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Communication No. 1828/2008

<i>Submitted by:</i>	Florentina Olmedo (represented by the Paraguayan Human Rights Coordinating Committee [CODEHUPY] and the World Organisation Against Torture [OMCT])
<i>Alleged victim:</i>	Eulalio Blanco Domínguez
<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>	Deprivation of life of an individual during a demonstration
<i>Substantive issues:</i>	Violation of the right to life and to an effective remedy
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	2 (3) and 6 (1)
<i>Article of the Optional Protocol:</i>	5 (2) (b)

[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. 1828/2008*

Submitted by: Florentina Olmedo (represented by the Paraguayan Human Rights Coordinating Committee [CODEHUPY] and the World Organisation Against Torture [OMCT])

Alleged victim: Eulalio Blanco Domínguez

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. 1828/2008, submitted to the Human Rights Committee by Ms. Florentina Olmedo 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 Florentina Olmedo, a Paraguayan national born in 1942, who is acting on behalf of her deceased husband, Eulalio Blanco Domínguez, a Paraguayan national born in 1940. She alleges that her husband was the victim of a violation by Paraguay of articles 2, paragraph 3, and 6, paragraph 1, of the Covenant. The Optional Protocol entered into force for the State party on 10 January 1995. The author is represented by counsel.

* 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.

The facts as submitted by the author

2.1 Blanco Domínguez was an agricultural worker whose home and working farm were located in the community of Andrés Barbero (district of San Pedro de Ykuamandyju). He belonged to the Asociación María Auxiliadora, which brought together producers of lemon verbena (aloesia) and was supported by the Agricultural Producers Coordination Office – San Pedro Norte (CPA-SPN), the largest rural workers' trade organization in the area. Given the major inequalities in rural land distribution in Paraguay, the chief demand of rural workers' organizations is for agrarian reform. That situation has frequently led to conflicts between landowners, farm workers and government authorities.

2.2 The Government had initially provided support for growing and marketing lemon verbena. In 2002, it handed marketing over to the private sector, triggering a drop in prices and a surplus of unsold crops, with losses for producers. 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. In the wake of 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 farm workers gathered once more in Santa Rosa del Aguaray to set up camp and continue organizing protests. After that date, the farm workers held as many as two or three demonstrations a day and were based in a camp set up on the grounds of a public institution.

2.3 On 2 June 2003, the producers' organization issued a public statement requesting the authorities fully to implement 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 to put pressure on them.

2.4 On 3 June 2003, around 1,000 demonstrators, including Blanco Domínguez, converged on the site of the demonstration. They found themselves facing a large number of police, anti-riot police and military personnel, under the orders of criminal prosecutor L.A., from the Santa Rosa district Prosecutor's Office, who was on duty that day. The demonstrators came face to face with the police barrier, which prevented them from advancing, and decided to blockade the road. The prosecutor ordered the leaders of the demonstration to unblock the road, and told them that if they failed to do so it would be cleared by force.

2.5 While negotiations were under way, the prosecutor ordered the road to be cleared. The police attack was immediate and violent, and involved the use of tear gas, firearms and water cannons. According to the author, the other demonstrators were given no prior loudspeaker warnings of the police intervention.

2.6 The police violently beat many demonstrators, fired indiscriminately at those who were fleeing and violently broke into and damaged various nearby houses, severely beating any persons they managed to catch. Both live and rubber bullets were used indiscriminately. Several demonstrators who were shot said that they had not been warned by the policemen who fired at them. They said that the shooting had often been unnecessary and disproportionate, and that it had occurred when demonstrators were fleeing or at close range when they had already surrendered.¹ The road was cleared in a matter of 10 to 15 minutes.

2.7 Blanco Domínguez had been at the head of the demonstration and, along with other demonstrators, had peacefully surrendered to the police, kneeling down with his hands up.

¹ The author attached a sworn statement by eight demonstrators.

While he was in this position, an officer of the National Police shot him in the back at very close range. After he fell to the ground, he was hit on the head by the police. After a few minutes, he was rescued by some demonstrators and other policemen, who took him to the Santa Rosa del Aguaray Health Centre. As the centre was not equipped to treat him, he was transferred to the San Estanislao District Hospital (Department of San Pedro) and from there to the Asunción Medical Emergency Hospital. After two operations, Blanco Domínguez died on 5 June 2003.² Some 16 persons were wounded during the incident and required treatment at the above-mentioned health centre or hospitals.

2.8 On 3 June 2003, the National Police filed a complaint with the criminal prosecutor L.A. against Blanco Domínguez and another 42 demonstrators for allegedly committing the following offences: threatening the safety of persons on the highway, threatening the safety and orderly coexistence of persons and resistance with firearms and bladed weapons.³ On the same date, the criminal prosecutor issued an order for the provisional detention of Blanco Domínguez and other demonstrators. On 4 June 2003, the prosecutor filed charges and applied for an order of pretrial detention against Blanco Domínguez and the other accused persons. On 3 December 2003, the criminal prosecutor filed an indictment against 32 demonstrators, not including Blanco Domínguez. On 2 May 2007, the Criminal Court of San Pedro de Ykuamandyju dismissed the indictment against the 32 demonstrators, on the grounds that the procedure had exceeded the maximum duration of three years without any definitive judicial decision. There was no appeal against the ruling, which became final.

2.9 The investigation into the death of Blanco Domínguez was opened on the basis of a police communication, dated 6 June 2003, addressed to prosecutor L.A. The case was assigned to Prosecutor No. 1 of the Santa Rosa del Aguaray District Prosecutor's Office. At the request of the Public Prosecution Service (*Ministerio Público*), the Police Chief of the Department of San Pedro filed a report of the incidents which took place on 3 June 2003, which stated the following:

The strategy and tactics used in the operation had been prepared in advance, and were based on the common knowledge that the demonstrators were overwhelmingly hostile and posed a significant threat to the physical integrity of law-enforcement officials. At the start of the operation, two water cannons adequately supplied with water and tear gas moved forward, backed up by a unit of riflemen equipped with rubber bullets, who were shielded by the cannons, whose purpose was specifically to control the demonstrators. The demonstrators fired at the police, hitting the water cannons with various calibres of bullets, forcing them onto the side of the main road, in a clear attempt to surround them. Meanwhile, as law-enforcement personnel who had been waiting at a safe distance on both sides moved forward, they found themselves face to face with the demonstrators. The armed demonstrators fled hastily down side streets, firing their weapons to cover themselves, while others ran away to hide in any available hiding places. Most of them returned to their quarters at the offices of the Rural Welfare Institute (IBR) and immediately used loudspeakers that were part of a discotheque sound system inside the building, to urge all their followers to fight to the death with the slogan "The people united will never be defeated".

² The forensic report described the surgical operation that was performed as a "laminectomy of lumbar vertebrae one with right paravertebral removal of a rubber projectile and a foreign body".

³ The author points out that the note dated 3 June states that "During the incident, persons who had suffered serious (but not critical) wounds who were taken by ambulance to the Asunción Medical Emergency Hospital included: Eulalio Blanco Domínguez (...) they had been shot with rubber bullets, all were in stable condition and their lives were not at risk (...)".

2.10 The report expressed regret at the loss of a human life as a result of the clash and declared that the police had exclusively used rubber bullets. The author points out that the Chief of Police of San Pedro submitted neither material evidence of the events it reported nor any probative evidence.

2.11 On 16 June 2003, the prosecutor requested the Director of the Asunción Medical Emergency Hospital to submit a certificate of the victim's medical diagnosis. This certificate was later added to the record of the investigation.

2.12 On 17 June 2003, the author requested the prosecutor assigned to the case to conduct various evidentiary proceedings, and on this same date, the author's son requested an investigation into the alleged homicide of his father. On 3 July 2003, the author and her son testified before the prosecutor and provided the names of possible witnesses of the incident.⁴

2.13 At the prosecutor's request, on 8 August 2003, a report by the Director of the Santa Rosa Health Centre was added to the record of the investigation. It indicated that Blanco Domínguez was treated on 3 June 2003, that he received appropriate treatment and that he was then transferred to another facility. On 14 August 2003, the prosecutor in charge of the case submitted a report on the request made by the Commander in Chief of the Armed Forces to deploy 30 troops to break up the demonstration that took place on 3 June 2003. At the prosecutor's request, on 14 November 2003, the forensic medicine department of the Medical Emergency Hospital submitted a medical diagnosis certificate for Blanco Domínguez. On 29 January 2004, the report of the forensic physician of the Public Prosecution Service, who analysed the medical diagnosis from the forensic medicine department of the Medical Emergency Hospital, was added to the record.

2.14 The Public Prosecution Service did not investigate the statements made by other witnesses identified by her and her son, nor did it take statements from other demonstrators and/or persons who were wounded in the incident. She also maintains that procedures such as the autopsy of the victim's body, ballistic reports, a crime-scene inspection and the collection of evidence at the site of the incident were not carried out.

2.15 On 5 November 2006, a lawyer from the Paraguayan Human Rights Coordinating Committee (CODEHUPY) acting on behalf of the victim's relatives, requested a copy of the criminal investigation record from the prosecutor in charge of the case. On 2 April and on 8 May 2008, the author requested additional information concerning the proceedings. The Public Prosecution Service never responded to those requests.

2.16 Other complaints had been lodged in relation to her husband's death. On 17 June 2003, CODEHUPY filed a complaint before the Human Rights Commission of the Senate on account of the arbitrary execution of Blanco Domínguez and other human rights violations that had taken place on 3 June 2003. On 20 June 2003, the complaint was submitted by the chairman of the Human Rights Commission to the Prosecutor-General's Office (*Fiscalía General del Estado*). On 24 June 2003, the Prosecutor-General's Office transmitted the complaint to a prosecutor in the Special Unit on Human Rights Offences; however, the complaint was not investigated.

2.17 The present communication falls within the scope of an exception to the rule requiring the prior exhaustion of all available domestic remedies, which is set out in article 5, paragraph 2 (b), of the Optional Protocol. According to applicable domestic law, the

⁴ The author included in the communication submitted to the Committee the statements of various witnesses. One witness stated that he saw a policeman shoot Blanco Domínguez with a rifle. Another stated that the policeman who shot him used a handgun. A third stated that he himself was shot in the side at close range by a policeman wearing a khaki uniform, at the same time as Blanco Domínguez.

Public Prosecution Service has a period of six months, beginning on the date of the initiation of proceedings, to complete its investigation (pretrial proceedings). This time limit may be extended in unusually complex cases; however, in no circumstances may an extension of pretrial proceedings effectively increase the total length of the criminal trial, which is set by the Code of Criminal Procedure at three years.

2.18 At the time the author submitted the present communication, the investigation had been under way for more than five years, without so much as a charge having been made. She adds that the Public Prosecution Service has not offered any satisfactory explanation to justify this delay, nor has it explained why it failed to order various routine investigation procedures, such as an autopsy of the body, ballistics reports, paraffin tests or the summoning of witnesses to testify for the author and her son. Consequently, she contends that the application of the remedies available to her under the domestic law has been unreasonably prolonged.

The complaint

3.1 The author alleges that the facts described amount to a violation of article 6, paragraph 1, of the Covenant, since her husband was arbitrarily deprived of his life as a result of the unlawful, unnecessary and disproportionate use of force by public officials. Although the State is authorized to order the break-up of a demonstration that has become obstructive, the powers entrusted to the authorities in preserving law and order cannot be exercised arbitrarily and with contempt for human dignity, in particular when the conduct of public law-enforcement officials may threaten the right to life of the victims, as in the present case. The mere act of blocking a public thoroughfare by a peaceful assembly does not in and of itself justify the use of firearms against demonstrators, provided that the latter do not otherwise represent a grave and imminent threat to the life or physical integrity of the public officials or third parties concerned.

3.2 The author argues that the victim did not commit any act of violence against any police officer, nor did he endanger the life of third parties in such a way as to justify the use of firearms against him. Before he was killed, he had submitted to arrest without resistance and was kneeling with his hands up as a sign of surrender. Even if the police report submitted to the prosecutor were true, which was subsequently neither corroborated nor substantiated, and the police had in fact had to react to gunshots from demonstrators, it is obvious that, when her husband was shot, no distinction was made between persons who represented a grave and imminent threat and those who did not.

3.3 The shot was fired at short range and aimed at a part of the body where it was likely to cause severe injury or even death. Moreover, the first aid provided immediately after the shooting was inadequate, late and completely improvised. No measures had been taken to ensure that medical teams from the public emergency services were present at the site of the demonstration, if needed, to provide proper first aid to the wounded. More than 12 hours elapsed between the moment Blanco Domínguez was shot and his admission to hospital for proper medical treatment.

3.4 The author alleges that article 6, paragraph 1, was also violated, because the National Police gave the demonstrators no prior warning that they would use firearms. The police fired at the demonstrators without first trying other means of dissuasion or non-lethal force, showing the complete lack of any police procedure for dealing with demonstrations, assemblies or occupations of public or private property. The fact that the State's police regulations were inconsistent with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials was a determining factor in the arbitrary execution of Blanco Domínguez. Act No. 222/93, National Police Organization Act, which was in force at the time of the incident and is still in force, is vague and imprecise about the circumstances in which police officers are lawfully authorized to use firearms. Articles 145 to 148 simply

restrict the criminal and administrative responsibility of public officials who use firearms and the precautionary measures that may be imposed during the investigation. The Guide to Police Procedure, which implements the Act, is also imprecise and is not consistent with the above-mentioned Basic Principles.

3.5 Moreover, the police force does not specify the type of weapon and ammunition that should be used, nor does it purchase or register them. Each police officer purchases his or her own weapon and ammunition, and no institutional standards have been formulated in this regard. It is therefore impossible to trace the bullets used during the police operation and to check whether the use of firearms was necessary or proportionate.⁵

3.6 The author maintains that the alleged facts also constitute a violation of article 6, paragraph 1, read in conjunction with article 2, paragraph 3, of the Covenant, since the investigation into the arbitrary execution of her husband was not conducted in an efficient manner. No account was taken of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions⁶ or the Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

3.7 According to the author, the investigation has been at a standstill since February 2004.⁷ No autopsy was performed as part of the investigation. Neither the clinical history report submitted by the Medical Emergency Hospital, nor the report written by the forensic physician of the Public Prosecution Service satisfy the specific requirements of an autopsy, which would have been decisive in clarifying the most fundamental aspects of the investigation. This omission was not subsequently remedied by other means. The scene of the crime was not cordoned off, nor was a forensic inspection performed in order to collect evidence. The Public Prosecution Service did not take steps to interview eyewitnesses, including those identified by the author and her son in their testimonial statements. Nor did it ensure with due diligence that the firearms used by police who took part in unblocking the road were examined by an expert. The projectile extracted from Blanco Domínguez's body, which has since been misplaced, was neither examined by an expert nor included as part of the evidence listed in the criminal investigation record. None of the weapons carried by the policemen who took part in breaking up the demonstration were subject to expert inspection. The failure to obtain these essential items of evidence in the investigation has meant that evidence crucial for determining the truth and bringing criminal charges has been lost.

3.8 The author requests the Committee to recommend that the State party: (a) undertake a thorough and effective investigation into the circumstances of the arbitrary deprivation of life of the victim, and adopt appropriate measures to punish those responsible and guarantee the author full access and the capacity to act at all the stages and levels of that investigation; (b) supply and keep a check on all weapons and ammunition belonging to police forces, establishing regulations on the use of force in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and (c) take measures to ensure that the author receives full reparation for the years of suffering she has endured.

⁵ The Human Rights Committee expressed its concern at this situation in its Concluding Observations on the second periodic report of Paraguay, contained in document CCPR/C/PRY/CO/2, para. 11.

⁶ Recommended by the Economic and Social Council in its resolution No. 1989/65, of 24 May 1989.

⁷ The copy of the prosecution file (record of the investigation) transmitted by the State party contains a copy of the notification issued to two witnesses, dated 9 June 2008, summoning them to appear in order to give testimony.

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

4.1 In a note verbale dated 2 June 2009, the State party declared that the case had been brought as a result of a campesino demonstration led by lemon verbena producers on 3 June 2003 in the Department of San Pedro, where a clash with law-enforcement personnel had left both policemen and demonstrators wounded. It maintained that police and judicial procedures had been conducted in strict compliance with the applicable constitutional and legal provisions, that such conduct was consistent with the principles of lawful and reasonable use of force and that due attention had been given to the seriousness of the situation.

4.2 The State party also declared that various circumstances are still being investigated in order to establish the facts. In spite of this, it has not yet been able to determine the origin of the shot or who fired it. The State party regrets the death of Blanco Domínguez and is committed in its efforts to establish the facts.

4.3 The State party referred to general memorandum No. 39, dated 29 January 2009, which was submitted by the Office of the National Chief of Police. It indicated that the demonstrators, under the leadership of Eulalio Blanco Domínguez and Ernesto Benítez Gamarra, among other leaders of the Agricultural Producers Coordination Office – San Pedro Norte (CPA-SPN), had been asked to unblock the road in order to allow vehicle traffic to resume. However, they refused the dialogue and responded highly aggressively towards law-enforcement personnel after these legitimate requests. Thus, in accordance with applicable domestic rules and regulations and under the direction and supervision of the duty prosecutor of Santa Rosa del Aguaray, steps were taken to unblock the road and apprehend the most notorious of the leaders.

4.4 The State party also refers to the report of the Office of the Chief of the Police of San Pedro, dated 19 June 2003, which had been submitted to the Public Prosecution Service. It states that the demonstrators passed in front of Santa Rosa Police Station No. 18 “shouting, cheering, protesting and hurling insults at policemen. Ostentatiously carrying guns [...] and nail-studded clubs, on the orders of their main leaders [...] they threatened to kill members of the police force”. The report also indicates that the policemen involved in the operation exclusively used rubber bullets and that 10 policemen were wounded by firearms in the incident.

Author's comments on the State party's submission

5.1 On 5 October 2009, the author commented on the State party's submission. She contends that, although the State party stated that investigations had been conducted to establish the facts, on the date of submission of the communication, the investigative phase into the incident had lasted more than five years, without not so much as a charge being made against the alleged perpetrators, nor any procedures being conducted with a view to establishing the facts.

5.2 The author reiterates that the incident referred to in the communication was not the result of a clash with law-enforcement personnel in which both policemen and civilians had been wounded, as suggested by the State party, but rather the disproportionate and unreasonable use of force by police officers against lemon verbena producers who were exercising their right to demonstrate.

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 takes note of the State party's argument to the effect that a number of circumstances are still being investigated in order to establish the facts. In this regard, the author maintains that the present communication falls within the scope of an exception to the rule requiring the prior exhaustion of all available domestic remedies, which is set out in article 5, paragraph 2 (b), of the Optional Protocol, owing to the length of time that has elapsed without any domestic procedures having been concluded. The criminal investigation in fact began on 16 June 2003, and since that date, no conclusions seem to have been reached regarding the circumstances of Blanco Domínguez's death. The Committee recalls that it is precluded from considering any communication unless it has been ascertained that all available domestic remedies have been exhausted. For the purposes of article 5, paragraph 2 (b), of the Optional Protocol, however, domestic remedies must be both effective and available, and must not be unduly prolonged. In the circumstances of the present case, the Committee notes that the State party has failed to explain why no progress has been made in the investigation nor has it provided a possible date for its conclusion. Consequently, the Committee considers that domestic remedies have been unreasonably prolonged and finds that article 5, paragraph 2 (b), of the Optional Protocol does not preclude it from considering the complaint.⁸

6.4 Considering that the other requirements for admissibility have been met, the Committee declares the communication admissible insofar as it raises issues under articles 6 and 2, paragraph 3, of the Covenant.

Consideration of the merits

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

7.2 The Committee takes note of the author's allegations to the effect that her husband was the victim of an arbitrary execution as a result of the unlawful, unnecessary and disproportionate use of force by police officers during a demonstration. She alleges that he was shot at close range after surrendering and subsequently struck on the head. She also alleges that the investigation into the incident was not conducted efficiently, that the circumstances surrounding the incident have still not been clarified and that responsibility has not been determined despite the time that has elapsed. The Committee also notes the State party's general argument that police and judicial procedures were carried out in strict compliance with applicable constitutional and legal provisions and that such procedures were conducted in conformity with the principles concerning the lawful and reasonable use of force. The Committee further notes that, according to the State party, a number of

⁸ See communications No. 1560/2007, *Marcellana and Gumanoy v. The Philippines*, Views adopted on 30 October 2008, para. 6.2; and No. 1619/2007, *Pestaño v. The Philippines*, Views adopted on 23 March 2010, para. 6.4.

circumstances are still being investigated in order to establish the facts. However, the State party has submitted no specific evidence shedding light on how or by whom Blanco Domínguez was fatally wounded.

7.3 With regard to the author's contention that article 6 of the Covenant was violated, the Committee recalls that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.⁹ The Committee refers to its jurisprudence, according to which both a criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by article 6.¹⁰ A violation of the Covenant may therefore arise as a result of a State party's failure to take appropriate measures to investigate and punish or redress such a violation.¹¹

7.4 The Committee also recalls that, under article 2, paragraph 3, of the Covenant, States parties should ensure that all persons have accessible, effective and enforceable remedies in order to claim the rights embodied in the Covenant. The Committee further recalls its general comment No. 31, on the nature of the general legal obligation imposed on States parties, to the effect that, when the investigations reveal violations of certain Covenant rights, States parties must ensure that those responsible are brought to justice.¹²

7.5 The Committee considers that the State has an obligation to protect the life of persons under its jurisdiction and, in the present case, the State party had the obligation to protect the life of the demonstrators. The grave circumstances surrounding the death of Blanco Domínguez call for an effective investigation into the possible involvement of the State party's police forces. Despite the foregoing, the State party has not explained why the investigation that began on 16 June 2003 has made so little progress and still not reached any definitive conclusion. The Committee takes note of the author's statement, which has not been contested by the State party, to the effect that no autopsy was carried out and that the projectile extracted from the body of Blanco Domínguez was not examined and has been misplaced, which now makes it impossible to elucidate particularly important aspects of the investigation. The Committee also recalls that the burden of proof cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol, that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities, and to furnish to the Committee whatever information it has available.¹³ In view of the foregoing, the Committee concludes that the facts before it reveal a violation of article 6, paragraph 1, of the Covenant, and of article 2, paragraph 3, of the Covenant, read in conjunction with article 6,

⁹ See the Committee's general comment No. 6, on the right to life (article 6 of the Covenant), *Official records of the General Assembly, thirty-seventh session, Supplement No. 40 [A/37/40] annex V*, para. 3.

¹⁰ See, for example, communications No. 1447/2006, *Amirov v. Russian Federation*, Views adopted on 2 April 2009, para. 11.2, and No. 1436/2005, *Sathasivam v. Sri Lanka*, Views adopted on 8 July 2008, para. 6.4.

¹¹ See communication No. 1619/2007, *Pestaño v. The Philippines*, Views adopted on 23 March 2010, para. 7.2.

¹² *Official records of the General Assembly, fifty-ninth session, Supplement No. 40, vol. I (A/37/40 [vol. I]) annex III*, para. 18.

¹³ See communication No. 1756/2008, *Zhumbaeva v. Kyrgyzstan*, Views adopted on 19 July 2011, para. 8.7.

paragraph 1.¹⁴

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 6, paragraph 1, and of article 2, paragraph 3, read in conjunction with article 6, paragraph 1, of the Covenant.

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 includes an effective and complete investigation of the facts, the prosecution and punishment of those guilty and full reparation, including appropriate compensation. 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 Committee's Views and to disseminate them widely.

[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.]

¹⁴ See communications No. 1458/2006, *González v. Argentina*, Views adopted on 17 March 2011, para. 9.4 and No. 1756/2008 (see footnote 13 above), paras. 8.8 and 8.10.