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Communication No. 1829/2008

Views adopted by the Committee at its 104th session, 12–30 March 2012

<i>Submitted by:</i>	Ernesto Benítez Gamarra (represented by the Paraguayan Human Rights Coordinating Committee (CODEHUPY) and the World Organization against Torture (OMCT))
<i>Alleged victim:</i>	The author
<i>State party:</i>	Paraguay
<i>Date of communication:</i>	25 August 2008 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 December 2008 (not issued in document form)
<i>Date of adoption of Views:</i>	22 March 2012
<i>Subject matter:</i>	Arrest during a demonstration
<i>Substantive issues:</i>	Torture or cruel, inhuman or degrading treatment; denial of effective remedy
<i>Procedural issues:</i>	None
<i>Articles of the Covenant:</i>	Article 2, paragraph 3; article 7
<i>Articles of the Optional Protocol:</i>	None

[Annex]

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 (104th session)

concerning

Communication No. 1829/2008*

Submitted by: Ernesto Benítez Gamarra (represented by the Paraguayan Human Rights Coordinating Committee (CODEHUPY) and the World Organization against Torture (OMCT))

Alleged victim: The author

State party: Paraguay

Date of communication: 25 August 2008 (initial submission)

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

Meeting on 22 March 2012,

Having concluded its consideration of communication No. 1829/2008, submitted to the Human Rights Committee by Mr. Ernesto Benítez Gamarra, 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 25 August 2008, is Ernesto Benítez Gamarra, a Paraguayan citizen born in 1969. He claims to be the victim of a violation by Paraguay of article 2, paragraph 3, and article 7 of the Covenant. The Optional Protocol entered into force for the State party on 10 January 1995. The author is represented by counsel.

The facts as submitted by the author

2.1 The author is an educator and agricultural worker whose home and farm are in the Táva Guaraní settlement. He is a member of the Agricultural Producers' Coordination

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kaelin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

Office of San Pedro Norte (CPA-SPN), acting as coordinator for education. The chief demand of rural workers' organizations in Paraguay is for agrarian reform. This has often led to conflict between landowners, farmworkers and Government authorities.

2.2 The growing and marketing of lemon verbena was initially supported by the Government. In 2002, the Government gave the private sector responsibility for marketing the crop, which led to a fall in prices and losses to producers as surplus production went unsold. With the support of CPA-SPN, the lemon verbena producers held demonstrations in Santa Rosa del Aguaray on 10 February, 24 April and 19 May 2003, demanding that the State take action to address the situation. Following these organized protests, the Ministry of Agriculture and Livestock pledged to grant the producers a subsidy; however, only a partial subsidy was paid, and following the failure of negotiations, on 29 May 2003 the farmworkers gathered once more in Santa Rosa del Aguaray to set up camp and continue organizing protests. Starting from that date, the farmworkers held as many as two or three demonstrations a day and were based in a camp set up in the grounds of a public institution.

2.3 On 2 June 2003, the producers' organization issued a public statement requesting that the authorities give full effect to the agreements signed by the Ministry of Agriculture before 7 a.m. on 3 June, failing which they would carry out a peaceful blockade of Route 3 in Santa Rosa del Aguaray as a pressure tactic.

2.4 On 3 June 2003, around 1,000 demonstrators, including the author, converged on the site of the demonstration. They were met at the site by a strong security presence made up of 239 policemen and 40 anti-riot officers from the special branch of the National Police. The police and anti-riot officers were acting under the orders of V.A.R., the chief of police in the department of San Pedro. A contingent of 30 armed military personnel was also present. The military and police personnel were acting under the orders of criminal prosecutor L.A. from the Santa Rosa del Aguaray District Prosecutor's Office. The security forces had anti-riot water-cannon vehicles and were armed. As the demonstrators were unable to cross the police line blocking their way, they decided to block the road. The prosecutor ordered the leaders of the demonstration to unblock the road, indicating that if they failed to do so measures would be taken to clear it by force. The author was among those negotiating on behalf of the demonstrators.

2.5 While negotiations were under way, the prosecutor ordered the road to be cleared. The police assault was immediate and violent, as they fired tear gas, live rounds and water cannon. According to the author, the police intervention was not preceded by loudspeaker warnings to the rest of the demonstrators.

2.6 The police beat many of the demonstrators violently, fired indiscriminately and forced their way into several nearby houses where the demonstrators had taken refuge, causing considerable damage and severely beating those they managed to catch. The road was cleared in about 10 minutes.

2.7 The author and approximately 120 other demonstrators managed to escape the crackdown and sought refuge in the camp that they had set up in the grounds of the Rural Welfare Institute, some 300 or 400 metres from the scene of the violent incidents. The police cleared the area using firearms and batons. They then singled out between 20 and 25 people for arrest, including the author. Once the detainees had been identified, they were forced to lie on the ground and were then beaten with batons, kicked and stamped on.

2.8 The author was identified by a police chief as he was trying to contact Radio Cáritas on his mobile phone. A group of policemen surrounded him and one of them fired a shot, probably a rubber bullet, which knocked him to the ground. Like other detainees, he was forced to put his hands on the back of his head and lie face down on the ground. He was beaten and kicked by military personnel and police officers, who also stamped on him.

Later, the police destroyed and set fire to their belongings, including two motorcycles and a vehicle used for delivering supplies.

2.9 After being beaten, the author and the other detainees were taken in a military truck to Santa Rosa del Aguaray police station No. 18, some 500 metres away. During the ride, they were forced to lie face down with their hands behind their head. In the police station they were beaten again. The author was particularly targeted; he was taken aside to a room where police officers and military personnel kicked him and beat him with batons on the back, feet, stomach and head while he was handcuffed with his hands behind his back. While beating him, they threatened him, saying that he had been the cause of the problems in the area and that the only solution was for them to kill him. They also sprayed an irritant gas in his face. When they saw he was crying, the police officers made fun of him, painted his face with lipstick and cut locks of his hair which they said they would “take as a trophy to their chief”. This treatment went on for several hours and stopped only when journalists who were covering the demonstration arrived at the police station. According to the author, these acts were witnessed by prosecutor L.A., who was in the police station and gave no order for them to be stopped.

2.10 Subsequently, the author and the other detainees were placed in a cell measuring 1.5 m wide, 8 m long and 3 m high, where they were unable to sit or lie down. They were kept there, without being allowed to go to the toilet, until 5.30 a.m. the next day, 4 June 2003.

2.11 On 3 June 2003 the National Police filed a complaint with the criminal prosecutor L.A. against the author and other demonstrators for the offences of “endangering traffic”, “disturbing the peace”, “threatening to commit an offence” and “resistance with firearms and bladed weapons”. On the same date the prosecutor ordered the provisional detention of the author and another 40 demonstrators. The order for the provisional detention of the author was issued after his arrest.

2.12 On 4 June 2003, the author and 31 other detainees were transferred to the San Pedro del Ykuamandyju regional prison. On the same date, the prosecutor filed charges against the author and another 42 demonstrators for “endangering traffic” and “disturbing the peace”.

2.13 It was only on 4 and 5 June 2003 that the author and the other detainees were examined by forensic physicians of the Public Prosecution Service and the judiciary.¹ The author states that the forensic medical examinations, in addition to being inconsistent, were not carried out in accordance with the Istanbul Protocol.²

2.14 On 9 June 2003, at the request of the public defender, the Criminal Court of San Pedro del Ykuamandyju ordered the provisional release of the author and the other demonstrators still in detention. On 3 December 2003, the Public Prosecution Service brought charges before the Criminal Court against the author and 31 other demonstrators for “endangering traffic” and “disturbing the peace”. However, no public oral proceedings were ever held on the basis of these charges and the Public Prosecution Service failed to

¹ The report by the forensic physician of the judiciary, dated 4 June 2003, states that “the patient presents a left lateral neck oedema approximately 4 cm in diameter and painful swelling of the left parieto-frontal region”. The report by the forensic physician of the District Prosecutor’s Office of San Pedro del Ykuamandyju, dated 5 June 2003, states that the author presented “minor grazing to the left knee” and that “no other injury was detected”.

² The author attaches a report, dated 9 July 2008, by Dr. Carlos Portillo, a specialist in the care of torture victims, which concludes that the reports of the examinations carried out on 5 June 2003 fail to comply with the requirements of the Istanbul Protocol.

take the necessary procedural steps for that purpose. On 2 May 2007, the Criminal Court of San Pedro del Ykuamandyju ruled that the criminal action against the author and the other 31 indicted demonstrators should be discontinued on the grounds that the three-year time limit for criminal proceedings had expired without any definitive judicial decision having been reached. The ruling was not appealed and became final.

2.15 On 10 June 2003, the author (and other demonstrators) filed a complaint for torture and ill-treatment with the Public Prosecution Service. The Paraguayan Human Rights Coordinating Committee (CODEHUPY) also filed a complaint with the Human Rights Commission of the Senate alleging serious human rights violations, including acts of torture against the author. On 20 June 2003, the chair of the Human Rights Commission lodged a complaint with the Public Prosecution Service.

2.16 The author was summoned to appear before the Special Unit on Human Rights Offences on 31 May 2004 with a view to establishing the facts; he confirmed his complaint and gave details of the events. On 12 July 2004, one year after the events, the prosecutor of the Special Unit charged the chief of Santa Rosa del Aguaray police station No. 18 and prosecutor L.A. with the offence of causing bodily harm in the exercise of public duties. The Public Prosecution Service requested a period of six months in which to bring charges and sought a number of interim measures against the accused, such as a prohibition on leaving the country, a monthly court appearance and a prohibition on communicating with the victims. The accused were not temporarily suspended from their duties.

2.17 On 18 March 2005, the Public Prosecution Service requested a temporary stay of proceedings against the accused on the grounds that, although it had evidence to support the view that an offence had been committed, the evidence to identify the perpetrators of the acts had not been processed.³ Among the evidence yet to be collected, the Public Prosecution Service cited 33 witness statements that had not been taken and said that officials from the Service needed to go to the scene of the events to obtain the statements. In addition, the counsel of CODEHUPY who had filed the complaint with the Human Rights Commission of the Senate had yet to provide a witness statement.

³ The request states: "A number of farm workers were beaten and arrested by the security forces, who used excessive and disproportionate force to apprehend them, given that they had already been cornered and had capitulated. Subsequently, those arrested were taken to the police station ... where their physical and psychological ill-treatment continued, even though they now offered no resistance to the police. ... Despite the efforts of the Public Prosecution Service to obtain witness statements from the alleged victims ... the statements of many victims identified as having been at the scene of the events have still not been taken. These inquiries suggested that the prosecutor ... directing the proceedings was present at the time the demonstrators were physically abused and he was therefore charged. It was also clear that the assaults on the demonstrators by uniformed officers continued at the Santa Rosa del Aguaray police station; accordingly, the district chief, ..., was also charged. ... A large amount of evidence, such as medical reports and the statements of victims and other persons who witnessed the events, together with photographs and other reports, proves conclusively that an offence was committed; it establishes that the physical abuse and injuries to several lemon verbena producers who had been demonstrating in Santa Rosa del Aguaray were the result of assaults by members of both the National Police and the Armed Forces. ... However, in order to secure the conviction of the accused, it must be proved that they committed the offence. Although police reports confirmed that one of those in charge of the proceedings was the indicted police station chief ..., there was no specific evidence to indicate that he was responsible for ordering and carrying out the assaults on the demonstrators. In addition, although it was clear that prosecutor L.A. had ordered the road to be cleared ..., there was no evidence that he had ordered excessive use of force by uniformed personnel. Consequently ... it cannot be argued that the investigation has been completed since other inquiries must be conducted in order to obtain further evidence to justify an indictment or on which to base the relevant application."

2.18 On 3 August 2005, the San Pedro del Ykuamandyju interim Criminal Court of Guarantees rejected the request for a temporary stay of proceedings and ruled that the case against the accused should be dismissed on the grounds that the prosecutor's office did not have sufficient evidence to justify continuing the case against them.⁴ According to the author, he was not formally notified of this decision and he was able to obtain information about the dismissal of the case only on his own initiative. The Special Unit on Human Rights Offences appealed the decision, but on 24 May 2006 the Caaguazú and San Pedro Appeal Court declared the appeal inadmissible on the grounds that it had not been filed by the deadline.

2.19 On 6 and 18 March 2008, the author asked the Santa Rosa del Aguaray Criminal Court and the San Pedro del Ykuamandyju Criminal Court for a copy of the court record concerning the charges brought by the Public Prosecution Service against the police station chief and the prosecutor. However, the record could not be found and is not in the courts where it should be kept. On 7 May 2008, the Public Prosecution Service informed the author that no further appeal was possible against the decision to dismiss the case taken on 3 August 2005. Consequently, the author maintains that he has exhausted all domestic remedies.

2.20 The author states that on 21 September 2004, the Judges Impeachment Panel instituted proceedings for administrative liability against prosecutor L.A., at the request of the San Pedro del Ykuamandyju Criminal Court, which notified the Panel of the charges brought against the prosecutor for the offence of causing bodily harm in the exercise of public duties to the author and the other demonstrators in detention. On the same date, the Panel decided to suspend the impeachment pending a final decision in the criminal case. Subsequently, on 22 November 2005, the Panel acquitted prosecutor L.A. on the grounds that the case had been dismissed by the Criminal Court.

The complaint

3.1 The author alleges that the facts described are a breach of article 2, paragraph 3, and article 7 of the Covenant.

3.2 With regard to article 7 of the Covenant, the author contends that the physical abuse he suffered on 3 June 2003 amounts to torture or at least cruel or inhuman treatment contrary to article 7 of the Covenant. The acts of torture to which he was subjected by police and military officers were intended to intimidate him and temporarily undermine his ability to continue leading the agricultural workers' protests. The State party indicted him and placed him in pretrial detention not because it had grounds to bring criminal charges against him, but with a view to imposing restrictions on him and subjecting him to police and prosecutorial surveillance. He points out that the beatings, asphyxiation and death threats to which he was subjected were committed with the consent of the criminal prosecutor who subsequently ordered his detention.

⁴ In its decision the court states: "The legal basis for the temporary stay of proceedings depends on there being a real possibility that the concrete and specific evidence that they wished to submit in order to enable the proceedings to continue would in fact constitute sufficient proof to justify a change in the course of the case. In the present case, the representative of the Public Prosecution Service makes no reference to any evidence in support of his application. ... there is no evidence to fully satisfy this Court of the involvement of the accused in the offence in question. In addition, the prosecutor's office makes no mention of any other inquiries aimed at establishing the facts of the case."

3.3 The author states that the assaults have left him with physical and psychological sequelae.⁵ The spraying of irritant gases directly into the face from a close distance causes a sensation of asphyxiation and drowning similar to that felt when being immersed in water, and is intended to cause severe pain and the sensation of dying from lack of air as a result of immersion. He argues that the sensation of anguish and fear of death was heightened by the fact that the acts were carried out with the consent of the judicial official responsible for protecting his life and physical and mental integrity.

3.4 The author recalls that the Public Prosecution Service itself recognized before the domestic court that physical punishment had taken place. In the application for the temporary stay of proceedings of 18 March 2005, the criminal prosecutor stated that there was ample evidence proving conclusively that the alleged offences had occurred. However, the judicial action taken was inadequate to fully clarify the circumstances of those offences, punish those responsible, compensate the victims and prevent similar situations from recurring.

3.5 The State party failed in its duty to investigate effectively, properly and promptly the complaints of torture filed by the author. In order to properly interpret the obligations under article 2, paragraph 3, in relation to article 7 of the Covenant, the Committee should take into account the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁶ and, in particular, the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol.

3.6 The author asserts that the complaint of torture was not dealt with promptly and was subsequently processed slowly and incompetently. The two public officials whose possible individual criminal liability was self-evident were charged 13 months after the events. The Public Prosecution Service did not request the temporary suspension of those officials (or of any others) from their duties as a precautionary measure to prevent them from obstructing the investigation and influencing the course of the public prosecution. The prosecutor assigned to the case appealed the order dismissing the case two months after the deadline for submitting a challenge. This incompetence and unjustified delay demonstrate the ineffectiveness of the available remedy.

3.7 The author maintains that the medical examinations carried out on the author and the other victims by forensic physicians of the Public Prosecution Service and the judiciary failed to comply with the requirements of the Istanbul Protocol. The examinations were superficial and confined to an external examination of the victims and included no

⁵ The author attached a medical report by Dr. Christian Palmas Nicora (an orthopaedist and traumatologist), dated 14 July 2008, and one by Dr. Carlos Portillo, dated 9 July 2008. According to the first report, the author presents limitation of abduction of the right shoulder beyond 120 degrees and pain with maximum external rotation with the shoulder at 90 degrees; pain around the upper right scapula region; muscular atrophy in the right paravertebral region and the right periscapular muscles. In the left hand, the author presents stiffness of the distal interphalangeal joints of the index finger, painful lumps in the proximal interphalangeal joints of the index and middle fingers, with partial loss of ability to flex the fingers. Decreased muscle strength in the left hand. He has an old fracture of the third right rib, posterior arch, and joint impingement of the distal interphalangeal joint of the index finger of the left hand. According to the second report, there is recurring pain in the bones and joints, which at the time of his release affected his whole body and which is currently mostly felt in both knees, deviation of the joint between the second and third phalanges of the index finger of the left hand, micturition difficulties, conjunctival sensitivity in both eyes when exposed to irritants that did not previously cause watering of the eyes, irritability and intolerance of any sound similar to explosions or gunfire.

⁶ General Assembly resolution 55/89, 22 February 2001.

diagnostic tests or psychological assessments. He points out that he received no medical care until the day after he was detained and beaten.

3.8 The place where the acts of torture occurred was not cordoned off and no judicial inspection was conducted to collect evidence. The first inspection of the crime scene by prosecutors was carried out on 15 October 2003, 4 months after the events, and the second inspection took place on 16 October 2004, 16 months after the events. The first inspection was confined to noting the size of the cell and the police station premises and the second to drawing up a basic plan of the police station. The alleged victims and other witnesses were not notified about or involved in either inspection. Only one of the indicted officials took part – the chief of the police station where the inspection took place.

3.9 The investigation by prosecutors was focused mainly on gathering witness statements. In this regard, the investigation was partial since most of the witnesses were officials who had participated in the crackdown and whose statements were intended to cover up their own responsibility and that of their superiors. The Public Prosecution Service interviewed as witnesses seven police officers, five military personnel, one official of the Public Prosecution Service and four demonstrators, including the author. No confrontations were arranged between witnesses who gave contradictory accounts and there was a failure to conduct other necessary investigations provided for by domestic law.

3.10 With respect to the application for a temporary stay of proceedings filed by the Public Prosecution Service, in which the prosecutor's office mentioned that 33 witnesses and victims had not been interviewed at the appropriate stage of the proceedings, the author maintains that 19 of those persons had been charged by the Public Prosecution Service and were under police and prosecutorial surveillance in the criminal case brought against them for blocking the road during the demonstration. Consequently, it is not true that it was difficult to identify and bring together the victims, since most of them were known to the Public Prosecution Service, they were under police and prosecutorial surveillance and they could be interviewed and brought to trial.

3.11 The author refers to the situation of impunity in the State party and states that the Public Prosecution Service's failure to file charges in the criminal investigation because of a lack of evidence collected at the appropriate stage of the proceedings is consistent with this pattern of impunity. In this regard, the author refers to the concluding observations of the Human Rights Committee⁷ and to the report of the Special Rapporteur on torture.⁸

3.12 The author asks the Committee to recommend that the State party: (i) undertake a thorough and effective investigation into the circumstances in which the author was subjected to torture and ill-treatment and take appropriate measures to punish those responsible; and (ii) take measures to ensure that the author receives comprehensive and appropriate redress for the injury suffered.

State party's observations on the admissibility and merits of the case

4.1 In a note verbale dated 2 July 2009, the State party submits that the case was brought as a result of a demonstration by lemon verbena producers in the department of San Pedro on 3 June 2003. Following a clash with the security forces, both police officers and demonstrators were left injured. The State party refers to National Police reports indicating that no member of the security forces witnessed or was involved in acts of physical or psychological torture committed by the police force. The injuries and bruising sustained by

⁷ Concluding observations on Paraguay, CCPR/C/PRY/CO/2, para. 12.

⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. Mission to Paraguay, A/HRC/7/3/Add.3, 1 October 2007, paras. 53–55.

the demonstrators were caused while obstructing the police during the course of their duties. Police and judicial procedures were both carried out in strict compliance with the Constitution and the law, respecting the principles of legality and reasonableness in the use of force, taking into consideration the seriousness of the situation.

4.2 The State party maintains that there are circumstances that are still being investigated in order to establish the facts and that the national authorities have repeatedly indicated their determination to give effective follow-up to human rights complaints and to prevent any offence that gives rise to such complaints.

Author's comments on the State party's submission

5.1 On 5 October 2009, the author reiterates that the facts to which the communication relates were not the result of a "clash with the security forces", as the State party claims, in which "both police officers and demonstrators were left injured", but the disproportionate and unreasonable use of force by police officers against lemon verbena producers who were exercising their right to demonstrate.

5.2 The author reiterates that the proceedings for torture have been dropped following the dismissal of the case against the alleged perpetrators. On 7 May 2008, the prosecutor informed the author that no further remedies or other procedural means of appealing the dismissal decision were available.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 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.

6.3 The Committee notes the State party's affirmation that a number of circumstances are still being investigated in order to establish the facts. However, the State party provides no details concerning those circumstances. The Committee also notes that, according to the author, the case was dismissed definitively and that, on 7 May 2008, the Public Prosecution Service notified him that no further appeal against the decision to dismiss the charges was available. Consequently, the Committee considers that the communication meets the requirement of the prior exhaustion of domestic remedies, as set out in article 5, paragraph 2 (b), of the Optional Protocol.

6.4 As the other admissibility requirements have been met, the Committee declares the communication admissible insofar as it raises issues under articles 7 and 2, paragraph 3, of the Covenant.

Consideration of the merits

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

7.2 The Committee takes note of the author's claim that he was beaten at the time of his arrest and that, once at the police station, he was taken with other detainees to a room where police and military personnel beat him repeatedly while he was handcuffed with his hands behind his back. He also claims, inter alia, that he was subjected to death threats and

degrading treatment and that an irritant gas was sprayed in his face. The assaults have left him with physical and psychological sequelae, as indicated in medical reports prepared in 2008.

7.3 The Committee also notes that, on 10 June 2003, the author filed a complaint concerning these events with the Public Prosecution Service. However, it was only on 12 July 2004 that the police station chief and a prosecutor were indicted for the offence of causing bodily harm in the exercise of public duties. According to the author, the prosecutorial investigation, based mainly on taking witness statements, was partial, since most of the witnesses were police or military officers and only four demonstrators were interviewed. The Committee notes that on 18 March 2005, the Public Prosecution Service acknowledged that a large amount of evidence, such as medical tests, the statements of victims and witnesses, photographs and other reports proved conclusively that an offence had been committed. However, more evidence — including the testimony of many victims — had yet to be gathered to provide a basis for the charges against the two accused. The Committee also notes the State party's claims that the police and judicial procedures were carried out in strict compliance with the law.

7.4 Taking into account the author's detailed description of the events of 3 June 2003, the medical reports he submitted and the Public Prosecution Service's recognition that those events occurred, the Committee considers that the use of force by the police was disproportionate and that the treatment to which the author was subjected constitutes a violation of article 7 of the Covenant.

7.5 With regard to the author's complaint concerning the investigation of the events, the Committee recalls its general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment⁹ and general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant,¹⁰ as well as its settled jurisprudence,¹¹ according to which complaints alleging a violation of article 7 must be investigated promptly, thoroughly and impartially by the competent authorities and appropriate action must be taken against those found guilty. In the present case, the Committee notes that the author filed the complaint on 10 June 2003 and that it was more than a year later — 12 July 2004 — that the prosecutor indicted two suspects. On 18 March 2005, the prosecutor requested a temporary stay of proceedings in order to allow further evidence to be gathered. However, the criminal court refused to allow such evidence to be gathered and dismissed the case. In those circumstances, and in the absence of any justification by the State party as to why the investigation into the case was interrupted, the Committee finds that the author did not have access to an effective remedy and that the facts before it amount to a violation of article 2, paragraph 3, read in conjunction with article 7 of the Covenant.

8. 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 facts before it disclose a violation of article 7 of the Covenant and of article 2, paragraph 3, of the Covenant, read in conjunction with article 7.

⁹ *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40)*, annex VI, sect. A, para. 14.

¹⁰ General comment No. 31, the nature of the general legal obligation imposed on States parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (2004), para. 18.

¹¹ See, for example, communication No. 1436/2005, *Sathasivam/Saraswathi v. Sri Lanka*, Views adopted on 8 July 2008, paras. 6.3 and 6.4; and communication No. 1818/2008, *MacCallum v. South Africa*, Views adopted on 25 October 2010, para. 6.7.

9. 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 which should, as an alternative to what has been undertaken so far, include an impartial, effective and thorough investigation of the facts, the prosecution and punishment of those responsible and full reparation, including appropriate compensation.¹² The State party is also under an obligation to prevent similar violations in the future.

10. 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 and ensure that they are widely disseminated.

[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.]

¹² See, for example, communication No. 1605/2007, *Zyuskin v. Russian Federation*, Views adopted on 19 July 2011, para. 13.