



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 2399/2014\*\*

#### Decision of the Human Rights Committee under the Optional Protocol regarding communication No. 2399/2014\*\*\*

<i>Submitted by:</i>	C.L.C.D., V.F.C. and A.F.C. (represented by Gustavo Gallón Giraldo and Federico Andreu Guzmán — Colombian Commission of Jurists)
<i>Alleged victims:</i>	The authors and their late husband/father, A.F.D.
<i>State party:</i>	Colombia
<i>Date of communication:</i>	8 November 2013 (initial submission)
<i>Document references:</i>	Special Rapporteur's decision under rules 92 and 97, transmitted to the State party on 28 May 2014 (not issued in document form)
<i>Date of decision:</i>	30 March 2016
<i>Subject matter:</i>	Extrajudicial execution of a member of the organization known as the Movimiento 19 de Abril (M-19)
<i>Substantive issues:</i>	Right to life; prohibition of torture and other cruel, inhuman or degrading treatment or punishment; right to liberty and security of person; freedom to choose one's residence; right to protection from arbitrary and unlawful interference with the family and home; right to child protection; right to an effective remedy

\* Adopted by the Committee at its 116th session (7-31 March 2016).

\*\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Muhumuza Laki, Photini Pazartzis, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.



<i>Procedural issues:</i>	Exhaustion of domestic remedies; abuse of the right of submission of communications
<i>Articles of the Covenant:</i>	Articles 2 (3), 6 (1), 7, 9 (1), 12 (1), 17 and 24
<i>Articles of the Optional Protocol</i>	Articles 3, 5 (2) (b)

1.1 The authors of the communication are C.L.C.D., of Colombian and Spanish nationality, born on 21 February 1947; V.F.C., of Colombian nationality, born on 28 August 1976; and A.F.C., of Colombian and French nationality, born on 25 June 1978. They are submitting the communication on their own behalf and on behalf of A.F.D. (the husband of C.L.C.D. and father of V.F.C. and A.F.C.), also of Colombian nationality, born on 24 July 1946. The authors claim that the State party violated the rights of A.F.D. under article 6 (1) of the International Covenant on Civil and Political Rights; the authors' rights under articles 7, 9 (1), 12 (1), 17 and 2 (3) of the Covenant; and the rights of V.F.C. and A.F.C. under article 24 of the Covenant.<sup>1</sup> The authors are represented by counsel.

1.2 On 25 August 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to examine the admissibility of the communication separately from the merits, in accordance with rule 97 of the Committee's rules of procedure.

#### **The facts as submitted by the authors**

2.1 A.F.D. was among the founders of the Movimiento 19 de Abril (M-19), in which he held various leadership positions. The authors claim that hundreds of persons suspected of being M-19 members or sympathizers were persecuted and arrested by the military; that, in this context, on 27 October 1979, A.F.D. was arrested in Bogotá and tortured by members of the army for several days; and that he was subsequently brought before a military court and tried by a summary court martial.

2.2 Given that the authorities were arresting relatives of M-19 members, C.L.C.D. was forced to change the identity of her daughters V.F.C. and A.F.C. — who were minors at the time — in order to protect them and ensure their security and physical safety. Both daughters were registered as having been born in Cali and as being the daughters of W.F., the brother of A.F.D. The authors claim that, in the light of their family member's arrest and trial, they were obliged to leave Colombia to protect their lives and ensure their physical safety and thus fled to Panama.

2.3 In June 1982, A.F.D. was sentenced to 26 years' imprisonment. However, in December of that year, the High Court of Bogotá granted him amnesty under Act No. 35 of 19 November 1982, by which an amnesty was decreed and provisions issued aimed at re-establishing and preserving peace.

2.4 In 1985, the authors returned to the State party. They were subjected to constant monitoring and telephone tapping, so they left Colombia again in December 1985, in fear for their lives.

2.5 In 1986, A.F.D., together with other members of M-19, made contact with the authorities in order to seek a new peace agreement. As a result of these contacts, several M-19 leaders were captured and executed. On 13 March 1986, A.F.D. was at the apartment of R.R.P., a well-known composer, in the centre of Bogotá. The authors claim that, according to eyewitness accounts, members of the Special Operations Group of the national police force burst into the house, shot A.F.D. and then shot the wife of R.R.P., killing both of

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<sup>1</sup> The Optional Protocol entered into force for the State party on 23 March 1976.

them. In the light of these facts and the fear of being persecuted by the authorities, the authors decided not to return to Colombia and took up residence in Mexico.

2.6 Criminal Court No. 75 opened a preliminary inquiry. The authors argue that the investigations carried out by Criminal Court No. 75, including the testimony that was gathered, the inspection of the crime scene, the at-the-scene examinations of the corpses and the forensic evidence, indicate that A.F.D. and the wife of R.R.P. were extrajudicially executed by the members of the Special Operations Group; that the objective of the operation had never been to arrest A.F.D., but instead to kill him; and that members of the police and the army should thus be held responsible for his death.

2.7 Meanwhile, on 15 March 1986, the Military Criminal Court (Court No. 78) opened a preliminary inquiry into the same events.

2.8 In addition, on 22 May 1986, R.R.P. lodged a complaint with the President of the Republic concerning the death of his wife. On 8 July 1986, the Office of the Specialized Counsel for the National Police within the Office of the Counsel General of the Nation opened a preliminary investigation, which was followed by a disciplinary inquiry into alleged wrongdoing involving the use of violence resulting in the loss of the life of the wife of R.R.P. as a result of actions which also led to the death of the authors' family member. The Directorate General of the National Police, for its part, initiated a procedure known as an "internal disciplinary investigation" into the same events. On 21 July 1986, however, the case was closed, as it had been determined that the operation had been carried out in accordance with the laws and regulations governing the police. On 29 December 1986, the Office of the Specialized Counsel for the National Police decided to close the disciplinary inquiry pursuant to the decision to close the internal disciplinary proceedings conducted by the national police, invoking the *non bis in idem* principle.

2.9 On 4 March 1987, the Military Court closed its investigation. On 24 March 1987, the Brigadier General, commander of the Bogotá Metropolitan Police Department, acting as a judge of first instance, rendered a judgment in which he stated that there was insufficient cause for court-martialling a first lieutenant, two non-commissioned officers and two police officers in connection with the killings. He therefore issued an order to suspend the proceedings against these persons. On 8 June 1987, the Higher Military Tribunal upheld the ruling issued in first instance.

2.10 Between 1988 and 1989, the Government of the State party entered into negotiations with M-19 and the People's Liberation Army. The authors claim that the military forces opposed the negotiation process and that several members of M-19 and the People's Liberation Army were tortured, disappeared or killed in military and police operations. Other members of these organizations managed to leave the country and seek refuge abroad. In August 1989, a former police officer made claims before the Counsel General alleging that members of the national police had committed several crimes, including the murder of A.F.D., and that an intelligence and counter-intelligence army battalion was investigating and following several people, including the lawyer J.E.U.M., who was his legal representative and had defended A.F.D. and other members of M-19 at the court martial. The Office of the Counsel General, however, did not take any action of its own motion to reopen the case of A.F.D.

2.11 In November 1989, C.L.C.D. travelled to Colombia to attend her father's funeral. In December of that year, V.F.C. and A.F.C. also returned to the State party to reunite with their mother and live with her in Bogotá, where they completed their high school and university studies. C.L.C.D. encountered great difficulty in finding employment owing to the fact that she was the widow of a former M-19 general commander and that persons who had been active in or associated with that organization were being persecuted.

2.12 Under a peace agreement signed with the Government on 11 March 1990, M-19 demobilized and became a legal political party known as the M-19 Democratic Alliance. Nevertheless, members and supporters of the organization continued to be victims of persecution and crimes. Indeed, the M-19 Democratic Alliance candidate in the presidential elections, the former M-19 commander C.P.L., was killed on 26 April 1990.

2.13 On 14 May 1992, the Administrative Court of Cundinamarca issued a judgment concerning a claim for direct reparation from the State, brought by R.R.P. and his children, and ordered the State to pay damages to them. The judgment was upheld by the Council of State.

2.14 The authors claim that, on 18 April 1998, members of the military intelligence service assassinated the lawyer J.E.U.M. in his office in Bogotá.

2.15 Beginning in 2000, C.L.C.D. participated as a founding member in the non-governmental organization Colectivo de Mujeres Excombatientes, which was established by a group of women who were former combatants with M-19 and other organizations that had signed peace agreements with the Government.

2.16 In 2000, owing to threats received by her family, V.F.C. travelled to France, where she obtained refugee status. In 2001, A.F.C. left Colombia to reside in France. At the time that the communication was submitted to the Committee, both were residing in France. The authors claim that, beginning in 2002 and during the first few months of 2003, C.L.C.D. was subjected to threats, surveillance and monitoring by unidentified persons and her home phone was tapped; that on 11 September 2002, while she was away from Bogotá, strangers broke into her apartment and stole her computer, photographs, her passport and those of both her daughters; and that robbery was not the motive for the intrusion into her home. C.L.C.D. reported these events to the criminal investigation police in Bogotá and to the Presidential Human Rights and International Humanitarian Law Programme. These events coincided with the request submitted by the Colombian Commission of Jurists to the Counsel General for access to copies of the record of the disciplinary investigation into the murder of A.F.D.

2.17 Given that the authorities were unable to guarantee the security and personal safety of C.L.C.D., in October 2003 she travelled to Spain, where she obtained a residence permit on the grounds of exceptional circumstances relating to security considerations. C.L.C.D. lived in Spain until 2009. After staying for a period of time in Mexico, C.L.C.D. returned to Colombia in 2011, where she currently resides.

2.18 On 10 June 2011, the Congress enacted Act No. 1448, laying down measures for the provision of support, assistance and comprehensive redress to victims of the internal armed conflict and incorporating other provisions (the Victims and Land Restitution Act). The authors note that the Act establishes, in general terms, that all persons who, individually or collectively, have suffered harm caused by events that occurred on or after 1 January 1985 as a result of violations of international humanitarian law or grave and flagrant violations of international human rights standards during the internal armed conflict are to be treated as victims. However, the Act expressly excludes from the definition of victim all members of illegal organized armed groups and their family members as indirect victims of the harm suffered by the members of those groups.

### **The complaint**

3.1 The authors claim that the State party violated the rights of A.F.D. under article 6 (1), as well as their own rights under articles 7, 9 (1), 12 (1), 17 and 2 (3), and the rights of V.F.C. and A.F.C. under article 24 of the Covenant.

3.2 The authors refer to the decisions of the Administrative Court of Cundinamarca and the Council of State, and they contend that the death of their family member at the hands of the Special Operations Group of the national police force was a deliberate action by State actors that constituted an arbitrary deprivation of life in violation of article 6 (1), of the Covenant. Even though the deprivation of life by State authorities is a matter of extreme gravity that should be effectively investigated, in the case of A.F.D., the investigation was carried out by the same institution that was implicated in the crime, namely the criminal investigation police of Bogotá, and the actions of the military criminal court were never aimed at shedding light on the facts or identifying the perpetrators and bringing them to justice. They claim that military courts have no jurisdiction to try cases of serious human rights violations, including extrajudicial executions, and that these crimes must be investigated and tried by ordinary courts.<sup>2</sup>

3.3 The authors claim that the fact that no light has been shed on the circumstances surrounding the death of A.F.D., that the perpetrators have not been held criminally liable and that those responsible for his extrajudicial execution enjoy impunity has caused them severe suffering, in violation of their rights under article 7 of the Covenant.

3.4 With regard to article 9 (1) of the Covenant, the authors claim that the State party did not take measures to ensure their safety and security and that, as a result they were forced to leave the country.<sup>3</sup> They add that, although the Presidential Human Rights and International Humanitarian Law Programme and the Protection Unit of the Human Rights Directorate of the Ministry of the Interior and Justice supported the application that C.L.C.D. submitted to Spain in connection with her second period of exile, this does not exonerate the State party from its obligation to guarantee her right to personal security and to reside in her own country. On the contrary, it indicates that the State was unable to protect those rights.

3.5 The State party violated the authors' rights under articles 12 and 17 of the Covenant. The situation of personal insecurity that they have experienced since 1979, and particularly following the death of their family member, has forced them to take various measures to avoid persecution. V.F.C. and A.F.C. had to change their identity, and the authors were obliged to live abroad against their will for several lengthy periods.

3.6 At the time of their father's death, V.F.C. and A.F.C. were 9 and 7 years old respectively. Nevertheless, in violation of article 24 (1) of the Covenant, the State party failed to take any special protection measures in the light of their status as minors.

3.7 The authorities did not conduct an effective investigation into the death of their family member, and the authors did not have access to an effective remedy to clarify the circumstances of his death or to protect their own rights under articles 7, 9 (1), 12 (1), 17 and 24, in violation of article 2 (3) of the Covenant.

3.8 The authors claim that they have not had access to an effective remedy. At the time that the events in question occurred, criminal procedural laws governing proceedings in the ordinary courts (Decree No. 409 of 3 May 1971 and Act No. 2 of 21 January 1982) allowed persons to file as civil parties to the prosecution once the trial was under way, but not at the preliminary inquiry or investigation stage. Later revisions of the Code of Criminal

<sup>2</sup> The authors refer to paragraphs 5 and 6 of the Human Rights Committee's concluding observations concerning the third periodic report of Colombia (CCPR/C/79/Add.2) and the draft principles governing the administration of justice through military tribunals prepared by the Special Rapporteur of the United Nations Sub-Commission on the Promotion and Protection of Human Rights, Mr. Emmanuel Decaux (E/CN.4/2006/58).

<sup>3</sup> The authors refer to the Committee's jurisprudence in relation to communication No. 859/1999, *Jiménez Vaca v. Colombia*, Views of 25 March 2002, and communication No. 195/1985, *Delgado Páez v. Colombia*, Views of 12 July 1990.

Procedure — enacted through Decree No. 050 of 1987, Decree No. 2700 of 30 November 1991 and Act No. 600 of 2000 — also prohibited persons from filing as civil parties to the prosecution during the preliminary stage of criminal proceedings. This restriction was abolished by the Constitutional Court in April 2002. Therefore, under the procedural legislation that was in force until 2002, the authors were unable to file as civil parties to the prosecution in the preliminary stage of the criminal proceedings, which would have allowed them to challenge the actions of the military criminal court on the basis of a conflict of jurisdiction. Moreover, the authors were not empowered to file as civil parties to the prosecution in the proceedings of the military court because the Military Criminal Code of 1958, which was in force at that time, allowed victims or their legal beneficiaries to file as civil parties to the prosecution only in cases concerning ordinary offences and prohibited such proceedings with respect to strictly military offences. Also, the case law of the Higher Military Tribunal and other bodies in the military criminal court system excluded the possibility of filing as civil parties to the prosecution with respect to ordinary crimes committed in the performance of duties. In any case, the military criminal courts cannot be considered an effective remedy. Lastly, the authors submit that, because they were residing abroad for security reasons, they were unable to bring reparation claims against the State before the system of administrative justice, since the Administrative Code stipulated a two-year statute of limitations, counting from the date when the events occurred, on claims for direct reparation.

3.9 The authors contend that, in practice, they were unable to submit their communication to the Committee any earlier for security reasons. They claim that the Optional Protocol does not establish a deadline for submitting a communication and that the mere passage of time between the date when the events occurred and the date when the communication was submitted does not in itself constitute an obstacle that would prevent the Committee from deciding on the merits of a case under its consideration.<sup>4</sup> In the case at hand, there are exceptional circumstances that make this a *sui generis* case, in the light of the position of A.F.D. as a member and leader of M-19, which the military forces viewed as an enemy armed group that must be eliminated. The authors add that, during the years following the death of A.F.D., M-19 members were killed and disappeared and their families lived in terror, and many people were forced into exile. They point out that throughout the 1990s there were massive human rights violations and widespread impunity,<sup>5</sup> as well as persecution of officials who investigated serious human rights violations committed against members or former members of M-19. Similarly, lawyers who represented victims of human rights violations were persecuted and, in some cases, murdered, as was the case with their legal counsel, J.E.U.M. Given this situation, C.L.C.D. had a well-founded and legitimate fear that any claims she might bring before international bodies against the State party could expose her to serious danger and put her life and personal safety and that of her two daughters at risk. During the period from 1989 to 2003, when she and her children resided in the State party, naturally their priority was to ensure

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<sup>4</sup> The authors refer to the Committee's jurisprudence in relation to communication No. 1618/2007, *Frantisek Brychta v. Czech Republic*, decision adopted on 27 October 2009, para. 6.3; communication No. 1623/2007, *Guerra de la Esquiella v. Colombia*, Views of 18 March 2010, para 8.3; and communication No. 1479/2006, *Persan v. Czech Republic*, Views of 24 March 2009, para. 6.3.

<sup>5</sup> The authors refer to the Human Rights Committee's concluding observations concerning the fourth periodic report of Colombia (CCPR/C/79/Add.76), paras. 15 and 18; the report of the United Nations High Commissioner for Human Rights (E/CN.4/1998/16), para. 172; the report of the Special Rapporteur on the independence of judges and lawyers on his mission to Colombia (E/CN.4/1998/39/Add.2), paras. 26 and 27; the report of the United Nations High Commissioner for Human Rights on the Office in Colombia (E/CN.4/1999/8), para. 150; and the third report on the human rights situation in Colombia of the Organization of American States (OEA/Ser.L/V/II.102, Doc. 9 rev. 1).

their own survival, and not to take any legal action that might put them at risk yet again. They were nonetheless subjected to persecution and threats and therefore had to leave the country once more. Finally, having returned to the State party in 2011, and in the light of the statements made by the Government to the effect that it would put forward legislation to protect the victims of the armed conflict, C.L.C.D. had hope of obtaining truth, justice and reparation for the death of her husband and the violations of their rights. However, the law that was ultimately passed did not provide them with that possibility.

#### **State party's observations on admissibility**

4.1 On 17 February 2015, the State party submitted its observations on the admissibility of the communication. It submits that the communication is inadmissible on the grounds that domestic remedies have not been exhausted, that it constitutes an abuse of the right of submission and that it is manifestly unfounded.

4.2 The State party submits that the communication primarily reflects the authors' dissatisfaction with the judgments issued by the national courts concerning the death of their family member, and that they are asking the Committee to act as an appeal court (of fourth instance) to challenge the judicial proceedings of the military criminal justice system. However, it is not for the Committee to review judicial decisions issued by national courts that have been legitimately constituted and established pursuant to the Constitution, or to assess the facts, evidence and investigation of a case heard by national courts.

4.3 The authors' communication constitutes an abuse of the right to submit a communication. While the Optional Protocol does not establish a deadline for submitting a communication to the Committee as regional human rights bodies do, in its jurisprudence the Committee has deemed some communications to be inadmissible on the ground of abuse of the right of submission, owing to the amount of time elapsed between when the facts occurred and when the case was submitted to the Committee.

4.4 In the case at hand, there was no obstacle preventing the authors from submitting a communication to the Committee earlier, at any point during a period of at least two decades. While at some point there might have been exceptional circumstances at play that would have prevented them from approaching the Committee, that was no longer the case as from around 1989, when the authors returned to the State party and took up residence in Bogotá. Even if it was previously not possible to submit the communication, as the authors claim, C.L.C.D. returned to live in the State party in 2011, and yet she did not submit the communication until 8 November 2013. Furthermore, the State party contends that the authors are abusing their right of submission by deliberately providing false or distorted information. For example, they claim that they suffered from a "widespread climate of persecution" that prevented them from remaining in the State party and availing themselves of the necessary legal remedies. This is contradicted, however, by the fact that V.F.C. and A.F.C. were able to complete their education, at both the basic and university levels, under completely normal circumstances, and that C.L.C.D. carried out very conspicuous activities as a founding member of the non-governmental organization Colectivo de Mujeres Excombatientes. If C.L.C.D. had believed that her life was at risk, she would not have led this organization, which is made up of women who previously served as combatants in M-19 and other organizations. On the contrary, the Colectivo de Mujeres Excombatientes was given ample room to carry out its activities. Lastly, the peace process entered into with M-19 was successful and culminated in the signing of the peace agreement on 9 March 1990. As a result of this agreement and an amnesty granted to former M-19 combatants, the latter were able to fully exercise their rights and even participated as the M-19 Democratic Alliance in the Constituent Assembly that prepared the Constitution adopted in 1991.

4.5 The authors did not exhaust domestic remedies in relation to the matter raised in this communication. Regarding the rules governing criminal proceedings in ordinary courts,

despite the authors' claims that they were unable to file as civil parties to the prosecution during the pretrial stage (that is, during the preliminary investigation), in reality they could have participated effectively in the proceedings. Under Decree No. 50 of 1987, persons who had filed as civil parties to the prosecution enjoyed various powers during the proceedings, such as the power to request the taking of evidence, to report property owned by the accused and ask that it be seized, and to lodge an ordinary or extraordinary appeal against a ruling. In addition, such persons had the option to request that proceedings be annulled or that a judge be recused. Thus, the law provided broad scope for action during the proceedings, of which the authors could have made full use if they had wished.

4.6 In their submission to the Committee, the authors erroneously interpret Act No. 1448 of 2011, and in particular article 3 (2) of the Act. While the Act provides that members of illegal organized armed groups are not to be treated as victims, their spouses, partners or permanent companions can be treated as direct victims of the harm suffered. In this regard, even if it is assumed that the authors' family member was active in M-19 at the time of his death, the Act does not exclude the authors from being treated as direct victims. Accordingly, they could have availed themselves of the various measures for comprehensive reparation provided for in Act No. 1448, subject to the assessments that must be carried out by the Unit for Support and Full Reparation for Victims in order for victims to be included in the Central Registry of Victims. The authors also qualify as victims on the basis of their claims that they were persecuted because of the fact that C.L.C.D. was a member of M-19. However, the authors did not apply to be included in the Central Registry of Victims.

4.7 Article 2 of the Optional Protocol refers to "all available domestic remedies". It therefore covers the obligation to exhaust not only strictly judicial remedies but also all other legal remedies. For example, in this case, the authors could have asked to be included in the Central Registry of Victims. Victims who are listed in the Registry are entitled to receive humanitarian assistance in matters of health, education, funeral arrangements, identity documentation, food, and family reunification, and to access other forms of reparation. Act No. 1448 also recognizes and defines the rights of victims to truth, justice, full reparation and guarantees of non-repetition, which are established as fundamental pillars of a transitional justice mechanism.

4.8 The authors' claims have not been sufficiently substantiated for purposes of admissibility. The State party maintains that the authors have made serious allegations that are not supported by the documentation submitted as an annex to their communication.

#### **Authors' comments on the State party's observations on admissibility**

5.1 On 17 April 2015, the authors responded to the State party's observations on the admissibility of the communication. They claim that the communication meets the conditions for admissibility set out in the Optional Protocol and reiterate their claims regarding the requirement to exhaust domestic remedies and the reasons why they were unable to submit a communication to the Committee earlier.

5.2 While article 5 (2) (b), of the Optional Protocol establishes as a condition for admissibility that the individual must have exhausted all available domestic remedies, in the case of serious human rights violations — such as extrajudicial killings — neither administrative or disciplinary remedies and sanctions nor administrative dispute proceedings can be considered as suitable and effective remedies within the meaning of article 2 of the Covenant. Similarly, a remedy cannot be considered effective if it does not allow the victims or their family members to associate themselves with the prosecution in judicial proceedings or even to intervene therein, thereby precluding the possibility of obtaining reparation through the courts.

5.3 At the time of the events in question, claims brought before an administrative court against the State for direct reparation based on the State's liability in tort were limited to compensation claims and did not cover other forms of reparation recognized under international law, such as restitution, rehabilitation, satisfaction or guarantees of non-repetition.

5.4 The ordinary courts only conducted a preliminary inquiry and never formally opened a criminal investigation by means of an order to initiate proceedings. Therefore, since the law did not allow for the filing as civil parties to the prosecution in the pretrial stage, the authors had no legal option to file as civil parties to the prosecution in the preliminary stage of the proceedings carried out by Court No. 75. Nor could they do so in the proceedings of the military courts. In addition, the military court proceedings were not conducted by an independent, impartial and competent court. The judge of first instance — the Brigadier General — was a civil servant in the executive branch and, moreover, was the superior of those accused of having carried out the extrajudicial killing of A.F.D. Furthermore, a military court cannot be considered to have jurisdiction in a case involving serious human rights violations.

5.5 Regarding the State party's observations on Act No. 1448 of 2011, the authors state that the Act was adopted 25 years after the death of A.F.D. and that, consequently, at the time of the events in question, no such remedy was provided for in the domestic legal order; that the Act provides for certain forms of reparation, but not those relating to the bringing to justice of the perpetrators of human rights violations; that it expressly excludes members of illegal armed groups; and that this exclusion was reaffirmed by the Ministry of Justice and the Constitutional Court when reviewing the constitutionality of article 3 (2) of Act No. 1448. The Constitutional Court stated that members of illegal organized armed groups who were victims of violations of international humanitarian law or serious and flagrant violations of international human rights standards could have access only to ordinary legal procedures for obtaining truth, justice and reparation.<sup>6</sup> At the time of his death, A.F.D. was a member of M-19, which, according to Colombian law, was an illegal organized armed group, meaning that the authors — as his family members — were not entitled to the reparation measures provided for in the Act. In addition, the mechanism set out in Act No. 1448 is not a judicial one and is therefore not an effective remedy, as it cannot provide satisfaction with respect to justice, truth and reparation.

5.6 The communication does not request the Committee to act as an appeal court of "fourth instance". With regard to the proceedings carried out by the military criminal courts, the purpose of the information provided in the communication is to allow the Committee to determine whether or not those proceedings constituted an effective remedy before an independent, impartial and competent court, whether there was any denial of justice, and whether the State party fulfilled its obligation under the Covenant to conduct an effective, independent and impartial investigation.

5.7 With regard to the State party's observation that the communication constitutes an abuse of the right of submission, the authors reaffirm their claim that they were unable to submit the communication earlier for security reasons, as doing so would have put their lives and personal safety at risk. Following the death of their loved one, various M-19 members, former members and sympathizers were killed or disappeared. This situation continued even in the years following the demobilization of M-19, as evidenced by the fact that the authors themselves had to leave the State party from 2000 to 2003. Even after the formation of the political party M-19 Democratic Alliance, members of M-19 were still subjected to persecution, murder and disappearance. By way of illustration, they attached a list of cases that occurred between 1990 and 2002.

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<sup>6</sup> The authors refer to judgment No. C-253A/12 of 29 March 2012.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 With regard to the requirement to exhaust domestic remedies, the Committee takes note of the authors' claim that they did not have access to an effective remedy. The Committee also takes note of the State party's argument that the authors did not exhaust all domestic remedies, since the rules of procedure governing criminal proceedings in the ordinary courts at the time offered them broad scope for participating in the proceedings as civil parties, of which they did not avail themselves; and that, at the same time, the authors did not ask to be included in the Central Registry of Victims, which would have allowed them to access the various forms of humanitarian support, assistance and reparation set out in Act No. 1448 of 2011 within the framework of a transitional justice mechanism. The Committee notes, however, that the State party's observations describe in general terms the powers granted to civil parties to the prosecution in criminal proceedings of the ordinary courts, without explaining specifically how those rules would have applied to the authors' participation in the proceedings before Court No. 75, which did not formally open a criminal investigation but merely conducted a preliminary inquiry. Furthermore, despite the time that has elapsed, no criminal investigation has been conducted with a view to shedding light on the circumstances surrounding the death of A.F.D. and punishing those responsible. The Committee recalls its jurisprudence according to which, in cases of serious violations, a judicial remedy is required.<sup>7</sup> Accordingly, the Committee concludes that there is no impediment to the admissibility of the communication under article 5 (2) (b) of the Optional Protocol.

6.4 The Committee notes the State party's argument that the communication constitutes an abuse of the right of submission within the meaning of article 3 of the Optional Protocol because there was nothing to prevent the authors from submitting the communication to the Committee earlier, at least after 1989, and that, even if it was not possible to submit the communication after that date, C.L.C.D. returned to live in the State party in 2011, and yet she did not submit the communication until 8 November 2013. The Committee also notes the authors' claim that, in practice, they were unable to submit a communication to the Committee earlier for security reasons, since even after they took up residence again in the State party in 1989, and throughout the 1990s, the persecution of persons connected with or related to M-19 continued, and many such persons became victims of murder or enforced disappearance. They therefore had reason to fear that any claims they might make against the State party before international bodies could put them at serious risk and, in fact, they were obliged to leave the State party once again and seek refuge in other countries from 2000 to 2003.

6.5 The Committee points out that, although there is no explicit deadline for the submission of communications under the Optional Protocol, in accordance with rule 96 (c) of its rules of procedure, "[a]n abuse of the right of submission is not, in principle, a basis of a decision of inadmissibility *ratione temporis* on grounds of delay in submission.

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<sup>7</sup> See communication No. 2051/2011, *Basnet and Basnet v. Nepal*, Views adopted on 29 October 2014, para. 7.4; communication No. 2111/2011, *Tripathi v. Nepal*, Views adopted on 29 October 2014, para. 6.3; and communication No. 1761/2008, *Giri v. Nepal*, Views adopted on 24 March 2011, para. 6.3.

However, a communication may constitute an abuse of the right of submission, when it is submitted after five years from the exhaustion of domestic remedies by the author of the communication, or, where applicable, after three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay taking into account all the circumstances of the communication.”<sup>8</sup> The Committee also recalls its jurisprudence according to which a communication is considered to constitute an abuse of the right of submission when an exceptionally long period of time has elapsed, without sufficient justification, between the relevant events in the case or the exhaustion of domestic remedies and the submission of the communication.<sup>9</sup>

6.6 In the case at hand, the Committee notes that the judicial activity concerning the death of A.F.D. took place between 1986 and 1987 and that, as there were no other effective remedies, the matter could have been submitted to the Committee subsequently — about 30 years ago. The State party claims in general terms that the exceptional circumstances that might have prevented the authors from submitting the communication to the Committee ceased to exist around 1989, when they returned to live in the State party; and that, following the signing of the peace agreement between the Government and M-19, former combatants from that group enjoyed all their rights and even participated in political life through the political party known as the M-19 Democratic Alliance. The Committee notes, however, that the authors have illustrated their claims of persecution with specific cases of M-19 members or persons associated with the group who were reportedly killed or disappeared between 1990 and 2002, including, in 1998, J.E.U.M., who had been their legal representative and the lawyer of their family member; and that the State party has not explicitly contested these claims. Moreover, between 2000 and 2003, the authors again left the State party to reside in other countries, either as refugees or under international protection. That being said, the Committee notes that the authors have not convincingly explained what was preventing them from submitting a communication to the Committee after 2004, even if they were outside the country. Notwithstanding the seriousness of the facts on which the authors’ complaints are based, the Committee is of the view that, in the absence of such explanations, and given that the relevant events in the case took place in 1986, the late submission of the communication has not been sufficiently justified and constitutes an abuse of the right of submission. Thus, the Committee concludes that the communication is inadmissible under article 3 of the Optional Protocol.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 3 of the Optional Protocol;
- (b) That this decision shall be transmitted to the State party and to the authors of the communication.

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<sup>8</sup> This rule applies to communications received by the Committee after 1 January 2012.

<sup>9</sup> See communication No. 1434/2005, *Fillacier v. France*, decision of inadmissibility of 27 March 2006, para. 4.3, and communication No. 1849/2008, *M.B. v. Czech Republic*, decision of inadmissibility of 29 October 2012, para. 7.4.