

Colombia: Enforced disappearances by paramilitary groups in contravention of international covenant

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The Human Rights Committee finds Colombia in contravention of the International Covenant on Civil and Political Rights for enforced disappearances by paramilitary groups and Colombia's failure to investigate the disappearances.



Serna and others v. Colombia (2134/2012)

Summary

In July 2015, the Human Rights Committee was asked to consider whether Colombia had violated its obligations under the International Covenant on Civil and Political Rights in connection with the enforced disappearance of two individuals.

The communication was submitted under the Optional Protocol to the Covenant by nine Colombian nationals in their own name and on behalf of two disappeared relatives and a deceased family member.

Background

On 8 March 1995, Guillermo Anzola Grajales and Julio Eduardo Molina Arias travelled to Puerto Triunfo, a municipality in Antioquia in the Middle Magdalena region of Colombia.

On 10 March 1995, two of the authors, Luz Elena Usuga Usuga and Rosa María Serna, the wives of Mr Anzola and Mr Molina respectively, travelled to Puerto Triunfo after their husbands failed to return.

On 11 March 1995, Ms Usuga reported Mr Anzola and Mr Molina missing to the police in Doradal, Puerto Perales and Puerto Boyacá.

On 17 March 1995, the car in which Mr Anzola and Mr Molina had been travelling was found abandoned in San Francisco, also in the municipality of Antioquia.

On 18 March 1995, Ms Usuga lodged a criminal complaint with the Puerto Triunfo public prosecutor's office.

On 25 October 1996, the case was formally dropped by the prosecutor on the basis that they were insufficient grounds to initiate a criminal investigation as it was not possible to identify the perpetrators of the act.

While making inquiries in the Middle Magdalena region, the authors were warned by a police officer that paramilitary groups were stopping people to check their identity and disappearing those who were from outside the region.

On 11 March 1995, the Association of Relatives of Detainees and Disappeared Persons (**ASFADDES**) filed complaints on behalf of the authors with the police in Doradal and subsequently with nine other authorities, including the Attorney General's office.

In July 1995, the authors exercised their right of petition, requesting through ASFADDES information on the status of investigations from the armed forces, the Provincial Office of the Attorney General, and seven other public bodies.

On 3 June 1996, ASFADDES submitted a petition to the armed forces regarding a stone quarry that was allegedly being operated to fund the paramilitary group Autodefensas Campesinas del Magdalena Medio and where approximately 300 persons were being made to work against their will and without their families' knowledge. On 24 June 1996, the armed forces responded to the petition, stating that they were unaware of the existence of any paramilitary groups and that no such quarry had been found when carrying out

intelligence work in the area.

On 18 September 2001, Ms Molina filed the disappeared persons search request form used by the Attorney General's Office.

Under Act No. 975 of 2005, several members of Autodefensas Campesinas del Magdalena Medio were demobilized and availed themselves of the special amnesty procedure established pursuant to the Act. However, none of demobilized members acknowledged the disappearance of Mr Anzola or Mr Molina.

Between September 2010 and January 2011, the Colombian Commission of Jurists submitted petitions on behalf of the authors, requesting information about the enforced disappearance of Mr Anzola and Mr Molina. The petitions were addressed to the Justice and Peace Unit of the Attorney General's Office, the Executive Directorate of the Military Criminal Justice System, the Counsel General, the Attorney General's Office and the Puerto Triunfo District Office of the Attorney General.

On 11 October 2010, the Ministry of Defence replied that the offence fell outside the jurisdiction of the military criminal courts as it had not been committed in the line of duty.

On 30 September 2010, the Counsel General's Office stated that there was no disciplinary investigation into the enforced disappearance of Mr Anzola and Mr Molina.

On 17 November 2010, the army replied that information had been sought from the commander of Infantry Battalion No. 3, which had been operating in the area where the enforced disappearances took place, but no details had been forthcoming and no disciplinary investigation had been conducted.

On 1 September 2011, the authors filed this communication with the Committee under the Optional Protocol to the Covenant.

The authors claimed that the enforced disappearances violated Mr Anzola and Mr Molina's rights to: (i) life, (ii) freedom from cruel and inhuman treatment, (iii) liberty and security of the person, (iv) humane treatment in detention, (v) recognition as a person before the law, (vi) freedom from arbitrary or unlawful interference with private life, and (vii) protection of the family (under articles 6, 7, 9, 10, 16, 17 and 23 of the Covenant respectively).

The authors also alleged that they themselves were victims of violations of articles 7, 17 and 23 of the Covenant.

The Committee's decision

On admissibility, the Committee considered Colombia's objection to the admissibility of the complaint on the ground that the communication was submitted 16 years after the dismissal order had been issued by the Puerto Triunfo prosecutor's office, on the basis that this amounted to an abuse of the right to submit communications. The Committee noted that the Optional Protocol does not establish time limits within which a communications must be submitted and that an abuse of the right to submit a communication is found only where an exceptionally long period of time has elapsed before the submission without sufficient justification. The Committee concluded that the violation alleged still persisted due to an absence of truth, justice and redress for the disappearances in question and therefore declared the communication admissible.

On the merits, the Committee decided to give due weight to the authors' allegations in the absence of any comments from Colombia regarding the substance of the authors' complaints.

The Committee observed that, according to the information provided by the authors and available from bodies of the United Nations human rights system, Colombia had encouraged the formation of paramilitary "self-defence" groups. It noted that enforced disappearance was a widespread practice used by paramilitary groups with the complicity of the Colombian armed forces, according to a broad range of national and international sources. The Committee noted that while "enforced disappearance" was not a term explicitly used in the Covenant, enforced disappearances constitute a unique and integrated series of acts that represent continuing violation of various rights recognized in the Covenant. The Committee observed that Colombia had failed to

make progress in investigating the fate and whereabouts of the disappeared in the last 21 years, despite the reports and appeals that had been presented by the authors. The Committee observed that Colombia had also intentionally placed the disappeared outside the protection of the law.

The Committee noted that, in accordance with its General Comment No. 31, a failure to investigate allegations of violations could constitute a separate breach of the Covenant. The Committee observed that there had been an absolute lack of investigation of paramilitary groups operating in the area. The authors had received no information despite having submitted numerous reports and requests to the various authorities and Colombia had failed to provide any justification for the delay in completing the investigation.

Finally, the Committee also noted the authors' allegation that they themselves and their families had suffered severe stress due to the disappearance of the family members and the uncertainty of their whereabouts.

In view of the above, the Committee found Colombia to have violated articles 6, 7, 9 and 16 in respect of Mr Anzola and Mr Molina. The Committee also found a violation of article 7 in respect of the authors. Having found a violation of these articles, the Committee considered that it was not necessary to make a finding with respect to the authors' allegations under articles 10, 17 and 23.

In accordance with article 2(3)(a) of the Covenant, the Committee observed that Colombia was under an obligation to provide the authors with an effective remedy, including: (a) the performance of an independent, thorough and effective investigation of the disappearances and the prosecution and punishment of those responsible; (b) the release of Mr Anzola and Mr Molina should they still be alive; (c) if they are dead, the handing over of their remains to their family; and (d) effective reparation for the violations suffered by the authors, including adequate compensation, medical and psychological rehabilitation.

The Committee also held that Colombia was under an obligation to prevent similar violations from occurring in the future and to ensure that any enforced disappearances give rise to prompt, impartial and effective investigation.

Colombia must now submit its written response within six months of the Committee's decision, including information on the action taken in the light of the Committee's recommendations, and ensure that the Committee's decision is published widely.

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