

ENFORCED DISAPPEARANCES IN MEXICO

Strategic litigation before the United Nations System



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Presentation

I(dh)eas, Strategic Human Rights Litigation¹, is a non-profit organization, independent, whose corporate purpose is the promotion and defense of human rights at the regional, national and international levels, to contribute to the construction of a democratic State of law and the creation of a culture of respect for human rights in Mexico.

In recent years, the work of I(dh)eas has focused mainly on the legal accompaniment of cases of serious human rights violations, particularly enforced disappearance at the national and international level.

By using strategic litigation, I(dh)eas has sought the location of the missing persons alive or dead, the determination of responsibility, the comprehensive reparation of the damage and the reform of the institutions. The litigation strategy before the bodies of the Universal System of Protection of Human Rights that I(dh)eas adopted in 2014 has had as its main objectives:

- ▶ To promote in Mexico, the use of the Universal System to report human rights violations.
- ▶ To make visible at the international level the generalized situation of disappearances, torture, gender violence and impunity.
- ▶ To promote the application of international standards for the search for disappeared persons and the investigation of serious human rights violations.
- ▶ To promote access to justice for victims and their families through the use of national and international strategic litigation before specialized bodies in the matter.

This document represents an effort of systematization, dissemination of the standards and jurisprudence generated by the bodies of the Universal System for the Protection of Human Rights of the United Nations for cases of disappearance in Mexico, as a result of the litigation work carried out by I(dh)eas over the past six years. The litigation strategy before the United Nations bodies was prepared by the founding team of i(dh)eas in which the following participated: Juan Carlos Gutiérrez Contreras as coordinator of the litigation, Rocio Maldonado de la Fuente and Mario Santiago Juarez as lawyers who supported in the preparation and development of the petitions and Tatiana Rincon Covelli who has been responsible to give constant follow-up to the litigation before the organs of the United Nations. All this under the support and backing of Jérémy Renaux who was Director of Institutional Development and deputy director until 2020.

¹ Web page: www.idheas.org.mx

Introduction

The enforced disappearance of persons is a serious violation of human rights, of a multi-offensive nature (it involves the violation of various rights) and of a permanent or continuous nature, which lasts as long as the whereabouts of the disappeared person are not known, or their remains are identified with certainty. The Inter-American Court of Human Rights has considered that the prohibition of the enforced disappearance of persons is a peremptory norm of international law (*ius cogens*), which means that it is “accepted and recognized by the international community of States as a whole as a norm that does not admit agreement to the contrary and that can only be modified by a subsequent norm of general international law that have the same character.”

Given its gravity and the character of a peremptory norm of international law that prohibits it, all States are obliged to investigate **ex officio**, without delay and in a serious, exhaustive, impartial, transparent, and effective manner any enforced disappearance, as well as to prosecute and punish those responsible. When States do not comply with this obligation, cases of enforced disappearance can be brought for examination to international human rights organizations. In the United Nations System, these cases can be presented, especially, before the Working Group on Enforced or Involuntary Disappearances, before the Committee against Enforced Disappearances and before the Human Rights Committee.

The Working Group on Enforced or Involuntary Disappearances is a special procedure created by resolution of the then United Nations Commission on Human Rights. The main mandate of the Working Group is “to help the families of disappeared persons to find out the fate and whereabouts of such persons.” This Working Group monitors compliance with the Declaration on the Protection of all persons from Enforced Disappearance by States and has a particular importance with respect to those that have not adhered to or ratified the International Convention for the Protection of all persons against Enforced Disappearances. For their part, the Committee against Enforced Disappearances and the Human Rights Committee were created by international human rights treaties, each with specific functions. In this document we will focus on the two committees, considering their competencies, functions and the decisions they have taken on various cases of enforced disappearance that occurred in Mexico.

1 Committee against Enforced Disappearances

The Committee against Enforced Disappearances (hereinafter, “CED”) was established in the International Convention for the Protection of All Persons against Enforced Disappearance to apply the provisions of this Convention, and is made up of ten experts of “great moral integrity, of recognized competence in the matter of human rights, independent, who will serve in a personal capacity and will act with total impartiality”. The expert members of this Committee have different nationalities and are elected for four-year terms, considering, in addition to their personal quality, equitable geographical distribution in all regions of the world.

Among the competences that the International Convention for the Protection of all persons from Enforced Disappearances (hereinafter also “International Convention” or “Convention”) gives the CED, there are two that are particularly relevant when it comes to cases of enforced disappearance.

The first of these competences is established in Article 30 of the Convention and authorizes the CED to “examine, urgently, any petition presented by the relatives of a disappeared person, their legal representatives, their lawyers or the persons authorized by them, as well as anyone who has a legitimate interest, in order to search for and locate a missing person”. This is known as the urgent action procedure.

The second competence is attributed to the CED by Article 31 of the Convention. In accordance with this competence, the CED “may receive and examine communications submitted by persons under its jurisdiction or on their behalf, who claim to be victims of violations by this State Party of the provisions of this Convention.” It is known as individual communications procedure.

We are going to describe each of these competencies and, regarding the first, we will point out some of the decisions adopted by the CED in relation to Mexico.

1.1 The competence of the CED in accordance with article 30 of the International Convention for the Protection of All Persons from Enforced Disappearance

Before presenting how this jurisdiction is regulated, it is important to remember that Mexico ratified the International Convention for the Protection of all persons from Enforced Disappearance on March 18, 2008. This means that this Convention, being an international human rights treaty, it is binding on the Mexican State, that is, it is mandatory.

This is important because the competence that the CED holds under Article 30 of the Convention does not depend on any subsequent ratification or acceptance by the States. In other words, when a State, such as Mexico, ratifies the International Convention for the Protection of All Persons against Enforced Disappearance, it accepts the competence of the CED to “examine, urgently, any petition presented by the relatives of a missing person, their legal representatives, their lawyers or the persons authorized by them, as well as anyone who has a legitimate interest, in order to search for and locate a missing person”.

Now, which jurisdictions does the CED has when it urgently examines a petition to search for and locate a missing person? The aforementioned Article 30 says, in this regard, that the CED, after verifying that the petition meets the indicated requirements, will request the State “to provide, within the period determined by the Committee, information on the situation of such person.” And, based on this information, “it may transmit its recommendations to the State Party and include a request that it adopts all necessary measures including precautionary measures, to locate and protect the person in accordance with this Convention, and may request that the Committee is informed, within the period determined by it, on the measures it takes, considering the urgency of the situation”. The CED will continue its efforts to collaborate with the State while the fate of the disappeared person has not been clarified.

In accordance with the foregoing, once the CED receives the request to search and locate the missing person (by mail, fax or email), it requests the respective State information on the situation of that person and, based on that, to make recommendations to the State and ask it to take all necessary measures to locate and protect the missing person.

The authority of the CED to ask the State to adopt all necessary measures, including precautionary measures, has allowed it to indicate, in specific situations and with respect to each State, what the authorities should do to search, locate and protect the disappeared person, as well as to protect their relatives and people linked to the search.

Urgent actions in cases of Mexico

According to the CED, from March 2012 to August 31, 2020, it had given 413 urgent actions for the search and location of missing persons in Mexico, of which 191 were requested by I(dh)eas in 2015 (119), 2016 (24), 2017 (4), 2018 (1) and 2020 (43). In these cases, the CED has used the powers conferred by Article 30 of the Convention to guide the Mexican State in carrying out various actions aimed at the search and effective location of the disappeared persons and the protection of life and integrity of their family members. and of the people involved in the searches.

In general, these measures correspond to: a) actions that the State must take to search and locate the missing person, b) actions related to the investigation of the disappearance, c) precautionary measures to guarantee the custody and protection of mass graves and clandestine graves, d) precautionary measures to protect the life and integrity of family members and persons linked to the search for the disappeared persons, and e) measures to guarantee the assistance of the relatives of the disappeared persons. The CED has indicated these measures in accordance with the provisions of Article 30 of the International Convention and other articles of it, including 12 and 24. In the same way, in the most recent decisions, the CED has invoked the Guiding Principles for the Search for Disappeared Persons, adopted by the Committee at its 16th period of sessions.

Bellow some measures directed or required by the CED to the Mexican State in the urgent actions managed by I(dh)eas for cases of Mexico City (1 AU), Guerrero (116 AU), Sinaloa (3 AU), Tamaulipas (1 AU) and Veracruz (27 AU). It is important to consider that the CED has guided Mexico in several of these actions to create and design a follow-up mechanism for compliance, in which all the authorities involved, the relatives of the missing person, or persons and their representatives participate.

► Measures for the search and location of the missing person

In urgent actions, the CED has been reiterative, by pointing out to the Mexican State that the authorities in charge of the search must: on one hand, take all the urgent measures necessary to search for missing persons, locate them, protect them and release them and to allow that their family members and representatives have immediate contact with them and on the other hand, they must define an investigation hypothesis and to adopt a comprehensive and exhaustive search strategy.

In this sense, the CED has guided Mexico, to ensure that the team in charge of the search has the professionalism, impartiality, autonomy, legitimacy and stability necessary for the development of its functions, as well as guaranteeing full institutional coordination between all the authorities involved in the search and location of the missing person.

In addition, the state must provide information to their relatives and their representatives on the search and investigation strategy that has been developed.

Regarding the comprehensive search strategy, the CED has indicated to the Mexican State that it must include, at least, the following aspects:

- 1. Appropriate reconstruction of the context of each of the disappearances.**
- 2. Comprehensive analysis of this context by a specialized team.**
- 3. Identification of the existing patterns and modus operandi of the perpetrators.**

4. A criminal structures identification linked to the disappearances (including their possible links and forms of liaison with local, state and federal authorities and organized crime).

5. A schedule and compliance indicators, which are regularly evaluated.

In the design of the comprehensive search strategy, the CED has also guided the Mexican State that the authorities integrate the performance of all relevant procedures in hospitals, SEMEFOS, mass graves, and state and federal penitentiary centers, taking the necessary measures so that the family members visit federal and state prisons, hospitals and other health centers in the region where the disappearance occurred, with the proper accompaniment to give them the opportunity to search for their loved ones.

Likewise, the CED has instructed Mexico that the authorities guarantee that all the information available on the located clandestine graves and the exhumations carried out is integrated into the records of the search and investigation of the disappearances; as well as diligently proceed to identify the human remains, objects and other evidence found in the graves, guaranteeing full compliance with the chain of custody and forensic identification of the remains in accordance with applicable international standards on the matter, considering, for example, the “Guide on forensic DNA analysis and identification of human remains” of the International Committee of the Red Cross (ICRC).

In these cases, the CED has directed more precisely that the authorities guarantee the addition and implementation of a plan of exhumations and review of clandestine graves, in which the authorities in charge have the human, financial and technical resources to accomplish the necessary activities, and carry out all exhumations in accordance with the applicable international standards on the matter, including the Istanbul and Minnesota Protocols.

In the same way, the CED has urged the Mexican State in urgent actions to ensure that family members, close friends and representatives have timely access to information on the progress of the investigations carried out in order to search for missing persons and locate them, as well as that the relatives can effectively participate in the search and that all the activities are carried out in a coordinated manner with them.

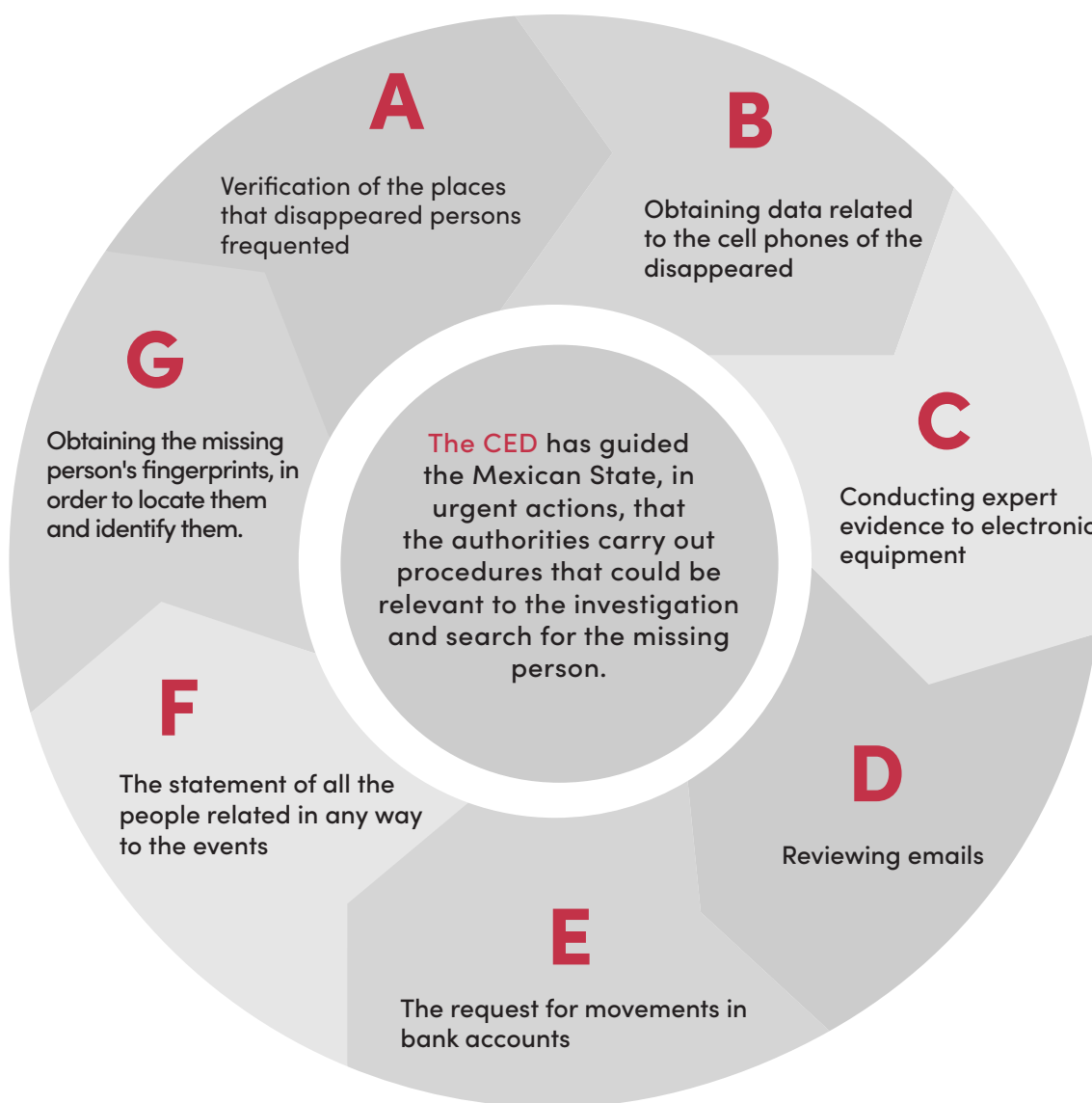
► **Measures related to the investigation of the disappearance**

The CED has required Mexico in urgent actions, that the authorities take all necessary measures to guarantee the full independence and impartiality of the investigation of the disappearance, including the immediate removal of the authorities that could be involved in the disappearance.

Furthermore, the CED has required to Mexican State that the authorities adopt the necessary measures to investigate the disappearance of the person in a comprehensive and exhaustive manner. In this sense, the CED has guided Mexico several actions, among them: to take the necessary measures to identify those responsible for the disappearance, to ensure that the possible participation of municipal, state or federal authorities and criminal groups is properly investigated, and to guarantee that the information obtained during the investigations to determine the authorship of disappearances is used efficiently and expeditiously to search for disappeared persons and vice versa.

Likewise, the CED has urged Mexico that the authorities take the necessary measures so that all the elements found in the course of the investigation are properly integrated into the file, analyzed and considered in the context of the actions taken to search for and locate the missing person, as well as guaranteeing the effective conservation, safeguarding and analysis, in accordance with the highest technical standards, of all the elements of evidence in the investigation or may be able to do so and that could determine the location of the disappeared person or the identity of those responsible for their disappearance.

The CED has also indicated to the Mexican State that it must ensure that the authorities in charge of the investigation have access to the information held by the security agencies that could be involved in the disappearance. Thus, it has guided, for example, that the investigation authorities have access to: a) the security forces movement logs on the day of the events, b) the operation or review points established or carried out on the day of the events and the days close to this, c) the photographic albums of the active elements of the respective security forces located in the region, and d) the entry and exit records of vehicles and aircraft, travel logs and people assigned to them, and the vehicles or units that match the characteristics of those involved in the corresponding inquiry.



Likewise, the CED has required to Mexico some urgent actions. That the authorities adopt all the necessary measures to guarantee that the competent entity or entities implement in a coordinated, immediate and effective manner the arrest warrants delivered in the investigation in relation to the disappearance of the person. In the same way, it has guided the State that the authorities adopt the necessary measures to issue immigration alerts that prevent the presumed author of the disappearances from being left out of the reach of the authorities, as well as the necessary to investigate and punish any type of intervention by the authorities that may have hindered the effectiveness of the search and investigation in process.

The CED has also urged the Mexican State that the authorities implement official and clear mechanisms through which the team in charge of the search and investigation of the disappearance will report periodically and transparently on the progress made and the founded difficulties. Likewise, that it takes the necessary measures to allow the full participation of the family members of the disappeared person and their representatives in the investigation and provide them with copies of the proceedings in the respective investigations.

► **Precautionary measures to guarantee the custody and protection of mass graves and clandestine graves**

In relation to the protection of the graves, the CED has guided the Mexican State, in several urgent actions, to adopt the necessary measures for the protection and preservation of the clandestine graves found with information about possible presence of the human remains of missing persons, as well as the findings made.

Precautionary measures to protect the life and integrity of relatives and persons linked to the search for the disappeared persons

In relation to the measures to protect the life and integrity of family members and people linked to the searches, the CED has indicated to the Mexican State in urgent actions that it must preserve the life and personal integrity of the relatives of the disappeared person and their representatives, and must adopt all the necessary measures so that they can carry out the activities related to the search, without being the objective of acts of violence and harassment. The CED has also required the State to provide precautionary measures of protection to the members of the groups of relatives of disappeared persons and to the search groups, so that they can continue with their activities without being subjected to acts of violence and harassment.

In accordance with what the CED has directed the Mexican State, the precautionary protection measures must: I) be adopted in agreed consultation with the family members and their representatives to ensure their full confidence in the persons in charge of their protection and the full adaptation of the measures to their needs in the context of search and investigation, II) be effective to protect them and allowing them to continue with the search, and III) be provided by security forces that have not participated or are involved in the disappearance.

In several urgent actions, the CED has guided Mexico to adopt specific precautionary measures of protection, among them: a) that all the conditions are met so that the relatives or close friends of the missing person report the events related to the threats in their against, and that these threats will be investigated promptly and effectively, and b) carry out patrols at the meeting places of search groups or groups of family members and at the homes and workplaces of family members.

► **Measures to guarantee the care of the relatives of the disappeared persons**

In several urgent actions, the CED has required the Mexican State to take all necessary measures to ensure that the relatives of the missing person have access to food, house, health and education support that they require to lead a decent life.

In this sense, the CED has guided that the relatives of the missing person must be registered in the National Victim's Registry (Renavi for its acronym in Spanish), in order to have timely and effective access to the support, care and assistance measures provided for in the General Victims Law whenever is needed. Likewise, in some urgent actions, the CED has guided specific measures of aid and assistance to the State; for example, that the house conditions of the relatives are adapted to their basic needs. Equally, that the necessary measures be taken so that they can resume and carry out their life project.

1.2 The competence of the CED in accordance with article 31 of the International Convention for the Protection of All Persons against Enforced disappearances

Article 31 attributes to the CED the authority to receive and examine communications submitted by persons who are under the jurisdiction of one of the States Parties from the International Convention for the Protection of All Persons from Enforced Disappearance and who argue to be victims of violations, by that State, of the provisions of the Convention.

In contrast to the power to attend urgent requests for the search and location of a missing person, concerning to any State that has ratified the International Convention, the CED can only exercise the authority that article 31 gives if the State Party has accepted expressly that authority. To that effect, this article reads: “The Committee will not accept any communication relating to a State Party that has not made such a declaration.” This means that, in addition to ratifying the Convention, the States must expressly protest that they accept that the CED receives and examines any communication that the persons under its jurisdiction present to the Committee for it to rule on violations of the rights recognized in the Convention.

On October 2, 2020, Mexico accepted the power that the CED has under article 31 of the International Convention for the Protection of All Persons from Enforced Disappearance to know about individual communications. Article 35 establishes that power of the CED only extends to enforced disappearances that began after the date of come into effect of the Convention, that is, on December 23, 2010. Until Mexico accepted the jurisdiction of the CED, cases of forced disappearance had not been brought before this Committee.

However, this does not mean that these cases cannot be brought before another committee of the United Nations System. Mexico has ratified the International Covenant on Civil and Political Rights and the Optional Protocol of this Covenant. This is very important because, as we will see below, the Optional Protocol is the one that gives the Human Rights Committee the authority to receive and examine communications submitted by persons who, once the domestic remedies available in the country have been exhausted, claim that the rights recognized in the Pact have been violated.

2 The Human Rights Committee

The Human Rights Committee was established by the International Covenant on Civil and Political Rights and is made up of 18 national members from the States Parties to the Covenant, “who must be persons of great moral integrity, with recognized competence in matters of human rights.”. These people are elected and carry out their functions in a personal capacity.

2.1 The Human Rights Committee and cases of enforced disappearance

The authority that this Committee has is very important in cases of enforced disappearance of persons, in accordance with the Optional Protocol from International Covenant on Civil and Political Rights, to receive and consider communications from individuals who claim to be victims of violations of any of the rights recognized in the Covenant.

► **Article 1 of the Optional Protocol reads, in that sense:** “Any State Party to the Covenant that becomes a party in this Protocol recognizes the authority of the Committee to receive and consider communications from individuals who are under the jurisdiction of that State and who claim to be victims of a violation, by that State party, of any of the rights set forth in the Covenant. The Committee will not receive any communication that concerns a State party to the Covenant that is not a party to this Protocol”.

Even though the International Covenant on Civil and Political Rights does not expressly contemplate, as does the International Convention for the Protection of All Persons against Enforced Disappearance, enforced disappearance and its prohibition, the Human Rights Committee during the years that it has been in operation, has developed a broad and consistent jurisprudence in which it has analyzed events of forced disappearance that occurred in various countries.

The Human Rights Committee, from its first decisions in relation to these cases, found that the fact of the enforced disappearance of a person violated several rights recognized in the Covenant: the right to life (Article 6), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7), the right to personal liberty and security (Article 9) and the right of every person deprived of liberty to be treated humanely and with the respect due to the inherent dignity of the human being (article 10). Likewise, from its first decisions in cases of enforced disappearance, the Committee recognized the deep sorrow and anguish suffered by the family members as a result of the disappearance of their loved one and because of the uncertainty about their fate and whereabouts, and pointed out that this fact constituted a violation of the right of the family members for not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7).

In the same way, it considered that the responsibility for the enforced disappearance of the missing person was from the State and, therefore, it was up to the State to determine the fate of the person, ensure their release, punish any person found guilty of the disappearance, and compensate for the grievances suffered and ensure that similar violations do not occur in the future.

Subsequently, and in accordance with the evolution of international law, the Human Rights Committee recognized that the forced disappearance of persons also violates the right of every human being to recognition of their legal personality (Article 16). Likewise, it has pointed out very clearly that “although the term ‘enforced disappearance’ is not explicitly used in any of its articles, this disappearance constitutes a unique and integrated series of acts that represent a continuous violation of various rights recognized in that treaty”.

Therefore, The Human Rights Committee is a treaty body that has recognized that the enforced disappearance of persons is a fact that violates a set of human rights protected in the Covenant and, as such, is attributable to the responsibility of the State, which is under the obligation to provide

the disappeared victim and their relatives an effective remedy that include reparation of rights that have been violated and taking measures to prevent violations of similar rights in the future. In this sense, it is a body to which cases of enforced disappearance can be submitted when the authorities of the prosecution and administration of justice of a State Party to the Covenant and the Optional Protocol have not fulfilled their obligation to investigate in a serious, exhaustive, impartial, transparent and effective manner, the enforced disappearance, to prosecute and punish those responsible and to make comprehensive reparations to the disappeared victim and their relatives.

2.2 The Human Rights Committee and cases of enforced disappearance in Mexico

In presence of the serious crisis of impunity in cases of enforced disappearance of people who already lived in Mexico in 2014 and the impossibility of submitting individual cases to the CED, I(dh)eas decided to go before the Human Rights Committee in order to obtain recognition of human rights violations, the search and location of disappeared persons, determination of responsibility and, with this comprehensive reparation of the damage to families and the reform of the institutions. This strategy was new because, at that time, the United Nations Human Rights Committee had not issued contentious decisions against the Mexican State on enforced disappearance.

As a result of the litigation carried out by I(dh)eas since the presentation of the three cases in November 2015, the Human Rights Committee has been able to rule, so far, in two cases by declaring the enforced disappearance of the victim: Christian Tellez Padilla, an Industrial Engineering student at the University of the Gulf of Mexico, Poza Rica Campus, Veracruz, which occurred on October 20, 2010 in Poza Rica, and Víctor Manuel Guajardo Rivas, which occurred on July 10, 2013 in Piedras Negras, Coahuila. In another case of disappearance, that of Jesús Israel Moreno Pérez, a geography student at UNAM who disappeared on July 8, 2011 in Chacahua, Oaxaca, even though the Human Rights Committee considered that it could not conclude that it was “an enforced disappearance directly attributable to the State Party”. It did find that Mexico failed to comply with Article 6 of the International Covenant on Civil and Political Rights, by violating the right to life of Mr. Moreno Pérez and not investigating the facts effectively. We will refer to the three cases below.

The case of Mr. Christian Téllez Padilla

On October 20, 2010, at around 3:30 in the afternoon, Mr. Christian Téllez Padilla was driving his car through the city of Poza Rica, Veracruz, to a workshop, when at the Hueleque Bridge, on the boulevard Adolfo Ruiz Cortines, eight policemen, two patrols from the Poza Rica-Tihuatlán-Coatzintla Intermunicipal Police, pointed their weapons at him, got him out of his car and put him on one of the patrols. From that moment on, his relatives had no further news of him or of his whereabouts, despite having asked about him at all the police and law enforcement institutions in Poza Rica and the state of Veracruz.

In this case, on August 5, 2019, the Committee concluded, that the facts constituted enforced disappearance; a decision considered historic, since for the first time a United Nations organ pointed out the responsibility of the Mexican State for the crime of enforced disappearance. To reach this conclusion, the Committee took into account the general context of human rights violations – in particular, the practice of enforced disappearances – prevailing at the time and place in which the events occurred; the coherent account of the facts and the documentation presented by the authors of the communication before the Committee, and the fact that the State had not provided a “sufficient and concrete” explanation to refute the assertions of the authors of the communication regarding the enforced disappearance of Mr. Téllez Padilla. It is important to note that the Committee considered that the State could not base its denial of the existence of the enforced disappearance on the confession that the persons implicated in the same could make of the facts:

► The Committee observes that “it is highly questionable to discard the testimony of witnesses based on the refusal of the superior officers of the state agency where it is said that the disappeared person was arrested,” that “it is [not] logical or reasonable to investigate a forced disappearance and make its clarification subject to the acceptance or confession of the possible perpetrators or authorities involved”, but rather, the States must establish effective procedures to thoroughly investigate cases of enforced disappearances, taking into account the characteristic elements of this type of crime, such as the refusal by the authorities to acknowledge the arrest.

In concluding that Mr. Christian Téllez Padilla had been a victim of enforced disappearance, the Committee indicated that the Mexican State in its prejudice, had violated, several rights recognized in the Pact.

Specifically, it identified the violation of the right to life (article 6), the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment (article 7), the right to personal liberty and security (article 9) and the right to recognition of their legal personality (article 16). The Committee also indicated that the anguish and suffering that the disappearance of Mr. Téllez Padilla and the search for justice had violated in prejudice their right of his relatives not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7). It also considered that the State had violated, in relation to the foregoing rights, the obligations established in Article 2, paragraph 3, of the Covenant.

► In the present case, the Committee observes that, despite the always consistent account of the eyewitness, and despite the numerous actions initiated by the family members of Mr. Téllez Padilla, the investigations have not progressed significantly and in particular, timely procedures have not been carried out, which led to the loss of important evidence (by not requesting the security videos of the cameras of the scene of the events, by not requesting the videos of the security cameras of the place where the car was found, by not ordering the visual inspection at the facilities of the Intermunicipal Police, by not analyzing the call log from the missing person's phone, by not collecting fingerprints on Mr. Téllez Padilla's car, by taking time to summon the identified police officers to testify, by not ordering a search in line of people, by not investigating the context). Likewise, domestic remedies have been unjustifiably prolonged. Despite the recognition by the Inter-Municipal Police, upon an inspection visit by the Office of the Attorney General of the Republic six years after the disappearance, that the operation had indeed been carried out on the day of the disappearance, no progress has been made in the research. In light of the foregoing, the Committee considers that the investigations carried out do not appear to have been prompt or exhaustive, have not been carried out with due diligence, have not been independent and impartial, and have been ineffective in clarifying the circumstances of the disappearance, the fate and whereabouts of Mr. Téllez Padilla, and to identify those culprits.

Finally, the Committee noted that the Mexican State has the obligation to provide to family members of Mr. Téllez Padilla an effective remedy, which includes full reparation of the rights that were violated. In this regard, it must **a)** carry out an exhaustive, rigorous, impartial, independent and effective investigation into the circumstances of the disappearance of Mr. Téllez Padilla; **b)** immediately release Mr. Téllez Padilla, if he continues to be held incommunicado; **c)** in the event that Mr. Téllez Padilla has died, deliver his mortal remains to his relatives; **d)** to investigate and sanction any type of interventions that may have hindered the effectiveness of the search processes and location; **e)** provide to his relatives detailed information on the results of the investigation; **f)** prosecute and punish those found responsible for the violations committed and disseminate the results of those actions; **g)** ensure that adequate psychological rehabilitation and medical treatment services are provided to the family members according to their needs, and **h)** grant the family members, as well as Mr. Téllez Padilla if he is still alive, a comprehensive reparation, which includes adequate compensation for the violations suffered. According to the Committee, the State also has the obligation to adopt measures to prevent similar future transgressions from being committed.

The case of Mr. Víctor Manuel Guajardo Rivas

At dawn on July 10, 2013, agents from the Weapons and Special Tactics Group (GATE for its acronym in Spanish) and the Metropolitan Weapons and Special Tactics Group (GATEM for its acronym in Spanish), both from the Elite Police of the State of Coahuila, violently entered to the house of Mr. Víctor Manuel Guajardo Rivas, they beat him and took him into custody. At the GATE facilities, his family members saw how Mr. Guajardo Rivas arrived unconscious in one of the official vehicles. However, the GATE authorities repeatedly denied the detention, and the relatives of Mr. Guajardo Rivas did not know his whereabouts again.

In this case, the Human Rights Committee took note of the context of human rights violations and, in particular, of enforced disappearances committed by soldiers and police officers that existed in Coahuila at the time of the disappearance, and observed that Mr. Guajardo Rivas was taken from his home by GATE agents, who took him to a place of detention where he was last seen alive, and his family members searched for him insistently while GATE officials denied that he was on his premises.

Likewise, the Committee emphasized that the Mexican State had not refuted that Mr. Víctor Manuel Guajardo Rivas was missing, and that it had also recognized that the persons with respect to whom the criminal action for the disappearance had been brought were acting as agents of the GATE the night of the events.

Considering the foregoing, the Human Rights Committee indicated, similarly to what it did in the case of Mr. Christian Téllez Padilla.

► In light of the general context of human rights violations – in particular, the practice of enforced disappearances – prevailing at the time and place in which the events occurred, and in view of the coherent account of the events and the documentation presented by the authors, the Committee considers that the State Party has not provided a sufficient and concrete explanation to refute the authors' claims regarding the alleged enforced disappearance of Mr. Guajardo Rivas. Consequently, the Committee considers that the facts described constitute an enforced disappearance.

The Committee noted that the Mexican State had violated, to the detriment of Mr. Guajardo Rivas, several rights recognized in the International Covenant on Civil and Political Rights; specifically, the right to life (article 6), the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment (article 7), the right to personal liberty and security (article 9) and the right to recognition of their legal personality (article 16). Likewise, it considered that the State had violated, to the detriment of Mr. Guajardo Rivas's relatives, their right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7), due to the suffering that the disappearance of his family member and the search for justice had caused them.

In this case, as in the enforced disappearance of Mr. Christian Téllez Padilla, the Committee concluded that the Mexican State had violated Article 2, paragraph 3, of the Pact, in relation to the previous articles (6, 7, 9 and 16), due to the unjustified delay in the investigations, due to the absence of lines of investigation regarding all those involved in the enforced disappearance of Mr. Guajardo Rivera, and due to the failure to carry out the necessary procedures in time, which led to the loss of important evidences. The Committee considered, therefore, "that the investigations carried out were ineffective to clarify the circumstances of the disappearance, the fate and whereabouts of Mr. Guajardo Rivas, and to identify those culprits."

Therefore, the Committee considered “that the investigations carried out were ineffective to clarify the circumstances of the disappearance, the fate and whereabouts of Mr. Guajardo Rivas, and to identify those culprits.”

The Human Rights Committee ordered the Mexican State to comply with various measures of comprehensive reparation, as part of its obligation to provide Mr. Víctor Manuel Guajardo Rivas and his relatives an effective remedy: **a)** to carry out a prompt, effective and exhaustive investigation, independent, impartial, and transparent on the circumstances of the disappearance of Mr. Guajardo Rivas; **b)** to immediately release Mr. Guajardo Rivas, if he continues to be held incommunicado; **c)** in the event that Mr. Guajardo Rivas has died, to deliver his mortal remains to his relatives in dignified conditions; **d)** to investigate and punish, if applicable, any type of intervention that may have hindered the effectiveness of the search and location processes; **e)** to provide the authors with detailed information on the results of the investigation; **f)** to prosecute and punish the persons found responsible for the violations committed and disclose the results of those actions, and **g)** to grant the authors, as well as Mr. Guajardo Rivas if he is still alive, comprehensive reparation, including compensation adequate for the violations suffered. The Committee also indicated that the Mexican State has the obligation to “adopt measures to prevent similar transgressions from being committed in the future, which should include a registry of all detained persons.”

The case of Mr. Jesús Israel Moreno Pérez

Mr. Jesús Israel Moreno Pérez was studying geography at UNAM and he was 19 years old at the time of the events. On July 4, 2011, he traveled from Mexico City, to the state of Oaxaca, where he resided. His family members contacted him for the last time on July 8, 2011, exchanging text messages upon his arrival at a beach in Chacahua, Oaxaca. They had no further news from him or his whereabouts.

As we pointed out before, the Human Rights Committee considered that it could not establish that Mr. Moreno Pérez’s was an enforced disappearance. In this regard, they said the following:

► **The Committee observes that, in the absence of any information on a to substantiate the presumption of participation, support or acquiescence of State agents in the disappearance, the Committee cannot conclude that the disappearance of Mr. Moreno is an enforced disappearance directly attributable to the State Party.**

Despite this statement, the Human Rights Committee found that the facts of the case did show a violation of the right to life (Article 6 of the Pact) of Mr. Jesús Israel Moreno Pérez, due to the failure of the Mexican State to carry out an effective investigation of those facts. In this regard, it pointed out several issues related to the protection of the right to life: “The content and scope of the right to life includes not only negative and positive material obligations, but also positive procedural obligations.” In this sense, the obligation of the States Parties to the Covenant to protect the right to life “requires that they must not only avoid the deprivation of life, but also investigate and prosecute possible cases of illegal deprivation of life, punish the responsible and offer comprehensive reparation”. According to the Committee, this obligation to investigate, prosecute, punish and make comprehensive reparations when it comes to illegal and arbitrary deprivation of life “it is implicit in the obligation to protect” and emanates “from the general obligation to guarantee recognized rights in the Covenant, which is established in article 2, paragraph 1, read in conjunction with article 6, as well as the specific obligation to protect by law the right to life, set forth in the second sentence of article 6. Thus, the States Parties must adopt adequate preventive measures to protect people from an illegal and arbitrary deprivation of life”.

To this extent, as the Human Rights Committee also pointed out, there may be a violation of the Covenant “when the State Party does not adopt appropriate measures to investigate and punish those who have violated those rights and offer reparation to the victims, and even violation of article 6 of the Pact in cases of apparent investigation efforts”. Therefore, “the effective investigation must be considered as an inherent obligation of the right to life”.

In relation to the investigation into the disappearance of Mr. Jesús Israel Moreno Pérez, the Committee observed, based on the foregoing considerations, that “the investigating authority had not exhausted the lines of investigation,” and that the investigation carried out was based “on statements and contradictory testimonies, which were also the basis on which the ‘verdict on the cause of verbal death’ was issued and an expert opinion on objects that were also not in view and whose existence was disputed by the father of the missing person”. This allowed the Committee to conclude the following:

► In light of what has been indicated regarding the failure of the State Party to comply with its obligation to investigate the facts effectively, in a context of vulnerability in which it is reasonable to presume that the right to life of Jesús Israel Moreno Pérez was violated. The Committee declares the violation of article 6, paragraph 1, of the Covenant, read only and in conjunction with article 2, paragraph 3.

The Human Rights Committee also found that the Mexican State violated the right of the relatives of Mr. Jesús Israel Moreno Pérez not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7 of the Pact), due to the “anguish , stress and mutilation of life”, suffered due to the disappearance of Mr. Moreno Pérez, the serious shortcomings and obstructions in the investigation of the disappearance, the premature closure of the case by the authorities in charge of the same, and the threats he received Mr. Moreno Pérez’s father for being involved in the investigation of his son’s disappearance.

Finally, the Committee pointed out that, as comprehensive reparation measures, the Mexican State has the duty to **a)** to carry out a prompt, effective and exhaustive, independent and impartial, and transparent investigation into the circumstances of the disappearance of Mr. Moreno Pérez, oriented to the establishment of the truth; **b)** to provide the authors with detailed information on the results of said research; **c)** to prosecute and punish the persons found responsible for the disappearance and eventual death of Mr. Moreno Pérez and disseminate the results of those actions; **d)** to investigate and punish, if applicable, any intervention by state agents that may have hindered the effectiveness of the search and location processes; **e)** in the event that Mr. Moreno Pérez has died, to try to locate his mortal remains and deliver them to his relatives dignified conditions, and **f)** to grant the authors comprehensive reparation, including adequate compensation for the violations suffered. The Mexican State also has the obligation to adopt measures to prevent similar transgressions from being committed in the future.

1 **Opinion approved by the Human Rights Committee. (Christian Téllez Padilla and Others against Mexico).**

ANEXO



Pacto Internacional de Derechos
Civiles y Políticos



CCPR/C/126/D/2750/2016

Distr.: General
13 September 2019 English
Original: Spanish

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2750/2016^{*,**}

► Communication submitted by:	María Eugenia Padilla García, Ricardo Ulises Téllez Padilla and María Eugenia Zaldívar Padilla, on their own behalf and on behalf of Christian Téllez Padilla, their missing son and brother (represented by i(dh)eas Litigio Estratégico en Derechos Humanos and the Mexican Commission for the Defence and Promotion of Human Rights)
► Alleged victims:	The authors and Christian Téllez Padilla (son and brother of the authors)
► State party:	Mexico
► Date of communication:	10 November 2015
► Document references:	Special Rapporteur's rule 92 decision, transmitted to the State party on 15 March 2016 (not issued in document form)
► Decision adopted on:	15 July 2019
► Subject matter:	Enforced disappearance
► Procedural issues:	Exhaustion of domestic remedies
► Substantive issues:	Right to an effective remedy; right to life; prohibition of torture and cruel and inhuman treatment; right to liberty and security of person; recognition as a person before the law
► Articles of the Covenant:	2 (3), 6 (1), 7, 9, 16
► Article of the Optional Protocol:	5 (2) (b)

^{*}Adopted by the Committee at its 126th session (1–26 July 2019).

^{**}The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

1.1 The authors of the communication, which is dated 10 November 2015, are María Eugenia Padilla García, Ricardo Ulises Téllez Padilla and María Eugenia Zaldívar Padilla, Mexican citizens born on 5 November 1960, 1 May 1985 and 19 March 1989, respectively. The authors are acting on their own behalf and on behalf of Christian Téllez Padilla, their son and brother, also of Mexican nationality, born on 24 July 1980 and missing since 20 October 2010. The authors allege that the State party has violated Christian Téllez Padilla's rights under articles 6 (1), 7, 9 and 16 of the Covenant, read alone and in conjunction with article 2 (3). The authors also claim to be themselves victims of a violation by the State party of their rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3). The authors also allege a violation of article 2 (3) of the Covenant. The Optional Protocol entered into force for the State party on 15 June 2002. The authors are represented by counsel.

1.2 On 17 November 2016, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, rejected the State party's request that the admissibility of the communication be considered separately from its merits.

The facts as submitted by the authors

► *Disappearance of Christian Téllez Padilla*

2.1 On 20 October 2010, Christian Téllez Padilla (who was 30 years old and studying industrial engineering at the Universidad del Golfo de México, Campus Poza Rica, Veracruz, at the time) was driving his car through the city of Poza Rica, bound for an auto repair shop. His partner, Aidée Galindres Basave, was following him in her van. At approximately 3.30 p.m., where the Puente Hueleque crosses Boulevard Adolfo Ruiz Cortines, two patrol cars of the Poza Rica-Tihuatlán-Coatzintla inter-municipal police, manned by eight police officers, stopped Mr. Téllez Padilla and made him get out of his car and into a patrol car at gunpoint. The patrol cars left and one of the police officers took Mr. Téllez Padilla's car. His partner tried to follow them, but when the patrols stopped to ask her what she was looking for, two police officers arrived on motorcycles and parked in front of her, blocking her way.

2.2 Ms. Galindres went straight to the inter-municipal police station, where she was told that Mr. Téllez Padilla was not there. She then went to the Veracruz Investigation Agency and the Federal Investigation Agency, where she got the same answer. She went to the Veracruz State Attorney General's Office² to report the disappearance, but her complaint was not recorded because 48 hours had not passed since the disappearance. She then called the emergency telephone number to report the disappearance, and was told that she had to go back to the inter-municipal police station. When she got there, she was again informed that the person she was looking for was not there.

2.3 In the early hours of 21 October 2010, relatives of Mr. Téllez Padilla (his mother, brother and two uncles) arrived in Poza Rica from the Federal District. They went to the inter-municipal police station, where the deputy chief, Javier Amador Mercado Guerrero³, told them that there was no record of Mr. Téllez Padilla. Although the deputy chief allowed one of Mr. Téllez Padilla's uncles to enter the area where the detainees were held, he refused to open a padlocked door, despite the uncle's insistence.

² Procuraduría General de Justicia del Estado de Veracruz, now Fiscalía General del Estado de Veracruz.

³ The file shows that this person was later arrested for kidnapping and links with the organized crime group "Los Zetas".

► *Complaints lodged over the disappearance of Christian Téllez Padilla*

2.4 On 21 October 2010, the Veracruz State Attorney General's Office finally admitted the complaint filed by the mother of Mr. Téllez Padilla, initiating preliminary investigation PZR4/495/2010. However, no action was taken to launch an urgent search for Mr. Téllez Padilla. In the afternoon of the same day, the family found Mr. Téllez Padilla's car in a vacant lot and informed the Attorney General's Office. The expert dispatched to the scene touched the steering wheel of the car without wearing gloves and told the family that he could not take fingerprints because of the dust. As part of the investigation, Ms. Galindres was summoned on 26 October 2010 to work on facial composites of the police officers (the authors claim to have asked to see the photograph album of the inter-municipal police, to make it easier to identify those responsible).

2.5 On 22 October 2010, Ms. Galindres filed an application for amparo for illegal deprivation of liberty and incommunicado detention⁴. On 3 November 2010, after requesting information from the inter-municipal police and being told that Mr. Téllez Padilla had not been detained, the court ordered a stay of proceedings. After proceedings had been stayed for a year, the judge considered the lawsuit not to have been filed (in accordance with the law in force at the time of the events).

2.6 On 26 October 2010, in view of the perceived indifference of the authorities in Poza Rica, Mr. Téllez Padilla's family went to the Directorate-General of Judicial Investigations in Xalapa, the capital of Veracruz, where another preliminary investigation was opened⁵. In the context of this investigation, the family gained access to the photograph album of the inter-municipal police and Ms. Galindres identified Pablo García García (of whom a facial composite had been made) and two other police officers (Marco Alfredo Castellanos López and Carlos Vicencio Santiago) as being among those responsible for the disappearance⁶. In addition, and also in the context of THIS INVESTIGATION, A NUMBER of people were questioned but claimed to have seen nothing in particular⁷. Family members were also informed that there were no surveillance cameras in the area (which turned out to be untrue, but due to the time that had elapsed, the video footage had been erased). On 29 November 2010, Pablo García García was summoned to testify. In his testimony of 6 December 2010, he stated that he belonged to the Canine Unit and did not drive patrol cars or motorcycles, and that he had been on holiday on the day of the events. He provided as evidence an official letter signed by the chief of the inter-municipal police (Juan Carlos Novoa Torres – who was linked to a murder in 2014) and the 20 October 2010 duty log of the Canine Unit, signed by the deputy chief of the inter-municipal police, Javier Amador Mercado Guerrero.

⁴ Case No. 0809/2010 before the Eleventh District Court of Poza Rica, for violations of articles 14, 16 and 21 of the Constitution.

⁵ Preliminary investigation 174E/2010.

⁶ The photographs of four police officers (Leodagario Amador González, Marcelo López Hernández, Gregorio Maldonado Ramírez and Guillermo Gómez Castillo) who, in January 2015, were summoned to testify and declared that they did not know Mr. Téllez Padilla were missing.

⁷ The authors claim that this was probably out of fear: a lady at the newspaper stand near the place where the police had asked Ms. Galindres what she was looking for, said that she had seen nothing, and two people – who refused to give their details – asked the family not to involve them. Moreover, the file also shows that some of the people questioned by the authorities said that they were “doing some repair work at home” and so were not aware of any situation involving patrol officers, or that they could not provide any information “because at the time mentioned this branch is closed”, or that they did not notice the presence of the inter-municipal police in their shop because they had their backs turned and could not see anything, or that they could not see anything because “the premises has air-conditioning and the door has to stay closed, and in any case the door is made of tinted glass”.

2.7 On 22 November 2010, a complaint was filed against the three police officers identified – Pablo García García, Marco Alfredo Castellanos López and Carlos Vicencio Santiago – in the Kidnapping Unit of the Office of the Assistant Attorney General for the Investigation of Organized Crime, in the Office of the Attorney General of the Republic, which gave rise to a preliminary investigation for the crime of illegal deprivation of liberty in the form of kidnapping⁸. The authors of the communication were very active,⁹ contributing various pieces of evidence for the investigation, including the news of the arrest of the deputy chief of the inter-municipal police, Javier Amador Mercado Guerrero¹⁰, reputedly the leader in Poza Rica of the organized crime group Los Zetas. According to the authors, it was not until nine months later (on 22 October 2012) that his statement was taken, and that when he denied the accusations, there was no analysis of the collaboration between the inter-municipal police and the Los Zetas group.

2.8 On 24 October 2014, Mr. Téllez Padilla's family filed a new complaint with the Disappeared Persons Search Unit (established on 21 June 2013) at the Office of the Attorney General of the Republic. This gave rise to an official report¹¹, for the purposes of which copies of all existing case files were requested. When the report was received on 16 April 2015, it was upgraded to a preliminary investigation. Although the call list for Mr. Téllez Padilla's telephone was examined and it was determined – in September 2015 – that a call had been made from his telephone a few minutes after his arrest and that on 6 December 2010 a call had been made to check the balance, it was impossible to obtain further information given the time that had elapsed.

2.9 As well as seeking judicial remedies, the authors filed complaints against the inter-municipal police with the Veracruz State Human Rights Commission (21 October 2010) and with the National Human Rights Commission (19 April 2011). None of the actions taken succeeded in establishing the whereabouts of Mr. Téllez Padilla.

2.10 The authors claim that the disappearance of Christian Téllez Padilla took place in a context of serious human rights violations with a clear link between state authorities and organized crime, citing reports from various international and regional bodies.¹² According to the authors, this link between the police and organized crime led to a rise in the number of extrajudicial executions and forced disappearances throughout the country, as well as in the number of complaints of inbuilt impunity for such acts; this situation was reflected in Veracruz, where it was influenced by the presence of organized crime groups such as Los Zetas, the Gulf Cartel and the New Generation Jalisco Cartel.

⁸ Preliminary investigation PGR/SIEDO/UEIS/561/2010.

⁹ Mr. Téllez Padilla's mother testified on 3 and 28 December 2010, 17 November 2011, 17 January, 27 June, 9 November and 10 December 2012, 5 February, 2 April, 22 May and 1 July 2013, offering, for example, colour photographs of her son and a blood sample for genetic-profiling purposes.

¹⁰ The person who had denied family members access to a padlocked room in the police station.

¹¹ Official report AC/PGR/SDHPDSC/UEBPD/M12/109/2014.

¹² The authors cite the 7 October 2015 statement of the United Nations High Commissioner for Human Rights on his visit to Mexico in 2015: "For a country that is not engaged in a conflict, the estimated figures are simply staggering ... Official statistics show that 98 percent of all crimes in Mexico remain unsolved, with the great majority of them never even properly investigated." They also mention the concerns expressed by the Committee on Enforced Disappearances, the United Nations Special Rapporteur on Torture and the Inter-American Commission on Human Rights after its visit in October 2015 (according to the Commission, the extent of enforced disappearance in the country was "alarming").

► *The complaint*

3.1 The authors maintain that the communication meets the admissibility criteria under the exception provided for in article 5 (2) (b) of the Optional Protocol, in that the appropriate remedies have been applied for but have been unreasonably prolonged and important evidence has been lost. The remedies have been ineffective in determining the circumstances of the disappearance and the fate and whereabouts of Mr. Téllez Padilla, and have not allowed those responsible to be punished.

3.2 In particular, the authors cite the Committee's jurisprudence that if remedies are unreasonably prolonged or proven to be ineffective, there is no obstacle to the consideration of a communication.¹³ The authors also maintain that the communication is admissible on the basis of the four criteria developed by regional human rights systems to determine what counts as a reasonable period of time for the purpose of determining the effectiveness of remedies.¹⁴ Regarding the complexity of the case, the authors maintain that the implication of the inter-municipal police made it impossible to make progress in the investigations. As for the procedural steps taken by the party concerned, the authors argue that they always cooperated in the investigation and that they were the ones who introduced evidence that opened new lines of investigation. As for the conduct of the judicial authorities, the authors maintain that those authorities obstructed and "vitiating" the investigation by: rejecting the complaint; contradicting themselves about the existence of security cameras; conducting a negligent expert appraisal of the car so that it was impossible to identify fingerprints; delaying the identification of the police officers – using a facial composite instead of showing the photograph album of the inter-municipal police, before eventually showing it with four photographs missing; taking 44 days to summon one of the police officers identified to testify; and giving full evidentiary value to the certificate produced by that police officer, even though it was signed by an officer who was later arrested on kidnapping charges. Finally, with regard to the last criterion – the effect of the legal situation on the persons involved – the authors point to the serious consequences for their personal integrity of not knowing the whereabouts of Mr. Téllez Padilla.

3.3 Turning to the violations in the present case, the authors assert that it concerns an enforced disappearance, since all the elements of the definition of that offence are met: **(a)** Mr. Téllez Padilla was stopped by inter-municipal police officers; **(b)** the officers made him get out of his car and into a police patrol car; and **(c)** his family tried very hard to find him and the officers denied that he was in the police station. The authors recall that the enforced disappearance of persons constitutes a multiple and continuing violation of several rights; they claim that the State party has violated Mr. Téllez Padilla's rights under articles 6 (1), 7, 9 and 16 of the Covenant, read separately and in conjunction with article 2 (3) of the Covenant. The authors also claim to themselves be victims of a violation by the State party of their rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3). They also allege a violation of article 2 (3) of the Covenant.

3.4 As for the violation of Mr. Téllez Padilla's right to life, the authors allege that the acts constitute a violation of article 6 (1) of the Covenant, given the circumstances of Mr. Téllez Padilla's detention by police officers and the absence of news on his fate or whereabouts.

¹³ The authors cite, for example, the case of *Pestaño v. Philippines* (CCPR/C/98/D/1619/2007).

¹⁴ The authors refer to the case law of the European Court of Human Rights (*Ruiz-Mateos v. Spain*, application No. 12952/87, judgment of 23 June 1993, paras. 38 et seq.) and the Inter-American Court of Human Rights (*Genie-Lacayo v. Nicaragua*, merits, reparations and costs, judgment of 29 January 1997, Series C, No. 30, paras. 77 et seq.; *Argüelles et al. v. Argentina*, preliminary objections, merits and reparations, judgment of 20 November 2014, Series C, No. 288, para. 189).

3.5 As for the violation of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the authors maintain that there can be no doubt that Mr. Téllez Padilla suffered greatly from the terrible uncertainty and the harm to his physical and mental integrity, and that the forced disappearance of persons constitutes in itself a form of torture. Furthermore, the authors claim a violation of article 7 of the Covenant in respect of themselves, on account of the distress and suffering caused by their pursuit of justice, by not knowing the whereabouts of their relative and by not knowing whether he was alive or in what conditions he was held captive.

3.6 The authors also allege a violation of article 9 of the Covenant because Mr. Téllez Padilla was arrested without a warrant, was not informed of the reasons for his arrest, was not charged, and was given no chance to appear before a judicial authority in order to challenge the lawfulness of his detention. The authors also cite general comment No. 35 (2014) on liberty and security of person, in which the Committee recognizes “being involuntarily transported” (para. 5) as a form of deprivation of liberty, and states that “enforced disappearances ... constitute a particularly aggravated form of arbitrary detention” (para. 17). They also cite the jurisprudence of the Inter-American Court of Human Rights to support the claim of a violation of the right to liberty, because Mr. Téllez Padilla was transferred to an unknown place and his detention was not recorded.¹⁵

3.7 With regard to the violation of the right to recognition as a person before the law, the authors rely on the Committee’s Views to allege a violation of article 16 in respect of Mr. Téllez Padilla, who was removed from the protection of the law and was last seen in the hands of the authorities.¹⁶

3.8 Finally, owing to the failure to conduct an effective investigation, the authors also allege a violation of article 2 (3), read alone and in conjunction with articles 6 (1), 7, 9 and 16 of the Covenant. In this regard, the authors claim that the State failed to initiate an independent, impartial, serious, thorough and effective ex officio investigation that guaranteed the right to the truth and respected the family’s right to participate in the proceedings (the authors point out that they even had to submit an application for amparo because of the enormous difficulties they faced in trying to obtain copies of the case files, and that international attention had already been drawn to this issue in the State party);¹⁷ and that the authorities also obstructed and vitiated the investigation. In this regard, the authors invoke a number of international rulings that indicate that the period immediately following arrest is crucial to gathering information and thus preventing a disappearance.¹⁸ Lastly, the authors recall paragraph 15 of general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, according to which “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”.

¹⁵ The authors cite the jurisprudence of the Inter-American Court of Human Rights in the case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala, merits, reparations and costs, judgment of 20 November 2012, Series C, No. 253, para. 200, according to which “the deprivation of liberty in legally recognized centers and the existence of records of detainees constitute fundamental safeguards, inter alia, against forced disappearance”.

¹⁶ The authors cite the cases of Abdelhakim Wanis El Abani (El Ouerfeli) v. Libyan Arab Jamahiriya (CCPR/C/99/D/1640/2007); Fatma Zohra Berzig v. Algeria, (CCPR/C/103/D/1781/2008); Aïssa Mezine v. Algeria (CCPR/C/106/D/1779/2008); and Ram Kumar Bhandari v. Nepal (CCPR/C/112/D/2031/2011).

¹⁷ The authors cite the case before the Inter-American Court of Human Rights of Radilla-Pacheco v. Mexico, preliminary objections, merits, reparations and costs, judgment of 23 November 2009, Series C, No. 209, para. 258.

¹⁸ The authors cite precautionary measure No. 453-13 granted by the Inter-American Commission on Human Rights in the matter of Daniel Ramos Alfaro regarding Mexico (20 February 2014, para. 11). They also cite Human Rights Watch, “Ni seguridad ni derechos: Ejecuciones, desapariciones y tortura en la guerra contra el narcotráfico en México” (Mexico, 2011, p. 10).

3.9 As reparation measures, the authors ask that the State party be ordered to: **(a)** conduct a prompt, impartial and thorough investigation into the facts; **(b)** continue the search to determine the whereabouts and fate of Mr. Téllez Padilla, in accordance with the relevant international standards; **(c)** provide the authors with detailed information on the outcome of the criminal investigation and the search; **(d)** release Mr. Téllez Padilla immediately if he is still in detention; **(e)** prosecute and punish those responsible; **(f)** grant the relatives and Mr. Téllez Padilla, if he is still alive, full reparation, including adequate compensation and the necessary rehabilitation; and **(g)** take measures to prevent similar violations in the future.

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

4.1 On 13 May 2016, the State party requested the Committee to consider separately the admissibility and the merits and to declare the communication inadmissible for failure to exhaust domestic remedies as the case was still pending.

4.2 First, the State party submits that the necessary investigations were carried out in the cases before the authorities of the state of Veracruz. In this respect, the State party mentions that facial composites were made of two individuals; that Pablo García García was identified as one of those responsible and that he was summoned to appear as an accused person for the purposes of the proceedings; that the attorneys general of 30 states and the Federal District were requested to issue instructions to the appropriate authorities to conduct search operations; that they were also asked to report on whether there was any investigation concerning Mr. Téllez Padilla under way and whether he was being held in a social rehabilitation centre or hospital; that they were also asked to post Mr. Téllez Padilla's photograph on their website and other media; that psychological help was requested for Mr. Téllez Padilla's partner and mother; that they were informed that the video footage taken by the cameras was automatically wiped after 15 days; that Ms. Galindres did not show up for appointments in 2012 and 2013 to identify the police officers; and that in 2015 a request was made to have the search included in the reward payment programme.

4.3 Secondly, the State party submits that the Office of the Attorney General of the Republic also carried out the necessary investigations. Thus, among other steps taken, statements were taken from various persons and acquaintances of Mr. Padilla Téllez; inspections were carried out at the scene of the events; searches were carried out in unmarked graves; 32 public prosecutor's offices, as well as hospitals and psychiatric units, were instructed to search for Mr. Téllez Padilla; the International Criminal Police Organization (INTERPOL) was asked to issue a Yellow Notice; the context was investigated; and a statement was taken from Javier Amador Mercado Guerrero, deputy chief of the inter-municipal police.¹⁹

4.4 The State party notes that, as a result of these actions, it has been established that there were several outbreaks of violence between criminal gangs in October 2010 in Poza Rica and that a number of press reports were critical of the actions of the inter-municipal police. However, the State party maintains that Pablo García García demonstrated "with an official document" that at the time of the events "he was enjoying his holiday", that "he did not know how to use or ride a motorcycle" and that "he does not have a scar like, or similar to, the one borne by the person riding the motorcycle who blocked the way, as described by the complainant".

¹⁹ However, the State party does not indicate what the outcome of this procedure was.

4.5 In short, the State party argues that the preliminary investigations are under way, pending the submission of information by various prosecutor's offices in response to the request for cooperation. It claims that it has followed the search protocols, but that there is no compelling evidence to hold anyone responsible for the events. In this respect, "it may be presumed that the perpetrators of the criminal act may have been law enforcement officials, but it has not been conclusively demonstrated that any member of the inter- municipal police was involved". It concludes that "the Mexican State has done its utmost to establish the facts" and that the appropriate investigations and actions have been carried out, so that the State party has fulfilled its legal obligation to investigate with due diligence.

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

5.1 On 18 July 2016, the authors submitted their comments on the State party's observations on admissibility, in which they stressed that they had taken the necessary steps to exhaust the appropriate remedies but that these had not been effective. They maintained that the remedies had been unreasonably prolonged, and that the fate and whereabouts of Mr. Téllez Padilla remained unknown almost six years after his disappearance.

5.2 On the basis of article 12 (2) of the International Convention for the Protection of All Persons from Enforced Disappearance,²⁰ the authors argue that the initial refusal to receive the complaint was contrary to the obligation to initiate investigations immediately. In addition, the authors maintain that the authorities have not conducted a thorough investigation, so there is still no information on the whereabouts and fate of Mr. Téllez Padilla, those responsible have not been punished and no reparation has been made. In conclusion, they argue that the investigations have been carried out: **(a)** without due diligence; **(b)** very belatedly, leading to the loss of crucial evidence; and **(c)** with long breaks that reduced the effectiveness of several measures and led to unreasonable delays in the investigations.

5.3 Looking at the list of steps taken by the State party, the authors reiterate that actions that were necessary to achieve the objectives of the investigation were not carried out. One of them was to carry out a proper inspection of Mr. Téllez Padilla's vehicle in order to obtain the fingerprints and DNA of one of those responsible. Another was to issue an immediate court order granting access to the security cameras at the scene of the disappearance. In addition, Mr. Téllez Padilla's cellphone call list was accessed and analysed too late. Finally, the authors report that the statements of the other two police officers singled out by the eyewitness were not collected until more than four years after the disappearance.

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

6.1 In its observations of 13 September 2016, the State party asked the Committee to find that it had not violated any of the articles of the Covenant.

6.2 The State party reiterates that the investigations were carried out promptly as soon as the authorities learned of the disappearance, on 21 October 2010. In this regard, the State party says that it was unaware of "evidence on which Ms. Galindres based her claim that she was not allowed to file a complaint on 20 October 2010". The State party also reiterates that the investigations were

²⁰ The relevant part of this article of the Convention, which was ratified by the State party on 18 March 2008, provides that: "Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities ... shall undertake an investigation, even if there has been no formal complaint."

carried out with all due diligence and argues that the obligation to investigate is not an obligation of result, but of means, to be interpreted in such a way as not to impose a disproportionate burden on the authorities. The State party adds that the investigation was impartial, since the public prosecutor's office is by law independent of the inter-municipal police, and that it was thorough, since both state and federal authorities carried out all the necessary investigations and actions.

6.3 The State party again details all the steps taken and specifies that, as far as the examination of the car was concerned, "there was no sign whatsoever of the car having been used by anyone other than the alleged disappeared person". The State party also adds that a number of other officers,²¹ in addition to the three police officers identified and the deputy chief of the inter-municipal police, Javier Amador Mercado Guerrero, came forward to testify and that their statements did not "suggest any probable link to the alleged events".

6.4 Thus, the State party maintains that the disappearance of Mr. Téllez Padilla cannot be attributed to State agents, "since no evidence has been produced in support of such a claim", and that, on the contrary, there is evidence pointing to different conclusions, such as the fact that none of the police officers admitted being involved and that none of the persons interviewed confirmed the facts. Thus, the State party argues that international responsibility cannot be attributed to it when it has produced evidence that discredits the authors' version.

6.5 Finally, the State party also maintains that it is not possible to claim that the disappearance resulted from an omission on its part. In this connection, it points out that a State cannot be held responsible for any situation of risk to the right to life if, at the time of the events, the authorities were not aware of the existence of a situation of real and immediate risk to the life of a given individual. The State party notes that it did not receive any warning that Mr. Téllez Padilla was at risk and it was therefore unable to prevent his disappearance.

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

7.1 In their comments of 20 January 2017, the authors state that the authorities did know about the disappearance from the very day it occurred, because Ms. Galindres called the police that same day on the emergency telephone number to report the disappearance of her partner after having asked about him in the offices of three state entities (the inter-municipal police, the Veracruz Investigation Agency and the Federal Investigation Agency). The authors say that the criminal case file contains a record of the call. In addition, the authors point out that there is a record in the case file of the refusal of the Veracruz State Attorney General's Office to accept the complaint on 20 October 2010.²²

7.2 The authors also insist that, despite the consistent account of the eyewitness, the investigations were neither prompt nor thorough; they were not carried out with due diligence; and they involved the loss or alteration of substantial and irreplaceable evidence, which was needed to establish what happened and who was responsible. In this regard, the authors point out that the Working Group on Enforced or Involuntary Disappearances has recalled that "the first hours and days after the deprivation of liberty are when abuses usually occur, including enforced or involuntary disappearances".²³ However, they say that no order was given to carry out an on-site investigation at the inter-municipal

²¹ Gregorio Maldonado Ramírez, Marcelo López Hernández, Leodegario Amador Gonzáles, Juan Carlos Novoa Torres and Reyna Vite Chávez.

²² Notably in the statement made to the Public Prosecution Service on 3 November 2010 by the mother of Mr. Téllez Padilla (annex 6: Statement by María Eugenia Padilla García to agent No. 8 of the Public Prosecution Investigative Service, p. 2).

²³ A/HRC/33/51/Add.1, para. 54.

police station or to take steps to obtain information from the cameras located in the place where the vehicle was found; that the first visit to the place of detention took place on 27 October 2010, that is, seven days after the events; that the Public Prosecution Service official also received from the police the photographs of the police officers on 27 October 2010;²⁴ and that the first order to take a statement from Pablo García García was issued on 24 November 2010 (more than two months after the disappearance). Likewise, the authors indicate that on 26 October 2010 they submitted a request to find out whether there was a video recording in the archives of “C4” (Control, Command, Communications and Computing Centre), and that, when no answer had been received two months and 18 days later, they resubmitted the request, only to be told in January 2011 that “the video footage taken by the cameras is automatically wiped after 15 days”.²⁵

7.3 As for the description of Pablo García García as one of the police officers riding a motorcycle, and the State party’s argument that he does not fit the description, the authors maintain that, although the officer’s lawyer stated that the physical description did not correspond exactly to the one given by the eyewitness, no steps were taken to clarify the differences and the witness was not asked to pick him out in a police line-up, as provided for in the Code of Criminal Procedure. Such a procedure would have been very pertinent, since when she viewed the photographs on 21 April 2014, the witness was very emphatic when she again identified Pablo García García as one of the police officers on a motorcycle who had blocked her way.²⁶

7.4 The authors also insist that the delay is particularly serious if one takes into account the context in which the disappearance took place, indicating that it is clear from statements in the file that, at the time of the disappearance, there were clashes between the authorities and “Los Zetas”, and that “people were being kidnapped”.²⁷ In this regard, the authors regret that no steps were taken to establish the veracity of the evidence provided by Pablo García García to rule out his possible participation, despite the fact that one of the statements was signed by a person subsequently arrested for kidnappings and links with “Los Zetas”. The authors also regret that, despite their having provided a copy of the press report of an inter-municipal police operation that took place on the scene that same day, it was not until more than six years later (9 December 2016) that the Office of the Attorney-General of the Republic, during an inspection of the inter-municipal police station, took statements from police officers who acknowledged that the operation had indeed taken place.

7.5 The authors also argue that the State party has not denied that Mr. Téllez Padilla is missing; that – in accordance with the jurisprudence of both the European Court of Human Rights²⁸ and the Committee²⁹ – it has not provided any other version of events that satisfactorily and convincingly explains what happened; and that the refusal of inter-municipal police officers to acknowledge

24 Annex 7: Veracruz State Attorney General’s Office, Directorate-General of Judicial Investigations, Agency No. 8 of the Public Prosecution Investigative Service, Official letter DGIM/MP8o/2276/2010, Subject: Reply to official letter PGJ/VDH/3945/2010/-NVN, Xalapa-Enríquez, 25 November 2010, p. 3.

25 Annex 23: Agent No. 15 of the Public Prosecution Service attached to the Directorate-General of Investigations in charge of the office of Agency No. 8. Xalapa-Enríquez, Veracruz, 14 January 2011.

26 It is clear from annex 5 to the comments on the observations on the merits that the witness specified that the scar on the officer’s forehead that she had mentioned was “very small and [was] probably from untreated acne or a small cut”.

27 Annex 9: Office of the Attorney General of the Republic, Office of the Assistant Attorney General for the Investigation of Organized Crime, Kidnapping Unit, AP PGR/SIEDO/UEIS/561/2010. Statement to the prosecution service by a university classmate, Mexico City, Federal District, 13 June 2014, p. 2.

28 The authors refer to the case of *Aslakhanova and others v. Russia*, judgment of 18 December 2012, para. 104, in which the European Court of Human Rights held that, faced with testimonies reporting enforced disappearance and the State’s argument that the investigation had thrown up no evidence of disappearance at the hands of State agents, the State had failed to meet the burden of proof.

29 Human Rights Committee, *Salem Saad Ali Bashasha v. Libyan Arab Jamahiriya* (CCPR/C/100/D/1776/2008), para. 7.2.

the detention of Mr. Téllez Padilla does not prove that he was not deprived of his liberty by agents of the State party since, precisely, one of the characteristic elements of enforced disappearance is the refusal to acknowledge the deprivation of liberty.

Issues and proceedings before the Committee

► *Consideration of admissibility*

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

8.2 The Committee has ascertained, as required under article 5 (2) **(a)** of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee takes note of the State party's argument that domestic remedies have not been exhausted, since preliminary investigations are still pending before the Veracruz State Attorney General's Office and the Office of the Attorney General of the Republic. In particular, the State party submits that the authors have applied for the appropriate remedies but that several attorney general's offices have yet to provide information in response to requests for cooperation. The Committee also takes note of the authors' claims that domestic remedies have not been effective because their processing has been unreasonably prolonged, so that the fate and whereabouts of Mr. Téllez Padilla remain unknown.

8.4 The Committee recalls that the purpose of the requirement that domestic remedies be exhausted is to give the State party the opportunity to fulfil its duty to protect and guarantee the rights enshrined in the Covenant.³⁰ However, for the purposes of article 5 (2) **(b)** of the Optional Protocol, domestic remedies must not be unreasonably prolonged. In view of the fact that almost nine years have elapsed since the disappearance of Mr. Téllez Padilla and the submission of complaints by both the authors of the present communication and Mr. Téllez Padilla's partner, without any significant progress being made in those investigations and without any justification by the State party for the delay,³¹ the Committee considers that those investigations have been unduly prolonged and that, consequently, article 5 (2) **(b)** of the Optional Protocol does not preclude it from considering the present complaint.³²

8.5 As all admissibility requirements have been met, and given that the authors' complaints under articles 2 (3), 6 (1), 7, 9 and 16 of the Covenant have been sufficiently substantiated for the purposes of admissibility, the Committee declares the communication admissible and proceeds to its consideration on the merits.

³⁰ Settled jurisprudence of the Committee since the adoption of its Views on *T.K. v. France* (CCPR/C/37/D/220/1987), para. 8.3.

³¹ *Ekaterina Abdoellaeвна v. The Netherlands* (CCPR/C/125/D/2498/2014), para. 6.3.

³² *Vladimir Chernev v. Russian Federation* (CCPR/C/125/D/2322/2013), para. 11.3.

► *Consideration of the merits*

9.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes the authors' assertion that the facts in the present case constitute an enforced disappearance, since all the elements of the definition of that offence are present: **(a)** Mr. Téllez Padilla was stopped by inter-municipal police officers; **(b)** the officers made him get out of his car and into a police patrol car; and **(c)** his family tried very hard to find him and the officers denied that he was in the police station. The Committee notes that the State party has not denied that Mr. Téllez Padilla is missing, and that it has stated that "it may be presumed that the perpetrators of the criminal act may have been law enforcement officials", but concludes that the disappearance is not attributable to State agents because none of the police officers have admitted any involvement and there is no testimony to support that of the eyewitness.

9.3 The Committee observes that one of the characteristic elements of enforced disappearance of persons is precisely the refusal to acknowledge detention and to reveal the fate and whereabouts of the person,³³ and recalls its jurisprudence to the effect that the burden of proof cannot fall exclusively on the authors of the communication, since the author and the State party do not always have equal access to the evidence and the State party is often the only one with access to the relevant information.³⁴ Therefore, when the authors have submitted credible complaints to the State party and when further clarification depends on information that is solely in the hands of the State party, the Committee may consider the complaints substantiated if the State party does not produce satisfactory evidence or explanations to refute them.³⁵ The Committee also notes that "it is highly questionable to reject the testimony of witnesses... based on the denial of the senior officers of the State entity where it is said that the disappeared person was detained" and that "it is neither logical nor reasonable to investigate a forced disappearance and subordinate its clarification to the acceptance or confession of the possible authors or authorities involved";³⁶ rather, States must establish effective procedures for the thorough investigation of cases of enforced disappearance, ³⁷ taking into account the characteristic elements of this type of offence, such as the refusal of the authorities to acknowledge detention.

9.4 Against the prevailing background of human rights violations – particularly enforced disappearances – taking place at the time and place of the events (see para. 2.10 and footnote 11 above), and in light of the consistent account of the events and the documentation submitted by the authors, the Committee considers that the State party has not provided an adequate and concrete explanation to refute the authors' allegations concerning the alleged enforced disappearance of Mr. Téllez Padilla. Accordingly, the Committee considers that the acts in question in the present case constitute enforced disappearance.³⁸

33 General comment No. 36 (2918) on the right to life, para. 58.

34 For example, Gyan Devi Bolakhe et al. v. Nepal (CCPR/C/123/D/2658/2015); Arab Millis v. Algeria (CCPR/C/122/D/2398/2014); Sarita Devi Sharma et al. v. Nepal (CCPR/C/122/D/2364/2014); and Himal and Devi Sharma v. Nepal (CCPR/C/122/D/2265/2013).

35 Gyan Devi Bolakhe et al. v. Nepal, para. 7.4.

36 Inter-American Court of Human Rights, González Medina and family v. Dominican Republic, Preliminary objections, merits, reparations and costs, judgment of 27 February 2012, Series C, No. 240, para. 161. See also general comment No. 36, para. 58.

37 Herrera Rubio et al. v. Colombia (CCPR/C/31/D/161/1983), para. 10.3.

38 Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.

9.5 The Committee recalls that, while the Covenant does not explicitly use the term “enforced disappearance”, such disappearance constitutes a unique and integrated series of acts that represent a continuing violation of various rights recognized in the Covenant,³⁹ such as the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, and the right to recognition as a person before the law.⁴⁰

9.6 In the present case, the Committee takes note of the authors’ claim that the acts constitute a violation of article 6 (1) of the Covenant, given the circumstances of Mr. Téllez Padilla’s detention by officers of the inter-municipal police and the absence of news on his fate or whereabouts. The Committee recalls that, in cases of enforced disappearance, deprivation of liberty followed by a refusal to acknowledge the deprivation of liberty, or by concealment of the fate of the disappeared person, removes the person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.⁴¹ In the present case, the State party has not submitted any information indicating that it took any measures to preserve the life of Mr. Téllez Padilla when he was detained by the authorities, in violation of article 6 (1) of the Covenant.

9.7 The Committee also takes note of the authors’ claim that the acts constitute treatment contrary to article 7 of the Covenant in respect of Mr. Téllez Padilla, because of the severe suffering, the uncertainty and the effect on his physical and psychological integrity as a result of the enforced disappearance. In the absence of any information from the State party on this point, the Committee considers that the facts as described constitute a violation of article 7 of the Covenant in respect of Mr. Téllez Padilla. The Committee also notes the authors’ assertion that Mr. Téllez Padilla’s disappearance and the pursuit of justice have caused them distress and suffering. The Committee considers that these facts reveal a violation of article 7 of the Covenant in respect of the authors of the communication.⁴²

9.8 With regard to the alleged violation of article 9 of the Covenant, the Committee takes note of the authors’ allegations that Mr. Téllez Padilla was arrested without a warrant and without being brought before a judicial authority, which would have enabled him to challenge the lawfulness of his deprivation of liberty. The Committee recalls its general comment No. 35, in which it observes that enforced disappearance constitutes a particularly aggravated form of arbitrary detention;⁴³ it recalls that article 17 of the International Convention for the Protection of All Persons from Enforced Disappearance provides that no one shall be held in secret detention and calls for the establishment of registers of persons deprived of their liberty as a fundamental safeguard against enforced disappearance; and it notes that the Inter-American Court of Human Rights has found that clandestine detention centres are per se a violation of the rights to personal liberty.⁴⁴

39 Gyan Devi Bolakhe et al. v. Nepal, para. 7.7.

40 Settled jurisprudence of the Committee since the case of *Sarma v. Sri Lanka* (CCPR/C/78/D/950/2000), para. 9.3, and general comment No. 36, para. 58.

41 Gyan Devi Bolakhe et al. v. Nepal, para. 7.8, and general comment No. 36, para. 58. See also Inter-American Court of Human Rights, *Velásquez-Rodríguez v. Honduras*, merits, judgment of 29 July 1988, Series C, No. 4: “The practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life ...” (para. 157), and “the context in which the disappearance ... occurred and the lack of knowledge seven years later about his fate create a reasonable presumption that he was killed” (para. 188).

42 Gyan Devi Bolakhe et al. v. Nepal (CCPR/C/123/D/2658/2015), para. 7.16, and general comment No. 36, para. 58.

43 General comment No. 35, para. 17, and general comment No. 36, para. 58.

44 Settled jurisprudence of the Inter-American Court of Human Rights since the case of *Anzualdo Castro v. Peru*, preliminary objections, merits, reparations and costs, judgment of 22 September 2009, Series C, No. 202, para. 63.

Since the State party has not provided any information in this regard, the Committee considers that due weight should be given to the authors' allegations and finds that the deprivation of liberty of Mr. Téllez Padilla was a violation of his rights under article 9 of the Covenant.

9.9 As for the authors' claim that Mr. Téllez Padilla was removed from the protection of the law and was last seen in the hands of the authorities, in violation of article 16 of the Covenant, the Committee recalls that the deliberate removal of a person from the protection of the law constitutes a denial of that person's right to recognition as a person before the law, particularly if his or her family's attempts to obtain effective remedies have been systematically obstructed.⁴⁵ In the present case, the Committee observes that the State party has not furnished any convincing explanation concerning the fate or whereabouts of Mr. Téllez Padilla, and that, when last seen, he was in the hands of the authorities. The Committee therefore finds that the enforced disappearance of Mr. Téllez Padilla removed him from the protection of the law and deprived him of his right to recognition as a person before the law, in violation of article 16 of the Covenant.

9.10 Lastly, the Committee takes note of the authors' claim that the facts also constitute a violation of article 2 (3) of the Covenant, which requires States parties to ensure that individuals have accessible, effective and enforceable remedies for asserting the rights recognized in the Covenant. The authors refer to the Committee's general comment No. 31, which states that failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. The Committee also notes the State party's assertion that its legal obligation to investigate has been discharged because the appropriate investigations have been conducted promptly, with due diligence, impartially and thoroughly. However, in the present case, the Committee notes that, despite the consistent account given by the eyewitness and the numerous actions undertaken by Mr. Téllez Padilla's family (see paras. 2.4–2.9 above), no significant progress has been made in the investigations and that, in particular, the appropriate procedures were not carried out in time, which led to the loss of important evidence (as a result of not requesting security camera footage of the scene of the incident in time, not requesting security camera footage at the location of the car, failing to order an on-site investigation at the inter-municipal police station, failing to analyse the call list for the disappeared person's telephone in time, not collecting fingerprints from Mr. Téllez Padilla's car, failing to summon the police officers identified to testify in a timely fashion, not ordering a police line-up and failing to investigate the context). The Committee also notes that domestic remedies have been unreasonably prolonged. Despite the admission by the inter-municipal police, during an inspection by the Office of the Attorney General of the Republic six years after the disappearance, that a police operation had indeed been carried out on the day of the disappearance, no progress has been made in the investigations. In view of the above, the Committee considers that the investigations carried out do not appear to have been prompt or thorough; that they were not carried out with due diligence; that they were not independent and impartial; and that they have been ineffective in clarifying the circumstances of Mr. Téllez Padilla's disappearance or his fate and whereabouts, and in identifying those responsible. The Committee recalls that article 2 (3) of the Covenant does not provide for an autonomous right.⁴⁶ Nevertheless, in view of the above, the Committee concludes that the facts before it reveal a violation of article 2 (3) of the Covenant, read in conjunction with articles 6, 7, 9 and 16, in respect of Mr. Téllez Padilla; and of article 2 (3) of the Covenant, read in conjunction with article 7, in respect of the authors of the communication.

⁴⁵ Gyan Devi Bolakhe et al. v. Nepal, para. 7.18, and also general comment No. 36, para. 58. See also the view of the Inter-American Court of Human Rights: "... disappearance is not only one of the most serious forms of placing the person outside the protection of the law but it also entails to deny that person's existence and to place him or her in a kind of limbo or uncertain legal situation before the society, the State and even the international community" (Anzualdo Castro v. Peru, para. 90).

⁴⁶ Settled jurisprudence of the Committee since the case of S.E. v. Argentina (CCPR/C/38/D/275/1988), para. 5.3.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses violations by the State party of articles 6 (1), 7, 9 and 16 of the Covenant, and of article 2 (3) read in conjunction with articles 6, 7, 9 and 16, in respect of Mr. Téllez Padilla; and of article 7 of the Covenant, and article 2 (3) read in conjunction with article 7, in respect of the authors of the communication.

11. Pursuant to article 2 (3) **(a)** of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires that full reparation be made to individuals whose rights have been violated. In this regard, the State party should: **(a)** carry out a thorough, rigorous, impartial, independent and effective investigation into the circumstances of Mr. Téllez Padilla's disappearance, ensuring that the officials in charge of the search for Mr. Téllez Padilla and the investigation of his disappearance have the professionalism and autonomy needed to carry out their tasks, without ruling out the involvement of the inter-municipal police, bearing in mind the eyewitness statement and taking into account the context identified in the present case of a link between state authorities and organized crime groups; **(b)** immediately release Mr. Téllez Padilla if he is still being held incommunicado; **(c)** if Mr. Téllez Padilla has died, hand over his remains to his family; **(d)** investigate and sanction any type of action that might have hindered the effectiveness of the search and tracking process; **(e)** provide the authors with detailed information on the outcome of the investigation; **(f)** prosecute and punish the persons found responsible for the violations committed and make the results of those proceedings public; **(g)** ensure that adequate psychological rehabilitation and medical treatment are available to the authors, as needed; and **(h)** grant the authors, as well as Mr. Téllez Padilla if he is still alive, full reparation, including adequate compensation for the violations suffered. The State party is also under an obligation to take steps to prevent the occurrence of similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information on the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated.

2 **Opinion approved by the Human Rights Committee. (Víctor Manuel Guajardo Rivas and Others against Mexico).**

ANEXO



**Pacto Internacional de Derechos
Civiles y Políticos**



CCPR/C/127/D/2766/2016

Human Rights Committee**Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2766/2016^{47*}, ^{48**}**

▶ Communication submitted by:	Midiam Iricelda Valdez Cantú and María Hortencia Rivas Rodríguez, on their own behalf and on behalf of Víctor Manuel Guajardo Rivas, their missing partner and son (represented by i(dh)eas Litigio Estratégico en Derechos Humanos A.C.; Comisión Mexicana de Defensa y Promoción de los Derechos Humanos A.C.; and Familias Unidas en la Búsqueda y Localización de Personas Desaparecidas A.C.)
▶ Alleged victims:	The authors and Víctor Manuel Guajardo Rivas (missing son and partner of the authors)
▶ State party:	Mexico
▶ Date of communication:	10 November 2015
▶ Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 15 March 2016 (not issued in document form)
▶ Decision adopted on:	24 October 2019
▶ Subject matter:	Enforced disappearance
▶ Procedural issues:	Exhaustion of domestic remedies
▶ Substantive issues:	Right to an effective remedy; right to life; prohibition of torture and cruel and inhuman treatment; right to liberty and security of person; right of persons deprived of their liberty to be treated with humanity; recognition as a person before the law; right not to be subjected to arbitrary or unlawful interference with one's privacy
▶ Articles of the Covenant:	2 (3), 6 (1), 7, 9, 10 (1), 16 and 17
▶ Article of the Optional Protocol:	5 (2) (b)

47 * Adopted by the committee at its 127th session (14 october–8 november 2019).

48** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

1.1 The authors of the communication, which is dated 10 November 2015, are Midiam Iricelda Valdez Cantú and María Hortencia Rivas Rodríguez, nationals of Mexico born in 1981 and 1956, respectively. The authors are acting on their own behalf and on behalf of Víctor Manuel Guajardo Rivas, their partner and son, also a national of Mexico, born in 1976 and missing since 10 July 2013. The authors allege that the State party has violated Mr. Guajardo Rivas' rights under articles 6 (1), 7, 9, 10 (1), 16 and 17 of the Covenant, read alone and in conjunction with article 2 (3). The authors also claim to be themselves victims of a violation by the State party of their rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3). The Optional Protocol entered into force for the State party on 15 June 2002. The authors are represented by counsel.

1.2 On 7 December 2016, the Committee, acting through its Special Rapporteur on new communications and interim measures, rejected the State party's request that the admissibility of the communication be considered separately from its merits.

The facts as submitted by the authors

► *Disappearance of Mr. Guajardo Rivas*

2.1 Early in the morning of 10 July 2013, officers of the Special Weapons and Tactics Group (GATE) and the Municipal Special Weapons and Tactics Group (GATEM), both part of the elite police force of the State of Coahuila, forced their way into the family home of Mr. Guajardo Rivas. Once inside, they went to the room where Mr. Guajardo Rivas was. They beat him and asked him where the money and drugs were stored. While some officers took Mr. Guajardo Rivas to the rear patio of the property, where they continued beating him and submerged him repeatedly in a small swimming pool, others locked the family in one of the bedrooms. After searching the house and taking money, mobile phones and other personal items, the police officers took Mr. Guajardo Rivas away in a pickup truck. One of the GATE officers told Ms. Valdez Cantú that they wanted to return her husband to her alive, but "let's see if he holds out".

2.2 The authors went almost immediately to the GATE premises, but the authorities informed them that their family member was not being held there. However, while they were waiting for information at the entrance to the premises, they saw their family member being brought unconscious into the premises in one of the GATE vehicles. The officers then present at the premises refused to give the authors any information.

► *Complaints lodged over the disappearance of Mr. Guajardo Rivas*

2.3 On the same day, 10 July 2013, the authors lodged a complaint with the Office of the Attorney General of the State of Coahuila regarding the enforced disappearance of Mr. Guajardo Rivas and an inquiry was launched. Even though in the complaint the authors identified those responsible as members of GATE, the public prosecutor responsible for taking their statement attempted to change the complaint to indicate that those responsible were "an armed group dressed in black", connected to organized crime. Ms. Rivas Rodríguez refused to sign the complaint and asked for the facts to be shown as they had been reported. In addition, the complaint was registered as an official report and not as a preliminary investigation.⁴⁹ Thus, although the authors indicated that they were able to

⁴⁹ An official report is the document in which the complaint is recorded. It implies that the authority has received the information as notice of a possible criminal act, but is not conducting a formal investigation. That is initiated only after the official report has been submitted for preliminary investigation, which allows the authorities to take the relevant measures to investigate the offence.

identify the perpetrators of the disappearance, facial composites were not made until almost a year later. Furthermore, the information obtained was not checked against the list of GATE officers, who were never investigated or called to make a statement. In addition, the authors provided the public prosecutors with a penknife used by the GATE police officers to break into their home on the night of the disappearance. The relevant authorities did not conduct an expert examination of the penknife and informed the authors in September 2014 that it had been mislaid. In parallel, on 7 and 10 April 2014, Ms. Rivas Rodríguez lodged a complaint with the National Human Rights Commission⁵⁰ and the State of Coahuila Human Rights Commission,⁵¹ respectively; both complaints remain open and have not yielded any results.

2.4 On 22 July 2013, the authors filed an application for amparo with the Third District Court of the Eighth Circuit. On 24 July 2013, the judge ordered the authorities of GATE and GATEM to provide information that would allow Mr. Guajardo Rivas to be located. However, on the same day, the director of GATE refused to receive the judge's order. On 26 July 2013, Superintendent R.D.S. informed the judge that GATEM had not arrested anyone named Mr. Guajardo Rivas and that, furthermore, they did not keep a record of detainees. On 9 October 2013, the judge suspended proceedings, because it had not been possible to obtain the appearance of the aggrieved party, and consigned the case to the Federal Prosecution Service under article 15.4 of the Amparo Act.

2.5 On 14 October 2013, the local criminal proceedings office of the Office of the Attorney General of the Republic launched a preliminary investigation in relation to the facts described in the communication. However, it subsequently declined jurisdiction and, on 8 January 2014, it transferred the preliminary investigation to the Office of the State Attorney General, where it was combined with the inquiry launched on 10 July 2013 (even though at that time it still had the status of an official report).⁵²

2.6 On 5 February 2015, the Disappeared Persons Special Search Unit of the Office of the Attorney General of the Republic launched another preliminary investigation, which remains open.⁵³ To date no appropriate measures for determining the whereabouts or fate of Mr. Guajardo Rivas have been ordered.

2.7 In April 2015, the GATE officers identified by the authors as being responsible for the victim's disappearance were arrested for having abducted a young man. The authors approached the authorities and requested that those officers also be questioned about the case of Mr. Guajardo Rivas, but the detainees refused to make a statement in that regard.

2.8 On 12 June 2015, J.L.G.R., who had been abducted from his home and taken to the GATE headquarters the same night as Mr. Guajardo Rivas, provided a statement to the Office of the State Attorney General. According to his statement, while he was being held at the GATE headquarters that same night, he saw Mr. Guajardo Rivas lying on the ground, writhing in pain as a result of the beatings that the police officers had given him. He also stated that another detainee had told him that he had heard GATE officers commenting that Mr. Guajardo Rivas had not survived the beatings and they did not know what to do with his body.

50 CNDH/1/2014/2802/Q.

51 CDHEC/049/2013/PN/OAE.

52 Which would later be submitted for preliminary investigation under No. 054/2013.

53 Preliminary investigation AP/PGR/SDHPDSC/UEBPD/M14/17/2015.

2.9 The authors assert that Mr. Guajardo Rivas' disappearance took place in the context of the security policy known as the "war on drug trafficking". That policy had led to a significant increase in human rights violations by soldiers and police officers, who were alleged to be responsible for extrajudicial executions and cases of enforced disappearance throughout the country.⁵⁴ In particular, there were reported to be at least 1,475 missing persons investigations in Coahuila.⁵⁵

► *The complaint*

3.1 The authors claim that Mr. Guajardo Rivas has been a victim of a violation of his rights under article 6 (1) of the Covenant given that the last time they saw him he was being held, seriously injured, at the premises of GATE, and, since then, the authorities have refused to inform them of the circumstances in which their family member is being held or whether he is still alive.⁵⁶

3.2 With regard to the violation of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the authors contend that the enforced disappearance of persons is in itself a form of torture and, thus, contrary to article 7 of the Covenant.⁵⁷ In addition, the anguish and suffering experienced by the authors as a result of the ongoing uncertainty surrounding the disappearance of their family member constitutes treatment contrary to article 7 with respect to them.⁵⁸

3.3 In relation to article 9 of the Covenant, the authors claim that their family member was arrested without a warrant, was not informed of the reasons for his arrest, was not charged, and was given no chance to appear before a judicial authority in order to challenge the lawfulness of his detention.⁵⁹ Superintendent R.D.S. himself, responding to the request made by the judge responsible for the amparo proceedings, explained that GATE did not keep any record of detainees.

3.4 The authors also claim that there has been a violation of article 10 of the Covenant, insofar as the testimonies of persons who were detained on the same day at the GATE premises indicate that Mr. Guajardo Rivas was not treated with humanity or with respect for his dignity.⁶⁰

54 The authors cite the report of 7 October 2015 by the United Nations High Commissioner for Human Rights on his visit to Mexico in 2015: "For a country that is not engaged in a conflict, the estimated figures are simply staggering [...]. At least 26,000 people missing, many believed to be as a result of enforced disappearances, since 2007"; "98 per cent of all crimes in Mexico remain unsolved, with the great majority of them never even properly investigated" (available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16578>). They also mention the concerns expressed by the Committee on Enforced Disappearances (according to which there is, in Mexico, a "situation of widespread disappearances in much of the State party's territory, many of which may be classified as enforced disappearances", the Special Rapporteur on torture, and the Inter-American Commission on Human Rights, according to which the magnitude of the problem of enforced disappearance in the country is alarming: "many cases of disappearance are not reported, because family members distrust the State's ability to respond [or] fear that they will suffer reprisals. [...] In cases in which complaints are filed, the response from the authorities falls seriously short (Preliminary Observations on the IACHR Visit to Mexico, 2 October 2015, available at https://www.oas.org/en/iachr/media_center/PReleases/2015/112A.asp).

55 Between January 2014 and September 2015, 45 were launched with the Office of the Attorney General of the Republic; and 1,430 were launched with the Office of the State Attorney General between 2007 and July 2015.

56 The authors cite, inter alia, *Sassene v. Algeria* (CCPR/C/112/D/2026/2011).

57 The authors cite, inter alia, *Mojica v. Dominican Republic* (CCPR/C/51/D/449/1991), para. 5.7.

58 The authors cite, inter alia, *Katwal v. Nepal* (CCPR/C/113/D/2000/2010), para. 11.7.

59 The authors cite, inter alia, *Berzig v. Algeria* (CCPR/C/103/D/1781/2008), para. 8.7.

60 The authors cite, inter alia, *Basnet v. Nepal* (CCPR/C/112/D/2051/2011), para. 8.6.

3.5 With regard to article 16 of the Covenant, the authors claim that there has been a violation of the right to recognition as a person before the law, since their family member was in the hands of the authorities when last seen and all their efforts to obtain access to potentially effective remedies have been impeded.⁶¹

3.6 With regard to article 17 of the Covenant, the authors claim that the entry of State agents into their home, early in the morning and without a warrant, causing damage and removing jewellery, money and other objects of value constituted unlawful interference with the victim's privacy, family and home.⁶²

3.7 Lastly, in view of the failure to conduct an effective investigation, the authors also allege a violation of article 2 (3), read in conjunction with articles 6 (1), 7, 9, 10 (1), 16 and 17 of the Covenant. The authors explain that the right to an effective remedy for the violation of each of the rights mentioned above was violated because the State did not initiate an independent, impartial, ex officio, prompt, appropriate, serious, thorough and effective investigation.⁶³ The authors mention that, although they lodged the complaint on the day of the detention, the authorities did not immediately take the necessary measures. Furthermore, during the first six months following the disappearance, no steps were taken to locate the victim, even though the authors had seen him enter the GATE premises. Similarly, although Ms. Valdez Cantú said that she would be able to recognize the officers who took Mr. Guajardo Rivas away, the necessary identification process was not carried out until almost a year after the events. Neither was there any expert examination of the penknife used to force the entrance door into the home; it has now been mislaid. The initial failure to act and the lack of due diligence on the part of the State mean that it is almost impossible to determine Mr. Guajardo Rivas' whereabouts. Lastly, the authors cite paragraph 4 of the Committee's general comment No. 6 (1982) on the right to life, according to which "States parties should also take specific and effective measures to prevent the disappearance of individuals [and] establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life", and paragraph 15 of general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, according to which 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".

3.8 As reparation measures, the authors ask that the State party be ordered to **(a)** ensure a prompt, impartial and thorough investigation into the facts, and prosecute and punish the perpetrators appropriately, providing the family members with appropriate information on the outcome of its inquiries; **(b)** take measures to ensure that similar violations are not committed in the future, including by reviewing the procedures, action protocols and legislation in force that have allowed violations of the Covenant to be committed; and **(c)** provide victims with full reparation.

3.9 The authors maintain that the communication meets the admissibility criteria under the exception provided for in article 5 (2) **(b)** of the Optional Protocol, in that the appropriate remedies have been applied for but have been unreasonably prolonged and important evidence has been lost. In particular, the authors explain that, because the criminal complaint was initially given the status of an official report, steps were not taken to determine the whereabouts of Mr. Guajardo Rivas within the first six months, a period that is critical in the investigation of an enforced disappearance. Thus, two and a half years after his disappearance, and despite the existence of two preliminary investigations, one at the local level (by the Office of the Attorney General of the State of Coahuila) and the other at the

61 The authors cite, inter alia, Bhandari v. Nepal (CCPR/C/112/D/2031/2011), para. 8.8.

62 The authors cite, inter alia, Kroumi v. Algeria (CCPR/C/112/D/2083/2011), para. 8.10.

63 The authors cite, inter alia, Pestaño v. Philippines (CCPR/C/98/D/1619/2007), para. 7.2.

federal level (by the Office of the Attorney General of the Republic), the necessary measures had not been taken to identify those responsible. With regard to the whereabouts of Mr. Guajardo Rivas, the amparo proceedings and the complaints filed with human rights commissions at the state and national levels have also shown the absence of any type of progress, thereby proving to be ineffective. The authors cite the Committee's jurisprudence that if remedies are unreasonably prolonged or are proven to be ineffective, there is no obstacle to the consideration of a communication.⁶⁴

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

4.1 On 4 July 2016, the State party requested the Committee to consider the admissibility of the communication separately from its merits. The State party submits that the communication should be declared inadmissible on the grounds of failure to exhaust domestic remedies.

4.2 First, the State party explains that the facts submitted in the communication are subject to investigations under way at the federal and local levels, the aim of which is to locate Mr. Guajardo Rivas. As part of those investigations, the authorities are continuing to take the necessary measures to identify his whereabouts. At the local level, with regard to the inquiry launched by the Office of the State Attorney General on 10 July 2013, the State party emphasizes that the case was submitted for preliminary investigation of the crimes of enforced disappearance and aggravated kidnapping on 24 June 2015, once three individuals, J.J.M.S., H.A.O.E. and M.A.M.G., had been identified as suspects. As part of that investigation, field searches were carried out in October 2015, January 2016 and June 2016 in order to attempt to identify the disappeared person's whereabouts. At the federal level, the State party also lists various steps taken by the Office of the Attorney General of the Republic between February 2015 and May 2016 as part of the preliminary investigation, such as collecting blood samples, taking statements from members of the disappeared person's family and requesting information from other authorities, all of which reported that they had no information concerning him. In addition, action by the local authorities has enabled the identification of the telephone number from which a call is alleged to have been made to one of the authors, demanding a sum of money as a ransom for her son, as well as the name in which that telephone number is registered.⁶⁵

4.3 Second, although the amparo proceedings have been suspended, that measure is in accordance with the Amparo Act, which requires the judge to refer the case to the Federal Prosecution Service if a year has elapsed and the aggrieved party has not been located, and if the means at the judge's disposal have been exhausted. This does not mean that the amparo proceedings have come to an end or that the search for the disappeared person has been suspended. Indirect amparo proceedings are an effective remedy, given that it is through these proceedings that actions of the authorities potentially violating any of the fundamental rights of an individual are examined. In the present case, if the indirect amparo proceedings had not been suspended, they would not have had an effective outcome, since the authorities shown to be responsible denied the existence of the act attributed to them, which could have led to the case being dismissed. The fact that the case was referred to the Federal Prosecution Service for it to continue with the investigations therefore shows that the remedy is effective, since this measure does not prevent an amparo decision being reached at a later date.

⁶⁴ Ibid, among others.

⁶⁵ The State party does not provide any further information on its proceedings in relation to this point.

4.4 The State party maintains that the supposed delay in the investigation should be assessed in accordance with the complexity of the facts and taking into account that international bodies, such as the Committee, do not have jurisdiction to determine whether investigation methods are appropriate, but that it is the responsibility of the courts of the State party to examine the facts and the evidence.⁶⁶

4.5 Consequently, given that there are still two open investigations concerning the authors' family member, in which measures have been taken continuously to the present time, domestic remedies have not been exhausted and it cannot be concluded that there is an unreasonable delay. Furthermore, the family members of Mr. Guajardo Rivas, including the authors, have been included in the National Registry of Victims and have been provided with psychological assistance, labour counselling and educational support. They are also able to access medical assistance if they so wish. Consequently, if the Committee finds the communication admissible and considers it on its merits, it will be violating the principle of subsidiarity in international human rights law.⁶⁷

► ***Authors' comments on the State party's observations on admissibility***

5.1 On 15 September 2016, the authors submitted their comments on the State party's observations on admissibility. The authors assert that they made use of the domestic remedies available through indirect amparo proceedings and criminal investigations; and emphasize that the State party does not indicate that other domestic legal remedies are available. The domestic remedies have, however, been unreasonably prolonged and have not been effective to clarify the facts concerning the enforced disappearance of Mr. Guajardo Rivas and to identify those responsible. More than three years since his detention and disappearance, his family has not received any information regarding his fate and whereabouts. Furthermore, the State party has not contested that Mr. Guajardo Rivas was detained on 10 July 2013 by State agents from GATE; that subsequently the authorities denied his detention; and that his whereabouts have not been known since then. They conclude that their family member was a victim of enforced disappearance.

5.2 With regard to the indirect amparo proceedings, the authors claim that on two occasions, in 2013 and 2015, the judge requested information from various local and federal authorities regarding the disappearance of Mr. Guajardo Rivas, but without success. Subsequently, on 3 June 2016, the judge ordered new measures, requesting the Office of the State Attorney General to collect DNA samples from family members in order to allow the possible identification of remains, which to date has not been carried out.⁶⁸ On the same date, the judge requested further information from local and federal authorities, including the security forces.⁶⁹ Even though the judge repeated that request to various authorities on three occasions, the said measures proved ineffective to clarify the circumstances surrounding the disappearance of Mr. Guajardo Rivas. Between June and July 2016, only six authorities responded to the judge's request, simply stating that they had no information regarding Mr. Guajardo Rivas or his disappearance. In particular, the authors emphasize that the authority responsible for GATE provided no relevant information on any of those three occasions. Given this authority's refusal to cooperate with the amparo court and supply information that it alone

⁶⁶ The State party cites various cases of the Inter-American Court of Human Rights, inter alia, González Medina and family v. Dominican Republic, Preliminary objections, merits, reparations and costs, Judgment of 27 February 2012, para. 256.

⁶⁷ The State party cites Arboleda Saldarriaga v. Colombia (CCPR/C/87/D/1120/2002), para. 7.3, among other cases of the International Court of Justice, the European Commission of Human Rights and the Committee on the Elimination of Discrimination against Women.

⁶⁸ The collection of blood samples to which the State party referred in its observations on admissibility was carried out as part of the federal investigation conducted by the Office of the Attorney General of the Republic.

⁶⁹ The authors provide a list of 40 authorities.

could provide, the court lacked information that would have allowed it to locate the disappeared person. The municipal police commander and the General Legal Director of the Coahuila State Commission for Public Security did not provide any information to the amparo court either. Furthermore, there is no record in the amparo file of any visits to or judicial inspections of the offices of GATE or police agencies that might have been connected with GATE. The amparo court therefore adopted a passive stance, merely accepting reports that provided no information, and took no measures aimed at searching for the disappeared person. In the light of the above, the authors claim that the limited action taken by the amparo court over a three-year period has clearly proven to be ineffectual, and the investigation has been neither thorough nor effective.⁷⁰

5.3 With regard to the criminal investigation at the local level, the authors again emphasize that when the Office of the State Attorney General initially took action on 10 July 2013, it did not open a preliminary investigation but rather an official report. This means that the inquiry conducted by the Office of the State Attorney General did not initially have the status of a criminal investigation, but until June 2015 was merely an administrative action. That status contributed directly to the excessive delay in the necessary measures being taken. As a result, the Office of the State Attorney General lost an opportunity to collect essential evidence that would have allowed the investigations to be conducted correctly and would have made for an effective remedy. For example, the Public Prosecution Service did not order any search or expert examination of Mr. Guajardo Rivas' home, even though one of the authors had informed the authorities that the GATE officers had touched all the furniture. Neither were any searches or expert examinations ordered at the GATE premises, even though the authors had reported having seen the disappeared person at those premises. In addition, the Office of the State Attorney General lost crucial evidence such as the penknife belonging to GATE, which was never sent to a laboratory with a view to identifying fingerprints or other traces for DNA testing. Furthermore, facial composites of the officers described by the authors were only made a year after the complaint had been submitted. Those facial composites were not compared with photographs, and no other measures were ordered with a view to identifying the persons in the composites. The author Ms. Valdez Cantú was never summoned to identify the GATE officers who had been in her house, and the Public Prosecution Service took a year to request a list of the members of that group. To date, none of the GATE officers identified by the authors has been linked to the proceedings. Thus, the action of the Office of the State Attorney General has been unreasonably prolonged, which has seriously affected the effectiveness of the criminal investigation.

5.4 With regard to the criminal investigation being carried out at the federal level by the Office of the Attorney General of the Republic, only two measures have been taken, on 9 February 2015 (request for information sent to various authorities) and 10 November 2015 (request for information sent to telephone companies and the National Centre for Planning, Analysis and Information to Combat Crime). Just like the amparo court, the Office of the Attorney General of the Republic merely took note of the written responses received from the authorities; it did not conduct any evaluation or analysis of the responses, or establish a clear line of investigation. Moreover, there is no indication that the Public Prosecution Service has sought any information regarding those responsible for the enforced disappearance of Mr. Guajardo Rivas.

⁷⁰ The authors recall the Committee's jurisprudence regarding the need for a thorough and effective investigation into cases of enforced disappearance, which should be conducted as quickly as possible: *Zerrougui v. Algeria* (CCPR/C/108/D/1796/2008), para. 7.4; and general comment No. 35 (2014) on liberty and security of person, para. 47.

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

6.1 In its observations of 6 April 2017, the State party reiterated that the communication was inadmissible given that domestic remedies had not been exhausted and that the investigations conducted by the State party meet the standards and obligations laid down in the Covenant.

6.2 First, the domestic remedies are effective in terms both of their accessibility for the victim and their effectiveness to restore the enjoyment of rights.⁷¹ The investigations at both the federal and local levels, and also the amparo proceedings, remain operational from the legal standpoint and in practice. The investigations undertaken at the local level allowed criminal proceedings for the crime of disappearance of persons to be brought, on 14 January 2017, in case 509/2016 before the Civil Court of First Instance, against the suspects J.J.M.S., H.A.O.E. and M.A.M.G., who at the time of the events were working as GATE officers. This shows that the domestic remedies meet the characteristics of accessibility and effectiveness and remain active, yielding positive results for the investigation of the enforced disappearance of Mr. Guajardo Rivas.

6.3 Second, the State party explains that the obligation to investigate and bring those responsible to justice is not an obligation of result, but of means, and that it has operated with due diligence, carrying out a prompt, impartial and thorough investigation.⁷² The investigation was prompt since when the complaint was lodged on 10 July 2013, two measures were immediately taken: **(a)** an investigation order was issued instructing the Chief of the Investigative Police of Coahuila to search for and locate Mr. Guajardo Rivas; and **(b)** official letters of cooperation were sent to the various municipal, state and federal police forces, including GATE and GATEM. In addition, on 4 February, the Office of the Attorney General of the Republic launched a preliminary investigation in the light of the facts reported by Ms. Rivas Rodríguez. Investigations were therefore begun without any delay. The investigation was also impartial since, even though the suspects were State agents at the time the acts were committed, all State authorities have taken forward the investigation. As for whether the investigation was thorough, at the local level the Office of the State Attorney General took steps to locate the whereabouts of Mr. Guajardo Rivas, and, with the help of the victim's family, has now identified three individuals probably responsible for the disappearance, in respect of whom criminal proceedings have been brought and warrants issued for their arrest. At the federal level, the work of the Office of the Attorney General of the Republic has been carried out in coordination with the Office of the State Attorney General, which has led to positive results in terms of identification of the probable perpetrators.⁷³ In addition, contrary to what the authors have indicated, the amparo proceedings proved effective since, as a result of the requests for information sent to the responsible authorities, the Office of the State Attorney General brought criminal proceedings under the preliminary investigation and the competent court issued warrants for the suspects' arrest.

6.4 Lastly, the State party reiterates that the authors and their family members have been entered in the National Registry of Victims.

⁷¹ The State party cites *Castañeda Gutman v. Mexico*, Preliminary objections, merits, reparations and costs, Judgment of 6 August 2008, Series C No. 184, para. 103.

⁷² The State party cites, *inter alia*, *Kožljak v. Bosnia and Herzegovina* (CCPR/C/112/D/1970/2010), para. 9.2.

⁷³ The State party again lists the measures set out in the written statement on admissibility, adding those taken between June and December 2016, which include locating the suspects in the Social Rehabilitation Centre of Villa Aldama, Veracruz, further to a request by Ms. Rivas Rodríguez, and entering the victims in the National Registry of Victims of the Executive Commission for Victim Support.

► ***Authors' comments on the State party's observations on admissibility***

7.1 In their comments of 26 June 2017, the authors insist that domestic remedies have been unreasonably prolonged and ineffective, and do not offer a reasonable prospect of finding out the truth, obtaining justice and receiving full reparation. Four years after the enforced disappearance of Mr. Guajardo Rivas, the crime remains unpunished, given that **(a)** his fate or whereabouts remains unknown; **(b)** none of the alleged perpetrators accused of his disappearance has been arrested for this act and no progress has been made in bringing them to justice, nor have they been convicted, if guilty; **(c)** there has been no clarification concerning the participation of other police officers who acted jointly with the three accused; **(d)** the family members have not received any compensation or reparation.

7.2 As for the State party's assertion that the investigations meet the standards and obligations laid down in the Covenant, the authors explain that this cannot be maintained in respect of any of the investigations carried out by the local or federal authorities. First, the investigation by the Office of the State Attorney General was launched as a preliminary investigation only in June 2015, almost two years after the family members formally lodged the complaint. Furthermore, **(a)** criminal proceedings were not brought for the crime of enforced disappearance but rather for that of disappearance of persons;⁷⁴ **(b)** even though the version of events given by the Office of the State Attorney General itself expressly points to the participation of more than three police officers in the enforced disappearance of Mr. Guajardo Rivas, criminal proceedings were only brought against the three initial suspects;⁷⁵ **(c)** even though it can be inferred from the facts that Mr. Guajardo Rivas was tortured before his disappearance, the three police officers against whom criminal proceedings were brought were not accused of this act;⁷⁶ **(d)** the arrest warrants against the suspects were not acted upon;⁷⁷ and **(e)** to date there has been no conviction establishing with clarity and certainty all those responsible for the disappearance, the way in which the events occurred and under what circumstances, and the fate or whereabouts of Mr. Guajardo Rivas.

7.3 Second, two years after the preliminary investigation was launched by the Office of the State Attorney General, no steps have been taken to search for Mr. Guajardo Rivas in specific locations nor has any order been given to search for his body in places previously identified by a clear search strategy or definite line of investigation.⁷⁸

⁷⁴ In the criminal law of the State of Coahuila, enforced disappearance is not a separate offence but rather an aggravating circumstance in relation to the criminal offence of disappearance of persons.

⁷⁵ The State party, in its investigation, merely took statements from Ms. Valdez Cantú, noted the photographic identification provided by her and obtained testimony from her minor children, without taking, ex officio, any other action or measure aimed at establishing the identity of the other police officers who, based on the description of the events provided by the Office of the State Attorney General itself, participated in the crime. Nor did it carry out an investigation or bring criminal proceedings against the supervisors who failed to keep a record of persons detained by GATEM and GATE, a practice that encouraged enforced disappearance and subsequent impunity. The authors cite the Declaration on the Protection of All Persons from Enforced Disappearance, which requires an official register to be maintained in every place of detention (art. 10 (3)).

⁷⁶ Based on testimonies in the file, Mr. Guajardo Rivas was beaten and electrocuted by the accused individuals and other persons. According to the Criminal Code of the State of Coahuila, anyone who "authorizes, orders, supports or allows" a disappearance is also guilty of the crime of disappearance of persons.

⁷⁷ Two of the suspects have been detained for another offence, and the third is evading justice. According to the Office of the State Attorney General, the arrest warrant against the two officers cannot be acted upon, and proceedings cannot be brought against them for enforced disappearance, until they have served the sentence for the other offence.

⁷⁸ For example, no searches have been conducted in the stables that the Office of the State Attorney General itself identifies as the place where Mr. Guajardo Rivas was taken by the GATEM forces.

7.4 Third, the amparo proceedings were dismissed on 30 December 2016, owing to the start of the criminal proceedings on 24 November 2016. The State party claims that the amparo proceedings were effective because they resulted in the criminal proceedings brought by the Office of the State Attorney General and the subsequent issue of arrest warrants, and also that the amparo proceedings were suspended to avoid interference with the criminal investigation. That is incorrect and biased, since **(a)** the purpose of amparo proceedings is not to identify the perpetrators but to conduct an immediate and thorough search for the disappeared person; and **(b)** the obligation of the judge to take all necessary actions and measures to search for and find Mr. Guajardo Rivas or discover his fate or whereabouts would not in any way interfere with the conduct of criminal proceedings.⁷⁹

7.5 Meanwhile, the authors add that none of the victim protection measures mentioned by the State party correspond to measures of full reparation, as defined in article 24 (4) and (5) of the International Convention for the Protection of All Persons from Enforced Disappearance or in the Mexican Victims Act (which clearly distinguishes assistance and support measures, such as those ordered by the State in respect of the authors, on the one hand, and full reparation measures, on the other).⁸⁰

7.6 Lastly, the authors emphasize that none of the State party's observations were observations on the merits regarding the violations of Covenant provisions owing to enforced disappearance. Furthermore, the State party accepts that Mr. Guajardo Rivas was deprived of his liberty by police officers who were part of GATE and has not denied that, to date, he is still missing and those responsible for these acts are acting with impunity and concealing his whereabouts.

Additional submissions by the parties

► *State party's additional observations*

8.1 On 27 November 2018, the State party reported on the measures taken between March 2017 and June 2018 by the Office of the Attorney General of the Republic under the federal investigation. Those measures include actions to identify persons who contacted the author Ms. Rivas Rodríguez by telephone in an attempt to extort money from her in relation to the disappearance of Mr. Guajardo Rivas; the identification by Ms. Rivas Rodríguez of two probable perpetrators of the disappearance; a visit by staff members of the Office of the Special Prosecutor for the Investigation of Crimes of Enforced Disappearance, established as part of the Office of the Attorney General of the Republic on 16 February 2018, to the prosecutor's office of the State of Coahuila, and a written statement by that prosecutor's office indicating that it continues with its efforts to search for and locate Mr. Guajardo Rivas, as well as others responsible for the crime in question. With regard to the criminal proceedings, it adds information concerning the warrants for the arrest of J.J.M.S., H.A.O.E. and M.A.M.G. The arrest of the first two individuals has been requested,⁸¹ while in the case of the third, orders to search for, locate and arrest the suspect, including a communication to the International Criminal Police Organization–INTERPOL, have been sought. For that reason, the State party reaffirms that the communication is inadmissible since these proceedings remain current to date and are appropriate means for establishing Mr. Guajardo Rivas' whereabouts and punishing those responsible for his disappearance.

⁷⁹ The authors cite a report of the Working Group on Enforced or Involuntary Disappearances on its mission to Peru, in which it is explained that the criminal investigation and the search have two different objectives; the first focuses on collecting and using evidence and the second on finding and identifying the disappeared person (A/HRC/33/51/Add.3, para. 26).

⁸⁰ Articles 61 to 78 of the Victims Act.

⁸¹ The State party does not explain whether, even though the suspects are serving a sentence for another offence, they could in the end be tried before they complete that sentence.

8.2 The State party emphasizes that the investigations are being carried out in accordance with the standards established in the Covenant.

► ***Additional comments by the authors***

9.1 In their observations of 10 April 2019, the authors emphasize that, almost six years after the disappearance of Mr. Guajardo Rivas, the additional information provided by the State party does not contribute to any progress or success in the efforts to search for and locate him, nor to any effective progress in the investigation, prosecution and punishment of those responsible for his disappearance.

9.2 With regard to the telephone calls to extort money, the State party does not indicate any possible perpetrators, motives or connection with the disappearance of Mr. Guajardo Rivas. With regard to Ms. Rivas Rodríguez's identification of two probable perpetrators of the disappearance, it states only that those persons denied knowing anything about the events and does not indicate what lines of investigation the Office of the Attorney General of the Republic might have opened or launched based on that information. Consequently, none of these actions contradicts the fact that domestic remedies have been unreasonably prolonged, have proven to be ineffective and do not offer the authors a reasonable prospect of finding out the truth of the events and receiving full reparation.

► ***Additional information from the authors***

10. On 16 May 2019, the authors reported having received the formal detention order issued by the relevant judge against M.A.M.G. for his probable responsibility in relation to the disappearance of Mr. Guajardo Rivas. They note that this detention is for the crime of disappearance of persons and not that of enforced disappearance, that the other two police officers have still not been detained for the disappearance of Mr. Guajardo Rivas, and that criminal proceedings have not been brought against any of the three for the crime of torture. They add that the said order does not change what they have stated previously, given that, almost six years since Mr. Guajardo Rivas' disappearance, **(a)** there is no information on his whereabouts; **(b)** there has been no prosecution, trial or punishment of the perpetrators (including other perpetrators in addition to the three against whom criminal proceedings have been brought); **(c)** it is still not clear what happened; and **(d)** the family members have not been provided with full reparation.

Issues and proceedings before the Committee

► ***Consideration of admissibility***

11.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

11.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

11.3 The Committee takes note of the State party's argument that domestic remedies have not been exhausted since preliminary investigations are still pending before the Office of the State Attorney General and the Office of the Attorney General of the Republic. The Committee also takes note of the

► authors' claims that domestic remedies have not been effective because their processing has been unreasonably prolonged, so that the fate and whereabouts of Mr. Guajardo Rivas remain unknown.

11.4 In view of the fact that more than six years have elapsed since the disappearance of Mr. Guajardo Rivas and the submission of complaints by the authors, without any significant progress being made in those investigations or in the proceedings against those responsible for his disappearance, and without any justification being given by the State party for the delay, the Committee considers that those investigations have been unduly prolonged and that, consequently, article 5 (2) (b) of the Optional Protocol does not preclude it from considering the present complaint.⁸²

11.5 In the absence of any other information from the authors regarding the exhaustion of domestic remedies in relation to article 17 of the Covenant, the Committee considers the communication inadmissible on that point.

11.6 As all admissibility requirements have been met, and the authors' complaints under articles 2 (3), 6 (1), 7, 9, 10 (1) and 16 of the Covenant have been sufficiently substantiated for the purposes of admissibility, the Committee declares the communication admissible and proceeds with its consideration of the merits.

► *Consideration of the merits*

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

12.2 The Committee notes the authors' claims that the facts of the present case constitute enforced disappearance, given that: **(a)** Mr. Guajardo Rivas was abducted from his home, **(b)** by GATE officers (who took him to a place of detention, which is where he was last seen alive), and **(c)** his family members searched persistently for him while GATE officials denied that he was at their premises. The Committee observes that the State party has not denied that Mr. Guajardo Rivas is missing, and recognizes that the three persons against whom criminal proceedings have been brought for Mr. Guajardo Rivas' disappearance were serving as GATE officers on the night of his disappearance.

12.3 The Committee observes that one of the characteristic elements of enforced disappearance of persons is precisely the refusal to acknowledge detention and to reveal the fate and whereabouts of the person,⁸³ and recalls its jurisprudence to the effect that the burden of proof cannot fall exclusively on the authors of the communication, since the author and the State party do not always have equal access to the evidence and the State party is often the only one with access to the relevant information.⁸⁴ Therefore, when the authors have submitted credible complaints to the State party and when further clarification depends on information that is solely in the hands of the State party, the Committee may consider the complaints substantiated if the State party does not produce satisfactory evidence or explanations to refute them.⁸⁵ Moreover, the Committee notes that States must establish effective procedures for the thorough investigation of cases of enforced disappearance,⁸⁶ taking into account the characteristic elements of this type of offence, such as the refusal of the authorities to acknowledge detention.

⁸² Padilla García v. Mexico (CCPR/C/126/D/2750/2016), para. 8.4.

⁸³ General comment No. 36 (2018) on the right to life, para. 58.

⁸⁴ Padilla García v. Mexico; Kandel v. Nepal (CCPR/C/126/D/2560/2015); Bolakhe v. Nepal (CCPR/C/123/D/2658/2015); Millis v. Algeria (CCPR/C/122/D/2398/2014); Sarita Devi Sharma, Bijaya Sharma Paudel and Basanta Sharma Paudel v. Nepal (CCPR/C/122/D/2364/2014).

⁸⁵ Padilla García v. Mexico, para. 9.3.

⁸⁶ Herrera Rubio v. Colombia (CCPR/C/31/D/161/1983), para. 10.3.

12.4 Against the prevailing background of human rights violations – particularly the practice of enforced disappearance – taking place at the time and place of the events (see para. 2.9 and footnote 6 above), and in light of the consistent account of the events and the documentation submitted by the authors, the Committee considers that the State party has not provided an adequate and concrete explanation to refute the authors’ allegations concerning the alleged enforced disappearance of Mr. Guajardo Rivas. Accordingly, the Committee considers that the acts described constitute enforced disappearance.⁸⁷

12.5 The Committee recalls that, while the Covenant does not explicitly use the term “enforced disappearance”, such disappearance constitutes a unique and integrated series of acts that represent a continuing violation of various rights recognized in the Covenant,⁸⁸ such as the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, and the right to recognition as a person before the law.⁸⁹

12.6 In the present case, the Committee takes note of the authors’ claim that the acts constitute a violation of Mr. Guajardo Rivas’ rights under article 6 (1) of the Covenant, given the circumstances of his detention by GATE officers and the absence of news on his fate or whereabouts. The Committee recalls that, in cases of enforced disappearance, deprivation of liberty followed by a refusal to acknowledge the deprivation of liberty, or by concealment of the fate of the disappeared person, removes the person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.⁹⁰ In the present case, the State party has not submitted any information indicating that it took any measure to preserve the life of Mr. Guajardo Rivas when he was detained by the State authorities, in violation of article 6 (1) of the Covenant.

12.7 The Committee also takes note of the authors’ claim that the acts constitute treatment contrary to article 7 of the Covenant in respect of Mr. Guajardo Rivas, because of the severe suffering, the uncertainty and the effect on his physical and psychological integrity caused by the enforced disappearance. The Committee also notes that, as can be inferred from the facts, the author may well have been subjected during his detention to physical violence constituting torture or cruel, inhuman or degrading treatment or punishment. In the absence of any information from the State party on this point, the Committee considers that the facts as described constitute a violation of article 7 of the Covenant in respect of Mr. Guajardo Rivas. The Committee also notes the authors’ assertion that the disappearance of their family member and the pursuit of justice have caused them distress and suffering. In this regard, the Committee considers that the facts described reveal a violation of article 7 of the Covenant in respect of the authors.⁹¹

12.8 With regard to the alleged violation of article 9 of the Covenant, the Committee takes note of the authors’ allegations that Mr. Guajardo Rivas was arrested without a warrant and was not brought before a judicial authority, which would have enabled him to challenge the lawfulness of

⁸⁷ Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, ratified by the State party on 18 March 2008.

⁸⁸ Padilla García v. Mexico, para. 9.5.

⁸⁹ Sarma v. Sri Lanka (CCPR/C/78/D/950/2000), para. 9.3, and general comment No. 36, para. 58.

⁹⁰ Padilla García v. Mexico, para. 9.6, and general comment No. 36, para. 58. See also Inter-American Court of Human Rights, Velásquez-Rodríguez v. Honduras, merits, Judgment of 29 July 1988, Series C No. 4: “The practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life” (para. 157). “The context in which the disappearance of [...] occurred and the lack of knowledge seven years later about his fate create a reasonable presumption that he was killed” (para. 188).

⁹¹ Padilla García v. Mexico, para. 9.7, and general comment No. 36, para. 58.

his deprivation of liberty. The Committee recalls its general comment No. 35, in which it states that enforced disappearance constitutes a particularly aggravated form of arbitrary detention;⁹² it recalls that article 17 of the International Convention for the Protection of All Persons from Enforced Disappearance provides that no one shall be held in secret detention and calls for the establishment of registers of persons deprived of their liberty as a fundamental safeguard against enforced disappearance; and it notes that the Inter-American Court of Human Rights has found that clandestine detention centres are per se a violation of the rights to personal liberty.⁹³ Since the State party has not provided any information in this regard, the Committee considers that due weight should be given to the authors' allegations and finds that the deprivation of liberty of Mr. Guajardo Rivas was a violation of his rights under article 9 of the Covenant.

12.9 Having concluded that there has been a violation of article 7 with respect to Mr. Guajardo Rivas, the Committee does not consider it necessary to rule on the existence of a violation of article 10 (1) of the Covenant for the same acts.

12.10 As for the authors' claim that Mr. Guajardo Rivas was removed from the protection of the law and was last seen in the hands of the authorities, in violation of article 16 of the Covenant, the Committee recalls that the deliberate removal of a person from the protection of the law constitutes a denial of that person's right to recognition as a person before the law.⁹⁴ In the present case, the Committee observes that the State party has not furnished any explanation concerning the fate or whereabouts of Mr. Guajardo Rivas, and that he was in the custody of State agents when last seen. The Committee therefore finds that the enforced disappearance of Mr. Guajardo Rivas removed him from the protection of the law and deprived him of his right to recognition as a person before the law, in violation of article 16 of the Covenant.

12.11 Lastly, the Committee takes note of the authors' claim that the acts also constitute a violation of article 2 (3) of the Covenant, read in conjunction with the articles mentioned above, given the lack of an independent, impartial, prompt, thorough and effective investigation of the enforced disappearance of their family member, as immediately reported. The Committee also notes the State party's assertion that its legal obligation to investigate has been discharged because the appropriate investigations have been conducted, with due diligence, impartially and thoroughly. However, the Committee observes that more than six years after the disappearance of Mr. Guajardo Rivas, the investigations have not enabled him to be located and have not allowed the perpetrators to be fully identified; they have thus been unreasonably prolonged. The Committee also notes that, although three individuals are subject to arrest warrants for the crime of disappearance of persons, one of whom has already been detained, these are the persons originally identified by the authors, the State party not having demonstrated the existence of any lines of investigation regarding other persons involved in the enforced disappearance. In particular, the Committee notes the allegations by the authors, not refuted by the State party, that appropriate measures were not taken in time, which led to the loss of important evidence. For example, the investigation was not appropriately opened as a preliminary investigation on the day the complaint was submitted; no orders were given to search or conduct an expert examination of Mr. Guajardo Rivas' home or the GATE premises

⁹² General comment No. 35, para. 17, and general comment No. 36, para. 58.

⁹³ See in this connection the settled jurisprudence of the Inter-American Court of Human Rights since the case of *Anzualdo Castro v. Peru*, Preliminary objections, merits, reparations and costs, Judgment of 22 September 2009, Series C No. 202, para. 63.

⁹⁴ *Padilla García v. Mexico*, para. 9.9, and general comment No. 36, para. 58. See also the view of the Inter-American Court of Human Rights: "... disappearance is not only one of the most serious forms of placing the person outside the protection of the law but it also entails to deny that person's existence and to place him or her in a kind of limbo or uncertain legal situation before the society, the State and even the international community" (*Anzualdo Castro v. Peru*, para. 90).

where the authors had reported having seen the disappeared person; no order was given to inspect the penknife used to force the entrance door to Mr. Guajardo Rivas' home, and the penknife was then mislaid; facial composites of the officers described by the authors were not requested until a year after the complaint had been submitted; the facial composites, once made, were not compared with photographs and no other measures were taken to identify the persons represented in the composites; and a year elapsed before a list of GATE members was requested. In the light of all the above, the Committee considers that the investigations carried out were ineffective to clarify the circumstances of the disappearance, fate and whereabouts of Mr. Guajardo Rivas and to identify those responsible.⁹⁵ The Committee concludes that the facts before it reveal a violation of article 2 (3) of the Covenant, read in conjunction with articles 6 (1), 7, 9 and 16 of the Covenant, in respect of Mr. Guajardo Rivas; and of article 2 (3) of the Covenant, read in conjunction with article 7, in respect of the authors.

13. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses violations by the State party of articles 6 (1), 7, 9 and 16 of the Covenant, and of article 2 (3) read in conjunction with articles 6, 7, 9 and 16, in respect of Mr. Guajardo Rivas; and of article 7 of the Covenant, and article 2 (3) read in conjunction with article 7, in respect of the authors of the communication.

14. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires that full reparation be made to individuals whose rights have been violated. In this regard, the State party should: (a) carry out a prompt, effective, thorough, independent, impartial and transparent investigation into the circumstances of Mr. Guajardo Rivas' disappearance; (b) immediately release Mr. Guajardo Rivas, if he is still being held incommunicado; (c) if Mr. Guajardo Rivas has died, hand over his remains to his family under decent conditions; (d) investigate and, where appropriate, punish any type of action that might have hindered the effectiveness of the processes of searching for and locating Mr. Guajardo Rivas; (e) provide the authors with detailed information on the outcome of the investigation; (f) prosecute and punish those found responsible for the violations committed and make the results of such measures public; and (g) grant the authors, as well as Mr. Guajardo Rivas if he is still alive, full reparation, including adequate compensation for the violations suffered. The State party is also under an obligation to take steps to prevent the occurrence of similar violations in the future, including by establishing a register of all detained persons.

15. 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 for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information on the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated.

⁹⁵ General comment No. 36, para. 27, which also states that investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death.

3 **Opinion approved by the Human Rights Committee. (Christian Téllez Padilla and Others against Mexico).**

ANEXO



**Pacto Internacional de Derechos
Civiles y Políticos**



CCPR/C/127/D/2760/2016

Distr.: General
16 December 2019 English
Original: Spanish

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2760/2016^{96*}, ^{97**}

▶ Communication submitted by:	Carlos Moreno Zamora, María Enriqueta Pérez Barrera and Areli Moreno Pérez, on their own behalf and on behalf of Jesús Israel Moreno Pérez, their missing son and brother (represented by I(DH)EAS Litigio Estratégico en Derechos Humanos and the Mexican Commission for the Defence and Promotion of Human Rights)
▶ Alleged victims:	The authors and Jesús Israel Moreno Pérez (son and brother of the authors)
▶ State party:	Mexico
▶ Date of communication:	10 November 2015 (initial submission)
▶ Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 6 April 2016 (not issued in document form)
▶ Date of adoption of Views:	5 November 2019
▶ Subject matter:	Disappearance
▶ Procedural issue:	Exhaustion of domestic remedies
▶ Substantive issues:	Right to an effective remedy; right to life; prohibition of torture and cruel and inhuman treatment; right to liberty and security of person; recognition as a person before the law
▶ Articles of the Covenant:	2 (3), 6 (1), 7, 9 and 16
▶ Articles of the Optional Protocol:	5 (2) (b)

96 * Adopted by the Committee at its 127th session (14 October to 8 November 2019).

97 ** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

1. The authors of the communication, dated 10 November 2015, are Carlos Moreno Zamora, María Enriqueta Pérez Barrera and Areli Moreno Pérez, all nationals of Mexico and adults. The authors are acting on their own behalf and on behalf of Jesús Israel Moreno Pérez, the son of the first two authors and brother of the third, also a national of Mexico, born on 23 November 1991 and missing since 8 July 2011. The authors claim that the State party has violated the rights of Mr. Moreno Pérez under articles 6 (1), 7, 9 and 16 of the Covenant, read alone and in conjunction with article 2 (3). The authors also claim to be victims of a violation by the State party of their rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3). The Optional Protocol entered into force for the State party on 15 June 2002. The authors are represented by counsel.

Factual background

▶ Context

2.1 The authors state that the facts of the present case occurred against a backdrop of serious human rights violations attributable to the security policy introduced by the State party in 2006 known as the “War on Drugs”, which pitted the police and armed forces directly against organized crime groups. This policy led to a drastic increase in serious human rights violations that were seldom if ever properly investigated.⁹⁸ This is the context in the State of Oaxaca, the part of the country with the eighth highest number of complaints of human rights violations.

2.2 The authors also refer to the concluding observations of the Committee on Enforced Disappearances on Mexico, which describe a situation of widespread disappearances in much of the State party’s territory. The Committee noted the existence of a number of obstacles reportedly preventing investigations from being conducted. In certain cases, the competent authorities had allegedly: (a) failed to initiate the investigation promptly; (b) classified the acts as other offences; and (c) destroyed and tampered with evidence.⁹⁹

2.3 The authors also make reference to the report of the Inter-American Commission on Human Rights on its visit to Mexico in 2015, which confirms the widespread nature of enforced disappearance,¹⁰⁰ and the statement made by the United Nations High Commissioner for Human Rights after his visit to Mexico the same year, which mentioned a “relentless wave of human rights violations”.¹⁰¹

▶ Disappearance of Mr. Moreno Pérez and complaints filed in this connection

2.4 On 4 July 2011, Mr. Moreno Pérez (who was 19 years of age at the time of the events and studying geography at the National Autonomous University of Mexico) travelled from Mexico City, where he lived, to the state of Oaxaca, where he intended to tour the beaches in the area as part of a month-long holiday. The last time his relatives heard from him was on 8 July 2011, when they exchanged text messages upon his arrival at a beach in Chacahua, in the State of Oaxaca.

98 The authors cite Human Rights Watch, *Ni Seguridad, ni Derechos. Ejecuciones, desapariciones y tortura en la “guerra contra el narcotráfico” de México* [Neither Rights Nor Security. Killings, Torture and Disappearances in Mexico’s “War on Drugs”], 2011, pp. 4, 5 and 16, available at <https://www.hrw.org/sites/default/files/reports/mexico111spwebwcover.pdf>.

99 CED/C/MEX/CO/1.

100 Preliminary observations on the on-site visit of the Inter-American Commission on Human Rights to Mexico, 2 October 2015, available at <http://www.oas.org/es/cidh/prensa/comunicados/2015/112A.asp>.

101 Statement by the United Nations High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, on the occasion of his visit to Mexico, 7 October 2015, available at http://www.hchr.org.mx/index.php?option=com_k2&view=item&id=767:-declaracion-del-alto-comisionado-de-la-onu-para-los-derechos-humanos-zeid-ra-ad-al-hussein-con-motivo-de-su-visita-a-mexico&Itemid=265.

2.5 Unable to contact his son, Mr. Moreno Zamora filed a complaint at the Missing Persons Centre of the Office of the Attorney General of the Federal District¹⁰² on 8 August 2011.

2.6 On 10 August 2011, having made the journey from Mexico City to Oaxaca City, Mr. Moreno Zamora filed a complaint with the Prosecution Service of San Pedro Tututepec (where the town of Chacahua is located), which led to a preliminary investigation being opened.¹⁰³ In view of the inaction of the authorities, and having been told by the person in charge of the investigation that it had not been possible to start inquiries as there was no money for petrol, Mr. Moreno Zamora began to search for his son himself. On 1 September 2011, he managed to locate his son's mobile phone, which still contained the same SIM card. The phone, together with its charger, had been found in the municipal landfill in Jamiltepec (a town located two hours away from Chacahua). In addition, on 10 September 2011 Mr. Moreno Pérez's father found his son's backpack at the hostel where he had been staying. These objects were handed over to the authorities.

2.7 On 8 October 2011, lacking confidence in the Prosecution Service of San Pedro Tututepec owing to its failure to open an investigation, Mr. Moreno Zamora filed another complaint with the Prosecution Service of Puerto Escondido (another municipality in the State of Oaxaca located two hours away from Chacahua). Another preliminary investigation¹⁰⁴ was opened, bringing the number of preliminary investigations under way to two.

2.8 Subsequently, Mr. Moreno Pérez's father also reported the disappearance to the Office of the Deputy Attorney General for the Investigation of Organized Crime attached to the Office of the Attorney General of the Republic, which led to the opening of another preliminary investigation.¹⁰⁵ Irregularities in the investigations conducted by the Office of the Attorney General of Oaxaca State (now the Office of the Prosecutor General of Oaxaca State)

2.9 The authors maintain that the first irregularity in the investigations occurred when the authorities substituted the disappeared person's mobile phone for another of the same make and model, thus allowing a piece of evidence vital to the investigation to be destroyed.

2.10 The second irregularity concerned the weight given by the authorities to the description of a body presumed to be that of Mr. Moreno Pérez given by a fisherman who reportedly saw his body floating in the water on 20 July 2011. The fisherman described him as robust, 1.5 metres tall, ostensibly bald and around 35 years of age,¹⁰⁶ when, in reality, he is slim, 1.7 metres tall and has long curly hair.

2.11 The authors stress that the authorities constructed a false version of events based on contradictory statements. On 2 December 2011, the authorities arrested Javier Rodríguez Peña, a 22-year-old fisherman and campesino from Chacahua with only a primary school education, who stated that, on 9 July 2011, he, along with three other people from the area (Honorio Corcuera, Félix Gallardo and Ramiro Serrano), killed Mr. Moreno Pérez on the beach when they stole his mobile phone, camera and iPod. The authors submit that Mr. Moreno Pérez never had an iPod or a camera, and that these objects were never found. According to Javier Rodríguez Peña's statement, Honorio Corcuera stabbed Mr. Moreno Pérez in the chest and he and the others then buried him, only to dig him up two days later and throw

¹⁰² Case file 644/EXT/2011.

¹⁰³ Preliminary investigation 176/RG/2011.

¹⁰⁴ Preliminary investigation 149/costa/2011.

¹⁰⁵ Preliminary investigation PGR/SIEDO/UEIS/009/2012.

¹⁰⁶ The authors enclose a copy of the order to appear issued in respect of Tomás Medina Lorenzana, dated 30 October 2011.

him into the sea.¹⁰⁷ On 5 December 2011, Javier Rodríguez Peña, having been placed in arraigo (preventive custody), made another statement in which he changed his account of the incident, stating that the homicide had in fact taken place on 10 July 2011 in a green boat in the Chacahua lagoon and that he had been accompanied by Honorio Corcuera, Margarito González and Irene Méndez Graf. According to this statement, Honorio Corcuera had beaten Mr. Moreno Pérez in order to steal his mobile phone, camera and iPod, before stabbing him in both sides in the rib area and in the chest and then throwing him into the water.¹⁰⁸ That same day, Honorio Corcuera made a statement alleging that Javier Rodríguez Peña had stabbed Mr. Moreno Pérez on a road in Chacahua.¹⁰⁹

2.12 On 21 December 2011, the authorities issued a crime scene investigation report that concluded that the death of Mr. Moreno Pérez was caused by “multiple injuries being inflicted with blunt and sharp objects and his being thrown into the sea”.¹¹⁰

2.13 On 22 December 2011, the former Attorney General for Oaxaca State and the former Deputy Attorney General for High-Impact Crimes of Oaxaca State informed the father of the disappeared person that his son had been murdered during a robbery.

2.14 On 24 December 2011, a forensic chemical examination confirmed that there were no traces of blood on the boat.¹¹¹ That same day, a search for the body was conducted but was unsuccessful.

2.15 On 25 December 2011, a virtual appraisal report was issued in respect of the objects that had apparently been the reason for the alleged robbery: (i) a Sony Ericsson mobile phone worth approximately \$65; (ii) a digital camera with a zoom lens worth approximately \$650; and (iii) an iPod worth approximately \$195.¹¹²

2.16 On 29 December 2011, a “verbal autopsy”¹¹³ report was issued, stating that the cause of death had been “intense internal bleeding due to injury to the thoracic and abdominal viscera caused by a sharp weapon”; a death certificate was also issued.¹¹⁴

2.17 On 2 January 2012, the four accused persons already in preventive custody (Javier Rodríguez Peña, Honorio Corcuera, Margarito González and Irene Méndez Graf) were officially arrested.

2.18 On 4 January 2012, the authorities announced at a press conference that the case had been solved.

2.19 That same day, in his first statement before the Criminal Court of Puerto Escondido, Javier Rodríguez Peña denied any wrongdoing and claimed that he had been beaten by the Oaxaca judicial police officer in charge of the investigation, Juan Luis Vásquez Martínez, and told to say that

¹⁰⁷ The authors enclose a copy of the statement of Javier Rodríguez Peña, dated 2 December 2011.

¹⁰⁸ The authors enclose a copy of the statement made by Javier Rodríguez Peña in preventive custody, dated 5 December 2011.

¹⁰⁹ The authors enclose a copy of the statement of Honorio Corcuera, dated 5 December 2011.

¹¹⁰ The authors enclose a copy of the crime scene investigation report, dated 21 December 2011.

¹¹¹ The authors enclose a copy of the forensic chemical examination report, dated 24 December 2011.

¹¹² The authors enclose a copy of the virtual appraisal report, dated 25 December 2011.

¹¹³ Article 33 of the Code of Criminal Procedure of the Free and Sovereign State of Oaxaca provides that “[w]hen the body is not recovered, experts may, in view of the information in the case file, simply declare the death to be a result of the injuries suffered. To this end, any witnesses who have seen the body will be examined and will be asked to provide a description of it and any information that might assist the investigation”.

¹¹⁴ The authors enclose a copy of the death certificate.

Honorio Corcuera had murdered Mr. Moreno Pérez. He stated that: “Officer Juan from Oaxaca, who arrested me, beat me black and blue and offered me 1 million pesos to testify against Honorio”.¹¹⁵ Honorio Corcuera told the court that the same police officer had beaten him and threatened to arrest his family to make him testify against Javier Rodríguez Peña: “He put a bag over my head and poured water on my face; he offered me 40,000 pesos”. The same day, the third accused person, Margarito González, told the court that the police officer had said that he was going to bring him before the court “the easy way or the hard way”; he “hit me and kept telling me to say that I was with the lad, that it would be better for me if I did; they put me in a van, put some bags over my head so that I would get confused and I signed some documents; then another officer beat me and threatened to tell people that I belonged to a cartel, and they made threats against my family”.¹¹⁶ The court did not open an ex officio investigation into these acts, but simply resumed the criminal proceedings against the four defendants for aggravated robbery with physical violence and for aggravated homicide with premeditation and undue advantage.¹¹⁷

2.20 On 7 January 2012, the court issued a detention order in respect of Javier Rodríguez Peña, which was confirmed on 17 January 2013 after the lodging of an appeal. On 10 January 2012, a detention order was issued in respect of Honorio Corcuera, Margarito González and Irene Méndez Graf. The first two lodged an appeal but the detention order was confirmed on 17 April 2013. Irene Méndez Graf hired a lawyer and lodged an application for amparo on the grounds that she was not in Chacahua at the time of the alleged homicide. On 12 June 2012, the court revoked the detention order issued in respect of Irene Méndez Graf and, on 2 July 2012, an order for her release was issued for lack of evidence to proceed.¹¹⁸ The other three defendants are still in prison.

2.21 The father of the disappeared person continued to search for his son. He met two people who told him that they had seen his son in Chacahua on 6 August 2011, almost a month after the alleged homicide. The police officer in charge of the investigation refused to take a statement from them and told the father of the disappeared person not to return to Oaxaca or he would be killed.¹¹⁹ The same police officer offered money to the nephew of Javier Rodríguez Peña, who is a minor, to testify about the circumstances in which Mr. Moreno Pérez’s voter identification card was found: “Officer Juan told me that if I said that my mum had it under the bed, he would give me 5,000 pesos and get my uncle out of jail; he told me to sign and to give my fingerprints; I don’t know what I signed”.¹²⁰ Complaints and administrative sanctions against officials from the Office of the Attorney General for Oaxaca State (now the Office of the Prosecutor General for Oaxaca State) for irregularities that occurred during the investigation

¹¹⁵ The authors enclose a copy of the preparatory statement delivered by the defendant Javier Rodríguez Peña before the court, dated 4 January 2012.

¹¹⁶ The authors enclose a copy of the statements of the defendants Margarito González and Honorio Corcuera, dated 17 April 2012.

¹¹⁷ The aggravating circumstance of premeditation is considered to apply when the defendant intentionally causes injury, after having reflected on the offence he plans to commit; the aggravating circumstance of undue advantage is applied when the offender is of superior physical strength to the victim and the victim is unarmed, when the offender has superior strength because of the weapons he is using, because he is more skilled in the use of weapons or because of the number of persons assisting him, when the offender uses certain devices to debilitate the victim, and when the victim is defenceless and on the ground while the offender is armed and standing up.

¹¹⁸ The authors enclose a copy of the application for amparo.

¹¹⁹ The authors enclose a copy of complaint No. 138(FESP)/2013 of 12 June 2013 concerning threats and abuse of authority, filed by Mr. Moreno Zamora.

¹²⁰ The authors enclose a copy of the statement of Francisco Javier Domínguez Rodríguez, dated 28 December 2013.

2.22 The father of the disappeared person filed a complaint against various officials who took part in the investigations. On 11 January 2013, administrative proceedings were initiated before the Specialized Prosecutor's Office for Crimes Committed by Public Officials, attached to the Office of the Attorney General for Oaxaca State.¹²¹

2.23 On 29 January 2014, the Specialized Prosecutor's Office described these procedural omissions, the failure to comply with the obligation to investigate, the abuse of authority, the falsified statements and the crimes against peace and security of person as serious offences. Consequently, it suspended several officials from the Prosecution Service and several judicial police officers for 30 or 90 days without pay.¹²² After the opening of another preliminary investigation on 22 February 2015, the Specialized Prosecutor's Office suspended the then Deputy Regional Attorney General of La Costa for 90 days without pay and a number of experts for 30 or 90 days without pay.

▶ *The complaint*

3.1 The authors submit that the necessary conditions have been met for the exception to the rule of exhaustion of domestic remedies, provided for in article 5 (2) (b) of the Optional Protocol, to apply, since, despite them having filed complaints with the competent judicial authorities, a prompt, impartial, thorough and independent investigation has not been opened and the investigation has been unreasonably prolonged, with the result that these remedies have not led to the whereabouts of the victim being established or those truly responsible being identified.¹²³

3.2 The authors allege a violation, in respect of Mr. Moreno Pérez, of article 6 (1) of the Covenant, read alone and in conjunction with article 2 (3), and request the Committee to apply its jurisprudence according to which the term "enforced disappearance" may be used broadly to cover disappearances committed by forces that are independent of the State. They also recall that States parties have an obligation to ensure the protection of individuals against violations committed by private persons.¹²⁴ They submit that, from the moment that the authorities learned of the disappearance of Mr. Moreno Pérez, they failed to launch an immediate search, and tampered with and fabricated evidence to alter the course of the investigation, thereby creating conditions that put his life at serious risk. It is therefore reasonable to presume that Mr. Moreno Pérez's right to life was violated.

3.3 The authors also allege a violation, in respect of Mr. Moreno Pérez, of article 7 of the Covenant, read alone and in conjunction with article 2 (3), by recalling the Committee's established jurisprudence according to which the disappearance of persons constitutes in itself a form of torture for the disappeared person. They submit that it is reasonable to presume that, during his deprivation of liberty, Mr. Moreno Pérez was left with a feeling of distress and defencelessness that caused him intense suffering. The authors also allege a violation, in respect of themselves, of article 7 of the Covenant, read in conjunction with article 2 (3), as the authorities tried to make them accept the version of events surrounding the homicide so that they could call off the search, and that the authorities' haste in closing the case causes them great pain. The father of the disappeared person told the media that he was against "closing" the case. The continuing uncertainty caused by the disappearance of Mr. Moreno Pérez causes them anxiety, stress and "is a blight on their life".

¹²¹ Administrative case file 09/VIS.GRAL/2013.

¹²² The authors enclose a copy of the report of the Specialized Prosecutor's Office for Crimes Committed by Public Officials, dated 29 January 2014, pp. 9, 12, 18–19, 21–23, 26 and 31.

¹²³ T.K. v. France (CCPR/C/37/D/220/1987), para. 8.2.

¹²⁴ Pestaño v. the Philippines (CCPR/C/98/D/1619/2007), para. 7.2.

3.4 The authors also allege a violation, in respect of Mr. Moreno Pérez, of article 9 of the Covenant, read alone and in conjunction with article 2 (3), since it has not been possible to clarify the whereabouts or fate of the disappeared person, or the manner in which he was deprived of his liberty, and since the authorities initially neglected to search for him and subsequently obstructed that endeavour, which gives them reason to believe that Mr. Moreno Pérez was deprived of his liberty against his will.

3.5 The authors also allege a violation, in respect of Mr. Moreno Pérez, of article 16 of the Covenant, read alone and in conjunction with article 2 (3), since he was placed outside the protection of the law as a result of his abduction and deprivation of liberty and the fact that subsequent attempts to search for him were systematically obstructed.

3.6 In short, the authors allege a violation of all the articles mentioned above (6 (1), 7, 9 and 16), read in conjunction with article 2 (3) of the Covenant, based on the actions of the authorities whose aim was to conceal the disappearance by tampering with and fabricating evidence, using confessions obtained through torture and manipulating witnesses to prove an alleged homicide as the result of a robbery and to close the case by accusing innocent people. The authors recall that statements and confessions are evidence that may be used during a criminal investigation, provided that consistent conclusions about the facts of the case may be drawn from them. However, when they are obtained under duress or through torture or other inhuman or degrading treatment, they cannot be used as evidence.¹²⁵ The authors also recall that the actions of the authorities have been punished administratively but not criminally. In addition, the authors recall that Mr. Moreno Pérez's body was never found, that a death certificate was issued in the absence of a body and that a virtual appraisal of non-existent stolen objects was carried out. The authors therefore conclude that the fate and whereabouts of the disappeared person have not yet been clarified.

3.7 The authors submit that, by way of redress, the State party should: **(a)** conduct an impartial, thorough and rigorous investigation into the facts of the case, bearing in mind the context of enforced disappearances; **(b)** continue to search for Mr. Moreno Pérez; **(c)** provide them with detailed information on the outcome of the investigations; **(d)** release Mr. Moreno Pérez if he is still deprived of his liberty; **(e)** in the event that he is in fact deceased, search for and hand over his remains; **(f)** prosecute and punish all those responsible; **(g)** provide comprehensive redress for the damage caused; and **(h)** take steps to prevent similar violations from occurring in the future and, in particular, review the legislation that allowed the violations to occur in the first place, such as the Code of Criminal Procedure of the Free and Sovereign State of Oaxaca, which allowed the cause of death to be established by means of an autopsy conducted in the absence of a body and which, consequently, allowed the State party to shirk its obligation to investigate, thereby hindering access to justice.

▶ *State party's observations on admissibility*

4.1 On 3 June 2016, the State party requested the Committee to declare the communication inadmissible for failure to exhaust domestic remedies in the investigation of the alleged disappearance of Mr. Moreno Pérez, since the investigations are still in progress.

4.2 In particular, the State party indicates that the preliminary investigation before the Office of the Attorney General of the Republic is still under way and that every effort is being made, in coordination with the local and federal authorities, to establish the whereabouts of the disappeared person, and that, in the criminal proceedings before the Criminal Court of Puerto Escondido, Oaxaca, even though

¹²⁵ Inter-American Court of Human Rights. *Cabrera García and Montiel Flores v. Mexico*, preliminary objection, merits, reparations and costs, judgment of 26 November 2010, series C, No. 220, para. 165.

a judgment has not yet been handed down in respect of the alleged perpetrators, the parties to the proceedings are actively providing and disclosing evidence. The State party submits that, while there has been no delay in the criminal proceedings themselves, the defendants have lodged various appeals and applications for amparo to challenge the decisions of the court, which have been resolved in a reasoned manner in accordance with the time limits established by domestic legislation, and that it is this process that has delayed the proceedings. The State party also submits that the authors, by lodging an appeal, will be able to reverse the judgment handed down if they consider it to be erroneous, and that amparo will also prove to be an adequate and effective remedy.

4.3 The State party argues that it is for its courts, not the Committee, to evaluate facts and evidence, as domestic proceedings are not arbitrary or tantamount to a denial of justice.

▶ ***Authors' comments on the State party's observations on admissibility***

5.1 On 12 September 2016, the authors submitted their comments on the State party's observations on admissibility, in which they insisted on having made use of the domestic remedies available to them, which have been unreasonably prolonged and have failed to clarify the facts of the disappearance.

5.2 The authors recall that it is for the domestic courts to evaluate facts and evidence unless the proceedings are clearly arbitrary, constitute a denial of justice or breach the duty of independence and impartiality. In the present case, not only did serious irregularities occur, described by the supervisory authority as "serious liabilities", but the court has failed to investigate the alleged defendants' claims concerning the false statements that they were forced to make – statements that still constitute the only items of evidence supporting this version of the events surrounding the alleged homicide. The authors submit that the allegations of treatment contrary to article 7 should be promptly investigated and reiterate that information obtained through torture should be excluded from the evidence.¹²⁶ In particular, the authors recall that the Committee against Torture had found it regrettable that, in Mexico, "some courts continue to accept confessions that have apparently been obtained under duress or through torture", and recommended that the State party adopt effective measures to "ensure that confessions obtained through torture or ill-treatment are not used as evidence in any proceedings whatsoever".¹²⁷

5.3 Furthermore, the authors maintain that the State party fails to provide specific and relevant information on the steps taken to investigate the facts as part of the preliminary investigation before the Office of the Attorney General of the Republic,¹²⁸ as it makes no mention of the efforts that it is supposedly making in that connection.

5.4 Lastly, with regard to the State party's argument that there has been no delay in the criminal proceedings, the authors recall that the proceedings began in January 2012 and that no progress has been made since that date.

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

6.1 In its observations of 20 October 2016, the State party asked the Committee to find that it had not violated any of the articles of the Covenant.

¹²⁶ Selyun v. Belarus (CCPR/C/115/D/2289/2013), paras. 7.2 and 7.3.

¹²⁷ CAT/C/MEX/CO/5-6, para. 15.

¹²⁸ Kadić v. Bosnia and Herzegovina (CCPR/C/115/D/2048/2011), para. 9.5.

6.2 In particular, the State party argues that it cannot be held responsible by act, as there is insufficient evidence to prove that State agents were responsible for the disappearance; nor can it be held responsible by omission, as not only is it not obliged to know everything that happens in its territory, but its duty to prevent the commission of unlawful acts is contingent on it being aware of a situation of risk,¹²⁹ which it was not.

6.3 Furthermore, the State party argues that its investigations comply with the standards and obligations established by the Covenant, as they have been conducted with all due diligence and in an impartial and thorough manner, and recalls that the obligation to investigate is not an obligation of result, but of means.

6.4 The State party argues that an investigation was conducted without delay as soon as the facts of the case became known on 10 August 2011, as it initiated the investigation that led to the institution of criminal proceedings, with three individuals currently on trial, the very same day.

6.5 The State party also argues that the investigations were conducted in an impartial manner as, given that it played no role in the alleged disappearance, there is no conflict of interest with the authorities conducting the investigations.

6.6 Furthermore, the State party argues that the investigations were thorough, as a large number of steps were taken to facilitate the search operations (statements were taken; visual inspections were conducted; the Ministry of Naval Affairs was asked to provide information on the trajectory of the currents and on whether it had found any bodies; a report on Mr. Moreno Pérez's debit card activity was requested; letters were sent to police stations with instructions to conduct a search; letters were sent to hospitals and health centres; on-site investigations were conducted; posters bearing the image of the disappeared person and offering a reward were distributed; and a request was made for a psychological and criminological profile of the defendants).

6.7 The State party also submits that an inquiry was conducted to address the allegations of torture made against Officer Juan Luis Vásquez Martínez. A preliminary investigation was opened before the Office of the Prosecutor General of Oaxaca State for probable involvement in making threats, abuse of authority and other relevant crimes.¹³⁰

6.8 Lastly, the State party submits that, on 14 June 2015, another preliminary investigation was opened before the Office of the Attorney General of the Republic (Office of the Special Prosecutor for the Investigation of Crimes of Enforced Disappearance of the Office of the Deputy Attorney General for Human Rights, Crime Prevention and Community Service),¹³¹ during which various steps were taken; for example, blood samples were collected to construct the genetic profile of the disappeared person and a request was made for information concerning his background and for records of entry into and exit from the country.

▶ *Authors' comments on the State party's observations on the merits*

7.1 In their comments of 3 July 2017, the authors recall that "States parties have a positive obligation to ensure the protection of individuals against violations of Covenant rights, which may be committed

¹²⁹ The State party refers to Inter-American Court of Human Rights, Pueblo Bello Massacre v. Colombia, merits, reparations, and costs, judgment of 31 January 2006, Series C, No. 140, para. 124.

¹³⁰ Preliminary investigation 138/FESP/2013 and its addendum 21/FESP/2015.

¹³¹ Preliminary investigation AP/PGR/SDHPDSC/UEBPD/M30/214/2015.

not only by its agents, but also by private persons or entities”.¹³² In addition, they consider that State agents did in fact commit acts that make the State party internationally responsible for the disappearance of Mr. Moreno Pérez, both by act and by omission.

7.2 With regard to the State party’s responsibility by act, the authors maintain that officials from the Prosecution Service and the judicial police of the Office of the Attorney General of Oaxaca State (now the Office of the Prosecutor General of Oaxaca State) took part in the acts by tampering with and fabricating evidence in order to alter the course of the investigation. The authors cite the Inter-American Court of Human Rights, according to which the use of State power for the destruction of direct evidence in an attempt at total impunity or the crystallization of some sort of perfect crime gives reason to believe that the disappearance may be attributable to the State.¹³³ The authors also stress that the Office of the Oaxaca Human Rights Ombudsman¹³⁴ found that the result of the autopsy was informed by “reports issued after the date on which the autopsy was carried out, relating to, inter alia, the journey to the scene, the expansion of the inspection and the reconstruction of events, and the visual inspection conducted at sea”, as a result of which “the document lacks full legal certainty as there is evidence to suggest that the outcome of steps that had not yet been taken when it was issued were taken into consideration”.¹³⁵ The Ombudsman’s Office also found that “serious doubts persist over the way in which the investigation of the facts was conducted and the likely guilt of the defendants. These stem from the failure to respect the chain of custody in handling the victim’s mobile phone and in following up on other lines of enquiry identified from the evidence gathered; the failure to make proper use of evidence in the investigation, induced witness statements and statements very probably obtained under duress, which is reflected in the clear contradictions in the statements taken during the previous investigation”.¹³⁶ Moreover, in view of how Mr. Moreno Pérez had reportedly died, the Ombudsman’s Office would have expected traces of blood to have been found in the boat, which was not the case. Furthermore, the fact that Irene Méndez Graf secured her release by proving that she was not in Chacahua on the day the alleged events took place “demonstrates once again how flimsy the evidence is”. By way of conclusion, the institution “warns [...] that since an effective investigation has not been conducted, the crime of homicide and robbery imputed to the defendants, which is based on contradictory statements and testimonies, and on expert evidence based on a body and objects that do not exist, cannot be proved”.¹³⁷

7.3 With regard to the State party’s responsibility by omission, the authors submit that the acts of tampering with and fabricating evidence have not been the subject of a criminal investigation and that it is for this very reason that the Ombudsman’s Office stated that the investigation should be resumed; that proceedings should be instituted against the officer accused of making threats, committing acts of torture and falsifying statements; and that criminal proceedings should be initiated where appropriate.¹³⁸

¹³² Krasovskaya v. Belarus (CCPR/C/104/D/1820/2008), para. 8.3.

¹³³ Godínez-Cruz v. Honduras. Merits, Judgment of 20 January 1989, Series C, No. 5, para. 155.

¹³⁴ Case file DDHPO/1572/(01)/OAX/2014 opened at the request of Mr. Moreno Zamora for violations of his rights attributable to public officials, dated 28 November 2014.

¹³⁵ The authors enclose a copy of recommendation 13/2016 of the Office of the Oaxaca Human Rights Ombudsman, dated 16 November 2016, p. 46.

¹³⁶ Recommendation 13/2016 of the Office of the Oaxaca Human Rights Ombudsman, dated 16 November 2016, pp. 48 and 49.

¹³⁷ Ibid., pp. 43 to 45.

¹³⁸ Ibid., p. 69.

7.4 The authors maintain that, ultimately, this made it possible to conceal the way in which the disappeared person was deprived of his liberty. This entailed actions by State agents that constitute enforced disappearance: **(a)** the disappearance and subsequent deprivation of liberty of Mr. Moreno Pérez without the State having clarified his whereabouts or the location of his body; **(b)** the involvement, support or acquiescence of State agents by reason of their direct involvement in the tampering with and fabrication of evidence and in the construction of false testimonies; and **(c)** the concealment of the fate and whereabouts of the disappeared person also by tampering with and fabricating evidence in order to alter the course of the investigation.

7.5 With regard to the investigations in general, the authors highlight the inconsistencies in the actions of the State party, which is conducting criminal proceedings for alleged homicide and, at the same time, preliminary investigations into a disappearance.

7.6 With regard to the State party's observation that the investigations are being conducted in a manner consistent with the Covenant, the authors argue that, on the contrary, the investigations were neither immediate nor thorough. They maintain that the State party learned of the disappearance on 8 August 2011 when the first complaint was filed (para. 2.5 above) and that an investigation was still not opened even after the second complaint of 10 August 2011 was filed (para. 2.6 above), which is exactly why the father of the disappeared person approached the Prosecution Service of Puerto Escondido to file a third complaint (para. 2.7 above). Furthermore, the authors maintain that the conclusion drawn by the Specialized Prosecutor's Office for Crimes Committed by Public Officials, according to which the investigation was marred by serious irregularities, is actually proof that it was not thorough. Lastly, the authors submit that the most recent preliminary investigation opened before the Office of the Attorney General of the Republic in 2015 (para. 6.8 above) has not proved to be exhaustive or thorough in nature, owing to a total failure to act.

7.7 The authors refer to the conclusion drawn by the Ombudsman's Office, according to which "there was an omission in the duty to investigate, since the collection of precise information is the first step that the authority should have taken and so, in view of its failure to do so, [the father of the disappeared person] conducted his own investigation to the point where he succeeded in locating the person who had housed his son before his disappearance and his son's backpack and other belongings", which he handed over to the Prosecution Service.¹³⁹ In the view of the Ombudsman's Office, "the institutional climate in which the investigation was conducted has made it impossible for this remedy to fulfil its objective", which, to this day, has kept the family of the disappeared person in the dark about what really happened to him, leading the institution to conclude that the right to due process, specifically the right to a thorough and exhaustive investigation, was violated.¹⁴⁰

▶ ***Additional submission from the State party***

8.1 On 19 December 2018 and 13 March 2019, the State party informed the Committee of actions taken to comply with the recommendation issued by the Ombudsman's Office. With regard to the conduct of the investigations, firstly, the State party mentions that, in a letter dated 24 November 2016, the Prosecutor General of Oaxaca State instructed the Specialized Prosecutor for High-Impact Crimes, who is attached to the Office of the Prosecutor General, to conduct a serious, effective, professional and scientific investigation that is respectful of human rights in order to exhaust all lines of enquiry that might lead to Mr. Moreno Pérez being found alive. Secondly, the State party mentions that constant requests for cooperation have been made in order to cross-check the genetic data of

¹³⁹ Ibid. p. 42.

¹⁴⁰ Ibid. pp. 51 and 52.

Mr. Moreno Pérez with those of any bodies that are found. Thirdly, the State party mentions that, on 25 October 2018, an investigation was also opened by the newly created Specialized Unit on Enforced Disappearances of the Office of the Prosecutor General of Oaxaca State in an effort to increase the effectiveness of the investigative process.¹⁴¹ Lastly, the State party listed a series of steps taken by the Office of the Attorney General of the Republic, which include several unanswered requests for the investigation to be taken over by new staff made in 2018.

8.2 As to the preliminary investigation conducted by the Office of the Prosecutor General for Oaxaca State in respect of officer Juan Luis Vázquez Martínez (para. 6.7 above), the State party indicates that, on 5 November 2018, the Eighth District Court of the State of Oaxaca decided to grant an application for amparo lodged on 6 November 2017 and that it is now for the federal authority to determine the appropriate action to be taken.¹⁴²

8.3 With regard to the public act acknowledging responsibility and the public apology recommended by the Ombudsman's Office, the State party indicates that these steps were taken on 29 November 2016 by the Prosecutor General of Oaxaca State, in the presence of Mr. Moreno Zamora, various media representatives and the Inspector General of the Ombudsman's Office, among others.

8.4 With regard to the compensation recommended by the Ombudsman's Office, the State party indicates that, on 29 November 2016, a meeting was held with Mr. Moreno Zamora at which he accepted the sum of 1.5 million pesos, which has since been disbursed.

8.5 With regard to the guarantees of non-repetition, the State party mentions that, in a letter dated 24 November 2016, it ordered the introduction of human rights training for officials in the Prosecution Service, to be dispensed with the assistance of the National Human Rights Commission and the Ombudsman's Office.

8.6 Lastly, the State party mentions that, on 8 May 2015, Mr. Moreno Pérez and Mr. Moreno Zamora were added to the National Registry of Victims as a direct and indirect victim, respectively.

▶ ***Authors' comments on the State party's additional submission***

9.1 On 16 May 2019, the authors submit that the State party has made no progress in giving effect to three of the Ombudsman Office's recommendations directly related to the disappearance of Mr. Moreno Pérez (investigation of the disappearance and criminal investigations in respect of officer Juan Luis Vázquez Martínez). In this connection, the Ombudsman's Office noted, in a letter dated 4 July 2018, that "the first recommendation had not been complied with, since [...] there is no evidence to suggest that a serious, professional and scientific investigation that is respectful of human rights has been conducted in order to exhaust all lines of enquiry that might lead to Jesús Israel Moreno Pérez being found alive", and that the second recommendation had not been complied with either, since the "investigation into the conduct of the State agent in question" had not been carried out. The Ombudsman's Office considers the above to be a cause for concern "since the actions of the Office of the Prosecutor General for Oaxaca State promote impunity for improper acts by public officials who, in the exercise of their functions, violate the legislation regulating their conduct".¹⁴³ Consequently,

¹⁴¹ Investigation case file 139/UEDF/2018.

¹⁴² The communication does not provide further details about the judgment in respect of which the application for amparo was lodged.

¹⁴³ The authors enclose a copy of letter No. 010038 from the Office of the Oaxaca Human Rights Ombudsman, dated 4 July 2018, pp. 4 and 5.

on 5 September 2018, the Ombudsman's Office instituted proceedings for the protection of human rights¹⁴⁴ against the Prosecutor General of Oaxaca State before Oaxaca High Court on behalf of Mr. Moreno Pérez's father, since "by not conducting a thorough investigation to establish the whereabouts of Jesús Israel, the Office of the Prosecutor General leaves the disappeared person unprotected and contributes to the suffering of the family caused by the State's inaction".¹⁴⁵ The High Court received the request on 11 September 2018.¹⁴⁶

9.2 The authors stress that the State party submitted its additional information after the letter from the Ombudsman's Office and the request for proceedings for the protection of human rights had been issued. It is therefore worrying that the State party has not provided the Committee with comprehensive information on the progress made in giving effect to recommendation 13/2016 of the Ombudsman's Office.

9.3 With regard to the criminal proceedings, the authors note that, more than seven years after the indictment, they remain at the investigation stage and that the court has failed to take into account the recommendation of the Ombudsman's Office as it has not given due weight to the serious irregularities detected in the preliminary investigation.

9.4 With regard to the investigation opened by the Specialized Unit on Enforced Disappearances of the Office of the Prosecutor General for Oaxaca State (para. 8.1 above), the authors indicate that the steps taken have mainly entailed writing to the Red Cross, hospitals, police stations and the Ministry of Public Security to request information on the disappeared person. The most recent step, which was taken on 4 March 2019, entailed requesting the preparation of a facial composite showing how Mr. Moreno Pérez might have aged in the interim.

9.5 In short, the authors reiterate that the authorities have continued to present a confused and inconsistent version of events and that the State party appears not to have devised a clear search strategy based on a logical hypothesis regarding the facts of the case.

9.6 The authors also maintain that the public act acknowledging responsibility does not cover all the facts, since its focus is the shortcomings in the investigation and not enforced disappearance as such. The authors, having brought to the Committee's attention not only an investigation lacking in due diligence and marred by inefficiency, but an enforced disappearance attributable to acts and omissions by the State party, maintain that the public apologies issued cover only the former and do not provide redress for the act that gave rise to the communication in the first place, namely, the enforced disappearance.

9.7 Lastly, the authors indicate that financial compensation was awarded to the father of the disappeared person, but not to his mother or sister, or to the disappeared person himself.

¹⁴⁴ According to article 13 (XXVI) of the Act on the Office of the Oaxaca Human Rights Ombudsman, this institution has the power to "defend persons in court when requested to do so for the purpose of protecting human rights before the Constitutional Chamber of the High Court of Justice of the State".

¹⁴⁵ The authors enclose a copy of the request for proceedings for the protection of human rights from the Office of the Oaxaca Human Rights Ombudsman, dated 5 September 2018, p. 7.

¹⁴⁶ The authors enclose a copy of the notice from Oaxaca High Court, Constitutional Chamber and Fourth Criminal Chamber, case file 09/2018.

▶ *Additional information provided by the State party*

10. On 11 September 2019, the State party informed the Committee of additional steps taken by the Office of the Specialized Prosecutor for the Investigation of Crimes of Enforced Disappearance (see para. 6.8 above), including excavations in the area surrounding Chacahua lagoon, interviews with neighbours and tourism companies operating in the area, and a simulation of a body being thrown into the sea with a view to tracking its movement and establishing the possible resting place of Mr. Moreno Pérez. However, these actions did not bear fruit. The State party also reported that the judges of the Constitutional Chamber of Oaxaca State Judicial Authority had resolved to order the Office of the Prosecutor General of Oaxaca State to comply with the first, second and third points of the recommendations made by the Office of the Oaxaca Human Rights Ombudsman (see para. 9.1 above). With regard to the proceedings instituted before the Criminal Court of Puerto Escondido, the State party notes that, on 14 February 2019, the Office of the Specialized Prosecutor formally indicted Javier Rodríguez Peña on criminal charges of aggravated murder with premeditation and undue advantage and aggravated robbery with physical violence and that, accordingly, the proceedings have now entered the trial phase. The State party also reports that Oaxaca State Judicial Authority has been formally requested to appoint experts to prepare evidence pursuant to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). The State party also reported that investigation nos. 139/UEDF/2018, 138/FESP/2013 and 21/FESP/2015 are still in progress. Lastly, the State party reports that Mr. Moreno Pérez's parents and sister have been added to the National Registry of Victims (see para. 8.6 above).

Issues and proceedings before the Committee

▶ *Consideration of admissibility*

11.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

11.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

11.3 The Committee takes note of the State party's contention that domestic remedies have not been exhausted as a number of case files and preliminary inquiries¹⁴⁷ are still open, and that the criminal proceedings before the Criminal Court of Puerto Escondido are still in progress. The Committee takes note, however, of the authors' allegations that domestic remedies have been unreasonably prolonged and ineffective and that the investigations have been marred by serious irregularities, with the result that the fate and whereabouts of Mr. Moreno Pérez are still unknown.

¹⁴⁷ Case file 644/EXT/2011 before the Missing Persons Centre of the Office of the Attorney General of the Federal District; preliminary investigation PGR/SIEDO/UEIS/009/2012 before the Office of the Deputy Attorney General for the Investigation of Organized Crime of the Office of the Attorney General of the Republic; preliminary investigation AP/PGR/SDHPDSC/UEBPD/M30/214/2015 before the Office of the Special Prosecutor for the investigation of crimes of enforced disappearance of the Office of the Deputy Attorney General for Human Rights, Crime Prevention and Community Service of the Office of the Attorney General of the Republic; investigation case file 139/UEDF/2018 before the Specialized Unit on Enforced Disappearances of the Office of the Prosecutor General of Oaxaca State.

▶ **11.4** The Committee recalls that the purpose of the requirement to exhaust domestic remedies is to give the State party the opportunity to fulfil its duty to protect and guarantee the rights enshrined in the Covenant.¹⁴⁸ However, for the purposes of article 5 (2) **(b)** of the Optional Protocol, domestic remedies must not be unreasonably prolonged. In view of the fact that eight years have elapsed since the disappearance of Mr. Moreno Pérez and the submission of the initial complaints by the authors of the present communication without any significant progress being made in those investigations and without adequate justification for the delay being provided by the State party, the Committee considers that those investigations have been unduly prolonged and that, consequently, article 5 (2) **(b)** of the Optional Protocol does not preclude it from considering the present complaint.¹⁴⁹

11.5 As all admissibility requirements have been met, and given that the authors' complaints under articles 2 (3), 6 (1), 7, 9 and 16 of the Covenant have been sufficiently substantiated for the purposes of admissibility, the Committee declares the communication admissible and proceeds to its consideration on the merits.

▶ ***Consideration of the merits***

12.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

12.2 The Committee takes note of the authors' assertion that the facts of the present case occurred against a backdrop of serious human rights violations attributable to the security policy introduced by the State party in 2006, resulting in numerous enforced disappearances that were not properly investigated, and that this was also the prevailing context in the State of Oaxaca, the part of the country with the eighth highest number of complaints of human rights violations. The Committee takes note of the authors' assertion that the facts of the present case constitute an enforced disappearance since all the elements in the definition of that phenomenon are covered: **(a)** the disappearance and subsequent deprivation of liberty of Mr. Moreno Pérez without the State having clarified his whereabouts; **(b)** the involvement, support or acquiescence of State agents by reason of their direct involvement in the tampering with and fabrication of evidence and in the construction of false testimonies; and **(c)** the concealment of the fate and whereabouts of the disappeared person also by tampering with and fabricating evidence in order to alter the course of the investigation. In particular, the Committee notes that the authors maintain that the use of State power for the destruction of direct evidence gives them reason to believe that the disappearance may be attributable to the State. The Committee takes note of the State party's contention that there is insufficient evidence to prove that State agents were responsible for the disappearance.

12.3 The Committee notes that the State party did not provide any explanation for the authorities in charge of the investigation having substituted Mr. Moreno Pérez's mobile phone for another, thus allowing a piece of evidence vital to the investigation to be destroyed. However, the Committee notes that, in the absence of any information pointing to a specific context of enforced disappearances in the place where the disappearance occurred, and in the absence of circumstantial evidence¹⁵⁰ to substantiate the presumption of involvement, support or acquiescence of State agents in the disappearance, the Committee cannot conclude that the disappearance of Mr. Moreno Pérez is an enforced disappearance directly attributable to the State party.

¹⁴⁸ T.K. v. France, para. 8.3.

¹⁴⁹ Téllez Padilla v. Mexico (CCPR/C/126/D/2750/2016), para. 8.4.

¹⁵⁰ Inter-American Court of Human Rights. Godínez Cruz v. Honduras, merits, judgment of 20 January 1989, series C, No. 5, para. 154.

12.4 In the present case, the Committee takes note of the authors' claims that the facts constitute a violation of article 6 (1) of the Covenant, read alone and in conjunction with article 2 (3), since States parties have an obligation to ensure the protection of individuals against violations, which may be committed not only by its agents, but also by private persons or entities, and the authorities failed to search for Mr. Moreno Pérez immediately, tampered with and fabricated evidence, and manipulated witnesses to alter the course of the investigation, thereby creating conditions that put his life at serious risk. The Committee also takes note of the State party's assertion that it cannot be held responsible either by act or by omission because it is not obliged to know everything that happens in its territory, it was not aware of a potential situation of risk and it has conducted investigations that comply with the standards and obligations established by the Covenant.

12.5 The Committee stresses that the content and scope of the right to life includes not only negative and positive obligations, but also positive procedural obligations.¹⁵¹ Specifically, States parties' duty to protect the right to life entails not only preventing deprivation of life but also investigating and prosecuting potential cases of unlawful deprivation of life, meting out punishment and providing full reparation.¹⁵² In particular, the duty to take positive measures to protect the right to life derives from the general duty to ensure the rights recognized in the Covenant, which is articulated in article 2 (1), read in conjunction with article 6, as well as from the specific duty to protect the right to life by law which is articulated in the second sentence of article 6. Hence, States parties are obliged to take adequate preventive measures in order to protect individuals against unlawful and arbitrary deprivation of life.¹⁵³ States parties also have an obligation to investigate and, where appropriate, prosecute such incidents: by ensuring that those responsible are brought to justice, States parties prevent impunity. This obligation is implicit in the obligation to protect and is reinforced by the general duty to ensure the rights recognized in the Covenant, which is articulated in article 2 (1), read in conjunction with article 6 (1), and the duty to provide an effective remedy to victims of human rights violations and their relatives, which is articulated in article 2 (3) of the Covenant, read in conjunction with article 6 (1).¹⁵⁴ The Committee also refers to its jurisprudence according to which criminal investigation and ensuing prosecution are necessary remedies for violations of human rights such as those protected by article 6, and that there may therefore be a violation of the Covenant when the State party fails to take appropriate measures to investigate and punish those who have violated those rights and to provide redress to victims,¹⁵⁵ including a violation of article 6 of the Covenant in cases where some effort has been made to investigate the case.¹⁵⁶ The Committee therefore considers that effective investigation should be considered an obligation inherent in the right to life.

12.6 The Committee also notes that, in the present case, the Ombudsman's Office concluded that the investigating authority had not exhausted all lines of enquiry and that "the fact that the investigation was based on contradictory statements and testimonies, which were also the basis on which the 'verbal autopsy report' was issued, and on an expert opinion on objects that were never found and whose existence was disputed by the father of the disappeared person, in the opinion

151 General comment No. 36 (2018) on the right to life, paras. 7, 19, 21 and 27; Minnesota Protocol on the Investigation of Potentially Unlawful Death.

152 General comment No. 36, para. 19.

153 Ibid., para. 21.

154 Ibid., para. 27, which also states that investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death. The Committee also notes that article 3 of the International Convention for the Protection of All Persons from Enforced Disappearance, which Mexico has ratified, establishes an obligation for States parties to investigate disappearances that are the act of persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

155 *Amirov v. Russian Federation* (CCPR/C/95/D/1447/2006), para. 11.2.

156 *Herrera Rubio v. Colombia* (CCPR/C/31/D/161/1983), para. 11.

of this body,” raise serious doubts about the quality of the investigation. The Ombudsman’s Office therefore concluded that there had been a violation of the right to due process, specifically the right to a thorough and exhaustive investigation (paras. 7.2 and 7.7 above). The Committee also notes that the State party, while claiming before the Committee that the investigations complied with the standards and obligations established by the Covenant, also acknowledged its responsibility for the shortcomings in the investigations by performing a public act and issuing a public apology (para. 8.3 above).

12.7 In conclusion, in the light of the above observations regarding the State party’s failure to fulfil its duty to investigate the facts effectively, in a context of vulnerability in which it is reasonable to assume that Mr. Moreno Pérez’s right to life was violated, the Committee finds a violation of article 6 (1) of the Covenant, read alone and in conjunction with article 2 (3).

12.8 The Committee also takes note of the authors’ claim that the facts constitute treatment contrary to articles 7, 9 and 16 of the Covenant, read alone and in conjunction with article 2 (3), in respect of Mr. Moreno Pérez. In this connection, the authors maintain that the authorities’ initial, deliberate failure to search for the missing person, and the subsequent obstruction of their search, make it reasonable to presume that Mr. Moreno Pérez was deprived of his liberty against his will; that, during his deprivation of liberty, he was left with a feeling of distress and defencelessness that caused him intense suffering; and that, in these circumstances, he was deprived of the protection of the law. However, in the absence of clear information as to the fate and whereabouts of Mr. Moreno Pérez, the Committee considers that, since it has not been possible to prove that the facts of the present case entail a deprivation of liberty prior to a deprivation of life, it does not have sufficient evidence to find a violation of articles 7 and 16 in respect of Mr. Moreno Pérez.

12.9 The Committee also notes that the authors allege a violation, in respect of themselves, of article 7 of the Covenant, read alone and in conjunction with article 2 (3), owing to the fact that the serious omissions and obstructions in the investigation of the disappearance and the premature closure of the case by the authorities overseeing it have caused them great suffering, which exacerbates the loss of their loved one, and that the continuing uncertainty caused by the disappearance causes them “anxiety and stress and is a blight on their life”. In the light of the foregoing, and taking account of the threats that Mr. Moreno Pérez’s father received after getting involved in the investigation of his son’s disappearance (see para. 2.21 above), the Committee concludes that the facts before it disclose a violation of article 7 of the Covenant, read alone and in conjunction with article 2 (3), in respect of the authors.¹⁵⁷

13. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of article 6 (1), read alone and in conjunction with article 2 (3) of the Covenant, in respect of Mr. Moreno Pérez, and a violation of article 7, read alone and in conjunction with article 2 (3), in respect of the authors of the communication.

14. Under article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires that full reparation be made to individuals whose rights have been violated. The State party should therefore: **(a)** conduct a prompt investigation that is effective and thorough, impartial and independent, and transparent into the circumstances of the disappearance of Mr. Moreno Pérez, with a view to establishing the truth; **(b)** provide the authors with detailed information on the outcome of the investigation; **(c)** prosecute and punish those responsible for Mr. Moreno Pérez’s disappearance and probable death, and make the results of

¹⁵⁷ Boudjema v. Algeria (CCPR/C/121/D/2283/2013), para. 8.8.

such measures public; (d) investigate and, where appropriate, punish any action on the part of State agents that might have diminished the efficacy of the search and location operations; **(e)** assuming that Mr. Moreno Pérez is deceased, endeavour to find his mortal remains and return them to his family in dignified conditions; and **(f)** provide full reparation to the authors, including adequate compensation for the violations committed. The State party is also under an obligation to take steps to prevent the occurrence of similar violations in the future.

15. 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 for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information on the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated.

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