



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2610/2015\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Yelitze Lisbeth Moreno de Castillo (represented by counsels Carlos Ayala, Bernardo Pulido, José Guarenas and Raúl Castillo)
<i>Alleged victim:</i>	The author; her deceased husband, Joe Luis Castillo González; and her deceased son, Luis César Castillo Moreno
<i>State party:</i>	Bolivarian Republic of Venezuela
<i>Date of communication:</i>	10 April 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 13 May 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	10 November 2017
<i>Subject matter:</i>	Responsibility of the State for the attack of which the author and her family were victims
<i>Procedural issues:</i>	Same case was submitted to the Inter-American Court of Human Rights
<i>Substantive issues:</i>	Right to life; right to physical integrity; right to security; guarantees of due process
<i>Articles of the Covenant:</i>	2, 6 (1), 7, 9 (1) and 14
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (a)

1. The author of the communication is Yelitze Lisbeth Moreno de Castillo, a national of the Bolivarian Republic of Venezuela. The communication is submitted on her own behalf and on behalf of her husband, Joe Luis Castillo González, and her son, Luis César

\* Adopted by the Committee at its 121st session (16 October–10 November 2017).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamarian Koita, Marcia V.J. Kran, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany, and Margo Waterval.

\*\*\* An individual opinion by Committee member Sarah Cleveland (partly concurring, partly dissenting) is annexed to the present Views.



Castillo Moreno, both deceased.<sup>1</sup> She claims that Joe Luis Castillo González was the victim of violations by the Bolivarian Republic of Venezuela of articles 6 (1), 7 and 9 (1), read in conjunction with article 2, and of article 14, read in conjunction with article 2 (3), of the Covenant, and that she and her son were victims of violations of articles 7 and 9 (1), read in conjunction with article 2, and of article 14, read in conjunction with article 2 (3), of the Covenant. The Optional Protocol entered into force for the State party on 10 August 1978. The author is represented by counsel.

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

2.1 Between 1999 and 2003, Yelitze Lisbeth Moreno de Castillo and her husband, Joe Luis Castillo González, both worked at the Social Action Office in the Apostolic Vicariate of Machiques in the State of Zulia, located in the Bolivarian Republic of Venezuela adjacent to the border with Colombia. Joe Luis Castillo worked on issues directly related to the situation of indigenous peoples and refugees. His duties included providing legal assistance, monitoring services and support in connection with migration, asylum and refugee issues in the area, disseminating information and training on human rights for indigenous communities and supplying legal support for campesinos attempting to recover their land. The author describes the unstable situation in the parts of Colombia close to Catatumbo, the area that her husband's work covered. The border between Colombia and the Bolivarian Republic of Venezuela has been marked by ongoing disputes concerning the ownership and use of land, which have been exacerbated by the involvement of irregular groups in the production of cocaine and by the land reform process that was under way at that time in the Bolivarian Republic of Venezuela. Between 1996 and 2003 there were 69 attacks on people working to defend land claims in Zulia, and a number of agrarian leaders were killed.

2.2 In view of the deteriorating security situation, in 2001 Joe Luis Castillo, acting as a representative of the Vicariate and working together with the Venezuelan Programme of Education and Action in the Field of Human Rights and the Centre for Justice and International Law, filed an application before the Inter-American Commission on Human Rights for precautionary measures to protect 52 displaced persons who were at imminent risk of being forcibly returned to Colombia. The request for precautionary measures was granted by the Commission on 12 March 2001. In November 2002, one of the persons named in the application for precautionary measures and his son were murdered by alleged contract killers. The Venezuelan authorities had not put in place any measures for the protection of these persons.

2.3 As a result of the precarious security situation, the author and her husband resigned from their positions in the Vicariate on 15 August 2003 and decided to move to the city of Mérida.

2.4 At approximately 7.30 p.m. on 27 August 2003, while they were still in Machiques, the author, her husband and their 18-month-old son were driving home when a motorcycle carrying two people approached the driver's side of the vehicle. The motorcyclists first slowed down in order to confirm the identity of the driver of the car and then continued on their way. A few metres further on, however, they stopped and shot at the three occupants of the car. Joe Luis Castillo was hit by 9 of the 13 bullets fired and was killed. The author sustained bullet wounds to her left arm, abdomen and neck. Her son was also hit by bullets in his left arm, chest and shoulders.

2.5 After the murder of Joe Luis Castillo, the Apostolic Vicariate of Machiques received anonymous threatening phone calls, which led to the temporary closure of the Social Action Office. The Office later reorganized its activities and discontinued its work on refugee support and cases of human rights violations.

2.6 The author submitted a request to the Inter-American Commission on Human Rights for precautionary measures to protect her life and personal integrity and those of her son. The measures were granted on 29 August 2003. However, the State did not take any action to implement those measures.

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<sup>1</sup> Luis César Castillo Moreno died from causes unrelated to the present communication.

2.7 Public Prosecution Office No. 20 for the State of Zulia, located in the town of Machiques de Perijá, opened a criminal investigation into the case on 28 August 2003. The investigation was conducted by the Agency for Scientific, Criminal and Forensic Investigations; Public Prosecution Office No. 11, which had full jurisdiction at the national level by order of the Directorate for Ordinary Crimes of the Office of the Attorney General of the Republic; the Directorate for the Protection of Fundamental Rights; and Public Prosecution Office No. 83 of the Judicial District of the Metropolitan District of Caracas. On 28 November 2006, the case was closed without any suspects having been identified.

2.8 According to the author, there were many shortcomings in the criminal investigation, notably a lack of coordination among the agencies involved and a failure to follow up on specific lines of inquiry, particularly the statements obtained from an alleged paramilitary and a member of the National Guard, who claimed that Joe Luis Castillo González's name was on a list of targets kept by paramilitary groups and that the mayor was aware of the actions of these groups, which operated with his acquiescence.

2.9 With regard to her access to information relating to the case, the author claims that she was not notified that the case had been closed and only found out when she visited the prosecutor's office in person. She also asserts that she requested the original file from the Public Prosecution Service on 24 May 2005. She had previously been provided only with certain parts of the file and was informed that the other parts were subject to confidentiality requirements. However, she was not able to view the file in full until 2007. The Vicariate of Caracas requested copies of the file from the Public Prosecution Service on 7 June 2007, 29 September 2008 and 4 February 2009. Despite the three requests for certified copies, they were provided only with an uncertified copy. The file was made available to the author for viewing only in 2007 and, although copies of the records of proceedings were obtained by the author from Public Prosecution Office No. 20, they were issued as confidential documents and did not include the decree declaring that the investigation had been discontinued.

2.10 The violent incident that the author experienced, combined with the knowledge that its perpetrators had not been caught, caused her emotional and psychological harm and led her to require specialized care. The author provides a medical report to that effect.<sup>2</sup>

2.11 The author brought the case before the Inter-American Commission on Human Rights, which found several violations of the American Convention on Human Rights.<sup>3</sup>

<sup>2</sup> Clinical psychologist Claudia Ernestina Carrillo Ramírez treated the author from February 2004 to 2012. In her affidavit, she asserts that the author suffered from depressive disorder and post-traumatic stress disorder. The author received medication to palliate the consequences of these disorders. The author suffered from an acute sense of vulnerability to violent attacks that prevented her from moving freely, ordering her ideas and rationally identifying potential threats. In terms of physical consequences, the author had to undergo abdominal surgery on two occasions as a result of the injuries suffered during the attack. The psychologist also stated that the son, Luis César Castillo Moreno, suffered from post-traumatic stress disorder and, once he learned what had happened, also suffered from depressive disorder.

<sup>3</sup> Inter-American Commission on Human Rights, report No. 120/10, case No. 12.605, *Joe Luis Castillo González et al. v. Venezuela*, merits, decision of 22 October 2010. In its notification of the transfer of the case to the Inter-American Court of Human Rights, dated 22 February 2011, the Commission summarized its conclusions on the case as follows: "The attack against Joe Luis Castillo González remains in impunity, as the State did not carry out serious and effective investigations to identify those responsible and, where appropriate, impose corresponding sanctions. The investigation initiated in relation to these events had serious irregularities and was closed by the public prosecutor's office without taking any actions aimed at clarifying the facts according to logical lines of investigation. The Commission considered proven that, in the investigation, there were indicia of presumable connivance and/or collaboration on the part of State agents in the murder of Joe Luis Castillo González, indicia that were dismissed without the respective investigations." Among the actions not taken, the Commission noted the lack of ballistic trajectory analysis and comparisons, the lack of coordination between various judicial bodies, the lack of follow-up of logical lines of inquiry that took into account the context in which the events had occurred or the modus operandi of certain actors, the lack of investigation of judicial proceedings in Colombia that might be connected and the dismissal of lines of investigation in connection with the possible participation of paramilitary and even State agents in the attack.

Subsequently, the Inter-American Court of Human Rights issued a ruling on 27 November 2012 in which it found no violations of the Convention.<sup>4</sup>

2.12 The author concedes that she has not been able to exhaust domestic remedies and notes that this is due to the fact that they have proved to be unreasonably lengthy. The Prosecution Service's decision to drop the case precluded the timely processing of effective remedies to protect the rights of the victims. In addition, she notes that there is no international legal procedure under way, since the Inter-American Court of Human Rights concluded its hearing of the case on 27 November 2012, at which time it issued its judgment on the merits. Furthermore, the three-year period for the submission of a communication provided for in rule 96 (c) of the Committee's rules of procedure has not been exceeded.

### **The complaint**

3.1 The author claims that the murder of her husband and the injuries that she and her son sustained, together with the existence of evidence indicating that local authorities were aware of the criminal activities of paramilitary groups responsible for the murders of human rights defenders in the area and did not take effective protection or prevention measures, as well as the subsequent delays and omissions in the criminal investigation and the failure to provide full redress, constitute violations of her human rights and those of her son and her deceased husband. She claims, in particular, that they amount to violations of the rights to life, integrity of person, personal security and judicial safeguards set forth in articles 6 (1), 7 and 9, read in conjunction with article 2, and article 14, read in conjunction with article 2 (3), in the case of Joe Luis Castillo González, and the rights to personal integrity, personal security and judicial safeguards set forth in articles 7 and 9, read in conjunction with article 2, and article 14, read in conjunction with article 2 (3), in the case of herself and her son.

3.2 The author claims that the State party failed in its duty under article 6 (1), read in conjunction with article 2, to adopt preventive and protective measures in connection with her husband, as a member of a vulnerable group (namely human rights defenders), even though the authorities were aware of the risks facing the members of that group and the campesinos with whom they were working. The existence of those risks had been highlighted in the requests for precautionary measures made by the Inter-American Commission on Human Rights on 12 March 2001 and 29 August 2003 in respect of the author and her son, following the death of Joe Castillo. The author stresses that, in addition to being a victim, she is the only eyewitness capable of recognizing those responsible for the death of her husband and, as such, her protection should have been a priority in the context of the investigation. Human rights defenders working in the border area at that time were particularly vulnerable, and the State therefore ought to have taken proactive measures to protect them. The work being done in the Vicariate of Machiques triggered adverse reactions on the part of the paramilitaries, guerrillas and other opponents of the land reform process implemented after the entry into force of the Land Act.

3.3 The State party has also violated the right to life of Joe Luis Castillo by failing to properly investigate the case and to identify and punish the perpetrators, which also constitutes a denial of the right to redress.

3.4 The author considers that the State is responsible by omission for a violation of the right to physical integrity of Joe Luis Castillo, her son and herself, as set forth in article 7, read in conjunction with article 2. The infringement of the right to physical integrity is evidenced by the gunshot wounds sustained by the author, her husband and her son, their subsequent hospitalization, and the emotional and psychological harm suffered by the author and her son following the attack. In connection with the responsibility of the State, the author cites the factors previously described, namely the absence of preventive measures and the non-fulfilment of the obligations to investigate the crime, punish the perpetrators and provide redress.

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<sup>4</sup> Inter-American Court of Human Rights, *Castillo González et al. v. Venezuela*, Judgment of 27 November 2012.

3.5 With regard to the violation of the human right to security of person as set forth in article 9 (1), read in conjunction with article 2, the author submits that the State party's failure to implement preventive measures to mitigate the risk facing Joe Luis Castillo seriously jeopardized his personal safety and that of his family.

3.6 The author claims that her rights under article 14, read in conjunction with article 2 (3), have been violated by reason of the absence of a satisfactory investigation and the failure to provide judicial safeguards in the course of the investigation. The investigation failed to address key elements, such as the risk of falling victim to contract killings faced by human rights defenders in the area and by Joe Castillo, in particular, because of his involvement in the pursuit of land claims, his representation of campesino leaders before the Inter-American Commission on Human Rights, the hazardous nature of his work with refugees in border areas and the possibility that he was being targeted by paramilitary groups. The investigation was mired in a multitude of ineffectual and disorganized efforts, with no proper coordination by the Public Prosecution Service or criminal investigation agencies. There was a lack of diligence in the collection of evidence and a failure to scrutinize other judicial proceedings that may have been connected with the case.

3.7 The author asserts, in particular, that there has been a violation of article 14 (3) (c) as a result of undue delays in the judicial process, and she maintains that this right applies not just to accused persons in a criminal trial but also to victims of an offence. She also states that victims' lack of access to information in a case file violates articles 2 (3) and 14 (1). Providing victims with all the available information relating to a case and the persons suspected of involvement in it, provided that this does not prejudice the course of the investigation, should be regarded as a guarantee of the independence and impartiality of the court.

3.8 The author asks the Committee to request that the State party investigate the case and prosecute and punish the perpetrators, bring the protocols on due diligence in investigations into line with international standards; adopt legislative, administrative or other measures to protect human rights defenders; and provide redress for the violations suffered by the victims through the payment of financial compensation for moral injury and material damage, as well as reimbursement for past, present and future legal costs and expenses incurred at the national and international levels.

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

4.1 The State party submitted its observations to the Committee on 29 December 2016 and 28 April 2017.

4.2 The State party notes that the case was reviewed by the inter-American system. The Inter-American Commission on Human Rights issued report No. 22/07 on admissibility, in which it declared the case admissible, and report No. 120/10 on the merits, in which it found the State responsible for the violation of a number of rights set forth in the American Convention on Human Rights. The Commission subsequently submitted the case to the Inter-American Court of Human Rights. On 12 November 2012, the Court issued a judgment in which it found no violation by the Bolivarian Republic of Venezuela of the rights of Joe Luis Castillo González, Yelitze Lisbeth Moreno and Luis César Castillo, as protected by the Convention, and closed the case. The State party therefore considers that the communication is inadmissible.

4.3 The State party requests that the communication be found inadmissible on the grounds that the Inter-American Court of Human Rights has issued a judgment on the merits of the same case. The present communication differs from others considered by the Committee that had previously been examined by other international bodies in that the Inter-American Court of Human Rights considered not only the admissibility but also the merits of the communication.<sup>5</sup> The State party calls on international bodies to review their practice of considering complaints that have already been ruled on by other international human rights courts.

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<sup>5</sup> The State party refers, inter alia, to communication No. 2202/2012, *Castañeda v. Mexico*, Views adopted on 18 July 2013.

**Author's comments on the State party's observations on admissibility**

5. In her comments of 3 February 2017, the author reiterated that the existence of a judgment of the Inter-American Court of Human Rights in no way presented an obstacle to consideration of the case by the Committee. She notes that the Bolivarian Republic of Venezuela has not entered a reservation to article 5 (2) (a) of the Optional Protocol to the Covenant.<sup>6</sup> The case of Joe Castillo is not being examined by the Inter-American Court of Human Rights, as that body issued its judgment on 27 November 2012. While the Committee cannot admit a communication if the same matter is being examined under another procedure of international investigation or settlement, it can admit it after completion of the review.

**State party's observations on the merits**

6.1 The State party provides background information on the conflict in the area where the events occurred, which was related to the implementation of the Land and Agricultural Development Act adopted by the Government of the Bolivarian Republic of Venezuela in 2001. The Act authorized the provision of temporary land titles to campesinos who were farming on public land. Landowners were strongly opposed to the policy and saw it as a threat. Some landowners paid Colombian paramilitaries to assassinate campesino leaders who were seeking enforcement of the new law. The Inter-American Commission on Human Rights itself, in its report on the merits, emphasized that the analysis of the question of whether responsibility could properly be attributed to the State was particularly complex owing to the existence of different versions as to the background, motives and even actors involved in the attack, noting that "this broad context alone [was] not sufficient to attribute to the State responsibility for violation of the duty of prevention".<sup>7</sup>

6.2 In connection with the events of 27 August 2003, the State party notes that Public Prosecution Office No. 20 for the Judicial District of Zulia opened a criminal investigation on 28 August 2003. A number of useful and necessary tasks were undertaken as part of the investigation, including a visual inspection of the crime scene, an autopsy, a forensic examination, the expert analysis of blood samples, mapping of the crime scene, a ballistics comparison and interviews with eyewitnesses. Once those tasks had been completed, it was concluded that the evidence was not sufficient to determine criminal liability. Accordingly, on 28 November 2006 the case was closed in accordance with the Code of Criminal Procedure. The author was formally notified of that fact. In accordance with the provisions of the Code, she had the option of applying to the presiding judge to request a review of the grounds for discontinuing the case.

6.3 The State party notes that, to date, no sufficient evidence to warrant the reopening of the criminal investigation has come to light.

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<sup>6</sup> The author refers, inter alia, to communication No. 986/2001, *Semey v. Spain*, Views adopted on 30 July 2003.

<sup>7</sup> Inter-American Commission on Human Rights, *Castillo González et al. v. Venezuela*, merits. The Commission found the following with regard to the duty to prevent:

"100. Although it is true that the State recognized a broader situation of violence in the border zone of the State of Zulia, where paramilitary groups and hired killers operate, this broad context alone is not sufficient to attribute to the State responsibility for violation of the duty of prevention. Nor is it possible to impute responsibility to the State for breach of that duty based solely on the climate of harassment of the activities of human rights defenders in Venezuela without factoring in other circumstances. Furthermore, while there is evidence that Joe Luis Castillo González was under observation because of his work and was a target for certain groups in the area, that evidence came to light after the investigation was opened. There is no evidence whatsoever to suggest that the appropriate State authorities had any knowledge of this particular situation before the attack such that they would have been in a position to take reasonable steps to prevent it.

101. Based on the above, the Commission finds that it lacks sufficient evidence to attribute to the State responsibility for violation of the duty of prevention where the killing of Joe Luis Castillo González and the injuries to Yelitze Moreno de Castillo and the boy Luis César Castillo Moreno are concerned."

6.4 With regard to precautionary protection measures for the author and her son, the State party stresses that, following his death, the family of Joe Luis Castillo decided to leave the State of Zulia and move to the State of Miranda. Accordingly, the Office of the Chief Prosecutor for the State of Miranda requested protection measures for the author and her son. The measures were authorized on 24 September 2003 by the Third Court of First Instance, which instructed the police force in Miranda to put those measures into practice. The protection measures were extended on 15 May 2007.<sup>8</sup> The chief prosecutor's office made efforts to locate the author, who presented herself on 16 June 2011 and stated that "at this stage, after so many years, I don't think the protection measures are really necessary".

6.5 On 1 October 2015, the State instituted proceedings to locate the author and determine her new address. On 18 December 2015, National Public Prosecution Office No. 76 summoned the author to an interview on 21 January 2016. The author did not attend. Following notification that the author had moved again, on 9 December 2016 the Office made renewed efforts to find her new address in order to provide protection to her and her family if she so wished.

6.6 In the light of the foregoing, the State party submits that the State bears no responsibility for the events of 27 August 2003.

6.7 In connection with the duty to prevent and protect and the right to personal and physical integrity, the State recalls that this duty relates to the means rather than the end result. In addition, it claims that there was no evidence of threats or intimidation directed at the Castillo González family prior to the attack nor had any request for protection been made, despite the fact that they had submitted a request to the Inter-American Commission on Human Rights for protective measures for 52 refugees from Río de Oro. That request was recorded by the Commission in its report No. 120/10 on the merits of the case. The file on the criminal investigation of the case shows that none of the individuals working in the Vicariate had made a request for police protection measures from the Government of the Bolivarian Republic of Venezuela before the attack on the Castillo González family, nor had they approached the Ombudsman's Office or the Public Prosecution Service.

6.8 The Inter-American Commission on Human Rights was aware that, in the course of his humanitarian work, Joe Castillo associated with Colombian citizens who were known to be guerrillas and who had reportedly been killed by paramilitary groups. This could have led the paramilitary groups to assume that Joe Castillo was protecting and collaborating with the guerrillas. However, the investigation did not find any indication that Joe Castillo had had any problems with the Venezuelan authorities.

6.9 The investigation did not uncover any evidence of acquiescence, collaboration or collusion of State agents. The Inter-American Court of Human Rights held that there was no proof of the existence of a structural risk that would have created a heightened duty of prevention. Complaints of human rights violations must include specific elements that will help to further the investigation, rather than being based on mere speculation and assumptions.

6.10 The State party lists the actions taken in the police and judicial investigations, including ballistics comparisons of the weapons seized in connection with other murders with the bullet casings collected in the Joe Luis Castillo case.

6.11 On the alleged violation of judicial guarantees, the State reiterates that a genuine investigation into the attack was conducted in accordance with the requirements of the Minnesota Protocol on the Investigation of Potentially Unlawful Death during the three years and three months before the case was closed and that, although there were some omissions and delays, the quality of the investigation should be assessed as a whole.

6.12 The State party also makes reference, in this context, to the two interviews carried out by the police of Machiques on 12 September 2003 of E.H.T., alleged member of a paramilitary group, and E.A.G., former member of the National Guard, to which the author refers. The State party indicates that these interviews did not take the form of formal

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<sup>8</sup> The State party does not specify the concrete measures taken by the police to protect the author and her son.

statements signed under oath by the persons in question. Furthermore, the information provided in the course of these interviews was very general and did not contain specific facts allowing a link to be established between the death of Joe Castillo and the possible involvement in it of State agents in the form of acquiescence, collaboration or connivance.

6.13 According to the State party, in its ruling the Inter-American Court refers to the following steps taken by Venezuelan authorities to investigate the killing of Joe Castillo: the collection of evidence at the scene of the attack; the identification of persons who witnessed the attack; two visual inspections of the crime scene and the car belonging to the victims; an autopsy and medical examination; expert appraisals based on the mapping of the location, the calculation of ballistic trajectories and blood analyses; interviews of eyewitnesses; the taking of a statement from the author; the preparation of an artist's sketch; the photographic identification of three alleged paramilitaries by an employee of the Vicariate; and a medical examination of the author (para. 154). Information and statements were, however, also received in connection with the possible involvement of Colombian paramilitary groups in the attack, including the above-mentioned interviews (paras. 156–157). According to the Court, the evidence did not suggest that the authorities in charge of the investigation had taken steps to determine the accuracy of claims made by persons interviewed by the police to the effect that the persons involved in the attack included the mayor of Machiques, members of the National Guard, the leaders of a ranchers' group and members of Colombian paramilitary groups allegedly recruited by ranchers in the area. After the case was closed on 18 May 2007, one person accused the mayor of Machiques of being responsible for the murder, according to a complaint filed before Public Prosecutor's Office No. 4. That individual was summoned by Public Prosecutor Office No. 20 to an interview on 27 July 2010. While that summons was reissued on 19 May 2011, there is no record that the interview ever took place (para. 159).

6.14 Notwithstanding, in spite of eventual shortcomings, on the basis of the available body of evidence, the Court concluded that the investigation had been conducted in a reasonable manner. It added: "The omissions and delays mentioned, which are related to specific aspects or proceedings of the prosecutor's investigation, assessed in the context of the investigation as a whole, are not of a sufficiently serious nature to attribute to the State international responsibility for the violation of the rights to judicial guarantees and protection of the alleged victims" (para. 162).

6.15 The State party also notes that discontinuing the case does not mean that it has been definitively closed. As no judicial decision has yet been issued in the case, the victim may request that the judge reopen the investigation and give instructions regarding the subsequent steps to be taken. The victim may also request that the presiding judge review the grounds on which the decision to discontinue the case was taken, pursuant to articles 316 and 317 of the Code of Criminal Procedure. Even if the judge were to declare the case dismissed, that decision could be contested in the courts of appeal and cassation. The Public Prosecution Service can also reopen the case on its own initiative if new evidence comes to light or if the victim so requests.

6.16 Regarding the victims' access to information, the State argues that the author and her representatives have had access to the case files. In its judgment, the Inter-American Court stated that, despite certain difficulties, Ms. Moreno and her representatives had been able to examine the files and maintain contact with the authorities in charge of the investigation, obtain information from them and ask them to undertake certain tasks. As to the alleged shortcomings in the implementation of protection measures for the author and her son, the Court noted that the body of evidence did not prove that the authorities had obstructed any actions by the beneficiaries of the measures or otherwise prejudiced the course or the outcome of the investigation (para. 170).

#### **Author's comments on the State party's observations on the merits**

7.1 The author submitted comments on the State party's observations on the merits on 3 February and 15 June 2017.

7.2 The author observes that the State acknowledges that, at the time of the attack, there was a generalized risk in the region owing to the internal armed conflict occurring in



Colombia. She notes that between 1996 and 2003 there were 69 attacks against human rights defenders who were working on land claims in the State of Zulia and that many human rights defenders were murdered. Joe Castillo's activities therefore put him at risk. The State party was aware of this situation but took no action whatsoever to protect him or to minimize the risk. On 20 February 2001, Joe Castillo himself attended a meeting with State officials for the purpose of making them aware of the danger and was one of the parties involved in submitting the request for precautionary measures of protection to the Inter-American Commission. The request for precautionary measures was granted and brought to the attention of the State. Several of the intended beneficiaries of those measures were killed. Therefore, the State party cannot claim that the victims had not made a public complaint or any report to the State authorities regarding the risks they faced.

7.3 The author reiterates her arguments regarding the lack of due diligence on the part of the State, both in preventing the attack and in its investigation of the case. She emphasizes, in particular, that during the investigation of the attack, the Agency for Scientific, Criminal and Forensic Investigations obtained statements from two individuals who claimed that Joe Castillo was on a paramilitary hit list and that the mayor was aware of the activities of the paramilitary groups and colluded with them. It is unacceptable that the State has not taken any judicial steps to shed light on the participation or acquiescence of local authorities in the attack against the Castillo Moreno family.

7.4 The author also contests the State's contention that she was notified of the decision to close the case and maintains that she was unaware of its discontinuance until she visited the prosecutor's office on 28 November 2006. In addition, she was unable to view the case file until 2007, and the copy she received did not include the declaration of discontinuance. Furthermore, the copy of the records provided to her lawyers was not certified. These obstacles prevented them from pursuing further remedies.

7.5 The author rebuts the State party's arguments regarding the effectiveness of protective measures for her and her son. She claims that, despite the fact that protection measures were granted by the Third Court of First Instance of the State of Miranda, such measures were never implemented, she was not notified of them and she was not afforded any protection beyond the court ruling. The court requested that the police superintendent in Miranda implement the measures on 11 December 2003, 29 July 2005, 26 September 2006 and 15 May 2007, but no steps were ever taken to protect their lives and personal integrity.

7.6 With regard to her failure to appear on 21 January 2016, the author notes that she was not properly notified of the summons: she was informed indirectly and at short notice despite the fact that the authorities could have contacted her through the Vicariate or through her lawyers, whose contact details appear in the original communication to the Committee, a copy of which was sent to the State. She considers that neither she nor her son received protection from the State at the time that such protection was most urgently needed. As there is currently no risk to her life, she is limiting her request to obtaining justice, full redress and the implementation of measures of non-repetition.

## **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.

8.2 In connection with the submission of the matter to another procedure of international investigation or settlement, the Committee notes the State party's contention that the case should be declared inadmissible because the same matter was submitted first to the Inter-American Commission on Human Rights and then to the Inter-American Court of Human Rights. The Court issued a judgment on the matter on 12 November 2012.

8.3 The Committee recalls its jurisprudence, according to which, under article 5 (2) (a) of the Optional Protocol, a communication shall be declared inadmissible if it is being examined under another procedure of international investigation or settlement. It further

recalls its jurisprudence, according to which, while the Spanish version of article 5 (2) (a) of the Optional Protocol can result in this paragraph being interpreted differently from the other language versions, this difference must be resolved in accordance with article 33 (4) of the 1969 Vienna Convention on the Law of Treaties by adopting the meaning which best reconciles the authentic texts, having regard to the object and purpose of the treaty. The phrase *ha sido sometido* in the Spanish version should therefore be interpreted in the light of the other versions as meaning “is being examined” under another procedure of international investigation or settlement. The Committee considers that this interpretation reconciles the meaning of article 5 (2) (a) of the authentic texts referred to in article 14 (1) of the Optional Protocol.<sup>9</sup> In the light of the fact that the matter is no longer pending before the regional bodies referred to above, the Committee finds that there is no obstacle to the admissibility of the communication under article 5 (2) (a). The Committee notes, however, that the Inter-American Commission on Human Rights and Court of Human Rights thoroughly reviewed essentially the same claims made by the author against the State party and issued fully reasoned decisions on them, which deserve due weight.

8.4 The Committee takes note of the author’s claims that she and her son were not provided with protective measures after the attack, that the measures ordered by the Third Court of First Instance of the State of Miranda were never implemented and that she was not afforded any protection beyond the court ruling. The Committee further notes that the State party, although providing explanations regarding the protective measures afforded to the author and her son throughout the years following the murder of her husband (paras. 6.4–6.6), has not specified which concrete measures were taken by the police to grant protection to them. The Committee considers, however, that the information provided by the author is not sufficiently precise as to the nature of the risk posed to her after leaving the border area of Zulia and therefore does not permit the Committee to assess the existence of State responsibility under the Covenant in this regard. The Committee therefore finds that these claims have not been sufficiently substantiated and are inadmissible pursuant to article 2 of the Optional Protocol.

8.5 With regard to the author’s claim under article 14 pertaining to the conduct of investigation, the Committee notes that the author has already alleged a violation of her rights and those of her husband and son under articles 6 and 7, read in conjunction with article 2 (3), of the Covenant with relation to the same issues. In these circumstances, the Committee does not consider that examination of whether the State party also violated its obligations under article 14 to be distinct from examination of the violation of her rights and those of her husband and son under articles 6 and 7, read in conjunction with article 2 (3). The Committee therefore considers that the author’s claims under article 14 are incompatible with article 2 of the Covenant, and inadmissible under article 3 of the Optional Protocol.

8.6 The Committee notes the author’s claim that she was not able to exhaust domestic remedies due to the fact that they had proved to be unreasonably lengthy. It also notes that the State party has not challenged the admissibility of the communication on the grounds of a failure to exhaust domestic remedies.

8.7 The Committee considers that the remainder of the author’s allegations have been sufficiently substantiated for the purposes of admissibility. As no other obstacles to admissibility exist, the Committee declares the communication admissible as raising issues under article 9 (1) and articles 6 (1) and 7, in connection with 2 (3) of the Covenant, and proceeds to its examination of the merits.

#### *Consideration of the merits*

9.1 The Committee has considered the present communication in the light of all the information submitted to it by the parties, as required by article 5 (1) of the Optional Protocol.

9.2 The Committee notes that the author’s complaints concerning the violation of her rights and those of her husband and son relate to the following factors: (a) the State’s

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<sup>9</sup> *Semey v. Spain*, para. 8.3; and *Rodríguez Castañeda v. México*, para. 6.3.

alleged failure to implement protection and prevention measures for human rights defenders, in particular her husband, despite their vulnerability as a group and the fact that the State was aware of the risks facing them in the border area of Zulia where they worked; and (b) the State's failure to properly investigate the attack on the family and the fact that, in consequence, the perpetrators have not been identified or punished and the author has not been able to obtain redress.

9.3 With regard to protection and prevention measures, the Committee takes note of the State party's argument that there was no evidence of threats or intimidation directed at the author's family prior to the attack, nor had any request for protection been made, despite the fact that Joe Luis Castillo and other human rights defenders had submitted a request to the Inter-American Commission on Human Rights for protective measures for 52 refugees. The Committee also notes the conclusions of the Inter-American Commission and the Inter-American Court referred to by the State party. The Commission, in particular, noted that, while there were some indications that Joe Luis Castillo was being watched because of his work and was being targeted by certain groups in the area, those indications only became apparent once the investigation had begun, and there was no evidence to indicate that State authorities were aware of the particular situation before the attack took place and therefore could not have taken reasonable measures of prevention (para. 6.1). The Court, for its part, noted that, prior to the attack, Joe Luis Castillo had not been subjected to threats or intimidation and no public complaint or report had been received by State authorities regarding a risk to him or his family or regarding the need for protection measures (para. 6.9). On the basis of the information submitted by the parties, the Committee considers that, although at the time of the incidents in question human rights defenders, with whom Joe Luis Castillo worked (para. 2.1) in the course of his legal and humanitarian activities, were at risk by reason of the complex interactions occurring among a range of different actors, causes and interests, that risk was not sufficiently specific in the particular circumstances of the case to trigger the State party's legal responsibility for failing to take appropriate measures to protect a particular person, in this case Joe Luis Castillo. The Committee therefore concludes that the facts as presented do not disclose a violation of the rights of the author, her son and her deceased husband to life and to security, under articles 6 and 9 (1) of the Covenant.

9.4 With regard to the lack of a proper criminal investigation into the attack on the family, the Committee understands the author's claims as falling under articles 6 (1) and 7, in conjunction with article 2 (3), of the Covenant. The author maintains that there were many shortcomings in the criminal investigation, notably a lack of coordination among the agencies involved and a failure to follow up on specific lines of inquiry, particularly the statements obtained from an alleged member of a paramilitary group and a member of the National Guard, who claimed that Joe Luis Castillo's name was on a list of targets kept by paramilitary groups and that the mayor of Machiques was aware of the actions of these groups, which operated with his acquiescence. The Committee notes the State party's position that a genuine investigation into the attack was conducted during the more than three-year period before the case was closed and that the Inter-American Court concluded that the investigation had been conducted in a reasonable manner (paras. 6.11–6.14).

9.5 The Committee notes that the Inter-American Commission considered it to have been proven that the investigation revealed evidence of the possible collusion and/or involvement of State agents in the attack and that relevant lines of inquiry were discontinued without being exhausted. However, the Inter-American Court considered the steps that the Venezuelan authorities did and did not take. While it noted the existence of omissions and delays related to specific procedural or other aspects of the judicial investigation, it found that those omissions and delays, when viewed in the context of the investigation as a whole, were not of sufficient magnitude or severity to establish the State's international responsibility for a violation of the presumed victims' right to judicial guarantees and protection (paras. 6.13–6.14).

9.6 The Committee recalls its jurisprudence, according to which States must establish administrative mechanisms to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies and that a failure by a State party to investigate allegations of violations could in and

of itself give rise to a separate breach of the Covenant.<sup>10</sup> In assessing the compliance of State obligations under the Covenant in this respect, the Committee gives considerable weight to the findings of international courts when they have engaged in the collection and analysis of evidence, including witness testimonies. In the present case, the Committee takes note of the findings of the Inter-American Court and considers that the information provided to the Committee by the parties does not contain sufficient elements to contradict those findings and thus cannot lead the Committee to the conclusion that the domestic proceedings did not meet the State party's obligations under the Covenant regarding a prompt, thorough and effective investigation.

9.7 The Committee takes note of the author's claims regarding the insufficient information provided to her by the authorities in connection with the investigation of her husband's death, in particular that she was not notified of the decision of 28 November 2006 to close the case and only found out when she visited the prosecutor's office; that she requested the original file from the Public Prosecution Service on 24 May 2005 because she had received only parts of it subject to confidentiality requirements; and that she was not able to see the file in full until 2007. The Committee considers, however, that the information provided by the author is not detailed enough, particularly in connection with the notification of the above-mentioned decision (paras. 2.9, 6.16 and 7.4), to conclude that the family was not kept sufficiently informed.

9.8. Based on the elements described above, the Committee considers that there is insufficient evidence to conclude that the State party has violated the rights of the author, her husband and her son under articles 6 (1) and 7, read together with article 2 (3), of the Covenant, in connection with the investigation of the attack in which her husband was killed and she and her son were injured.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is therefore of the view that the facts before it do not disclose violations of the author's rights under the Covenant.

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<sup>10</sup> General comment No. 31 (1980) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 15.

## Annex

### Individual opinion of Committee member Sarah Cleveland (partly concurring, partly dissenting)

1. I disagree with the Committee's deference to the Inter-American Court of Human Rights regarding the adequacy of the investigation (paras. 9.4–9.6) and its inadmissibility finding regarding the failure of the Bolivarian Republic of Venezuela to protect the author and her son (para. 8.4).

#### Inadequate investigation

2. Human rights defender Joe Castillo was murdered, and his wife and son suffered multiple injuries, in an environment in which paramilitary attacks on activists protecting land rights were tragically common. The investigation was closed in November 2006, without any person being identified as criminally responsible.

3. The claims were previously considered by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights under the American Convention on Human Rights. While one could imagine a different approach to the relationship among international human rights bodies, the Committee's longstanding jurisprudence holds that, absent a reservation, prior examination under another procedure of international investigation or settlement does not prevent the Committee's consideration of a claim. Nor does it prevent the Committee, after sound consideration, from occasionally reaching a conclusion under the Covenant that is different from that under another international human rights instrument.

4. The Committee observes that the Inter-American Commission and Court thoroughly reviewed the claims made by the author against the Bolivarian Republic of Venezuela and that the resulting decisions "deserve due weight" (para. 8.3). It concludes that the author has failed to provide sufficient information to contradict the findings of the Inter-American Court and thus cannot conclude that the State party failed to conduct an adequate investigation (para. 9.6).

5. Unfortunately, however, the Inter-American Commission and Court reached diametrically opposed conclusions regarding the adequacy of the investigation into Mr. Castillo's murder. The Committee never explains why it gives "due weight" to the conclusion of the Court over that of the Commission in this context. Nor does the Committee ever independently analyse or explain how the investigation satisfies the Committee's own standards for an adequate investigation under article 6. This deference is particularly concerning, given that the standard applied by the Inter-American Court in *Castillo v. Venezuela* appears inconsistent with both the prior and subsequent jurisprudence of that Court.

6. The essence of the author's claim is that while some measures were taken to investigate the murder of Joe Castillo, particularly relating to examination of the specific crime scene (paras. 6.2 and 6.13), the investigation nevertheless was seriously flawed. In particular, the State party repeatedly failed to pursue information implicating paramilitaries and State authorities, including the mayor of Machiques.

7. As the author indicates, the Inter-American Commission concluded that the State party did not carry out serious and effective investigations to identify those responsible. The relevant concerns include the failure to conduct ballistic comparison tests of weapons seized from suspects with the shells from the bullets that struck Joe Castillo; the failure to examine the overall context in which the events occurred (including the known risk to human rights activists, particularly land activists, in the area); the modus operandi of certain actors (including paramilitaries); the lack of investigation of related judicial proceedings in Colombia; and the failure to pursue direct evidence of the possible participation of paramilitary and/or State agents in the attack (note 3 and para. 3.6).

8. Both an alleged paramilitary and a former member of the National Guard informed investigators that Joe Luis Castillo González's name was on a paramilitary hit list and that the mayor was aware of the activities of the paramilitary group, which operated with his collusion and acquiescence (paras. 2.8 and 7.3). Specifically, the former paramilitary witness indicated that Mr. Castillo's murder had been committed by presumed Colombian paramilitaries with the support of Venezuelan local authorities. The former National Guard member stated: "these guys are *paracos* (paramilitaries) hired by various cattle ranchers in the area; Mayor Toto Márquez knows about it, and in fact his own drivers take these guys to and from different places; they have come to cleanse Machiques of all the scum; they are scary guys because they don't respect anybody".<sup>1</sup> The Bolivarian Republic of Venezuela, however, never took a formal statement under oath from these individuals or otherwise attempted to determine the accuracy of these claims. Before the Committee, it merely contends that the information they provided was "very general" (para. 6.12).

9. In May 2007, six months after the case was closed, another individual accused the mayor of responsibility for the murder. The prosecutor took over three years to summon this person to an interview — in July 2010 and May 2011 — and there is no evidence that the interview ever took place.

10. Failure to vigorously investigate the responsibility of State agents and paramilitaries has lain at the heart of much of the impunity for violations against human rights defenders in Latin America. This is the space where States have most frequently failed to fulfil their due diligence obligations to conduct effective investigations and ensure accountability, and it remains an ongoing concern for the Bolivarian Republic of Venezuela.<sup>2</sup>

11. The Committee has long established that investigations into violations of article 6 must always be independent, impartial, prompt, thorough, effective, credible and transparent. States parties must take appropriate measures to establish the truth relating to the events leading to the deprivation of life, including revealing the reasons for targeting certain individuals.<sup>3</sup>

12. The Committee, however, never addresses whether it would consider the investigation into Joe Castillo's murder to be adequate under the Covenant as a matter of first impression. It instead defers to the Inter-American Court's finding of no violation. The Committee does so suggesting that it is deferring to the factual determinations of the Court, as a result of its ability to "engage in collection and analysis of evidence, including witness testimonies" (para. 9.6).

13. Nowhere, however, does the Committee mention the legal standard that the Court applied in reaching its conclusion. That standard appears at paragraph 153 of the Court's opinion, as follows:

[T]he Commission and the representatives mentioned procedures which, in their view, should have been carried out. For the purposes of this analysis, only those ordered by the authorities will be taken into account. The Court will not consider possible specific investigative measures which, according to the arguments of the Commission or the representatives, should have been carried out and that were not ordered by the authorities. This is so because, in principle, it is not up to the Court to determine the appropriateness or utility of specific investigative actions or measures, unless the failure to take them is contrary to objective standards, or is manifestly unreasonable.

In short, the Court refused to examine the adequacy of the investigation in the light of its potential scope, but limited its assessment of the investigation to the scope defined by the Bolivarian Republic of Venezuela.

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<sup>1</sup> Inter-American Court of Human Rights, *Castillo González et al. v. Venezuela*, Judgment of 27 November 2012, paras. 33–34.

<sup>2</sup> Concluding observations on the fourth periodic report of the Bolivarian Republic of Venezuela (CCPR/C/VEN/CO/4), para. 14 (b).

<sup>3</sup> General comment No. 36 (2018) on the right to life, para. 28.

14. Even a cursory analysis suggests that *Castillo* is an outlier in the Inter-American Court's jurisprudence. The Court generally has been widely known, and admired, for its exacting scrutiny of investigations implicating the right to life. In cases both before and after *Castillo*, the Court either did not apply the test above, or readily found that an investigation's shortcomings were indeed "contrary to objective standards" or "manifestly unreasonable".<sup>4</sup>

15. Unfortunately, because the Court accepted the decision of the Bolivarian Republic of Venezuela not to pursue lines of investigation implicating paramilitaries and State authorities, and because the Committee defers to that decision, neither the Committee nor the Court has ever considered whether the investigation was adequate in the light of its full potential scope.

16. The Committee is correct that human rights commissions and courts are often better positioned to determine facts. However, this does not relieve the Committee of responsibility to independently examine a properly presented claim against the legal standards established by the Covenant. In my opinion, such an examination in this case would have yielded the conclusion that the Bolivarian Republic of Venezuela violated its obligations to conduct an independent, impartial, prompt, thorough, effective, credible and transparent investigation, as required by article 6.

### Measures of protection

17. The author also claims that the Bolivarian Republic of Venezuela failed to adequately protect the life and well-being of herself and her son following Mr. Castillo's murder. With respect to this claim, it is uncontested that there were numerous attacks in the region against human rights defenders, including by paramilitaries; that in March 2001, Mr. Castillo obtained precautionary measures from the Inter-American Commission for displaced persons that the authorities did not implement, resulting in two deaths; that the author and her son were shot in the attack on Mr. Castillo and the author was the sole eyewitness; that the Apostolic Vicariate of Machiques began receiving threatening phone calls leading to closure of the office, where the author also worked; and that two days after the attack, the Inter-American Commission granted precautionary measures to protect the author and her son.

18. In finding the present claim inadmissible, the Committee cryptically concludes that the author did not provide sufficiently precise information regarding "the nature of the risk posed to her after leaving the border area of Zulia". However, the record contains no suggestion that the author and her son no longer needed protection once they had moved to Miranda immediately after the attack. To the contrary, both parties' submissions clearly recognize that the need for protection continued. The Bolivarian Republic of Venezuela, in particular, does not contend that the need for protection diminished, but emphasizes that the Miranda prosecutor and court sought and entered measures of protection — measures that the author contends were ultimately entered and renewed four times between 2003 and 2007. The author, however, contends that the police took no action to protect her and her son in this period, when such protection was most urgently needed. The Bolivarian Republic of Venezuela also presents no evidence that the police actually implemented the court orders. It states only that the prosecutor's office eventually made efforts to locate the author, apparently in 2011, 2015 and thereafter (paras. 6.4–6.5 and note 8).

<sup>4</sup> See, e.g., *Garibaldi v. Brazil*, Judgment of 23 September 2009, para. 122 ("the State did not seek exhaustively to identify possible witnesses and obtain statements that would have allowed the facts concerning [the victim's] death to be clarified"); *Cepeda Vargas v. Colombia*, Judgment of 26 May 2010, para. 119 (the State is obligated to investigate all patterns of possible responsibility, not only the crime scene); *Barrios Family v. Venezuela*, Judgment of 24 November 2011, paras. 236 ff; *Human Rights Defender et al. v. Guatemala*, Judgment of 28 August 2014, para. 214 ("omissions must be avoided in the gathering of evidence and in following the logical lines of investigation"); *Landaeta Mejias Brothers et al. v. Venezuela*, Judgment of 27 August 2014, para. 234 (failure to conduct ballistic comparison of other guns and "to exhaust all the lines of investigation in order to discover the truth"); *Garífuna Punta Piedra Community and its members v. Honduras*, Judgment of 8 October 2015, para. 298 ("The investigation with due diligence requires taking into account what happened in other homicides and establishing some type of relationship between them").

19. The fact that, fortuitously, no harm ultimately came to the author and her son cannot refute the necessity of protection *ex ante*. Under the circumstances, the Bolivarian Republic of Venezuela was obligated to take measures to protect the life and well-being of the author and her son, and also to protect the author as a witness to the crime. Based on the above information, and in the absence of any evidence that the police ever took any action to implement the numerous court orders, the claim regarding failure of protection is both admissible and reveals a violation of article 6 (1).

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