



## International Covenant on Civil and Political Rights

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### Human Rights Committee

101st session

14 March–1 April 2011

### Views

#### Communication No. 1458/2006

<i>Submitted by:</i>	Ramona Rosa González (represented by counsel, Carlos Varela Alvarez)
<i>Alleged victim:</i>	The author and her deceased son, Roberto Castañeda González
<i>State party:</i>	Argentina
<i>Date of communication:</i>	9 February 2006 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 28 February 2006 (not issued in document form)
<i>Date of adoption of Views:</i>	17 March 2011
<i>Subject matter:</i>	Irregularities in the proceedings relating to the disappearance of the author's son
<i>Procedural issues:</i>	Insufficient substantiation
<i>Substantive issues:</i>	Violation of the right to life and to an effective remedy
<i>Articles of the Covenant:</i>	Article 2, paragraph 3; article 6, paragraph 1
<i>Article of the Optional Protocol:</i>	Article 2

On 17 March 2011 the Human Rights Committee approved the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1458/2006.

[Annex]

\* Published by decision of the Human Rights Committee.

## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (101st session)**

concerning

#### **Communication No. 1458/2006\*\***

*Submitted by:* Ramona Rosa González (represented by counsel, Carlos Varela Alvarez)

*Alleged victim:* The author and her deceased son, Roberto Castañeda González

*State party:* Argentina

*Date of communication:* 9 February 2006 (initial submission)

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

*Meeting* on 17 March 2011,

*Having concluded* its consideration of communication No. 1458/2006, submitted to the Human Rights Committee by Ramona Rosa González 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 the State party,

*Adopts* the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication, dated 9 February 2006, is Ramona Rosa González, an Argentine national, who submits this communication on her own behalf and on behalf of her deceased son Roberto Castañeda González, born on 25 May 1964. She claims to be the victim of violations by Argentina of articles 2; 3; 6; 7; 9; 9, paragraph 5; 14, paragraph 1; and 26 of the Covenant. The Optional Protocol entered into force for the State party on 8 November 1986. The author is represented by counsel.

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Krister Thelin and Ms. Margo Waterval.

In accordance with article 90 of the Committee's rules of procedure, Mr. Fabian Omar Salvioi did not participate in the examination of the present communication.

**The facts as submitted by the author**

2.1 Roberto Castañeda González was last seen on 10 September 1989 in Mendoza. The van he owned, together with his personal effects, were found burned out in a location known as “el Pastal de Lavalle” that same day. A charred body was also found inside the van. Forensic tests carried out to identify the body did not yield positive results but did confirm the presence of multiple skull fractures and of a bullet presumed to have been the cause of death prior to carbonization. Police Station No. 17 carried out a preliminary investigation and reported the facts to the Fifth Examining Court of the province of Mendoza. The judicial investigation concluded that the fire had been set intentionally.

2.2 The author informed the court that, three months prior to her son’s disappearance, a lawyer had told her that he should leave, as his name was on a list of people that the Mendoza police were going to cause to disappear. The author also stated that, two months earlier, Roberto Castañeda had been detained in the company of W.L. and that, when the latter’s father had gone to collect W.L. at the Directorate of Investigation, the police officers present had warned him not to let his son mix with Mr. Castañeda. In May of that year, Mr. Castañeda was again detained for illicit car racing. The author maintains that on that occasion, a police officer said to Mr. Castañeda in her presence, “This time you walk away, but next time we’ll kill you.” Two months after the disappearance, W.L. was detained again and threatened with the same fate that had befallen Mr. Castañeda. The judge also heard the testimony of a police officer who claimed that the perpetrators of the offence against Mr. Castañeda were three civilians belonging to a criminal gang that had been infiltrated by that particular police officer. The judge initiated proceedings against them. However, according to a note in the case file, on 5 August 2002 the case was closed pending the apprehension of those responsible for the acts in question and/or expiration of the statute of limitation for criminal proceedings.

2.3 The case file also contains statements from several police officers who identify other officers as having caused the death of Mr. Castañeda.

2.4 According to the author, the following irregularities occurred during the trial:

- The evidence was not protected. Roberto Castañeda’s father said that when the burned-out vehicle was returned to him, he found various body parts inside, which he himself had to take to the forensic medical examiners.
- Months after locating the vehicle, the police themselves said that the traces found had no evidentiary value.
- At the crime scene there were prints left by footwear used by the police, fingerprints, a bullet and traces of blood, none of which were taken into account.
- The preliminary investigation pointed to the possible involvement in the crime of police officers belonging to the Directorate of Investigation or the Commando Unit. However, this hypothesis was not thoroughly investigated by the judge or the prosecutor.
- The judge decided not to pursue the investigation, closing the case and awaiting the expiration of the statute of limitation.
- Two police commissions were appointed for the investigation. Ironically, one of these included the police officer who was on duty at the police station on the night of the events, and who was later identified as a key suspect by police witnesses.
- The police presented false witnesses, some of whom stated that they had seen Roberto Castañeda alive and well in various places.

2.5 With regard to the exhaustion of domestic remedies, the author states that she had claimed damages in the criminal proceedings and had appealed against the decision to dismiss the case. However, her appeal was rejected because, as a civil claimant, she lacked the legal capacity to appeal the criminal aspects of the case. Furthermore, on 14 August 2001 she had submitted an application for habeas corpus to the Third Examining Court, on the grounds of enforced disappearance, since there was no certainty that the charred remains found in the vehicle were those of her son. This application was rejected by both the lower court and the Appeal Court as it did not meet the requirements of the remedy provided for by law.

### **The complaint**

3. The author states that these acts constitute a violation of articles 2; 3; 6; 7; 9; 9, paragraph 5; 14, paragraph 1; and 26 of the Covenant. She states that both her son's right to life and physical integrity and her own right of access to justice were violated, obstructing truth and equal treatment before the law in arbitrary and biased proceedings that had, after 17 years, still failed to reach a conclusion.

### **State party's observations**

4. In a note verbale dated 5 September 2006, the State party suggested to the Committee and the author that they should set up a dialogue with a view to finding a solution that would uphold the rights protected by the Covenant.

### **Author's comments on the State party's submission**

5.1 In a letter dated 19 September 2007, the author transmitted to the Committee a copy of a memorandum on negotiations for a friendly settlement signed by her counsel and the Ministry of the Interior of the province of Mendoza. In the memorandum, both parties agreed to a procedure to reach an amicable settlement including the following points:

“(a) In view of the existing statements of fact leading to the international complaint and the other evidence adduced during the dialogue process, and in particular the explicit recommendation from the Ministry of Foreign Affairs that an amicable solution should be found, the Government of the Province of Mendoza finds that there is sufficient evidence to engage the *objective responsibility* of the Province in the case and accordingly accepts responsibility for these acts and their legal consequences;

(b) This responsibility arises under the Covenant to the extent that the competent authority has not been able to make a determination in accordance with the principles of due process of criminal law, and in particular because more than 18 years have elapsed since proceedings began.”

5.2 The memorandum also states that the Government of Mendoza undertakes to compensate the family for the material and moral damages suffered. In this connection, the parties agree to:

(a) Accept the proposal for compensation drawn up by the author's counsel;

(b) Form an ad hoc arbitration tribunal to approve the compensation awarded for Mr. Castañeda's disappearance and other non-monetary measures ordered, and to determine the fees for counsel in the international case;

(c) The tribunal should be established no more than 30 days following the signing of the provincial government decree ratifying the agreement;

(d) The procedure to be followed shall be defined by parties and recorded in a memorandum, a copy of which shall be forwarded to the Human Rights Committee. To that

end, the parties shall each appoint a representative to participate in the deliberations on the procedure;

(e) The decision of the arbitration tribunal shall be final and without appeal. The tribunal shall approve the amount, modalities and beneficiaries of the monetary compensation, and shall determine appropriate fees for participation by counsel in the international and arbitration proceedings;

(f) The petitioners agree to refrain from any civil action in the case before the domestic courts and to renounce finally and irrevocably all other monetary claims against the Province or the State in this case.

5.3 As further compensation, a proposal put forward by the author's counsel was accepted, namely acknowledgement by the State party of its international responsibility, a public apology, notification of the courts and the police and guarantees of non-recurrence.

5.4 On 30 December 2008, the author informed the Committee that the Government of Mendoza had taken no concrete steps to bring the amicable settlement procedure to a conclusion since it began on 28 August 2006. Therefore, the author had decided to withdraw from the procedure.

#### **Additional observations by the State party**

6. On 6 March 2009, the State party informed the Committee that discussions to explore the possibility of a friendly settlement had resumed. Consequently, the provincial Office of the Attorney General was evaluating the factual background of the case in order to expedite the payment of compensation and other agreed reparative measures.

#### **Additional comments by the author**

7.1 On 24 June 2009, the author asked the Committee to take a decision on the admissibility and merits of the communication. The author informed the Committee that during her discussions with the provincial authorities she had not mentioned suspending or abandoning the case before the Committee. These comments were transmitted to the State party on 26 June 2009.

7.2 In a letter dated 27 October 2010, the author reiterated her request to the Committee. She stated that there had been no change in the situation regarding the complaint and that the judicial investigations had ground to a halt. She said that the State had acknowledged the seriousness of the case and the facts surrounding it and that the actions of the provincial authorities had been dilatory.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

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

8.2 As required under article 5, paragraph 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.

8.3 The Committee takes note of the author's claims that both her son's right to life and physical integrity and her own right of access to justice were violated, contrary to articles 2; 3; 6; 7; 9; 9, paragraph 5; 14, paragraph 1; and 26 of the Covenant. The Committee considers that these claims fall primarily within the scope of article 6, paragraph 1, and

article 2, paragraph 3, that they have been sufficiently substantiated for the purposes of admissibility and that domestic remedies have been exhausted. In the absence of other impediments to admissibility, these claims should be considered on the merits. On the other hand, the Committee considers that the claims of violations of articles 3; 7; 9; 14, paragraph 1; and 26 have been insufficiently substantiated for the purposes of admissibility and finds them inadmissible under article 2 of the Optional Protocol.

*Consideration of the merits*

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee takes note of the author's allegations relating to the disappearance of her son Roberto Castañeda González on 10 September 1989 and the uncertainties regarding the identification of the body found in the vehicle he owned. The author also claims that there is circumstantial evidence indicating that the police were responsible for depriving her son of the right to life, notably threats allegedly made to him before the events in question. She also states that a police officer who might have been involved in the disappearance had been a member of one of the police commissions investigating the events. Finally, the case was closed on 5 August 2002 as those responsible had not been identified. The Committee also notes that the State party has not commented on the author's allegations, merely informing the Committee of the negotiations for an amicable solution, which were never concluded. In these circumstances, the Committee believes that due weight should be given to the information provided by the author.

9.3 The Committee also notes that, although it cannot be concluded from the information submitted that Mr. Castañeda was detained, the information does confirm the existence of the corpse of a person who apparently died a violent death, along with indications that it may have been Mr. Castañeda's. While the judicial proceedings failed to explain these facts or identify those responsible, the State party has not refuted the version of the facts submitted by the author, notably with respect to State responsibility.

9.4 The Committee recalls that, under article 2, paragraph 3, of the Covenant, States parties must ensure that individuals have accessible, effective and enforceable remedies to uphold Covenant rights. The Committee refers to its general comment No. 31, according to which States parties must establish appropriate judicial and administrative mechanisms for addressing claims of rights violations. A failure by the State party to investigate alleged violations, could give rise to a separate violation of the Covenant.<sup>1</sup> In the present case, the information before the Committee indicates that neither the author nor her son had access to such remedies. The Committee also observes that the friendly settlement proceeding initiated between the parties was not concluded. In view of the foregoing, the Committee concludes that the facts before it reveal a violation of article 6, paragraph 1, of the Covenant in respect of the author's son, and of article 2, paragraph 3, of the Covenant, read in conjunction with article 6, paragraph 1, in respect of the author and her son.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses a violation by the State party of article 6, paragraph 1, in respect of Mr. Roberto Castañeda González, and of article 2, paragraph 3, of the Covenant, read in conjunction with article 6, paragraph 1, in respect of the author and her son.

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<sup>1</sup> Communication No. 1295/2004. *El Alwani v. Libyan Arab Jamahiriya*. Views dated 11 July 2007, para. 6.9.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including a thorough and diligent investigation of the facts, the prosecution and punishment of the perpetrators and adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views.

[Adopted in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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