree-Law 2500 of 1970), found that the delay in handling the case concerning the events in the "Contador" district was justified, since it was due to the heavy workload and not to negligence, it having been established that the judges produce a high monthly average of decisions.

6.5 As regards the administrative inquiry instituted by the Office of the State Counsel for the national police into the incident in the "Contador" district, the State party in its letter of 1 October 1980 informed the Committee that this had been completed. The Office of the State Counsel had requested the dismissal of all the members of the patrol involved in the operation. This dismissal was ordered on 16 June 1980 and had been carried out.

6.6 Nevertheless, the State party reiterated that domestic remedies had not been exhausted.

7.1 In further letters dated 3 and 31 October 1980 the author submitted the following additional information: "... the investigation into the massacre on 13 April 1978 was conducted by the very police officer who had led the raid, namely Captain Carlos Julio Castano Rozo, the SIPEC Chief of the Bogota Police Department". He further stated in July 1980, the Inspector General of Police, General Fabio Arturo Londono Cardenas, acting as judge of first instance, issued an order for all criminal proceedings against those charged with the massacre to be discontinued, on the basis of article 417 of the Code of Military Criminal Justice, which states:

"Article 417. If, at any stage of the proceedings, it becomes fully established that the act for which charges have been laid or which is under investigation did not take place, or that it was not committed by the accused, or that the law does not consider it a criminal offence, or that there were no grounds for instituting or continuing the criminal proceedings, the judge of first instance or the investigating official shall, with the approval of the Public Prosecutor's department, issue an official ruling to that effect and shall order all proceedings against the accused to be discontinued."

The author alleged that the Inspector General of Police invoked the ground of justification of the criminal act provided for in article 1 of Decree No. 0076, of 20 January 1978. This ruling went to the Higher Military Court for ex officio review. The Higher Military Court, through its Fourth Chamber, annulled the decision of the Inspector General of Police: The dossier then remained in the hands of the judge of first instance and the author stated that up to the date of his letter (3 October 1980) no order had been issued convening a military court to try the accused (Consejo Verbal de Guerra).

7.2 However, in his letter of 2 January 1981, the author informed the Committee that on 30 December 1980 a military court acquitted the 11 members of the Police Department. He stated that Dr. Martinez Zapata, the lawyer for the "Contador" victims, was not allowed to

attend the trial, submit appeals or make objections. He affirmed that the acquittal was based on Decree Law No. 0070 of 1978.

7.3 The author further stated that as a result of the acquittal no administrative suit for compensation could be filed and the police officers and agents, who were dismissed on the recommendation of the Deputy Procurator General for Police Affairs, would be reinstated in their functions. The author had earlier stated:

"... in principle, an action for compensation may be brought before an administrative tribunal. However, if the accused are acquitted and the State turns out not to be responsible, how could such an action be brought before an administrative tribunal? It is quite clear, moreover, that the lawyers for the victims are not simply seeking compensation; above all they want justice to be done and a declaration that Legislative Decree No. 0070 of 1978 is manifestly a breach of articles 6, 7, 14 and 17 of the International Covenant on Civil and Political Rights."

7.4 The author claimed that this was a serious case of a denial of justice which definitively confirmed that murders of civilians by the police would go unpunished.

8.1 The Committee found, on the basis of the information before it, that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication since there was no indication that [the same matter had been submitted under another procedure of international investigation or settlement.

8.2 As to the question of exhaustion of domestic remedies, the Committee, having been informed by the author of the communication that on 30 December 1980 the military tribunal acquitted the 11 members of the Police Department who were on trial and this information not having been refuted by the State party, understood that the military tribunal found the measures taken by the police which resulted in the death of Maria Fanny Suarez de Guerrero to have been justified. It appeared from the information before the Committee that there was no further possibility of an effective domestic remedy in regard to the matters complained of. The Committee was therefore unable to conclude on the basis of the information submitted by the State party and the author, that there were still effective remedies available which could be invoked on behalf of the alleged victim. Accordingly the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol. The Committee stated, however, that this decision could be reviewed in the light of any further explanations which the State party might submit under article 4 (2) of the Optional Protocol.

9. On 9 April 1981, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if

any, that may have been taken by it. These should include a copy of the judgement of the military tribunal acquitting the members of the Police Department who were on trial.

10. The time limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 26 November 1981. To date, no submission has been received from the State party in addition to those received prior to the decisions on admissibility.

11.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol. The Committee bases its views on the following facts, which are not in dispute or which are unrefuted by the State party.

11.2 Legislative Decree No. 0070 of 20 January 1978 amended article 25 of the Penal Code "for so long as the public order remains disturbed and the national territory is in a state of seige" (see text of Decree in appendix below). The Decree established a new ground of defence that may be pleaded by members of the police force to exonerate them if an otherwise punishable act was committed "in the course of operations planned with the object of preventing and curbing the offences of extortion and kidnapping, and the production and processing of and trafficking in narcotic drugs".

11.3 On 13 April 1978, the judge of the 77th Military Criminal Court of Investigation, himself a member of the police ordered a raid to be carried out at the house at No. 136-67 Transversal 31 in the "Contador" district of Bogota. The order for the raid was issued to Major Carlos Julio Castano Roza, the SIPEC Chief of the F-2 Police, Bogota Police Department. The raid was ordered in the belief that Miguel de German Ribon, former Ambassador of Colombia to France, who had been kidnapped some days earlier by a guerrilla organization, was being held prisoner in the house in question.

11.4 In spite of the fact that Miguel de German Ribon was not found, the police patrol decided to hide in the house to await the arrival of the "suspected kidnappers". Seven persons who subsequently entered the house were shot by the police and died. These persons were: Maria Fanny Suarez de Guerrero, Alvaro Enrique Vallejo, Eduardo Sabino Lloredo, Blanca Florez Vanegas, Juan Bautista Ortiz Ruiz, Omar Florez and Jorge Enrique Salcedo.

11.5 Although the police initially stated that the victims had died while resisting arrest, brandishing and even firing various weapons, the report of the Institute of Forensic Medicine (Report No. 8683, of 17 April 1978), together with the ballistics reports and the results of the paraffin test, showed that none of the victims had fired a shot and that they had all been killed at point-blank range, some of them shot in the back or in the head. It was also established that the victims were not all killed at the same time, but at intervals, as they arrived at the house, and that most of them had been shot while trying to save themselves from the unexpected attack. In the case of Mrs. Maria Fanny Suarez de Guerrero, the forensic report showed that she had been shot several times after she already died from a heart attack.

11.6 The Office of the State Counsel for the national police instituted an administrative

inquiry into the case. The administrative inquiry was completed and the Office of the State Counsel for the national police requested the dismissal of all the members of the patrol involved in the operation. This dismissal was ordered on 16 June 1980.

11.7 In addition, the judge of the 77th Military Criminal Court was ordered to hold a criminal investigation into the case. The preliminary investigation of the case was conducted by Major Carlos Julio Castano Rozo. This investigation did not prove that the victims of the police action were kidnappers. In July 1980, the Inspector General of Police, acting as judge of first instance, issued an order for all criminal proceedings against those charged with the violent death of these seven persons during the police operation on 13 April 1978 in the "Contador" district of Bogota to be discontinued. This order was grounded on article 7 of Decree No. 0070. A Higher Military Court as a result of an ex officio review, annulled the decision of the Inspector General of Police. On 31 December 1980 a military tribunal (Consojo de Guerra Verbal), to which the case had been referred for retrial, again acquitted the 11 members of the Police Department who had been involved in the police operation. The acquittal was again based on Decree-Law No. 0070 of 1978.

11.8 At no moment could a civil action for damages be instituted in conjunction with the military criminal proceedings. An action for compensation for the persons injured by the police operation in the "Contador" district depended first on determining the criminal liability of the accused. The accused having been acquitted, no civil or administrative suit could be filed to obtain compensation.

12.1 In formulating its views, the Human Rights Committee also takes into account the following considerations:

12.2 The Committee notes that Decree No. 0070 of 1978 refers to a situation of disturbed public order in Colombia. The Committee also notes that the Government of Colombia in its note of 18 July 1980 to the Secretary-General of the United Nations (reproduced in document CCPR/C/2/Add.4), which was designed to comply with the formal requirements laid down in article 4 (3) of the Covenant, made reference to the existence of a state of siege in all the national territory since 1976 and to the necessity to adopt extraordinary measures within the framework of the legal regime provided for in the National Constitution for such situations. With regard to the rights guaranteed by the Covenant, the Government of Colombia declared that "temporary measures have been adopted that have the effect of limiting the application of article 19, paragraph 2, and article 21 of that Covenant". The Committee observes that the present case is not concerned with articles 19 and 21 of the Covenant. It further observes that according to article 4 (2) of the Covenant there are several rights recognized by the Covenant which cannot be derogated from by a State party. These include articles 6 and 7 which have been invoked in the present case.

13.1 Article 6 (1) of the Covenant provides:

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

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

13.2 In the present case it is evident from the fact that seven persons lost their lives as a result of the deliberate action of the police that the deprivation of life was intentional. Moreover, the police action was apparently taken without warning to the victims and without giving them any opportunity to surrender to the police patrol or to offer any explanation of their presence or intentions. There is no evidence that the action of the police was necessary in their own defence or that of others, or that it was necessary to effect the arrest or prevent the escape of the persons concerned. Moreover, the victims were no more than suspects of the kidnapping which had occurred some days earlier and their killing by the police deprived them of all the protections of due process of law laid down by the Covenant. In the case of Mrs. Maria Fanny Suarez de Guerrero, the forensic report showed that she had been shot several times after she had already died from a heart attack. There can be no reasonable doubt that her death was caused by the police patrol.

13.3 For these reasons it is the Committee's view that the action of the police resulting in the death of Mrs. Maria Fanny Suarez d Guerrero was disproportionate to the requirements of law enforcement in the circumstances of the case and that she was arbitrarily deprived of her life contrary to article 6 (1) of the International Covenant on Civil and Political Rights. Inasmuch as the police action was made justifiable as a matter of Colombian law by Legislative Decree No. 0070 of 20 January 1978, the right to life was not adequately protected by the law of Colombia as required by article 6 (1).

14. It is not necessary to consider further alleged violations, arising from the same facts, of other articles of the Covenant. Any such violations are subsumed by the even more serious violations of article 6.

15. The Committee is accordingly of the view that the State party should take the necessary measures to compensate the husband of Mrs. Maria Fanny Suarez de Guerrero for the death of his wife and to ensure that the right to life is duly protected by amending the law.

* See the text of Legislative Decree No. 0070 in the appendix below.

APPENDIX

Decree No. 0070 of 20 January 1978

introducing measures for the restoration of public order

The President of the Republic of Colombia

in the exercise of the authority vested in him by article 121 of the National Constitution, and

Considering:

That, by Decree No. 2131 of 1976, the public order was declared to be disturbed and a state of siege was proclaimed throughout the national territory;

That the disturbance of the public order has increased with the intensification of organized crime, particularly as a result of the commission of offences against individual freedom, against the life and integrity of the person and against the health and integrity of society;

That it is the duty of the Government to take whatever measures are conducive to the restoration of a normal situation;

Decrees:

Article 1. For so long as the public order remains disturbed and the national territory is in a state of siege, article 25 of the Penal Code shall read as follows:

"Article 25. The act is justified if committed:

"(1) Pursuant to a legislative provision or to a mandatory order given by a competent authority;

"(2) By a person who is constrained to defend himself or another against a direct or wrongful act of violence against the person, his honour or his property, provided that the defence is proportionate to the attack;

"The circumstances referred to in this subparagraph are presumed to exist in any case where a person during the night repels any person who climbs or forcibly enters the enclosure, walls, Coors or windows of his dwelling or outbuildings, whatever the harm done to the attacker, or where a person finds a stranger in his dwelling, provided that in the latter case there is no justification for the stranger's presence in the premises and that the stranger offers resistance;

"(3) By a person who has to save himself or another from a serious and imminent danger to the person which cannot be avoided in any other way, which is not the result of his own action and to which he is not exposed in the course of the exercise of his profession or occupation;

"(4) By the members of the police force in the course of operations planned with the object of preventing and curbing the offences of extortion and kidnapping, and the production and

processing of and trafficking in narcotic drugs".

Article 2

This decree shall enter into force on the date of its enactment and shall suspend any provisions inconsistent therewith.

For transmittal and enforcement

Done in Bogota, D.E., on 20 January 1978.

(Signed) Alfonso Lopez Michelsen

Minister of the Interior

(Signed) Alfredo Araujo-Grau

Minister for Foreign Affairs

(Signed) Indalecio Lievano Aguirre

Minister of Justice

(Signed) Cesar Gomez Estrada

Minister of Finance

(Signed) Alfonso Palacio Rudas